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The Philosophical Presuppositions of Thomas Jefferson's Social Theories

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THE PHILOSOPHICAL PRESUPPOSITIONS
OF
THOMAS JEFFERSON'S SOCIAL THEORIES

by

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CHAPTER I
INTRODUCTION

This dissertation is an attempt to trace the philosophical presuppositions of Jefferson's social theories. The tools to be used are primarily philosophical, not historical; because of the very nature of the study a considerable amount of space will be devoted to the historical setting but it will always be consigned to a secondary or auxiliary position. The dissertation is not based on the assumption that the philosophical was the most important factor involved in the American experiment in self-government. However, it is clear that it was a factor, and perhaps not the least important. Therefore, an investigation of the philosophical presuppositions of Jefferson's social theories is a contribution to Jeffersonia, Americana, and the philosophical enterprise as a whole.

The problem of whether or not ideas do influence history is a field of investigation in its own right and will receive only brief treatment here. The reverse relationship, the effect of events on ideas, will be treated at length. There is little question but what ideas arise from history; on this point, at least, few disagree. Just why there is some question whether or not ideas, in turn, influence history or whether there is an ultimate sense in which ideas and events can be said to maintain external relationships, is not clear. It is assumed that they do influence
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events as the cognitive factor in an overall process, that they are one means of analyzing events.

This dissertation will draw upon history for the origin of the philosophical concepts but it will not seek to establish the degree to which Jefferson's theories were determinant factors in subsequent American development. That is left for others.

When the curtain was drawn over the Middle Ages bringing to a halt the scientific, religious, and political thought of the Hellenistic era, there was little capable leadership to remind the people of their rich heritage in these respective fields. The religious and scientific disciplines stepped from the cocoon of history some two centuries before practical attempts were made to construct their corollaries in the body politic.

Luther was born in 1483 and Francis Bacon in 1561; during the lifetime of each, the principles for which they strove in their respective fields were placed into practice. It is true that even as early as 1291 the League of The Three Forest Cantons, a union of mutual defense, was formed in what is now Switzerland, but in any study of continuous political development the Swiss Confederation must be understood as a backwater, an historical eddy. Perhaps it is because theirs was not a self-conscious evolvement that their more recent counterparts have not found the Swiss endeavor a fruitful prototype. A spirit of nationalism sundered the
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Holy Roman Empire but the absolutism found in the papacy was merely transformed to the absolute monarchies. Only here and there as in Switzerland did the negligence of sovereigns permit outbreaks of liberal political practices based on mutual contract and the attendant implied individualism. Although the Protestant groups strongly resisted the tendency toward continued atomization, the gates forced by Luther loosed an uncontrollable flood, many of whom had little sympathy with the original religious motivation. The rejuvenated natural sciences found patrons among contending princes.

Unlike the religious and scientific thinkers, the political theorists did not live to see liberal principles of government instituted. It was in the British colonial system that the recrudescence of earlier Greek and Roman political thought took place. It is to the credit of that system with all of its faults that such a metamorphosis transpired when it did not in the German, French, Dutch, and Spanish colonies. Although the "mother of parliaments" did not achieve maturity until the early part of the 19th century, its first tentative efforts in gradually undermining the autocratic power of the monarch were to have considerable influence on its colonial governments. It is with one phase of that development that this study is concerned.

Primarily, because of the distance between England and its American colonies, the latter enjoyed considerable
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independence from the very first and as a result became informal schools in political mechanics. They managed their local affairs and dealt with Indian border difficulties. But they were not free of a burdensome taxation, control over international relationships, and the foreign trade agreements that were forced upon them. The works of the political theorists found a ready market and although they were in no sense prepared for self-government at the time of the Revolution, when pressed by the exigencies of social upheaval, there were some few scholars who contributed, and who were capable of contributing, to the alternative foundations for an indigenous social philosophy. It was necessary to find a basis for the new government, a foundation that could support it against the established monarchies of the old world. The need was both pragmatic and theoretical, politically and intellectually necessary.

This was particularly true for peoples who had been accustomed to the theory of the "divine right of kings." For them, the intellectual was a part of the pragmatic need. It was necessary to give the new nation a theoretical justification, a feeling of the basic rightfulness of the Revolution. Only from such a belief could the necessary hope and faith be derived for the arduous and burdensome conflict ahead. Every revolutionary element must possess such a mythos before it can be nerved to the battle; it may be nothing more than a fiction or it may convey religious authority, but it must be
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genuine, vivid and comprehensible in the minds of a subject people before they will confront established authority.

Adams, Madison, Hamilton, Washington, and Jefferson, to name but a few, were outstanding leaders in this development though not all were by any means students of previous political thought. The term democracy was certainly not unknown; Plato and Aristotle had used it in their political treatises, but only Aristotle had maintained that it might be given serious consideration. No one had dreamed that it could be applied to a large and growing nation. The Greek city states and Swiss cantons were not acceptable models because of their size. Aristotle's use of the term was in fact what now would be considered an aristocracy, only the upper middle class was destined to rule. The term itself precipitated visions of the mobs swelling the Roman streets and was frequently paraphrased by the term mobocracy. There was the deep-set and uneasy feeling that it was a sophisticated name for anarchy or lawlessness, that trade and commerce could never prosper in a democratic state. It carried overtones of the barbarous, of leather clad teutonic warriors striking their shields in clamorous disapproval or rollicking approbation. The men mentioned above, along with others, were, because of their respective background and experience, called upon to provide theoretical and practical solutions to the factious problems of self-government.

They responded in various ways; reflecting in their
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writings and leadership many conflicting factors such as the religious, cultural, economic, geographical, scientific, and philosophical, they were not always in agreement. But together, the Founding Fathers were instrumental in providing temporary answers to many of the most pressing problems.

There are at least two ways in which the presuppositions of Jefferson's social theories may be studied. In the first place there are the men and the writings mentioned by Jefferson himself as having had a direct influence on his thought. Possessing one of the largest private libraries in the colonies, being an omnivorous reader, and carrying on a voluminous correspondence throughout his life, the writings present a considerable problem in this regard. Letters written in one context frequently contradict letters written in another. At one time or another he described several books on political theory, some of which presented distinct and contradictory views, as "the best" in the field. He castigated few previous thinkers, Plato and Hume among them; he applauded many. Jefferson published only one major work, the celebrated study in geography, botany, colonial life, and government, known as the Notes on Virginia. His commonplace books may be likened to personal diaries in their respective fields, but they do not include commentaries, only passages collected from others. By themselves they would be of little use in determining the nature of his thought. Nevertheless it is from all of these writings that the
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political theories of Jefferson may be gleaned and streams of influence traced. Chapters II and III are devoted to preleminary studies concerning the life and times of Jefferson and his work in the House of Burgesses; Chapters IV through VII, however, are devoted to a study of the historical streams of influence directly influencing Jefferson in so far as they can be determined.

Secondly, the philosophical presuppositions of Jefferson's social theories may be studied by comparing him to other political theorists to determine the ones he most resembled, regardless of whether or not he had read them. Chapters VIII and IX are devoted to just such a comparison. This method also provides a means of comparing him to men on whom he did not depend.

Cicero, Hobbes, and Locke are studied in Chapter VIII and their political philosophies are compared to Jefferson's commentary on the Constitution in Chapter IX. It is readily seen that Jefferson stands in the Ciceronian and Lockian tradition and that he is unalterably opposed to Hobbes. It is further concluded that Jefferson is a political positivist in the Humian sense of that term having handled previous realistic theories of the state in the same way that Hume handled previous theories of substance, of space and time. The problem of this paper therefore is to determine first the historical concepts that most influenced Jefferson's social theories, and secondly to compare the philosophical
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presuppositions of those theories with other outstanding thinkers. It must be added that the distinction is functional, not ultimate. The conclusions should be an aid in delineating those theories, both political and metaphysical, which have contributed most to the democratic tradition.

Although more than Jefferson's theory of the state will be treated in this dissertation, only his doctrine of religious freedom will receive comparable consideration. His other theories such as the theory of education, agrarian economy, and slavery will be mentioned only in passing. It is important to remember this when it is claimed that Jefferson is a political positivist; this label is not extended to include his moral philosophy. As will be shown, it is the conclusion of this dissertation that in spite of his interest in moral philosophy, every time he tenders it individual treatment he is caught up in an elementary conflict, an ambiguity that concludes in an impasse. The central problem here is his political philosophy and the manner in which it is related to previous doctrines of natural law.

Adrienne Koch, in her extremely well-written The Philosophy of Thomas Jefferson, has most nearly approached the objectives outlined above. Her volume was published in 1943 and has the advantage of being based on a much more comprehensive survey of Jefferson's writings than most previous works dealing with the same problem. Although there is a
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plentitude of excellent bibliographies of Jefferson and compendious works on his special interests such as architecture, botany, etc., few volumes have been devoted to a thorough investigation of his commentaries on philosophy. Unquestionably, contributing factors to this lack of recognition are to be found in his checkered and purely pragmatic interest in the field plus the manifest contradictions in his moral philosophy.

This essential pragmatism may be found in almost any of his letters wherein is discussed the works of some outstanding philosopher. The works of the philosophers are used when they are relevant to specific questions and no further. They are not developed for their own sake nor does he trace the logical implications of his theories. Throughout the study this shall be noted in various ways. Considerable caution should be employed when the phrase "philosophy of Jefferson" is heard or read. The degree to which these scattered commentaries can be lifted from his other writings and maintain a collective identity is slight indeed. Koch's title, for that reason, is somewhat ambiguous if not question begging. It is nearer the truth to say, "the theories of Jefferson" or "Jefferson's commentaries on philosophical problems."

Because of the close similarity of Koch's work and this dissertation, some attention will be given to a comparison of the two. Koch's Philosophy of Thomas Jefferson is much more comprehensive than the problem here outlined and the investigation of Jefferson's social theories is limited to one
section. Koch maintains that Jefferson was a *philosophe* because he was willing to search and compare, but not a philosopher. The distinction turns on the method, not on the subject matter; as she defines and employs the term, it is so all-inclusive that it adds little to a comprehension of Jefferson's thought. Almost any student conditioned by a particular discipline is willing to search and compare; furthermore, even the most implacable and doctrinaire thinkers are willing to experiment in some field or other. For that reason the term will not be employed in this study although the negative aspect of her conclusion is valid; he was not a philosopher either of the first or second rank. Not only that, but he had a penchant for reading thinkers that were not destined to achieve subsequent fame. Some of his theories are so manifestly contradictory, theories treated in the same letter, that there is no question but what he did not appreciate their implications. On several such occasions Koch becomes an apologist for him, tending toward hagiography and making of him what he was not. Jefferson's primary interest was law and his most scholarly piece of work is in that field; it is his astute analysis of the degree to which Christian dogma had influenced the Common Law.¹

In the first chapter of her work Koch attacks Chinard's statement that Jefferson was first a Stoic and then an

¹. Jefferson, (Ford), I, 360. "Whether Christianity is Part of the Common Law."
Epicurean; Koch maintains that he was neither but was influenced by both about equally in his moral philosophy. Koch traced the Epicurean development through Gassendi and made a much more thorough study of the problem than did Chinard; consequently she arrives much nearer the truth. In her treatment of Jefferson and Bolingbroke, Koch dismisses lightly the conflict between Jefferson's moral sense theory and his theory of Epicurean utility. She designates it as a stage in his development but as a matter of fact it stayed with him the rest of his life; it is a basic ambiguity and reveals nothing more than his general distaste for metaphysical problems. This dissertation agrees with Koch that the theoretical influence of French thought on Jefferson was practically nil. At best it serves as an index to concepts already well developed; at worst it is a blind alley. There was considerable French influence in other areas but as will be pointed out later, in the field of social thought, Jefferson went to France as an instructor, not a student.

Jefferson stood in the English deistic tradition drawing on Bolingbroke rather than Voltaire, Locke rather than Montesquieu. Tracy demands and receives separate treatment but even here Jefferson stands in a slightly superior position, that of an established American patron for the French author. The primary concepts of Ideology Tracy freely admits were taken from Locke, concepts with which Jefferson had long been familiar. Therefore care should be taken in assuming that
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because Jefferson considered France his "second home" that there was a direct philosophical influence. The compilations of Chinard in cooperation with both the Johns Hopkins Press and Les Presses Universitaires de France may have unintentionally contributed to an overstatement of that influence. Of course, the letters addressed to Jefferson's contemporaries in France are stressed and frequently bound separately.

There is a rather strong tendency for Koch to make of Jefferson an accomplished metaphysician. That he frequently employed a metaphysical terminology is true, that he read from metaphysicians, notably Bolingbroke, is likewise true, but he was not a metaphysician as such. As will be pointed out in the chapter on the Commonplace Book, he did copy a section of Bolingbroke's metaphysics but Chinard's contention in the introduction to the contrary, that does not of itself imply agreement, disagreement, or even that he thought more of it.

Koch does not make an adequate distinction between what Jefferson himself said on the one hand and what she believes were the logical implications of those statements on the other. There is a difference. Regardless of the accuracy achieved in the most acute logical analysis they are still not his theories but her judgment of them. For the metaphysician, all consistent theories convey metaphysical implications and Jefferson's are no exception. Furthermore much is to be gained by indicating those implications, but they still do not make of the subject a metaphysician and the distinction at all times should be clear.
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To be rational is a right assumed by every thinker but that right is misconstrued by a reader who refuses to admit that a thinker can sometimes be irrational.

The last seven chapters of Koch's work is devoted to a more detailed study of his social philosophy. She ascribes to Jefferson a political relativism similar to that of Montesquieu. The great French thinker contributed the rather startling observation that the government of a country is determined by its climate, an interesting adaptation of natural law theories. He does not evaluate the systems as such, claiming that one is necessarily superior to another but only that one may be better in a specific climate. There is one sense in which it can be said that Jefferson was a relativist in so far as each society was to determine its own government, but it can never be said that he equated the monarchial, the aristocratic, and the democratic forms of government. Neither did he place so much stress on climatic determinism. Jefferson was a relativist in that he believed each culture should determine its own government by social compact, the constitution. But he assumed that every social compact would automatically become democratic. There is a further distinction to be made, Montesquieu did not develop his social theory to the point of a temporal relativism as did Jefferson. Jefferson believed that some provision should be made for a complete overhauling of the compact with each generation. This goes much further than Montesquieu and makes of Jefferson
not a mere relativist but a political positivist. Jefferson's contribution at this point was just as significant as that of Montesquieu and for the most part it has been ignored.

In return for the honor it has bestowed upon Jefferson, history has demanded that he submit to the inevitable stereotype, that he be equated with all that has since endeared itself to what may be called the American tradition. Inasmuch as the constitution does not provide for its extinction with every generation, this phase of Jefferson's thought has been passed by.

Jefferson and Madison, also by Koch, is an attempt to prove the two men were interdependent in their political thought, that the one balanced the other. Although it is an excellent contribution to the field of Early American thought, it is not of great value to this study.

Chinard is second only to Koch in time spent interpreting the philosophical passages in Jefferson's writings. But Chinard is a historian first, a philosopher second, and is generally impatient with attempts to trace ideas as such; his primary interest is to be found in the biographies of men, their active participation in the great historical events. Characteristically, he comments in an off-hand manner that Jefferson derived his social theories from the early democratic experiments in Britain during the 4th, 5th, and 6th centuries. Chapter III treats the problem in some detail. It is through such unguarded statements in biographies that many popular
errors have arisen; the biography will always command a much larger reading audience than the more scholarly published treatises such as those of Koch. The introductions to the Commonplace Books by Chinard are likewise marked with a considerable degree of carelessness, particularly in the assumption that what Jefferson copied he believed. The opposite might well be true.

The Commonplace Books, for that reason, have only a secondary value. Only when he evaluates them in a letter do they come into prominence as a practical channel to an understanding of his thought. At most, they support and elaborate a thesis found elsewhere.

The works of Becker and Freidenwald on the Declaration of Independence have been of considerable assistance as will be noted in Chapter IV. Becker, particularly has been used; there is little doubt but what he has given the Declaration the most thorough treatment it has been accorded from a philosophical point of view. The first and last chapters have been of great assistance.

Beard's Economic Origins of Jeffersonian Democracy has not been considered relevant to this study. It is an effort to interpret the economic determinants involved in the agrarian movement as opposed to the financial and trading centers. In its field it is an excellent study and the inference is not to be drawn that there were not strong economic forces involved in the election of Jefferson to the presidency in 1800; there were,
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but they do not constitute the subject matter of this study.

Other than the Memorial Edition of Jefferson's writings, the Ford Edition has been used for the most part. The references to the Memorial Edition in the footnotes are not designated as such but simply as "Jefferson." The Jefferson Cyclopedia by Foley has also been helpful as a primary reference work.

The first volume of the Papers of Thomas Jefferson, edited by Julian P. Boyd, and published by Princeton University Press, was received by subscribers in 1950. The project will not be completed until some fifty or more volumes are printed; needless to say it will be definitive and many letters will be printed that have not been heretofore. Some three or more volumes are completed as this is being written so it has been of little value to this dissertation. There is one sense in which this edition constitutes a Sword of Damocles for all studies of Jefferson made while the work is in progress. The knowledge that it is being published has been an active deterrent to placing great emphasis on isolated selections that might be inundated in the flood of letters soon to be released. A studied effort has been made to treat only the central themes, not the theories stated only in a few letters to friends, but theories that run throughout his writings, both personal and public. With the publication of the Princeton edition the time will be ripe for the detailed studies of individual letters that constitute the variations
on the main theme. It might be added in this connection that some books have been read of recent date in which the authors claimed to have had access to the additional material. Nothing of consequence to the intent of this study has been uncovered so far. Unquestionably such a monumental study will contribute to a better understanding of Thomas Jefferson and his times.

The method employed has been, so far as possible, derived from the nature of the material under study. Within given limits a chronological order has been followed beginning with the early years of Jefferson's life. Historical analyses have been used in addition to the writings of Jefferson as such; this is particularly true with the chapter treating the revolt against the church. The chapters have been grouped around those events during his life which were most significant from the viewpoint of this study and throughout there has been an attempt to treat more than the isolated statements concerning the subject at hand. A general view of his life, the times in which he lived, and the issues uppermost in the minds of the people at the time, have been considered.

After reading what Jefferson has had to say on a particular subject, other secondary sources have been employed. An effort was then made to place Jefferson historically, that is, discover what streams of thought had most influenced him in a particular area of his social theories. Then comparisons have been made with prominent thinkers in the philosophical
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tradition. The latter is a judgment based on point by point comparisons; but it is felt that therein lies the greatest value of this study. In the concluding chapter it is pointed out that Jefferson was a political positivist in the tradition of Hume and J. S. Mill. One conclusion of this dissertation is that what Jefferson meant by the state was the mutual agreement of two or more people on a method of government for a stated period of time; the ideal or normative state would constitute mutual agreement on a method of self-government.

The personal character of Jefferson is primarily a problem for his biographers. However it is almost impossible to read any phase of his works without being impressed with the qualities of magnanimity, daring, and cultural breadth. Throughout his life there was profound and indefatigable sympathy for the oppressed. This is revealed in his concern for slaves, minority sects and the poor who could not afford to educate themselves. His personal habits were intemperate only as they tended toward austerity. His lifelong gregariousness and hospitality constituted a continual temptation for others to impose upon his time and wealth. It is due to his conscientious habits of correspondence, habits which led him to write detailed letters to people he scarcely knew, that this investigation and many more like it are possible. The theory that governments are to be altered with each generation, the only political theory that was uniquely Jeffersonian, is
one indication of his ingenuity, an inventiveness expressed far more in the problems of technology than in the classic questions of political thought.

There are qualities in the character of Jefferson reminiscent both of Aristotle and Cicero. He had a passion for reform found in neither, but more so in Cicero than in Aristotle. He was himself an aristocrat as both Aristotle and Cicero were. The level of his comprehension was closer to that of Cicero than Aristotle but the breadth of his interests were Aristotelian. He was more inventive than Cicero but much less so than Aristotle. He was self-assured but not overbearing, patient but not given to procrastination.

Jefferson was not the Great Legislator in the tradition of either a Lycurgus or Solon although he bears a historical relationship to the founding of the nation similar to theirs in Sparta and Athens. He was never so convinced of the rightness of his opinion that he would oppose himself to the majority will. He was in every sense of the word a Founding Father of the United States and the experiment in government which it heralded, but he was a father who was unwilling to assume the responsibility of a patriarchy and had infinite respect for the rights and opinions of his political descendents. He did not covet for his generation the distinction of being a landmark in history, only that it fulfill its obligations. It was not with reluctance that he contemplated the fundamental changes to be wrought in succeeding generations but with
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faith, hope and high expectation. If he had any word of
guidance to pass on to the future it was that it not
imitate its forbears. Jefferson did not foresee the dogmatic
implications involved in this admonition. But the scholar
will look far to find another political theorist who
recommended that the fundamental document of government carry
its own seeds of necessary self-destruction.

Where conclusive evidence is lacking and where forthright
statements are scattered sparsely, in a word, where there is
a paucity of definitive data, there hypotheses flourish and
bloom in abundance without being mutually contradictory.
Those suggested here are expected to widen and deepen the
search, to bring to light views heretofore unexpressed and to
place variant emphases upon others already introduced by
previous thinkers.
Although the immediate boundaries of this dissertation are defined as Jefferson's social theories, it will soon be evident that the total intellectual development will demand some investigation. Jefferson's relation with the past will only become relevant when it is seen in the light of his immediate background and environment. This is not an attempt to deal with one work by an individual author but with a person who saw clearly and distinctly an immediate relationship between his thought and what he accomplished each day. When the student attempts to evaluate a published work, he is interpreting what the author wished to reveal to others. However when the material of the investigation includes personal notations and letters to friends plus the published documents, there is a real sense in which he is interpreting what the author wished to clarify for himself.

Jefferson's interests knew no boundaries. His tireless curiosity sought out every crevice of human thought and endeavor, past and present. His social theories were nothing apart from his daily life. He discoursed with equal readiness on philosophy, government, art, natural science, ethics, history, religion, agriculture, education, and language. Even this list is not inclusive. One of the student's first problems is to be found in the fact that in most of his communications these subjects fall out in a jumbled mass. All too often,
their connections exist only in the mind of Jefferson. Padover states that there has never been anything to compare with his range of interest since the Italian Renaissance.\footnote{Padover, TCJ, x.} Certainly no individual rises from the pages of American history to challenge that assertion.

Just what is meant by the term presupposition in this context may be further clarified. We may with justification for instance, draw a line from the best Stoic teachings now available to the Declaration of Independence in its first draft. It would greatly simplify the study. Thus an identity might or might not be established, but it is certain that the comparison could be relatively accurate. The problems involved here are much more complex. It is one thing to show similarities existing in reference to concepts; it is quite another to prove that they have a direct historical relationship. Also, as in this instance, it might be found that while the Declaration of Independence had much in common with the Stoic teachings, the former was only one aspect of Jefferson's social theories and that even they may have been subsequently altered. Therefore only a hypothesis or possibility will be proposed when identity is established between the works of Jefferson and his predecessors. Except in the cases wherein Jefferson credits one of his predecessors with directly influencing him, this will remain in hypothetical form. However an indirect
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approach by way of necessary implications might serve to reduce the possibility of error. Since this study deals with a man who changed and developed his social theories over a period of time, every reference to his thought must be qualified by a definite point in history. This is particularly true of his attitude toward organized and institutionalized Christianity.

Jefferson's first tutor was the Reverend William Douglas who had come from Scotland in 1750.¹ His second tutor was Reverend James Maury.² The latter was always spoken well of in Jefferson's later correspondence while the former was not regarded as a suitable teacher.³ His criterion consisted of the instructor's ability to teach the classics, Latin and Greek. Both of Jefferson's tutors were clergymen and doubtless did much to influence his attitude toward the church. It is possible that this early negative experience with a clergyman lowered his respect for the church in general. Likewise it is possible that it had no measurable effect. It is also possible that his experience with the second tutor heightened his respect for the church. Actually, the problem cannot be pursued further for lack of relevant evidence, although in view of

¹. Malone, JHT, 40.
². In addition to being historically important as one of Jefferson's tutors, Maury is remembered for his fight against the "Two Penny Act."
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Jefferson's later relationship to the established church, interesting hypotheses present themselves to the reader. Until 1760 we know practically nothing of Jefferson's personal thought life except by implication. In a letter to Ralph Izard in 1788 Jefferson makes the following statement on education:

I have never thought a boy should undertake abstruse or difficult sciences, such as mathematics in general, till fifteen years of age at soonest. Before that time they are best employed in learning the languages, which is merely a matter of memory.

The most adequate hypothesis is that Jefferson left Douglas and started studying under Maury because Maury entertained a much more thorough grasp of the classics.

Another use of the term presupposition as it will

1. Koch, POJ, 1. The Ford and Princeton editions which are printed in chronological order, give the first letter as January 14, 1760. Jefferson was not quite seventeen years of age at the time. The next entry is a letter to Page two years later on December 25, 1762. There are only a few letters previous to 1770 when Jefferson was twenty-seven years old. Most of these deal with an early love affair. Koch points out that there are few sources previous to 1785 when Jefferson was forty-two years old, which give a day to day development of his thought such as subsequent letters furnished. However, much can be gained from the Commonplace Book which was being written during this time. Of course later letters often discussed his earlier thoughts but will not be used when an earlier letter can be found. All too often memories "improve" with age, even the memory of Jefferson. Most of this chapter must necessarily deal with Jefferson's surroundings and friends.

be used here may now be introduced. It will also be employed to indicate the metaphysical implications of Jefferson's social theories apart from historical precedents. But in this sense it will be used sparingly because of the tendency to read into what are otherwise explicit and objective statements. The difficulties in tracing the historical evolvement of his theories are considerable but the problems involved in labeling him a materialist or an idealist, in metaphysics, or a hedonist in morals are overwhelming. It is the finding of this dissertation that it cannot be accomplished without serious injury to what is stated explicitly.

It is relevant that when Jefferson was only fourteen years old he placed the study of the classics above all other disciplines. This is a point of view which, while developed very early in life, was maintained until his death. The Commonplace Book has extracts from Homer, Euripides, Herodotus, Anacreon, Virgil, Ovid, Horace, Cicero, and Seneca. He was able to read these authors in their native tongues and also could read French. However his firsthand knowledge of French authors was to come later with his stay in Paris. All subsequent education was overshadowed by his thorough training in the classics for it became the norm for his later judgments and constituted the core of his philosophy of education.
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Most of the boys of his age had received some introduction into the classics but had discontinued their schooling earlier. Education in Virginia and the other southern states was not considered so vitally important as it was in the northern states. In the development of the southern colonies the same motivations did not exist and the culture as a whole seemed to rebel against the best laid educational schemes. Soon after the establishment of the northern colonies provisions had been made for adequate schooling. Schools for the clergy were constructed in order to furnish a literate leadership within each parish. Also it was necessary that the laymen be able to read the Bible and converse intelligibly on the doctrines taught in the catechism. As a consequence schools were also constructed for the laymen. Meanwhile in Virginia those planters who were able to do so, sent their children to England there to study in the private schools maintained for the landed gentry; those who were not, frequently hired tutors from among the clergy. This constituted a supplementary income and may have been one of the contributing factors in discouraging the development of public schools. The poor in the South remained illiterate. Although the South was not so interested in education as the North, the content of what they did teach was often of a superior quality. Since the motivation stemmed from two very diverse sources, the subject matter varied likewise. The upper classes in the southern colonies received an education in the classics while
the northern schools were more concerned with teaching those subjects designed to help the students understand the catechism. The Anglican clergy were much broader in their interpretation of curriculum requirements than were the ministers of the Puritan tradition. Primarily because of its ecclesiastical ties, the South maintained a much closer relationship to English educational systems. Although some of these conditions were changing during Jefferson's lifetime, the fundamental educational habits altered slowly and conservatively. Jefferson's early interest in the classics can best be understood in the light of this tradition.

In 1760, at seventeen years of age, Jefferson enrolled in William and Mary. 1760 is also the year of his first extant letter wherein he discusses the reasons for the projected step toward higher education. He stated that if he remained, the loss of one fourth of his time would be inevitable, a loss due to the continual arrival of guests at the plantation. Thus it would "lessen the expenses of the estate" for him to leave. Also he wanted a "more universal Acquaintance" and to "learn something of the Mathematics." William and Mary (est. 1692) was located in Williamsburg, the capital of the colony. It was the pride of colonial Virginia and was at that time some 68 years old. Constituting the educational

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and social center of the colony as it did, William and Mary had also become a focal point for colony wide critical attacks. It had undergone criticism from every side that ranged from student morals to curriculum standards. It had a powerful influence over the clergy of Virginia and had done much to raise the cultural level of the colony; there was a ratio of six clergymen to one layman on the faculty. William Small was the sole layman and it was he who first instructed Jefferson in physics, metaphysics, and mathematics.¹ On the resignation of the professor of moral philosophy, the lectures on ethics, rhetoric, and literature also fell to him. Jefferson valued the friendship of Small more than anyone he had known up until that time and credited him with having influenced many of his later decisions.² Throughout Jefferson's student days at William and Mary, the faculty members were in continual conflict with the local authorities. Much of the unrest stemmed from the question concerning the authority of the Bishop of London in directing the activities of the school. The faculty was on the whole a riotous and drunken lot and during Jefferson's stay three members either resigned or were dismissed because of ungentlemanly behavior. Of the seven faculty members, in his Autobiography, Jefferson only mentions Small although doubtless, he studied under others. It was

¹. Malone, JHT, 51.
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Small who, in addition to introducing him to the disciplines mentioned above, also introduced him to Wythe and Governor Fauquier, "the ablest man who had ever filled that office." The four frequently dined together and spent the evening in serious and enlightening conversation. "To the habitual conversations on these occasions I owed much instruction."

From these references it is easy to see that Jefferson had little in common with the local clergymen. "The seeds of anticlericalism...were probably sown in his mind while he was in college or soon afterwards, when he became intimate with Francis Fauquier." There is no direct evidence for this. Yet we do know that Fauquier was not on the best of terms with the clerical authorities and also that he was one of Jefferson's closest friends. As Malone points out, it is probable that Jefferson knew of this conflict and chose the side of Fauquier.

Historians generally agree that Jefferson was right in stating that Fauquier was the best governor Virginia had ever had even though there had been some very able men in the governor's chair. "A man of broad education, liberal outlook and charming manners, he was instantly liked." Fauquier was against the infamous Stamp Act and did all he could to prevent it. His objectivity was tested thoroughly in the days which led up to the Revolution.

4. Hawthorne, WON, 76.
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If it is true that Jefferson did develop his first anti-clericalism on the basis of Fauquier's conflicts, he did not find an intellectual basis for his judgment until he read the works of Bolingbroke. It is imperative to point out here that Jefferson's anti-clericalism was not necessarily anti-Christian. In his twentieth year Jefferson wrote this simple statement of faith enclosed in a letter to John Page.

Perfect happiness, I believe, was never intended by the Deity to be the lot of one of his creatures in this world; but that he has very much put in our power the nearness of our approaches to it, is what I have steadfastly believed. The most fortunate of us, in our journey through life, frequently meet with calamities and misfortunes which may greatly afflict us; and to fortify our minds against the attacks of these calamities and misfortunes, should be one of the principle studies and endeavors of our lives. The only method of doing this is to assume a perfect resignation to the Divine will, to consider that whatever does happen, must happen; and that by our uneasiness, we cannot prevent the blow before it does fall, but we may add to its force after it has fallen. These considerations and others such as these, may enable us in some measure to surmount the difficulties thrown in our way; to bear up with a tolerable degree of patience under this burden of life; and to proceed with a pious and unshaken resignation, till we arrive at our journey's end, when we may deliver up our trust into the hands of him who gave it, and receive such reward as to him shall seem proportioned to our merit.

This was penned three years after his first acquaintance with Fauquier. Chinard\(^2\) points out that he had retained his early Christian faith. "This note of Christian stoicism is exactly what might be expected from a young Protestant whose

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mind was not particularly perturbed by metaphysical problems.¹ Koch² is correct in stating that Chinard was overly anxious to label Jefferson a Stoic, when he did so on the basis of this letter. Stoicism, entering through no less a person than St. Paul, had for centuries been sufficiently influential within the walls of orthodox Christianity to justify Jefferson's statement. Jefferson, a student of Cicero, was certainly not unmindful of the Stoic position, but it was not necessary for him to go beyond the Christian tradition in order to subscribe to this statement of faith. Stoic principles which became firmly embedded in all Roman literature from the very beginning of the Christian era and had particular influence among the kings and governors of western culture since that time, entered the Christian tradition in the teachings of Paul.³

Although Paul had embraced the Christian religion, there is considerable evidence to indicate that he retained many Stoic concepts. Inasmuch as Paul did not refer to the Stoics as such, it is impossible to trace the strands of thought with certainty. However, for Paul, the human body was given an inferior status, a subsidiary position compared to the spirit. This psychological dualism and his references to the heavenly and celestial bodies indicate the

¹ Chinard, TJ, 20.
² Koch, PQJ, 4.
³ Arnold, Art., XI, 863.
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degree of his reliance on the Stoic teachings. They were not peripheral, but lay at the very core of his thought. Paul's emphasis upon withdrawal and acceptance in addition to his lack of concern for social reform further support this contention. "It may be fearlessly maintained that the Christian cult of the "Holy Spirit" and the ecclesiastical dogma of the Trinity grew great in a soil enriched by Stoic speculation and experience."¹ De Officiis and the Discourses of Epictetus for all practical purposes became Christian manuals.² Arnold goes on to say that the Stoic philosophy was a "nursing mother to the church."³

In Paul's speech on Mars Hill (Acts, 17,24-28.) there are several verses which reflect this influence to a considerable degree, particularly his affinity for Stoic pantheism when speaking to the Greeks.

God made the world and all things therein,... hath made of one blood all nations of men for to dwell on all the face of the earth, and hath determined the times before appointed, and the bounds of their habitation; That they should seek the Lord, if heply they might feel after him, and find him, though he be not far from every one of us: For in him we live, and move, and have our being: as certain also of your own poets have said, For we are also his offspring.

To be sure, there is much here that would also reflect the strict dogmatism of the Pharisee, but there is also the all-encompassing spirit to be found in Stoicism along with

¹. Arnold, Art., XI, 864.
². Gifford, SOP, 155.
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the acceptance of God's purposes as unswerving and deterministic. Likewise there is an admission that he had studied the Greek thinkers of the past. In Chapter XII of First Corinthians Paul outlines his doctrine of Christian vocation stating that each is granted particular talents and that the body of Christ, his church, consists in the combination of specific vocations. It is incumbent upon the believer to accept his position in life as a gift of God, not to question or seek promotion. Although direct influence cannot be proven, it is in fact, a system of organic harmony which anticipates the ecclesiastical hierarchy that was to develop later, a doctrine which parallels, if it did not draw upon, Plato's Republic.¹

Of the many trends of Stoic thought within the Christian religion, one of the most conspicuous is the basic belief in a heavy handed determinism which found its way into the Anglican doctrine through the teachings of Augustine and Calvin.² At this time in the life of Jefferson we may assume that he was anti-clerical but had not yet altered his orthodox Christian views. Later, this was not the case for he definitely placed the purer forms of the Stoic

². The influence of Calvin on the Anglican doctrine of faith is adequately discussed by Orr, Art., III, 146-154. He also refers to the Augustinian influence on Calvin. Gifford, SOF, 389f., discusses the relation of Calvin's thought to that of Augustine also. Augustine was not the only church father influenced by Stoicism but he was the most important. Ambrose was influenced by the Stoic view of the natural virtues. Gifford, SOF, 608f., discusses at some length the relation of the Christian and Stoic philosophies.
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philosophy above that of the Christian.

Jefferson only attended college formally for two years after which time he continued to study under William Small. This continued for two additional years. He spent his mornings studying law but in the afternoon and evening he turned to the disciplines which have successfully thwarted the attempts of subsequent interpreters to divide his activities into specific categories. There were only two professions open to men in the colonies of his ability and background. They were the law and the ministry. Without hesitation he chose law; there is no evidence whatsoever that he ever considered the ministry.

There were no law schools in the Virginia colony and Jefferson decided against studying in England. Candidates for the bar studied in local law offices until they were ready to pass an examination before a board of lawyers appointed for the purpose. Henry Clay finished his studies and took his examination in six months; Jefferson presented himself for the bar examination six years after leaving the university. He studied in the law office of George Wythe, attended the court sessions and spent the rest of his time studying at home. These were some of the great formative years of his life during which he drew heavily on the friendship of Small, Wythe, and Governor Fauquier.

1 Chinard, TJ, 28.
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Although Jefferson did not pay Wythe for tutoring him, he did assist the well-known Williamsburg lawyer in legal research. In all probability he did not spend many hours in the law office itself, but it was from Wythe that he received his books and assignments. Wythe, like Jefferson, was largely self-taught and up until thirty years of age had spent most of his time studying law and the classics. In the opinion of Jefferson, Wythe was the best classical scholar in Virginia. Although he was a devoted and ardent student of Plato, Wythe failed to instill a similar devotion for the great idealist in the young mind of Jefferson. While Wythe limited his study to law and the classics, Jefferson was interested in about every field of formal knowledge and though Wythe did not join him in his pursuits, he probably did not discourage him. Wythe was "not quick of apprehension, but with a little time, profound in penetration and sound in conclusion." All in all, Wythe was a demanding tutor and did much to shape the mind of Jefferson.

No man ever left behind him a character more venerated than George Wythe. His virtue was of the purest tint; his integrity inflexible and his justice exact; of warm patriotism and devoted as he was to liberty, and the natural and equal rights of man, he might truly be called the Cato of his country, without the avarice of the Romans; for a more disinterested person never lived.

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That their medium of conversation was not limited to legal terms is suggested by the fact that Jefferson continued to refer to him in later years and guarded their friendship closely.

It was Wythe who introduced Jefferson to Coke upon Littleton, a stodgy, heavy, and difficult primary treatise by Littleton with annotations by Coke. As Jefferson commented, its "matter cannot be abridged."¹ There were no shortcuts to a study of law at that time; on the basis of later evidence, it is certain that Jefferson mastered this work.² Sir Thomas de Littleton's (1407-1481) work was not a product of the Enlightenment. Within its pages the concept of a dynamic, changing theory of law was hard to find. But it was the culmination of some of the great decisions which had contributed to the English Common Law. It was the standard work of lawyers, both in England and the colonies. It had gone through some twelve editions and held sway over the minds of jurists throughout the previous century. Obviously there was a tendency for lawyers during the time of Jefferson to think of it as the law book to end all law books. It was accepted as the point of departure for members of the bar as well as students. In content, Coke upon Littleton is a discussion of primary legal terms on the practical day to day decisions of the bench having to

¹. Jefferson, WOJ, I, 361.
². Malone, JHT, I, 71.
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do with property laws. Jefferson could speak the technical language of a case involving an acre of disputed property or a stolen horse long before his interest in philosophy began to mold his thinking toward the concepts presupposed in the Declaration of Independence. Coke upon Littleton was one part of the four part Institutes of the Laws of England edited by Coke. Littleton's work on tenure was one of the first ten books published in London and had the honor of being the earliest treatise on English law ever printed. It does not borrow from other legal traditions but deals exclusively with English law. The method employed was to begin with a definition or "class" and then illustrate the definition with hypothetical cases. It treats English land law up until the time of equitable rights in property.¹

Later, Jefferson took up in chronological order the remainder of the Institutes. The second covered the period beginning with the Magna Carta and ending with James I, the third discussed criminal law, and the fourth was a treatment of jurisdiction. Beginning with these works he began to study the revisions based on them, reading in particular Matthew Bacon, Lord Kames, and Bracton.²

Of the three just mentioned, Lord Henry Home Kames (1797-1782) was probably the most influential author. Chinard³ states that it was from Kames that Jefferson

². Malone, JHT, I, 72.
³. Chinard, TJ, 30.
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derived his concept of civil rights. "The Scottish was for him a master and a guide."\(^1\) Lord Kames was strongly influenced by Locke and both had much influence on the mind of Jefferson. While Chinard's statement concerning the origination of civil rights in the mind of Jefferson is debatable and will be taken up to some extent later, the degree of influence asserted by Chinard rests unchallenged. Kames served as a commentator on Locke and expressed the fundamental ideas in a more readable and practical language. Kames, like Jefferson, was a lawyer interested in legal philosophy. In 1751 he published the Essays on the Principles of Morality and Natural Religion. In this treatise he supported the doctrine of "innate ideas" as opposed to freedom of the will. His innate ideas not only structured human thinking but contained it. The doctrine drew immediate protests from the clergymen and Christian apologists.\(^2\)

In about the year 1764 Jefferson wrote a strikingly astute piece of work in the appendix of his Reports of Cases Determined in the General Court of Virginia. He discusses

the most remarkable instance of Judicial legislation that has ever occurred in English jurisprudence or perhaps in any other. It is that of the adoption in mass of the whole code of another nation, and its incorporation into the legitimate system by usurpation of the Judges alone, without a particle of legislative will having ever been called on, or exercised towards its introduction or confirmation.\(^3\)

2. Kames also wrote treatises on agriculture, a subject of immediate interest to Jefferson.
3. Jefferson, WOJ, I, 360. "Whether Christianity is Part of the Common Law" was written circa 1765.
In this short discussion Jefferson ably illustrates the inclusion of Hebrew law into British Common Law. He claims that it was not done by legislative procedure but through the autonomous actions of the judges. Although it begins by being purely technical, before the reader is through, he suspects that Jefferson was already formulating his thoughts on the necessary separation of the church and state. As a matter of fact, almost all homogeneous systems of law are formed by the continual interaction of legislative bodies and judges.

His central criticism turns on the point that when the state and church trade functions, they are neutralized. The state is incapable of interpreting the scriptures and legal terminology is unsuitable for the appropriation of spiritual meanings. He adds to this an evident distrust of the close cooperation theretofore existing between the judges of England and the ecclesiastical hierarchy. It is not surprising that there should be a close relationship between church and state law in England because of the very nature of the Establishment.

In England and Wales complications arise owing to the close connection between church and state, which involves the result that the church's law cannot become binding unless the state assents to it.

There is no doubt as to the authenticity of Jefferson's claim. In Chinard's treatment of this early development in the mind of Jefferson, he oversimplifies Jefferson's motivation by laying it to a single factor.

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Chinard makes the following analysis. Jefferson believed English Common Law to be common law plus the biases and alterations induced by subsequent jurists, priests, conquerors, and kings. He attempts to return to the original and the work discussed above is only one instance of the attempt. Jefferson claims that the additions made by the hierarchy are not only technically illegal, but more important, the Hebrew laws contained in Exodus are not indigenous to England and the colonies. Chinard points out that this was not necessarily new for it was fully discussed in the last chapter of Blackstone's *Commentaries*. But the motivation for Jefferson's early acceptance of the thesis Chinard lays solely to Jefferson's provincialism.

True, Jefferson was a resident of a lonely intellectual outpost within the British Empire. He did not have recourse to the intellectual battles then raging in Europe and could lay his hands on few current periodicals. But he did have a friend in the person of Governor Fauquier who was competent in undertaking the task of enlightenment. In those days of

1. Sir William Blackstone (1723-1780) produced in the *Commentaries* a popular exposition of the laws of England. "He propounds in terms the doctrine that municipal or positive laws derive their validity from their conformity to the so-called law of nature or law of God." Sherwood, *Enc. Brit.*, discussed Blackstone's work as an unscientific Handbook of English law for laymen. It has a beautiful style but in trying to reduce the heterogenous body of law to reasonable precepts, he has violated much of its content. It is a "genuine outcome of 18th century culture and a true exposition of the 18th century standpoint."
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relatively poor systems of communication most thinkers worked in comparative isolation. Jefferson's early thought on the church and the state cannot be explained and justified on the basis of his isolation. His criticism in the appendix was scholarly and technically correct. That it was only one phase of his thought on the subject goes without saying; he had already had a number of negative experiences with the clergy. As late as 1814 he sent a copy of the dissertation to Thomas Cooper¹ in evident justification of his former thought even though he had by then become a true citizen of western culture.²

At this point, by way of summary, a number of statements can be made concerning the early life of Jefferson which are of particular interest to the subsequent chapters. Jefferson was an aristocrat and is always to be understood in that light; he possessed independent means and unlike many of his contemporaries was able to avail himself of an advanced education. From the first his financial independence provided him with the conditions for a wide latitude in the choice of his studies. He could afford to spend long hours

². Chinard's statement concerning the provincial nature of Jefferson must be placed in the larger context of an argument which Chinard attempts to develop throughout his works on Jefferson. He holds that Jefferson was only slightly influenced by contemporary thought and places the whole range of Jefferson's thinking between the two poles of Stoicism on the one hand and Epicureanism on the other. This, in spite of the fact that throughout his discussion he lists the names of English and French thinkers, particularly those of Bolingbroke, Milton, Shakespeare, Buchanan, Dryden, Thompson, Moss, Pelloutier,
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with the classics, in that day and age, a mark of the true gentleman. Doubtless, they meant more than that to him for they became the substrata of his thought, the great background of his later studies.

Jefferson had as personal friends the outstanding political and intellectual leaders of the colony, but little or no acquaintance with the ecclesiastical hierarchy. For the most part they were indifferent to the church if not antagonistic to it. With the exception of his tutors, Jefferson seldom mentions the leaders of the colonial church. It is significant that quite early in life he associated himself with a secular fraternity which drew upon the ancient humanists for its intellectual fare.

Before acquainting himself with the theoretical aspects of law, Jefferson gained a thorough knowledge of cases and the empirical studies of cases. His introduction to civil processes was immediate and practical; the studies in the ultimate justification for governments were to come later. However, the studies which were later to eventuate in his doctrine of the separation of church and state began at a relatively early date.

Kames, and Voltaire as having been read by Jefferson and also as having influenced him. Although it simplifies the discussion it is not necessarily accurate. His basis for labeling Jefferson a Stoic in his early years is based entirely on the first letter discussed at any length in this chapter. It is an unstable basis at best. This is discussed further in Koch, POJ, 4.
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It is far too early to classify Jefferson as a Stoic, particularly on the basis of the letter to Page quoted above. It is quite possible that the Stoic overtones came to Jefferson through the writings of Paul, not Cicero. It is the finding of this dissertation that Chinard was overly anxious to pin the label of Stoicism upon him, so anxious that he based the claim on a rather ragged thread of questionable evidence.

Jefferson's most scholarly work in historical research was accomplished at a relatively early age and anticipated his later attitude toward the church, it was his "Whether Christianity is Part of the Common Law."

Already, the trend of his later thought is clearly evident and it is to be noted that there is little or no French influence.

With the names of Small, Wythe, and Fauquier we may outline the extent of Jefferson's future interests. As a student of Small, he arrived at his interest in philosophy and the sciences. From Wythe he achieved his interest in law and the classics. Indirectly from Wythe he also found an interest in government, and current European thinking. No one of these men answered all of Jefferson's intellectual demands during these formative years but all three did much to shape his future development. Of the three, it was from Wythe that he gained the most.
CHAPTER III

THE RIGHTS OF BRITISH AMERICA

With Jefferson's election to the House of Burgesses in 1769 he began the legislative phase of his life. Although he was subsequently to occupy several executive positions, he always maintained a rigid and consistent deference for the legislative department of the government. It was, for him, the source of good government and the judge of the executive and the judicial. He was not "afflicted with the morbid rage of debate"¹ and therefore made most of his outstanding contributions in committee. Early recognized as an outstanding writer, he was called upon to draft various public papers that he did and did not initiate.

It is difficult to compare the Virginia House of Burgesses in 1769 with the present state legislatures. It was the top of the political ladder; the governor was appointed by the king and the upper house was appointed by the governor. The House of Burgesses was the greatest height that could be attained by popular suffrage.

There is little of consequence for this discussion between the years of 1769 and 1774. In 1770 fire destroyed practically all of Jefferson's books, a catastrophe that has been shared by all of his subsequent biographers, as they have been at a loss to determine his earlier reading habits. At the same time it has furnished an index to his primary interest.

¹ Jefferson, WOJ, I, 81.
in books if it is assumed that he first purchased the ones he desired the most. In the legal argument, "Howell vs. Netherland"¹ he very effectively argued against extending slavery to the grandchildren of a mixed union. The technical details of this argument are unimportant for it was a problem in litigation. Yet it is evident that Jefferson was already developing an uneasy conscience on the question of slavery. It is highly probable that Jefferson wrote the "Resolutions of Albemarle County," July 26th, 1774 but the contents are so similar to the "Summary View" which it is known that he did write, there is no need of discussing it in detail.

His first public paper of great consequence, "A Summary View of the Rights of British America," was published in 1774 at Williamsburg. The occasion was the departure of the delegates from the colony of Virginia to the third general meeting of the Colonies. He introduced it as a resolution to be confirmed by the House of Burgesses; it was designed as a guide for the delegates. The resolution was voted down and tamer sentiments were drafted. However many who did agree with the resolution written by Jefferson had it printed in pamphlet form. Widely circulated in the colonies, it soon found its way to England and there met with detailed refutations and popular repercussions. The "Summary View" forms an excellent outline of his social philosophy at thirty-one years of age. It is a potpourri of numerous and

¹ Jefferson, WOJ, I, 373f.
heterogenous arguments having as their common goal the establishment of British America on a political basis comparable with that of Great Britain proper.

The most significant political query in the document is: "Why should the British parliament be above our colonial assemblies?" The question that is of considerable pertinence for social theorists and one that is repeatedly asked by Jefferson is: "What is the basis of property ownership in the colonies?" By answering the second, and more basic of the two, he also answers the first. The answer stems from two distinct sources, history and philosophy. The answer from history is an attempted revival of Anglo-Saxon institutions (c. 500-700, 1066?). The philosophical answer in this instance is from John Locke's fifth chapter of the Second Treatise on Government and has to do with individual property rights. If the colonial soil in America is allodial, then the British parliament is on a par with the colonial assemblies. Thus the king forms a synthesis of the "parliaments," but he is not a feudal overlord; he is a bond and symbol, but not the full measure of sovereignty. On the other hand if the soil is not allodial Britain holds the colonies as feuds—a historical retrogression and recapitulation against which every freedom-loving individual will feel it necessary to bear arms. Since the adoption of the "Declaration of Rights" on February 13, 1689 British subjects had maintained that among other things taxes could not be levied without the consent of Parliament. Jefferson's statement amounted to a clarification and extension
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of this act as it applied to the legislative assemblies in the colonies.

Jefferson had reason to believe that he was voicing the "united complaints" of the American subjects. Since it was the first time that he had spoken for all of the colonies it is evident that he had been perusing many of the pamphlets then enjoying a wide distribution. In writing this paper, he introduced few concepts which were original with him. He rode the wave of indignation which had begun before his birth and within the next two years was to culminate in the Revolution. In order to evaluate the wide acceptance of the pamphlet it will be necessary to review briefly some of these accumulated grievances. Beard, in his Basic History of the United States summarizes this mounting feeling of unrest as it approached a climax. Stephenson in his A History of the American People likewise devotes considerable space to an evaluation of the social, intellectual, political, and religious trends.\(^1\) Any attempt of this sort is admittedly walking on very shaky ground as historical cause and effect is difficult to trace.\(^2\)

Countless forces and motivations tended to separate the colonies from Great Britain. Middle class merchants, artisans, and farmers released on a "free" continent with infinite capacity for the increase of wealth destroyed the ancient lines and social distinctions which could only exist under a limited

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1. Stephenson, HAP, Chapters VII and VIII.
2. Stephenson introduces the theory that the Great Awakening was the first event in the colonies to transgress colonial boundaries, HAP, 155.
economy. Learning was quickly disseminated and literacy climbed to unprecedented heights. Although the degree of literacy cannot be ascertained accurately, it was undoubtedly high as compared with the older countries of Europe. This is evident from the large distribution of magazines, books and newspapers.¹

An enquiring mind such as Jefferson's had ample opportunity to familiarize itself with distinctively American problems as they developed. One of the indexes to the increased opportunities for advancement, learning, and the accumulation of wealth may be found in the fact that during the seventeenth century approximately one hundred thousand servants rose from bondage to freedom.² As early as 1676 an armed rebellion led by Nathaniel Bacon broke out in Virginia. In 1717 John Wise of Ipswich, Massachusetts preached the philosophy of equal rights, equality, and a definition of government which provided for the earthly happiness of the individual.³ Individual, this-worldly happiness was a thought foreign to most pulpits of 1717. The doctrine of natural rights appeared in the uprisings in New Jersey between 1745 and 1754; it was directed, not against the British, but against an American brand of oligarchy, the great landlords of New Jersey. The petitioners maintained that the land was to be owned by

¹. Davidson, PAR, 209f. Davidson estimates that one half of the men and one fourth of the women were literate.
³. Beard, BUS, 54.
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the man who improved it; to deny this was to rebel against the provisions of "natural justice." ¹ This Lockian theory of property will be discussed later when it is echoed in the "Summary View."

The Paxton Boys, a revolutionary group from Western Pennsylvania were prevented from firing on Philadelphia only by the foresight of Franklin who consented to accept a formal petition maintaining their "Natural Privileges of Freedom and Equality." ² There was general unrest in other colonies among the disaffected tenants and small landholders. North Carolina, Georgia, and New York may be mentioned in particular. In the latter, the Levellers of the Hudson River Valley were in open and armed conflict, a disturbance which lasted until troops were summoned. ³ In Massachusetts a series of incidents spread into a general conflagration over the revocation of the Charter; the appeal here was made to religious doctrines. ⁴

According to Beard, the leaflets and other provocative writings of the period were concerned with four major questions.

What is the origin of human government and by what right does one set of men make laws for, and govern, all the rest of the people? What is the place of the colonists in the British Empire and what rights do they and should they enjoy as British subjects in America primarily as human beings? What are the sciences, arts, and opportunities of commerce which will promote the economic and social welfare of the American

¹. Beard, BUS, 55.
³. Davidson, PAR, 33.
⁴. Van Tyne, CWI, 33-36.
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people? What after all, are the great ends of human life and how may men and women best attain them?

In 1765 John Adams repeatedly placed pen to paper in order to call for a great experiment in freedom. The armed conflict came as a result of a cultural revolution which had been in progress for over a century. The three thousand miles of rough Atlantic symbolized a breach, a wedge that penetrated into every area of human life. The break was so thorough that the best minds in America were free to search the whole history of human thought in justification of their violent act and for guidance that would lead them in building not only a new nation but a new culture. The extent to which the new freedom influenced every walk of life may be appreciated by referring to the various fields of endeavor from which sprang the leaders of the new era. Clergymen, lawyers, physicians, and publishers joined in defense of their rights and when they defended their own rights, they defended the rights of all. The works of Edward Coke (Coke upon Littleton, 1628), John Locke (Treatise on Government, 1690), Montesquieu (Esprit des Lois, 1748), and Adam Ferguson (An Essay on the History of Civil Society, 1757) were drawn upon and widely distributed among the laymen, directly and indirectly. The doctrines of natural right, pursuit of happiness, and utility became common property.²

¹. Beard, BUS, 56. Cf. Davidson, PAR, II.
². Beard, BUS, 63-4.
Even though the cultural background had readied the people for the great break, it still would not have been possible if it had not been for two other factors. The charters of the colonies had provided for local governments and these began at the town and county level. Also, the economic opportunities made it possible for the colonists to carry the ideals into effect. A hasty glance at the above list will show that all of the basic authors who inspired the revolution were themselves citizens of seventeenth and eighteenth century Europe. The books were published there first! Yet the people in Europe who read them could not put them into effect. When Jefferson was seated in the Virginia House of Burgesses in 1769 it was exactly 150 years old, only 26 years younger than the American Congress in the year 1952. Over six generations had sent delegates to the colonial capital to present their case to the king's personal representative. Thus partial self-government was not new to the colonists.\(^1\) In spite of the fact that only a small percentage, sometimes as low as two percent of the people, participated in the regular elections, it was of primary interest to many more. The county court house offered daily lessons in local administration and litigation. The seed, when blown to new soil, found rootage and a climate suitable to reproduction.

The governor of the colonies was the point of contact

\(^1\) Van Tyne, CWI, 40f. and 86f.
with the foreign overseer, the king of England. He had in most cases the power to dissolve the assembly, to choose the members of the upper house, and to veto bills. In many cases by indirection he was able to bring about arbitrary acts of injustice without the consent of the people in any form.

Because of these arbitrary acts the people had long accustomed themselves to the conviction that they could limit his powers. Before the time of Jefferson they had sent six back to England and made life intolerable for many others. Most legislatures agreed on the following nine prerogatives.

To introduce and enact bills on all matters of local and general interest in the colony, subject to the terms of the charter and English law.

To fix the kinds and amounts of taxation to be laid on the people.

To pass upon the governor's actions in the nature of legislation.

To control the voting of money to pay salaries, including the governor's, and audit the disbursement of funds.

To create courts of law and regulate the salaries of judges.

To choose and pay agents charged with lobbying for or against measures pending in the Parliament or before royal officers in London.

To elect the speaker of the house.

To decide disputes over contested seats and check any resort to corruption on the part of the governor in elections.

To have periodical elections of members fixed by law at from two to five years.¹

At one point the American colonists were lacking in experience. During most of the colonial development the British government had sharply regulated inter-colonial trade. Parallel strings extended from the British crown to

¹ Beard, BUS, 80.
the American colonies; at few points were they tangled and intertwined. In effect, all important inter-colonial business involved a government three thousand miles away although only a few miles might have separated the participants.

In spite of this division, the colonies had taken steps in later years to express their common interests and grievances. Newspapers began to leap the colonial boundaries and the colonial assemblies established committees whose business it was to communicate with other assemblies. Circular letters were instituted by one assembly and quickly found their way to others. Previous to the congress to which Jefferson addressed his "Summary View" the colonists had had occasion to call two other representative meetings. The first was held in Albany, New York in 1754; it was intended to cement the common interests of all the colonists. Although immediately ineffectual, it defined the problems which were to be encountered by succeeding assemblies. The second was the Stamp Act Congress which met in October, 1765. Between the years 1763 and 1767 nine repressive acts were passed which rocked the colonies to their foundations and brought about the classic rebuttals of Patrick Henry and others. They were: The Royal Order (1763), the Sugar Act (1764), the Currency Act (1764), the Stamp Act (1764), the Quartering Act (1765), the Declaratory Act (1766), the Customs Collecting Act (1767), the Revenue Act (1767), and the Tea Act (1767). Six of the nine were strictly economic in character and were

related to the collection of taxes. The Royal Order
reserved western lands for the king. The Quartering Act
was an order of requisition and made all colonists liable for
the upkeep of the soldiers. Only the Declaratory Act dealt
specifically with the theory of government. It was a
declaration of supremacy on the part of the British parliament
stating that it had the right to levy taxes on the American
colonists. With this brief survey in mind the principles
involved in Jefferson's "Summary View" may be better understood.

In the opening sentences Jefferson speaks of the "united
complaints" of the American subjects. In making this state-
ment he was on firm ground; the first Continental Congress
presupposed just such community. Referring to the rights which
"God and the laws have given equally and independently to all,"\(^1\)
Jefferson asserts the doctrine of equality. Apart from his
personal piety, the reference may have been intended to strike
a chord of response among the religiously inclined as well as
to place a limitation upon natural law. In a previous appeal
he had joined with John Walker in asking the people of the
parish of St. Anne to join in fasting and prayer "to implore the
divine interposition in behalf of an injured and oppressed
people."\(^2\) It is almost certain that the motivation in this
appeal was intent on using religious sentiment to crystallize
the opposition to British oppression. It was not customary for

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the House of Burgesses, which initiated the appeal, to call on the people to fast and pray. No religious authorities were consulted before it was agreed upon and the political opportunism involved is obvious.

The use of the term God in the "Summary View" might well have had similar motivation. That God might be mindful of equal rights was proposed for the most part by Deists, the religiously enthusiastic sons of the Enlightenment. Finding its basis in the first feeble attempts in the field of comparative religions rather than in the Christian Bible, it was a novel doctrine for most laymen of 1774. God as judge, God as wrathful, God as vengeful, God as virtuous, even God as beneficent, were familiar enough, but not God as the guarantor of equality. As has been pointed out previously many laymen were familiar with Locke's political theories but few had become thoroughgoing Deists. Up until this time it had been thought that God was always on the side that not only placed race over race but within the race itself supported sharp class distinctions.

The depository of English legal theory, the English constitution was that to which Jefferson referred when he said that the laws also guaranteed equality. Here he was on firm ground. Beard offers a summary of the British constitution to this effect.

Under the English 'constitution' Englishmen everywhere in the realm have certain rights which cannot be taken from them, such as the right to share, through their representatives,
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in the making of laws and the laying of taxes; the purpose of government is to protect the life, liberty, and property of the people; when tyranny or oppression takes the place of protection, the people have a right to change the government by revolution if necessary; all human beings are equal and have a right to obtain the land necessary to a livelihood.¹

If the appeal to God was for the religiously inclined then the appeal to law was directed toward the secular. Between them, they were designed to place the "Summary View" on a firm basis. But other arguments were to be used, arguments with a much deeper motivation than the ones quoted above.

In the same paragraph, Jefferson, using some eight lines to define the duties of the king, refers neither to God or law as a source. Using the terminology of a Bolingbroke or a Locke, but not a Hobbes, he draws a line around the monarchy which, if read by King George III, doubtless made him writhe with indignation.

...When he King George III reflects that he is no more than the chief officer of the people, appointed by the laws, and circumscribed with definite powers, to assist in working the great machine of government, erected for their use, and, consequently, subject to their superintendence; and, in order that these, our rights, as well as the invasions of them, may be laid more fully before his Majesty, to take a view of them, from the origin and first settlement of these countries.²

This definition of kingly duties could well have been taken directly from Locke's Essay Concerning Toleration written in 1667.

¹ Beard, BUS, 90.
² Jefferson, WOJ, I, 429.
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The whole trust, power, and authority of the magistrate, is vested in him for no other purpose but to be made use of for the good, preservation and peace of men in that society over which he is set, and therefore that this alone is and ought to be the standard and measure according to which he ought to square and proportion his laws, model and frame his government.

But there was no need for Jefferson to read this directly for over one hundred years separated the "Essay" and the "Summary View," a century during which the eruption of the idea of natural rights as interpreted by Locke had ample time to find its way into numerous articles, books, and pamphlets. Doubtless the walls of the House of Burgesses had echoed to similar thoughts before. The impertinence of the definition is not found so much in the words themselves as in the fact that a subject, what is worse, a colonial, was attempting to circumscribe the duties of a magistrate. Although many monarchs would have subscribed to most of the definition, it was the king's prerogative, not the subject's, to define the office. The wise ruler always made it appear as if each hard-won concession was actually a gift, never a right.

It must be noted that Jefferson in writing the "Summary View" implied that there was a third ground to which he could appeal. Every ruling implies a judicial prerogative, a position of objectivity. Jefferson in the "Summary View" strives to establish such a position. Nature is appealed to as having given man the right to change the place of his

1. This essay is quoted in part by William S. Carpenter, Art., xi. The complete essay is printed in Fox Bourne, Life of John Locke, I, 174-194. (1876).
habitation if it is not his choice. But since nature was the
touchstone of his day, there is little evidence that he,
himself, had thought through the metaphysical implications
involved, at least, by this time in his career.

Jefferson had evidently been turning through the
relatively few pages of British history covering the time
from Hengest and Horsa (449) to the beginning of the eighth
century when he wrote the following lines.

That their Saxon ancestors had, under this
universal law, in like manner, left their
native wilds and woods in the North of
Europe, had possessed themselves of the
Island of Britain, then less charged with
inhabitants, and had established there that
system of laws which has so long been the
glory and protection of that country.¹

Later in a letter, which was probably addressed to Edmund
Pendleton on August 13, 1776, he goes into greater detail.

Are we not the better for what we have
hitherto abolished of the feudal system?
Has not every restitution of the antient
[Sic] Saxon laws had happy effects? Is it
not better now that we return at once into
that happy system of our ancestors, the
wisest and most perfect ever yet devised
by the wit of man, as it stood before the
8th century?²

In the Journals of Congress there appears the notation
stating that Jefferson recommended the two Saxon chiefs,
Hengest and Horsa, be placed on the federal seal.³ In the
Anglo-Saxon Chronicle immediately following the notation
that "John the Baptist revealed his head to two monks...on

¹. Jefferson, WOJ, I, 430.
³. Chinard, TJ, 86.
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the spot which was formerly Herod's residence," there appears
the relatively extended discourse to the effect that Hengest
and Horsa landed (449-450-455) in Britain to assist King
Vortigern against the Picts.¹ This was the first recorded
Saxon invasion although there were probably others.² Jefferson
chooses the period from 450 to 700 as the golden era in
English history. The near decade of 690-699 marks the time
during which Theodore of Tarsus, Archbishop of Canterbury,
"Created a new concept of kingship."³ Actually, the English
nation did not appear until about the ninth century with the
ascendancy of the West Saxons.⁴ It is substantially true that
during this time a system of government prevailed in the seven
Anglo-Saxon kingdoms, the Saxon Heptarchy, which was unlike
anything to be practised again until the reforms during which
parliament gained control. There is likewise a rough analogy
between the thirteen states and the Saxon Heptarchy. But the
conclusion which Jefferson drew had to be based on facts which
were stretched and forced into place. It was not a system of
government that an impartial observer would wish to recreate
in the eighteenth century but only one which a revolutionary
scholar might find useful in furnishing a precedent for an
essentially novel act.

The Angles and the Saxons were the most dominant tribes
which finally evolved into the English nation. During the

¹ Anon, ASC, 309f. ³ Langer, EWH, 166.
² Stenton, ASE, 17. ⁴ Baldwin, GE, 21.
days of the seven kingdoms they maintained a hereditary nobility along with commons, serfs, and slaves. The commons or ceorls were the freemen in each kingdom and varied in their legal value to the kings. The serfs and slaves can be known only by inference. There is no direct mention of their conditions or place in the various Anglo-Saxon institutions. That they existed is proved almost beyond a doubt and it may be that this is one of the facts that Jefferson overlooked in his study of early English institutions. For contrary to the thought of Jefferson, feudalism had made serious inroads into the political institutions of the people long before the eighth century. Yet there was one fact which slipped with extraordinary ease into the American brief. The freemen, the ceorls, participated in a government which is described by Baldwin as proto-democratic.\(^1\) One hundred freemen comprised a 'moot.' They were assembled by a moot-horn and the act of.mooting was jealously guarded. But even the democratic moot could have little to say about national decisions; they only settled local conflicts and proclaimed local laws. The king presided over a council of his own appointees. Even though they were appointed by the king, there are records to indicate that they had the power of deposition and often asserted that right.\(^2\) The witan or the national moot chosen by the king could choose another king from the royal family without regard

\(^1\) Baldwin, GE, 23.  
\(^2\) Baldwin, GE, 23.
to primogeniture, a cornerstone of the evolving feudal system which was to be hewn later. Therefore the king was not a sovereign but a leader. The basis of local government rested in the freemen, that of the national in the members of the witan. Undoubtedly it was this proto-democracy which attracted Jefferson.

Jefferson, returning to the subject again in the "Summary View" makes some further statements on this, one of his favorite subjects.

In the earlier ages of the Saxon settlement, feudal holdings were certainly altogether unknown and very few, if any, had been introduced at the time of the Norman conquest.¹

In the year 1066 William the Norman or as he is often called, William the Conqueror, defeated the Britons on October 14th, in the battle of Hastings. According to Jefferson, therefore, there were few characteristically feudal institutions before the later half of the eleventh century. He specifically states "feudal holdings;" yet, even with the sparse character of early English history it is certain that the seven Saxon kingdoms were largely feudal by the time of the eighth century, possibly even the sixth. The aristocratic element was significant in the latter part of the seventh century according to the laws of Ine.² The freeman was already called upon to pay a food-rent, a feorm and serve in the military forces, the fyrd. In Wessex the normal annual dues to a lord, according

¹ Jefferson, WOJ, I, 443.
² Stenton, ASE, 275.
to the laws of Ine, clearly indicate the "management of an estate for a lord's profit." It was a common practice for the commoner to be called upon to support the king and his retinue when the king passed his way. Couriers, and hunters for the king also claimed this right and it could be evaded only by heavy fees. Holders of unenfranchised land were forced to cart goods, build roads, and bridges and repair the estate of the king. It is almost impossible to know just when these feudal holdings began. In the middle of the seventh century however there is a record of the king giving a large estate to a lord. Stenton states that there were probably such grants in the sixth century. Grants from the king to the members of his retinue and friendly ecclesiastics laid one of the first bases for the feudal economy. The people had originally had some defense against this but it was not effective. As the lords and bishops assumed control they appropriated the lands to themselves, if by no other means, then through overburdening taxes. Since the king had the power to do the same thing it is probable that from time to time such was the case. Under the year 855 in the Anglo-Saxon Chronicle the following statement is found. "And the same year king Ethelwulf gave by charter the tenth part of his land throughout his realm for the glory of God and his own eternal salvation." The laws of Ine establish irrevocably the fact that a manorial economy penetrated back to the seventh century.

2. Stenton, ASE, 298.  
3. Anon, ASC, 349.  
4. Stenton, ASE, 309.
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land very plainly belongs to the lord. Obviously if a king made a gift of an estate it had to be his in the first place to give. Jefferson is partly correct in his short summary of Anglo-Saxon land ownership but he overstates the point. His conclusion that British common law was based on alodial holdings is, however, in serious error. The laws of Ine, one of the three authorities quoted by Alfred and one of the most complete records available today, show many instances of feudal economy. Much later, William the Conqueror played an important role in hastening the feudal development but it cannot be said that his actions were decisive.

In spite of the fact that Jefferson was largely wrong, his argument would have been welcomed by the struggling colonists if it had not been for three factors. It is patent that it did not catch the imagination of the people or the leadership.

In the first place, Jefferson falls into the error of Rousseau and Locke on the question of origins. To prove that a certain institution existed at the beginning of a certain era is not to prove its worth; in itself, it is nothing more than antiquarian research. Every institution, original or derived, must come under the scope of reasonable comparison according to certain general principles. On the question of early Anglo-Saxon institutions Jefferson became suddenly gullible. He accepted the seeds of feudalism along with this early manifestation of democracy. He implies that the "basis

1 C. Bowne, POE, 2-3.
or groundwork of the common law\textsuperscript{1} is the best part of that law because it is the original, not because it is judged best by comparison.

In the second place, Jefferson makes a sharp break in English history at the time of the Norman conquest which is not justified. This schism serves to emphasize the distinction between the pure Anglo-Saxon heritage and the foreign impurities imported with William the Conqueror. Thus the American colonies become, for Jefferson, the first reëstablishment of the pure heritage; the foreign is sloughed off.

The third reason why Jefferson's reasoning did not catch the fancy and imagination (or condemnation) of others was because it was based on an era that was almost totally unknown. Whatever the institutional types in the fifth and sixth centuries there was certainly no prize for the scribe.

Jefferson's argument was in error and it was not accepted by the people along with the rest of his thought. In spite of this fact there are historians who attempt to explain his whole political philosophy by this key. Nothing could be further from the truth but it was necessary to discuss it in some detail to disprove their contentions. Chinard, one of the outstanding biographers of Jefferson has this to say:

This early Anglo-Saxon principle is the true foundation of Jefferson's political philosophy. No greater mistake could be made than to look for his sources in Locke, Montesquieu, or Rousseau. The Jeffersonian democracy was born

\textsuperscript{1} Jefferson, WOJ, I, 444.
under the sign of Hengest and Horsa, not of the Goddess Reason.

Falling prey to the chronicler's temptation, Chinard denies the wider aspects of history. The forced alternative is deceptive; it is not either the Saxon brothers or reason, but both and much more. They are not exclusive but readily combine; it was the reasonableness inherent in the Anglo-Saxon system of government that made him think it might be applicable to 1774. It was the reasonable mind of a lawyer that led him to search for a precedent and believe that he had found it in the early Anglo-Saxon culture.

Chinard is quite right when he says that Jefferson did not find the sources of his political philosophy in Rousseau; few have claimed that he did. Likewise, as will be shown, Montesquieu made only a slight contribution. But Locke is in an altogether different category. Those parts of Jefferson's thought which this dissertation traces to the writings of Locke can hardly be found in the thought of Hengest and Horsa. Chinard has placed himself in the position of either finding such a source or relinquishing the claim.

In the treatise written by Jefferson in 1764, "Whether Christianity is Part of the Common Law?" he draws the same line in British history, that is, the early eighth century. Previously the common law gathered and written by Alfred had quoted only from Ine, Offa, and Aethelbert, not from the scriptures. But an officious monk appended sections taken

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from Exodus, sections which are contrary to the common law. The abuses which followed the eighth century were therefore, in the mind of Jefferson, not only legal but religious. By referring to the true Anglo-Saxon civilization between 450-700 A.D., he was not only defying the absolutistic monarchy but also the domination of the church. He ignored the fact that most people would believe that a system which had lasted ten centuries was more indigenous to the race than one that had lasted only two. He felt secure in ignoring it because he believed that the cultural distinctions between England and Colonial America justified a break so complete that the colonists could choose their own heritage.

The "Summary View" makes clear that the debt owed to England could be repaid by trade alone, and that the king, not the Parliament, was the proper link binding together Britain and all her colonies. The Parliament had no right to levy taxes. The king is reminded that the people in the past (James II in the revolution of 1688) had asserted the right to depose the king. Although it is to be used only in cases of "extreme necessity," it nevertheless is a right.

The phrase "natural rights" is used repeatedly. Just as for Locke there was no difference between Nature and "nature" there was likewise no distinction for Jefferson except that they were the two parts of the same plant: "nature" being the utilitarian branches and Nature the metaphysical root.¹ There is little evidence to indicate that Jefferson

¹ Locke, ECG, II, 118-124; Windelband, HOP, 503.
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had fully explored the implications of the root except that he, like Locke, equated the laws of God and the laws of nature.\(^1\) In the "Summary View" at least he used the terms God and natural rights interchangeably.\(^2\) In saying that Jefferson used these terms with little or no distinction between them does not mean that he, like Locke, equated reason and revelation or the law of Nature and revealed religion. At least one way in which the ideas of Locke came to Jefferson was through the works of Bolingbroke. On many important questions Locke and Bolingbroke agreed but Bolingbroke, unlike Locke, used the same principle of investigation in regard to the revealed religions that Locke used in regard to monarchies. Therefore when Jefferson used the terms God and nature in the "Summary View" he did not mean, necessarily, natural rights as revealed in the Old and New Testaments. Reason was for him at all times and places the judge of revelation, neither equal or subservient to it. With the help of Bolingbroke, he had advanced much further in this respect.\(^3\) The efforts of the early leaders of the enlightenment—Hooker, Rousseau, and Locke—to establish the reasonableness of the Christian religion\(^4\) had been dashed on the rocks by men who had placed reason above revelation without an attempted reconciliation. Jefferson reconciled reason and religion but at the expense of the seventeenth century revealed religion.

In a letter probably addressed to Edmund Pendleton on

1. Windelband, HOP, 503.
3. Locke, ECG, 122, 11.
August 13, 1776, Jefferson refers to a hasty production in which he states that the lands held in the American colonies are allodial. The "hasty production" could be no other than the "Summary View" for it was intended to have been "put under a course of severe correction" but because of his illness on the road he had to send it on without the correction.

Referring to the colonial soil as being allodial, he said: "This opinion I have thought and still think to prove if ever I should have time to look into books again." In the "Summary View" he did not prove it by the original charters but rather by the twin appeal to Hengest and Horsa on the one hand and Locke on the other. Here he refers to "certain other acts of the British Parliament, by which they would prohibit us from manufacturing, for our own use, the articles we raise on our own lands, with our own labor." Chapter Five of Locke's An Essay Concerning the True Original, Extent and end of Civil Government, discusses property rights and develops the viewpoint that since every man has "property" in his own person, "The labor of his body and the 'work' of his hands... are properly his." It was this doctrine to which Jefferson appealed in the "Summary View." Although specific quotations from the original charters showing that the colonial lands were allodial would have meant more to the king, he was not adverse to using this principle of Locke's which indicates that it was

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rather generally accepted at the time; however, it was not accepted by the king.

Since the "Summary View" was not presented at court but was published for all to read, it may well be true that Jefferson gained more for the cause by appealing to this universal principle of property rights than if he had proved it through the traditional method of litigation. Locke's point of origin is comparable to the Cartesian principle of existence. Both are egoistic and individualistic. The "I am" of Descartes becomes the "I own" in Locke's doctrine of property rights. Locke's premise cauterizes physical slavery in the same way that Descarte's premise eliminates the tyranny of other minds. If we are to know through the senses we must own the physical body in a unique and private sense. That is, we are to develop freely and the body must have freedom of action. We must not only own it but we must be able to own property sufficient to feed and clothe it. This is not far from Hegel's theory that property is implicated in the idea of personality.

Obviously other doctrines had made similar provisions and Locke's thought was only a shift in emphasis. But any shift away from a society which found the ideal life in the monastery or the feudal manor seemed good to the freemen of America in the seventeenth and eighteenth centuries.

It is because the repressive measures of the king had the potential power to check the "population of our country"1

1 Jefferson, WOJ, I, 444.
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that Jefferson believed the time had come to stop them. It is the "nature and purpose of civil institutions" to appropriate "all the lands within the limits which any particular party has circumscribed around itself."\(^1\) If the social organization does not perform this task, "each individual of the society, may appropriate to himself such lands as he finds vacant, and occupancy will give him title."\(^2\)

In summary Jefferson states that the "whole art of government consists in the art of being honest."\(^3\) This is an oversimplification to which he did not accede, even in the treatise containing the statement, but it does point to the fact that he was trying to give the appeal a moral basis. This is echoed in the closing paragraph of the "Address to Governor Dunmore"\(^4\) in which Jefferson suggests that "we commit our injuries to the even handed justice of the Being who doth no wrong."\(^5\) The Jeffersonian "Draft of Declaration on taking up Arms" is another catalogue of tyrannical acts and an appeal to "supreme reason."\(^6\) In a letter to John Page in 1775 under the stress of armed conflict Jefferson momentarily breaks with his Deistic terminology of "supreme reason" and in reference to British arms states that "the hand of God is upon them."\(^7\) This outburst follows the news that a forty gun British ship had accidentally exploded in the harbor.

The letters of Jefferson during the year 1775 are filled with the cares and details of war. Having little time for further study he relied upon his earlier knowledge to furnish a justification for the break and subsequent revolution.

Jefferson was early associated with the great lawmakers of the colony who dwelt on the smaller problems of the colony with the same care they were to employ later in its reorganization. From them he gained a considerable amount of practical knowledge in the routine processes of law making. Jefferson was interested in the early foundations of the common law in English history but having tried the method of antiquarian research to establish his point and found that it carried little weight, he did not take it up again. Rather, he turned to philosophy to justify his political theories. Jefferson was from the first swept up in the revolutionary ferment and although he retained his ability for objective and critical analysis, there is no indication that he ever favored the Tory movement.

It is to be noted in this discussion which covers the time up to the writing of the Declaration of Independence, that there is nothing in the thought of Jefferson that was not in the minds of numerous other thinkers and writers of the period. The degree to which he had thought through the metaphysical implications of Locke's works is not known. Later in life it is certain that he had given them very thorough consideration. In his religious life he had probably found a correspondence between the Stoics and the contemporary Deists that he
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appreciated and followed to some degree. But the evidence here is sketchy. The only ground for it is found by inferring from scattered phrases here and there in his writings which are not always consistent. The Sage of Monticello after the turn of the century could look back on these earlier days and arrange his thought according to metaphysical principles, but whether or not Jefferson was conscious of them at the time is another question.
CHAPTER IV

THE DECLARATION OF INDEPENDENCE

The Autobiography, the one hundred and sixty-four page\(^1\) journal beginning with the family background and concluding on the 21st of March, 1790, was written by Jefferson in 1821 when he was seventy-seven years old. The Declaration is the only public paper reproduced in full in the Autobiography and the occasion of its authorship is described in the first person.\(^2\) In order to be "consistent with European delicacy" the decision to draft the Declaration was resolved by Congress assembled in a committee of the whole.\(^3\) The deference and regard for European delicacy was prompted by the fear that without a Declaration, American ambassadors would not be acceptable to continental courts.

The relatively few pages in the Autobiography which precede the actual text of the Declaration were written in retrospect. They are pages filled with the accumulated wisdom of a lifetime which had sifted and reexamined the original basis for independence taken down in note form at the time and found it sound. However, in spite of the considerable lapse of time, the proceedings related by Jefferson in the Autobiography correspond closely with other reports written at the same time. The formal debate lasted only two days.

\(^1\) Jefferson, I, 1-164. Unless designated otherwise, references to Jefferson's writings will be made from the Memorial Edition.
\(^2\) Jefferson, I, 28-38.
\(^3\) Jefferson, I, 24.
"Wilson, Robert R. Livingston, E. Rutledge, Dickinson, and others" constituted the opposition and their arguments are faithfully recorded. Then he turns to the counter arguments presented by those with whom he classed himself and the ones who were eventually triumphant, John Adams, Lee, Wythe, who was Jefferson's early mentor, and others. Far from being dilatory or digressive, they are concise, conclusive, and arranged in legal style.

The opponents of the bill claimed that although they were "friends to the measures," the time was not yet ripe for the following reasons. The sovereignty of the king was not in question; that had long since been disclaimed, but the sovereignty of Congress and the mechanics of representation were brought forth as impediments to capital action. Congress could take such action only with the mandate of the constituency. Any formal declaration without such support would be so much wasted parchment. It is undeniably true that many of the delegates did not have the required authority. In addition, the colonies were independent and a Congressional majority could not coerce a particular colony if it proved to be recalcitrant. The delegates assembled were there only for purposes of investigation and recommendation, each colony at this stage being understandably jealous of its individual prerogatives. Coercion, even implied coercion, might well have partitioned the infant Congress and further weakened it in international

eyes. As has been noted, the growing international consciousness constituted not an inconsiderable part of the slowly hardening mortar of union.\(^1\) Further, France and Spain would be jealous of the rising power "which would one day certainly strip them of all their American possessions."\(^2\)

At any rate, the opponents argued, the mechanics of union would have to be investigated before the Declaration could be written. That would be in the distant future for the machinery had hardly begun to move.

Those who demanded immediate action reminded their opponents that no one had argued for submission to the English monarchy. It had been one year, two and one half months since the battles of Lexington and Concord on April 19, 1775. The boundaries of the debate itself proved the extent to which the colonies had divorced themselves from the mother country; the very implications of the arguments introduced by the opponents were of themselves pleading for explicit statement. The action having been virtually agreed upon, expediency was the only point of disagreement. That the assembled representatives considered the following arguments sound is evident for they readily voted in favor of the bill.

The colonials enjoyed rights equal to those of the Englishman resident in England and as such were not subject to the British parliament which had been supplanted by the

\(^1\) Jefferson, I, 20.
\(^2\) Jefferson, I, 20.
representative ruling bodies of the respective colonies. From the beginning theirs had been a federation; they were subject to the king alone and that by their own consent. The ambiguous relationship of the colonial assemblies to the English Parliament will be treated later. Here it need only be noted as an index to the seeming paradox evident in the lack of sympathy on the part of the English whigs for a corresponding political philosophy then extant in the American colonies.

The colonies which were existing in a state of war with the British crown were no longer obligated to it in any way. There can be allegiance only when there is protection and with the cessation of protection in an act of war, allegiance is likewise dissolved. Obligation implies reciprocity. Philosophical justification was not lacking and happily it could be couched in terms that had a familiar ring in English ears. Locke's *Second Treatise on Civil Government* had long been current, both in England and the colonies. Chapter III is devoted to the "State of War" and justifies not only the cessation of allegiance but the total destruction of one's former government on the basis of equal rights and self-preservation. "It being reasonable and just I should have a right to destroy that which threatens me with destruction."\(^1\) Likewise, Locke ably presents the doctrine of government by contract in the *Second Treatise*.

\(^1\) Locke, *ECG*, III, 16.
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For I have reason to conclude that he who would get me into his power without my consent, would use me as he pleased when he had got me there, and destroy me too, when he had a fancy to it; for nobody can desire to have me in his absolute power, unless it be to couple me by force to that which is against the right of my freedom, i.e., make me a slave.¹

The proponents of immediate action further argued that the representatives should lead the way instead of erecting barriers. Using an argument that has long echoed in the halls of parliaments, it was further urged that the opposition did not represent their constituency. The assumption that a majority of the people were, at that time, in favor of the Declaration was precarious indeed! A historical precedent was recalled as attention was drawn to the revolution deposing James II and the opponents were reminded that the king did not officially declare the people out of his protection but his actions were considered sufficient to do so. "No delegates then can be denied, or ever want, a power of declaring an existing truth."² The brutal truth confronting them was that they were in a state of war with their former ruler and were under the necessity of formulating an independent government immediately.

The clinching argument revolved around the participation of foreign powers in the war, especially France. It was pointed out that with the publication of the Declaration those countries sympathetic to the cause would be free to carry on commerce with the new nation and thus furnish supplies, possibly even armies. But this could not be hoped for previous to the

Declaration. With this, the comparison of the two views will be concluded and attention will be drawn to the unique position of the British Parliament.

Colonial unwillingness to accept parliamentary sovereignty constitutes a multi-faceted problem and furnishes ample opportunity for a comparative analysis of their respective political philosophies. On hurried examination it would seem that the colonists would have welcomed the jurisdiction of the Parliament as opposed to that of the king. Presumably the Parliament represented the interests of the people in England and would therefore be amenable to colonial interests. This is particularly true since the forces which were pressing for more power in Parliament were also those which were called upon to lead the fight for colonial independence. Inspired by the popular uprisings in England which were shaking the power of the throne with religious and political revolts, the Parliament had risen to new heights of power. And the scattered seed of revolt had taken root in American soil. But with the Declaratory Act, an act of Parliament discussed in the previous chapter, it is clear that the doctrines of equality, toleration, and natural rights were to be limited to Englishmen living on English soil. The same tyranny, though in a more impersonal form, was to be meted out to the colonials. Thus it was the king who repealed the stamp act when it was proved to be impractical and the Parliament which voted the arbitrary Declaratory Act which could do little
but produce resentment among the colonists. This is an instance in which the political descendants of Locke in England were in direct opposition to his followers in America and it was the Tories who offered the only means of arbitration, meagre as it was. An attempt will be made to trace the thread in this skein of contradictions.

The origins of the British drive for freedom under representative government are to be found, not in philosophical or even political systems but in the insufferable conditions of religious and economic tyranny or tragic stupidity. The great English political philosophers wrote during and after the great revolutions, the principles of which they attempted to summarize and justify. Richard Hooker (1554-1600), the great systematizer and first English thinker to write on ecclesiastical polity, used reason as a guide to sectarian peace. But it was written only after the Puritans and Anglicans had been in continual conflict for years.1 Thomas Hobbes (1588-1679) was the most prominent apologist for the Stuarts but James I came to the throne in 1603 long before the publication of the Leviathan in 1651. James had already introduced and in part, reaffirmed the divine right of kings, naive and ineffective as it might have been in bridling the rising power of Parliament. Although the Leviathan was published in 1651, it did not receive recognition

1. The Anglican Church was established as the state church in 1563 but the conflict preceded this. By the time Hooker wrote, the dissenters had become compartmentalized into the Separatists, Presbyterians, Brownists, and Congregationalists plus many smaller groups.
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until much later.¹

John Milton (1608-1674), the poet-philosopher who yielded his pen in unison with the sword of Cromwell (1599-1646), that is, the revolution stretching from 1642 to 1646, did not write The Tenure of Kings and Magistrates until 1649. Although he wrote numerous tracts during the revolution, he was hired as a professional apologist and had done little to precipitate the outbreak of the war. John Locke returned to England in 1689 with William and Mary but the Two Treatises on Government were not published until after the deposition of James II and the adoption of the Declaration of Rights. The Treatises were a justification of the revolution of 1688; they followed, but did not precede it. The point is not being made that the rights of man did not receive serious consideration before 1600. They did.² But it is evident that the great systems were initially apologetic, results rather than causes. This may be taken as a partial explanation for the fact that the English Whigs were unsympathetic with their American counterparts. Those who were deeply stirred regarding the rights of English representative government did not extend that concern to include the rights of the colonials. Their response to the opportunity for colonial exploitation was unabashed and positive. The English Whigs were Lockian only to the water's edge.³

¹. Locke, in writing the first Treatise (1689) was not concerned with Hobbes but with Sir Robert Filmer who was much better known then, although but for Locke he would not be known today.
². Cf. Chapter VIII.
³. Cf. Becker, DOI, 226f. for a comparison of the way in which the Declaration was received in England and France. Even a
The English political philosophies written as revolutionary apologies became in America the germinal idea. One of the points which this chapter will seek to prove is that while undoubtedly various other sources were used, Locke furnished a completed system, an alternative ready at hand. Whatever else he might have used, Jefferson needed nothing more than the metaphysical lumber that had been cut and hewn by Locke.

The first and second paragraphs of the Declaration present a social theory and a political philosophy on which the remainder of the treatise is based. The catalogue of facts submitted to a candid world would be meaningless apart from the first two paragraphs for they are an indictment of the king, an indictment submitted by a subject people. This doctrine which was not new, but dates from the earliest attempts of man to frame a political system, is one that was nevertheless novel to the American colonists. Augustine, drawing on the hierarchical system of Plato and revising it in his City of God to form a theory of the state whereby the king was subject to the pope alone, had set the stage for the divine right of kings doctrine. Once established, it was difficult to dislodge. Not until the break with the Catholic Church had freed the kings from the control of the Pope did the opportunity arise for its dissolution. Even then, the Protestant kings claimed that they were subject only to God, that their sovereignty was not conferred by the people. But from the question so non-political as literary style was violently debated between the two countries. Some British critics believed that while the king's government had been subjected to insufferable embarrassment, it was his English that had sustained the greatest injury.
beginning it was imperative that a people who had tasted freedom in their parishes would also devise a means of self-rule at the political level. Later, attention will be given to the various channels through which this current flowed on the continent. England permitted the newly discovered freedom to find its voice in the slowly evolving power of Parliament. So much for the bare historical outline; the primary problem is one of political theory and the balance of this chapter will be confined to a study of the philosophical presuppositions implied in Jefferson's original draft of the Declaration.

Hobbes, the materialists, and Sir Robert Filmer, author of the Patriarche, were the spokesmen for the absolute monarchies. It was Hobbes, the Stuart apologist, who became the predominant target for the religiously motivated darts of the Puritans. The Puritans had as their spokesmen John Milton, Ralph Cudworth, Henry More, and Lord Herbert of Cherbury. But the outstanding exponent of the democratic ideal, an ideal that included but was not limited to religious motivation, was John Locke. His philosophy furnished the most systematic alternative to a freedom impoverished people.

In the year 1669 Locke drew up the Fundamental Constitutions for the colony of Carolina, which according to Langer, "provided for an archaic feudal regime totally unsuited to the needs of a frontier colony."¹ It was in this way that the new world first

¹Langer, EWH, 513.
came to know of Locke and from that time on, his writings circulated among the colonists as well as the people of the continent. The *Essay* published in 1690, found its way into the Yale library sometime before 1775; the complete works were in the Princeton Catalogue before 1760 and at Harvard before 1773.¹ British universities where many of the early colonial leaders were educated, had long used Locke's works as standard texts. Furthermore, private libraries throughout the continent contained his writings either in whole or in part.²

The influence of Locke on Jefferson was both direct and indirect. Indirectly he received the doctrines of Locke through such men as Bolingbroke,³ Paine, and Sidney plus many other popular pamphleteers. Although there is no positive evidence, there is every reason to believe that Jefferson, by the year 1776, had also read most of Locke in the original. In a letter to James Madison written during the August of 1823 in which he reviews the charges made by Adams that the essence of the Declaration of Independence was contained in Otis' pamphlet, Jefferson states that he had not read the pamphlet mentioned. But in the same letter he takes up the charge of Richard Henry Lee that it was copied from Locke's *Treatise on Civil Government*; he does not deny having read it. He simply states that it was not before him at the time of writing.⁴ Lee's charge does bear investigation, especially inasmuch as Jefferson did not attempt

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to refute it directly. In a letter to Lee, himself, Jefferson states that the Declaration was "intended to be an expression of the American mind."¹

All its authority rests, then, on the harmonizing sentiments of the day, whether in conversation, in letters, printed essays, or in the elementary books of public right as Aristotle, Cicero, Locke, Sidney, etc.²

Locke was a part of the American mind of 1776 and the political philosophy outlined in the first two paragraphs of the Declaration could have been copied from the Second Treatise even though they were not. It should be noted at this point before proceeding further with Locke, that by the phrase American mind, there is no evidence that Jefferson adhered to a social mind theory. It is a universal without substance and implies nothing more than consensus of individual opinions.

It is not infrequently pointed out that the Declaration is based on an appeal to God, the implication being that it is the God of traditional orthodoxy; nothing could be further from the truth. It was an outright reversal of the popular conception of God current at that time for it appealed to a doctrine of God which was non-transcendent, a doctrine popular only among Deists. True, he was self-revelatory, but he revealed himself only in a particular way, that is through the laws of nature. Jefferson had something very definite in mind when he referred to nature. The Declaration of Independence is an

¹. Jefferson, XVI, 118, 119.
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assertion of natural law which is at the opposite pole from
the doctrine of revealed law or divine law popularly conceived
as resting on traditional and scriptural verification. The
political application of the natural law philosophy was framed
by John Locke and on it he based the four principles outlined
in the first two paragraphs of the Declaration.¹ According to
Locke's doctrine of natural law, "all men are created equal,"
among their "inherent and inalienable rights," which have been
endowed by their Creator are "life, liberty, and the pursuit of
happiness;" governments are to derive their just powers from
"the consent of the governed."² In addition to the doctrines
of equality, inalienable rights, and consent, which were based
directly on the theory of natural law, there was a fourth which,
although not based on the natural law theory, is an attempt to
describe natural phenomena. It is the doctrine of prudence and
it approaches a word for word correspondence with the last
chapter of Locke's Second Treatise.³

Prudence, indeed, will dictate that governments
long established should not be changed for light
and transient causes; and accordingly all experience
hath shown that mankind are more disposed to
suffer while evils are sufferable, than to right
themselves by abolishing the forms to which they
are accustomed.⁴

In a letter to T. M. Randolph written in 1790 Jefferson
states that "Locke's little book on Government, is perfect as
far as it goes."⁵ Obviously, it went far enough to furnish the

¹. Locke, ECG, 4, 54, 220, 222, 225, 230.
basic principles for the Declaration. But the little book on
Government was not all that Jefferson had absorbed of Locke:
in adopting the basic principles of Locke's *Second Treatise*
he had also adopted a position in metaphysics for Locke's
principles of government were based on his *Essay Concerning
Human Understanding*. Beginning with chapter two, "No Innate
Principles in the Mind," Locke devotes the first part of the
Essay to a discursive analysis of the epistemological theories
which would attempt to find certain basic mental forms
originating outside of the mind.¹

It would be sufficient to convince unprejudiced
readers of the falseness of this supposition, if
I should only show (as I hope I shall in the
following parts of this discourse) how men, barely
by the use of their natural faculties, may attain
to all the knowledge they have, without the help
of any innate impression, and may arrive at
certainty, without any such original notions
or principles.²

One after the other in hurried succession he approaches
the arguments in favor of innate ideas and analyzes them into
his doctrine of atomistic sensory perceptions. A consideration
of these arguments is of primary importance to this study
because they precipitated a sharp break with established beliefs.
The first is that of universal consent.³ Two propositions are
discussed, propositions customarily granted universal validity.
"What is, is," and "it is impossible for the same thing to be
and not to be." But Locke points out, this is not necessarily

¹. *Locke*, EHU, 134f.
². *Locke*, EHU, 134-5.
true; children and idiots are human beings, yet they do not have imprinted on their minds these two abstract propositions.\(^1\)
Only one exception is required to disprove the theory of universal consent; Locke believed that he had found several. It cannot be argued that an idea is innate even if it is true of all those who approach the age of reason. Reason is the ability to deduce unknown truths from principles already known. Thus for Locke, and this is eminently important for an understanding of his doctrine, reason was not a quality of the mind or even a capacity of the mind in the sense that it was an innate form. It is learned, an achievement of those minds willing to submit to the rigors of logic. Locke meant by reason nothing more than logic, a tool of the disciplined mind, a means of reaching certain conclusions once the premises were known. Obviously reason is not innate. Otherwise everyone would be logical. In even using the phrase "come to the use of reason," Locke\(^2\) could mean nothing more than that most minds reach a stage of development at which time they are capable of examining critically all experienced phenomena with the aid of logic.

Without going further into the matter here it should be noted that Locke found another realm in which to deposit the universal laws of reason. In the Second Treatise reason becomes something more than a mere tool for it originates in nature. The world in which we live is rational.

1. Locke, EHU, 136.
2. Locke, EHU, 138.
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Just as there are no innate, abstract principles of logic embedded in the mind, there are likewise no innate moral principles. Even the moral conscience arises from education, society, and the customs of the country to which a person belongs as a citizen.\(^1\) He draws on numerous examples from history to prove that this is the case; one man abhors what another considers divine and both act with the full justification of their respective consciences.\(^2\) Thus Locke seeks to destroy the doctrine of innate ideas by carefully surveying those which have been presented as innate and pointing out that they are not innate in all people, certainly not in newborn children where they should be strongest.

It is easy to foresee, that if different men of different sects should go about to give us a list of those innate practical principles, they would set down only such as suited their distinct hypotheses, and were fit to support the doctrines of their particular schools or churches; a plain evidence that there are no such innate truths.\(^3\)

The first part of the Essay is a refutation, an attempt to clear the ground for the positive epistemological hypothesis which is to follow. The transition is not strained for Locke finds in his refutation of innate ideas the basis for his epistemology. If, he argues, the mind has within its very nature ideas which are common to all minds then those ideas must be similar to other ideas, "for where the ideas

\(^1\) Locke, EHU, 161.
\(^2\) Locke, EHU, 163f.
\(^3\) Locke, EHU, 170.
themselves are not, there can be no knowledge, no assent, no mental or verbal propositions about them."\(^1\) When the so-called propositions are broken down into ideas, it is found that they do not exist. Simple ideas therefore do not arise as a constitutive part of the mind; they are impressed on the mind from without. Some might argue that the idea of God is simple or that it is innate in the mind, but even this varies from culture to culture.\(^2\) Thus neither simple ideas nor propositions relating simple ideas are innate. Locke concluded his arguments against the doctrine of innate ideas in his Essay by outlining what he believed to be the basis for the theory in the first place. It arose from two sources; the first was mere laziness, an unwillingness to question and search; the second was a systematic attempt to mislead.

It was of no small advantage to those who affected to be masters and teachers to make this the principle of principles, 'That principles must not be questioned;' for having once established this tenet, that there are innate principles, it put their followers upon a necessity of receiving some doctrines as such.\(^3\)

Although the motivation of those who attempt to promote the doctrine of innate ideas is of secondary importance in the Essay, it becomes of primary importance in the Second Treatise. It was through such authoritarian reasoning that the idea of the divine right of kings had been instilled in the subjects.\(^4\)

1. Locke, EHU, 179.
2. Locke, EHU, 196.
3. Locke, EHU, 203.
4. Cf. the works of Filmer and Hobbes.
In the Essay it was a rebellion in the realm of epistemology alone; in the field of political theory it became a rebellion against tyrants. It was for this reason that Locke made explicit the political implications of his doctrine in support of the Revolution in 1688. But before his specific political doctrines are treated as such it will be necessary to outline Locke's epistemology. It was not only the theories themselves that Jefferson had in mind when he penned the Declaration, it was Locke's approach to all natural phenomena. If, asks Locke, the ideas are not innate, if there are no constitutive forms within the mind which structure the way in which we know, how do we know, what is the nature of mind?

It is generally agreed that men think and they use ideas in thinking. But the ideas in order to reach the mind are perceived through one of two channels; they are simple if they are perceived through sensation and they are complex if they are constructed through reflection. The mind in its initial, passive state is similar to a piece of paper, one on which no characters or lines are drawn. It is not even ruled with the laws of logic. Since the mind cannot act or reflect without first having perceived simple ideas, it is a mere potential and apart from the ideas received through sensation it is uncomprehending. Once the ideas have been received they may be manipulated by the mind, arranged and rearranged to construct ideas that could never arise from the senses. Thus our doubt,

1. Wormser, TL, 300.
our reasoning, our willing, and our believing arises in this way but they are basically sensual. The mind receives the sensations passively but with reflection it is active; as active it may be reasonable but the one does not necessarily follow the other. However if the mind is to become discursive, if it is to accept, formulate and reject it must become reasonable. Thus reason is a tool of the active mind but it is not a part of its original furniture.

The discrete simplicity and sharp clarity of the Lockian epistemology produces a spontaneous appeal even today. It is not difficult to understand the influence it had on minds who were just emerging from the dogmatic and subtle complexities of the middle ages. This unified and quantitative analysis of the knowing mind had an immediate appeal for those who had been trained in the double truth theory of a Duns Scotus or the triune divisions of a Thomas Hooker who divided laws into divine, human, and natural. For Locke, there is only one means of gaining knowledge of the external world and that is through experience.

Locke had certainly not been the first to present this view. Heraclitus and Protagoras along with other Greek Cosmologists equated knowledge with sensation. Democritus, the Epicureans and early Stoics had similarly based their epistemology on sensation. Hobbes presented an extreme form of sensory cognition which was to have a direct effect upon

1. Locke, EHU, 206-8. 3. Windelband, HOP, 64.
Locke. Thus it was not novel in the history of human thought but it was the best contemporary presentation of an empirical epistemology.

This is of particular importance to the purposes of this study. Jefferson was not primarily a metaphysician even though he did commit himself to certain metaphysical presuppositions. The metaphysical positions which best upheld his views were positions similar to or identical with those of Locke. Actually, he had little to choose from among modern metaphysicians. The works of neither Kant or Hegel were available to him. Hume was a contemporary but his works had not been recognized. Other than the British thinkers mentioned, he had only the ancients on which to draw if he was not to accept some phase of scholasticism or a watering down of the same. For many readers of his day Locke's philosophy produced the same sensation that the captain of a ship must experience when as the ship leaves the harbor, he sees the last tug boat cast off, the last marker disappear in the distance, and the harbor pilot descend to his boat.

It is something of this self-sufficiency and self-confidence that Jefferson had in mind when he wrote in 1808 to Reverend Samuel Miller that "every one must act according to the dictates

1. Windelband, HOP, 413.
2. This is not to be confused with degrees of certainty in which intuitive and demonstrable knowledge precede the sensory. We have an intuitive knowledge of the self and a demonstrable knowledge of God's existence as the first cause.
of his own reason."\(^1\) In 1791 he wrote "I hope that we have not labored in vain and that our experiment will still prove that men can be governed by reason.\(^2\) Thus reason, as Jefferson understood it, was the tool of the mind, the criterion of truth which was to be relied upon above all else. Unfortunately, it is not clear whether he limited it to logic as such or merely intended to distinguish between the cognitive and affective functions of the mind.

Man once surrendering his reason, has no remaining guard against absurdities the most monstrous, and like a ship without rudder, is the sport of every wind. With such persons, gullibility which they call faith, takes the helm from the hand of reason, and the mind becomes a wreck.\(^3\)

It will be noted that the above statements followed the writing of the Declaration by several years, years during which the principles implied became explicit in his own thinking. It is not certain that he had read the Essay by the time he wrote the Declaration but it is certain that he approved of the point of view presented by Locke and that he had absorbed some of it from other sources if not from the Essay itself. Before taking up the Second Treatise it will be instructive to compare Jefferson's approval of the above principles with his categorical rejection of another outstanding philosopher, Plato. A thinker may be understood by that of which he disapproves as well as by that of which he approves. There is every reason to believe that previous to the authorship of the Declaration,

\(^1\) Jefferson, XI, 429.
\(^2\) Jefferson, III, 124.
\(^3\) Jefferson, XV, 409.
he had read Plato because of his interest in the classics. Sharp denunciatory rejections sometimes bordering on irrational tirades are sprinkled throughout his later correspondence.

Concluding one of his longer criticisms of Plato in a letter written to John Adams in 1814, Jefferson employs the terminology of Locke in a parody of the twin supports of authoritarianism, intuition and innate ideas. In the same letter Jefferson states that when Plato is brought to the test of reason, he is proven to be only a Sophist who has escaped condemnation because of his style and incorporation into the "body of artificial Christianity." Jefferson admits that he has seldom had the patience to complete a whole dialogue and doubtless that accounts for much of his extreme and frequently unwarranted criticism. But since he also adds that he had attempted most of them, it is clear that at least a cursory acquaintance had been lifelong. Much of his biblical criticism later in life is based on an attempt to separate the sayings of Jesus from the Platonisms which had been interpolated. If the arguments for immortality, he claimed, rested on the principles of Plato scarcely anyone would believe in the unbroken life. This, he affirms, in spite of the fact that Plato is frequently appealed to in support of the belief.

Jefferson sharply resented Plato's use of Socrates in the

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dialogues for he thought him to be a philosopher of the highest order. The rule of thumb method by which he distinguished the two consisted in deciding what was worthwhile in Plato's works and attributing it to Socrates. All in all, he considered the dialogues a libel on the person of Socrates. Arbitrary and ill-advised as it may be, this naive distinction indicates the exact doctrines in Plato with which Jefferson disagreed. Socrates as a moral philosopher was the founder of an area of study in which Jefferson was intensely interested. Plato's great contribution to philosophy was in the fields of metaphysics and political theory; Jefferson distrusted the first and disagreed violently with Plato's doctrines in the second. The one exception in his general distrust of metaphysics were the works of Bolingbroke, particularly those sections which he laboriously copied in his Commonplace Book. Even if conclusive evidence were lacking, evidence that Jefferson was a student of Bolingbroke, it is clear from the above that the theories expressed in the Declaration and elsewhere imply a definite metaphysics. Furthermore it is a metaphysics which is not inconsistent with that of Locke.

2. Jefferson, XIV, 150.
3. Jefferson was not alone in his dislike of Plato. Of his friends, John Adams was an outstanding critic also. However Adams gave a more considered appraisal of Plato's metaphysics and was probably better acquainted with him than Jefferson. Jefferson, XIII, 375f.
5. Jefferson, XIV, 149.
7. Cf. Chapter V.
8. Of course Bolingbroke was also a student of Locke.
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Since it was not formulated and made explicit in the mind of Jefferson, it cannot be described as a system.

In the terminology of the scholastics, Jefferson was a nominalist as opposed to a realist, he was a child of the Enlightenment to the degree that he could join with Bolingbroke in saying that "no hypothesis ought to be maintained if a single phenomenon stands in direct opposition to it."¹ Not each man, but the reason of each man, was the measure of all things for he was saved from sophistry by the laws of reason. He was for all practical purposes a materialist but a materialist that did not bother to explain the relationship of the mind to the body.² He had a basic revulsion to mysticism, eternalism, mentalism, and Plato's theory of universal concepts. The God that could not be known through the laws of nature was a God that either did not exist or was not worth contemplation.

With this survey of the metaphysical system implied in the Declaration of Independence and other writings of Jefferson contemporary with the Declaration, the latter phase of the problem for this chapter will be discussed. That is the relation of the Second Treatise to the Declaration of Independence.

Jefferson wrote the Declaration for the same reason that Locke wrote the Two Treatises on Government. The first Treatise is a detailed answer to Sir Robert Filmer's Patriarcha and as such is of no particular importance to this study except that

¹. Jefferson, CBP, 41.
it was a refutation of absolutism. If it had been a refutation of Hobbes it would have been worth much more but only one short reference to Hobbes is contained in either treatise. It is to be found in the introduction of the Second Treatise and is only implied. ¹ Jefferson refutes the divine right of kings doctrine through omission when he appeals to natural law. It can only be thought of as divine law if it is remembered that for Jefferson God could only be known through nature, not through the traditional religious institutions which had supported the European monarchies.

The natural state, as Jefferson understood it, was not Hobbes's state of nature which was one of continual conflict and war, but the state of nature outlined by Locke in his Second Treatise. Although Hobbes's theory is much nearer the truth according to modern studies in anthropology, Locke offered an alternative that was more consistent with the temperament of the day. Locke's "state of nature" was not based on even the most rudimentary findings in anthropology. The Second Treatise, unlike the Essay, does not appeal to specific examples for verification. His studies in the genesis of social customs are normative rather than descriptive; they are not observed phenomena but imaginative abstractions. It is an imaginary description of how he believed men would live if they were suddenly stripped of all customs and forms unique to civilization.

¹ Locke, EOG, I, 1.
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We must consider what state all men are naturally in, and that is a state of perfect freedom to order their actions and dispose of their possessions and persons as they think fit, within the bounds of the law of nature, without asking leave, or depending on the will of any other man.¹

It might seem that the law of nature referred to here would be a physical law such as the law of gravity, of relativity, etc., but such is not the case. The law of nature is reason, a discipline which must be consciously cultivated and consulted; therefore it is not innate.² Natural man is able, by his own reason, to guide and order his habits and customs. Locke leaps far too easily from the assumption that everyone could be reasonable in the state of nature to the belief that everyone would be reasonable, at least, that a majority would be. His distinction between the possible and probable is far from adequate. The fundamental reasonableness of the majority constitutes the foundation for the complete Second Treatise.³ The majority will know and recognize the public good. They are the worthy as opposed to the unworthy, the populace as opposed to the criminals and reason is the tool which furnishes the worthy with the necessary advantage of rulership. Not finding a positive reason why one should be placed above another, he introduces the doctrine of equality, again, a doctrine that is normative rather than descriptive.

There being nothing more evident than that creatures of the same species and rank, promiscuously born to all the same advantages of nature, and the use

¹ Locke, ECG, II, 4.
² Locke, ECG, II, 6.
³ Locke, ECG, I, 3.
of the same faculties, should also be equal one amongst another without subordination or subjection...\textsuperscript{1}

Conceivably, political equality could rest only upon one basis; if God had so ordained it, His right to do so could not be questioned. Since Locke had disposed of that thesis in the first Treatise, it was a safe door to leave ajar. The only type of inequality that would exist in a natural society would be that between parent and child.\textsuperscript{2} But even the children would be granted political freedom and protection.

It must be remembered that Locke wrote at the beginning of the Enlightenment; he was not a part of it, but a forerunner and this to some degree accounts for many of the older thought forms. One such instance is evidenced in the ease and facility with which he makes sharp distinctions in social and political theories. The fact that he was himself a metaphysical atomist may also partially account for the way in which he could apply the knife to such a concept as equality and declare that there are many kinds, that one kind does not necessarily influence the other, that although age or virtue may give one man precedence it does not mean that he has more freedom than another.\textsuperscript{3}

Today, evidence to the contrary is patent; not only do the various types of equality become interdependent, but factors of which Locke never dreamed combine to prevent men from being equal, politically or otherwise.

\textsuperscript{1} Locke, ECG, II, 4.  
\textsuperscript{2} Locke, ECG, VI, 64.  
\textsuperscript{3} Locke, ECG, VI, 54.
From the discussion in the Second Treatise it is impossible to know for certain whether or not Locke intended for his state of nature to be descriptive of human origins. If he did, as has been stated before, he did not bother to give specific historical examples. But whether he did nor not, it is now evident that a man living in the state of nature according to the law of nature as defined by Locke would be the end product of a highly developed and fruitful society, not its progenitor. Actually, natural man differed from Locke's contemporaries in one respect only: that is, he would not be dominated by an arbitrary king but would be left to his own devices. With the aid of reason he could, and would, participate in his own government.

The first sentence of the second paragraph in the Declaration "we hold these truths to be self evident: that all men are created equal;" is a manifest error unless (1) it is inflated to meaningless dimensions, or (2) it refers only to a limited and possibly specious category. In the latter case it does have meaning; all men are created equal to the extent that no one man can become the depository of their collective rights if a strong society is to endure. At least Jefferson would have some historical justification for such an application. The rights of the people were inherent to the degree that they could be recalled at will. That is, governmental abuse cannot continue with impunity but must result in the dismissal of the government. The rights were in one sense ultimately inalienable. The means by which they might be recalled was not immediately
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important. In England Jefferson had evidence that the slowly evolving power of Parliament was in such a process; in America another means was already in use. But first there must be a rational justification for either evolution or revolution and Jefferson believed that he had found that justification in Locke's doctrine of natural law.

Among the inalienable and non-transferable rights of man are at least these three: life, liberty, and the pursuit of happiness.\(^1\) They are the product of, and limited by, natural law. A murderer forfeits his right to life according to the very law which grants it to the reasonable. This, Jefferson would have argued, can be seen from an observation of nature itself; at least it is not dependent upon the will of an arbitrary monarchy.

Liberty is based on Locke's doctrine of equality and has already been discussed as freedom. The right to the pursuit of happiness is evident in nature as the end of life. This likewise does not depend on a monarchy for its justification.

Since it is the duty of government to secure these rights, either Jefferson contradicted himself or he meant that the rights were normative, that, they should be achieved. Governments are constituted to secure them and when they are abridged the people have a right to declare themselves independent for the rights are ultimately inalienable. Jefferson is here arguing that if there are rights at all, if anyone is to have

\(^1\) Jefferson, I, 29.
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the opportunity to enjoy them, it is the people, not the government. Rights originate with, and are indigenous to, the people, not the constituted authority which has as its duty only the security of those rights. The doctrine of consent is nothing more than another way of saying the same thing. The government is a tool to be used in the attainment of the public good. For Jefferson the nation and the state are to be equated with the government which has only methodological significance. There is no substantial entity apart from the people and their method of self government. When it is said that the rights are ultimately inalienable it is meant only that they reside in the people as potentially attainable.

It may seem from the above analysis that this is an attempt to rationalize the evident contradictions in the Declaration but such is not the case. It is an attempt to present what Jefferson had in mind. Although Jefferson was untiring in his efforts to leave a "fair copy" of his thoughts for posterity, interestingly enough he never did write a commentary on the Declaration. Even with the theories of Locke in mind it offers ample opportunity for ambiguity in interpretation; without Locke and other writings current at the time, it is almost inexplicable.

Jefferson goes on to say that "when a long train of abuses and usurpations, begun at a distinguished period and pursuing

2. Locke, ECG, 220-2.
invariably the same object evinces a design to reduce them under absolute despotism, it is their right, it is their duty to throw off such a government.¹ Locke used some of the same terminology in a similar argument found in the Second Treatise. He expressly mentioned "a long train of abuses" and "design" in the same connection.² The emphasis on design so impressed Jefferson that he did not feel he had proved his case until it had been shown that the king was acting according to design.

After giving the basis for his political philosophy and listing the positive rights which are the property of every individual, Jefferson goes on to say that "prudence...will dictate that governments long established should not be changed for light and transient causes."³ Appealing to and reflecting personal experience he argues that instead of men being over anxious to change their governmental forms, they are, as a matter of fact, slow in doing so. They are slothful and passive until the evils become insufferable.⁴ In a similar vein Locke writes "people are not so easily got out of their old forms as some are apt to suggest. They are hardly to be prevailed with to amend the acknowledged faults in the frame they have accustomed to."⁵ These observations are not a constitutive part of either philosophy but it does indicate the close similarity that exists between the Declaration and the Second Treatise; it is to be

² Locke, ECG, 225, 230. ⁵ Locke, ECG, 223.
³ Jefferson, I, 29.
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remembered that Jefferson did not deny this.¹

The remainder of the Declaration is concerned with the specific application of the principles listed above to the government of King George III. Contemporary commentaries on the Declaration are inclined to dismiss the catalogue of facts which were submitted to a candid world as a long list of unrelated errors in government. But Jefferson did not see them as such. To him, they were the studied attempts of the mother government to drain the wealth from the colonies. Thus he arranged the list in such a way that they would reveal this plan.²

Until George Grenville came to power (1763-1765), the colonies had been given free rein and were permitted to do about as they pleased. It was Grenville who turned on the colonies when they reached maturity to teach them what they had not been taught in infancy. A cursory glance at Machiavelli's The Prince would have taught him that a free people are not to be handled as those who have not tasted of freedom. At any rate, the acts which immediately followed were the acts to which Jefferson referred in his bill of grievances. He referred to no act by name but only by indirection. Only once

¹. Those passages in Locke of particular relevance to the Declaration are paragraphs 4, 54, 220, 222, 225, and 230.
². Becker, DOI, 14. Becker makes much of the design within the catalogue of facts and with it proves to his own satisfaction that the Declaration is primarily a philosophy of government, not merely a list of grievances with a theoretical prologue affixed. His argument is also supported by the fact that the list does not exceed the bounds of the theory presented in the second paragraph.
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did he make specific reference to the Parliament and that was deleted in the congressional editing. His references were to specific violations and not to general policies such as the extremely narrow economic policy which had been promoted by the English government in order that the colonies would not compete with the manufacturers in England. Either he did not think of this as being serious or he did not wish to weaken his argument with appeals to unverifiable generalities. By in large it was the following restrictions which he most resented: the necessity for sending legislative measures to England for approval; the refusal of the king to permit newly formed counties to be represented; the removal and dissolution of assemblies; the quartering of soldiers; the high prices imposed on new lands; the undermining of the colonial courts by the admiralty courts over which the colonies had no control; the multiplication of tax commissioners; the institution of military rule in Massachusetts; the inability of the colonial courts to try English troops caught in criminal acts; the importation of English criminals as settlers and the refusal to permit the naturalization of continental immigrants.

The remainder of the grievances have to do with specific acts of war such as the plundering of the cities and the importation of mercenaries. However, there is one exception and that is the proscription of slavery which was not accepted by Congress. This is of vital importance to the study and will be dealt with to some degree here since it is one of the strongest statements Jefferson made against the institution of
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slavery, and one that would have had most effect if it had
been accepted. It is the original inclusion of the proscription
on the part of Jefferson which made his copy of the
Declaration more than a list of petty grievances. It is
extraneous to the matter at hand only if the Declaration is
viewed as a mere catalogue of woes. Actually, it underlines
the universals implied in the Declaration.

Jefferson states that the clause was deleted in deference
to two groups, the first, as was to be expected, consisted of
South Carolina and Georgia, "who had never attempted to restrain
the importation of slaves, and who, on the contrary, still
wished to continue it."¹ The second group consisted of "our
northern brethren" who "felt a little tender under these censures;
for though their people had very few slaves themselves, yet they
had been pretty considerable carriers of them to others."²

Jefferson, in the Declaration, speaks of slavery as a cruel
war waged against human nature and it is evident from the wording
of the proscription that it need presuppose nothing more than
Locke's doctrine of equality outlined in the second paragraph
of the Declaration. In the Notes on Virginia he again speaks of
slavery as a moral and political evil and looks forward to the
"complete emancipation of human nature."³

Only five years after the writing of the Declaration,
Jefferson set down his thoughts concerning slavery in some

¹ Jefferson, I, 28.
² Jefferson, I, 28.
³ Jefferson, II, 124.
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detail; they are found in his Notes on Virginia and consist of a consideration based on the abnormal development and eventual destruction of human values under the system of slavery. It is not an appeal to a theory of human rights and equality but consists of a minute scrutiny of the deterioration of manners consequent to the institution. "The whole commerce between master and slave is a perpetual exercise of the most boisterous passions, the most unremitting despotism on the one part, and degrading submissions on the others."¹ Not only do the adults take part in this display of passion on helpless individuals but they likewise teach their children to do so. Gradually the nature of the learning process intensifies the tendency from generation to generation until "the man must be a prodigy who retains his manners...undepraved by such circumstances."²

The institution of slavery threatens the morals and industry of the owners, reduces the slave to an animal, and embarrasses³ a nation newly founded and established on the principles of liberty.

Indeed I tremble for my country when I reflect that God is just; that his justice cannot sleep forever; that considering numbers, nature and natural means only, a revolution of the wheel of fortune, an exchange of situation is among possible events; that it may become probable by supernatural interference.⁴ For a person who did not believe in supernatural events this is no mean condemnation. Since this appeal to the supernatural is inconsistent with the rest of Jefferson's thought, it must

¹ Jefferson, II, 225-6
² Jefferson, II, 226.
³ Jefferson, XIX, 41.
⁴ Jefferson, II, 227.
be considered as the overstatement of a man who was basically disturbed by a situation which he believed to be morally wrong. Apart from the appeal to the supernatural, his reasoning is ample to prove the basic error of slavery. They are reasons which for the most part rest on the argument for the increase rather than the decrease of human values.

Throughout the correspondence frequent references are made to the practice of slavery and always with the same feeling of shame, embarrassment, and contempt. However he did not free his own slaves until the time of his death and then only those who were "worthy."\(^1\) Even this overt action was not unique to him; many large plantation owners did the same. Jefferson's thoughts on slavery, unlike most of his statements in the Declaration, were probably the result of his own observation.\(^2\) To be certain, Locke does devote three paragraphs to the subject of slavery in his Second Treatise\(^3\) but the presentation is so unrealistic and normative that it could have had but little effect on the mind of Jefferson when confronted with the problem of slavery in his own plantation and colony. Locke makes the point that inasmuch as an individual does not own his life, he is breaking a law of nature when he becomes a slave to another. Reared in a nation which was at the time employed in a world-wide

\(^1\) Jefferson, XV, vi; XVII, 469-470.
\(^2\) Jefferson, XIX, 41. "He who is permitted by law to have no property of his own can with difficulty conceive that property is founded in anything but force."
\(^3\) Locke, ECG, IV, 21-23.
slave market and exiling himself to another which was not without its commerce in human life, Locke chose an example from the Old Testament to illustrate his argument. This might have been a concession to Filmer or a habit of his own thought. At any rate it proved to be a blind spot. Medieval history, even English medieval history, offers ample opportunity for studying the worst forms of human slavery.

The Hebrews, Locke maintains, did not sell themselves into slavery but into drudgery because there were legal conditions under which they could be freed. At other times he speaks of slavery only in the political sense. That is, a subject is in some sense a slave to a despot. But he did not have in mind an institution such as the one that existed in the American colonies and elsewhere.

It was Jefferson's plan, as it was the plan of others, to deport the slaves to Africa and hire free white labor to take their place in the economy of the nation. He believed that habit, nature, etc., had drawn indelible lines between the Negro and the Anglo-Saxon. In the Notes on Virginia he gives a detailed and graphic account of the differences between the Negro and the Anglo-Saxon concluding that when freed the Negroes should never be allowed to mix with them. He is not so certain of the Teutonic race for he seriously considers a plan of colonizing Negroes and Germans together. His sense of equality did not extend to a consideration of the fact that the Negroes might wish to wander over the face of the earth as freely as

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the Anglo-Saxons, that they might wish to have some say in whether or not they wanted to mix, etc. However, he did go much further than most in his day and he based his arguments for emancipation on his own observations.

Jefferson's original copy of the Declaration is an all inclusive whole based on the broad principles of natural law. It makes particular application of universal principles and should be considered as a normative hypothesis flung into the current of history. It was not an attempt to describe the origins of man but it was an attempt to alter his historical destiny. Neither is it to be thought of as a mere dream for it implies a consistent metaphysics, a metaphysics which looked to human reason, and reason alone for the salvation of man.

By way of summary a number of conclusions may be noted. The Declaration of Independence finds its origin in the varied needs and thought patterns of the American people. It was not, primarily, an attempt to formulate a consistent political philosophy, but it drew upon current theories of natural right widely published and discussed. At the same time a thorough-going philosophy was implied complete with a metaphysics to meet the demand for intellectual justification of the action to be taken. The Second Treatise came in handily at this point even to the phrasing.

This does not mean that Jefferson was in complete agreement with Locke or that he was even in agreement with Bolingbroke. It does mean, and this is quite important, that when he wished
to summarize his own political philosophy, the wording of Locke came easily to mind. On the other hand there is never any indication that he accepted the psychology.

The argument from design in the Declaration is one of its most outstanding points. The catalogue of blunders were endurable as isolated instances of bad judgment, but coming as they did to establish a continuous trend, they were unacceptable, indeed, intolerable. For the announced purpose of allowing each reader to discover the trend for himself, the bill of particulars was included. Actually the colonies had ruled themselves with considerable independence and there is a real sense in which the Declaration was a conservative document drawn up to meet a growing threat. In this sense the Declaration was no more revolutionary for America than the Magna Carta was for feudal Britain. Both were repelling threats and reaffirming previous political values. The Revolution may be described as an attempt on the part of Britain, not to hold, but to retake the colonies after loosing them by default.

Needless to say this is not the whole truth of the matter but it is a welcome antidote to the more popular view, both being half truths, validity lies somewhere in between. It is quite clear that the implied appeals in the Declaration were based on rights which the people believed they already possessed. Fortunately for America, British colonial policy had not taken a leaf from Machiavelli regarding the treatment of a free people to the effect that the only approved means of ruling them was
that of obliteration.¹

Although Jefferson was opposed to slavery it should always be noted that he did little or nothing to change the system on his own plantation as he owned between two and three hundred slaves. Throughout his life his social philosophy entertained abolition only as a theoretical possibility.

This concludes the consideration of the Declaration of Independence and the sources from which Jefferson drew for his political theories included therein. So far, they are implied rather than explicit.

¹ Machiavelli, PRI, V.
CHAPTER V

THE COMMONPLACE BOOK OF PHILOSOPHERS AND POETS

Previous to Jefferson's departure for Paris in 1784, at forty-one years of age, he had a fully developed moral philosophy that formed the basis for his political thought up to that time. It is the purpose of this chapter to discuss the authors who had most influenced Jefferson previous to the trip. Unquestionably, he had been familiar with many of them before the writing of the Declaration, but as was shown in the preceding chapter, the whole framework of that prominent document can be found solely within Locke's Second Treatise. The Enlightenment, with its emphasis on Deism and Materialism, consisted to a large degree in a revival of the Greco-Roman moralists. Jefferson, who was in every sense of the word a child of the Enlightenment, drew heavily upon those works of the ancients that were available to him.

Jefferson's early letters reveal a young student who is preoccupied with the afflictions of this world and the contemplation of death. One of the best examples is to be found in his letter to John Page (1763)\(^1\) which was quoted at length in the second chapter. Interspersed with the pages of humor and light hearted wit which he uses to describe in detail some otherwise colorless experiences, are thoughts that reflect dejection and sometimes even despair. An individual's hopes and despairs, especially a youth's, are not innate to his

\(^1\) Jefferson, IV, 8-11.
character, but in large measure rest on what he has been taught to expect from life. If this were not so, many cultures would have spent their time in perpetual anxiety because they could not live during another era; countless peasants would have been distraught throughout their lives because they were not kings. Only those who have approached some advancement in human life at one time, only to have it denied later on, only those who have entertained a hope as being in the realm of the possible, are subject to such thorough despair and disappointment. Thus a child who had been told that he would live to witness some gigantic celestial collision might conceivably become a life-long pessimist on being told that it would not occur; but one who had never been thus informed could hardly be expected to be disappointed with the same news. Therefore when the letters describe a dejected young man, possessed with a gifted mind, who had the advantage of attending school and owning one of the larger plantations, who was one of the privileged aristocrats of the colony, the reader has the right to ask just what he did expect.

Since, for the most part, his disappointment was phrased in terms that belied a distrust in ultimate principles, it is safe to assume that he had once relied on the traditional orthodoxy of his day. Throughout his life he was religious in the sense that ultimate beliefs mattered to him, and mattered very much. His first two tutors had been ministers and it is probable that previous to the time when he chose law as his
vocation he had been deeply impressed with the fully developed
theistic interpretations of the universe then current.
Furthermore, his acceptance of them had not been merely formal
or superficial; they had furnished him with a basis for his
personal morality, a guide for all of life. They were so
important to him\(^1\) that when he finally gave them up, he
considered the effort to find a new basis for morality the
most significant work to which he could devote himself.\(^2\)

If the tendency had been confined to some early part
of his life and then been forgotten, it would be of little
consequence to this study, but such is not the case. Throughout
his life he is as much concerned to state what he does not
believe as what he does, and to state it in reference to what
he believed formerly. He seems always to have in mind either
his own previous beliefs or those of individuals who still
believed them.

It is just at this point that the Commonplace Book fits
into the framework of his thought.\(^3\) Excerpts from Bolingbroke

3. Jefferson, CBP. This book was not published until 1928 by
Gilbert Chinard and is titled by him, The Literary Bible
of Thomas Jefferson. With some insignificant exceptions
he places the writing of the book in the early part of
Jefferson's life. It consists of a series of extracts
which Jefferson had culled from his reading and they are
without footnote or marginal comment. Jefferson wrote two
Commonplace Books and the other was edited by Chinard in
1926. While this one is limited to philosophers and poets,
the other takes up his theories of government. Chinard
referred to this one as a Literary Bible because he believes
that it is a supplement to Jefferson's Bible edited much
later in life. References in this study to the Commonplace

dominate the first section, excerpts which are critical of orthodox theology and which seek to establish a Deistic foundation for morality. The latter part consists of heterogeneous selections from numerous philosophers and poets, for the most part, ancient moralists. Primarily Jefferson was a moral philosopher and the Commonplace Book is an excellent example of his devotion to it as a field of study. Since the first large group of entries consists of selections from Bolingbroke, some space will be devoted to an evaluation of his influence on Jefferson.

In political philosophy Bolingbroke is to be understood as a link between Locke and Jefferson, but in the realm of metaphysics, Bolingbroke stands as the most important single influence on the life of Jefferson. Jefferson accepted Bolingbroke's skeptical attitude toward metaphysics in general, but along with it Bolingbroke's metaphysical system in particular. Jefferson's background in metaphysical systems was not sufficient to let him see the evident contradiction involved in a general attack on metaphysics as such from the vantage point of a particular metaphysics. But his apologists need incur little embarrassment at this point for he was not the first to make the mistake.

Beginning with Lord Herbert of Cherbury's *De Veritate* (1624), Book of Philosophers and Poets will be to Jefferson, CBP; references to Chinard's introduction in his edition of it, will be, Chinard, LBJ.

and continuing with Spinoza's *Tractatus Theologico-Politicus*, Thomas Hooker, Charles Blount, John Locke, Toland Collins, Tindal and others, reason understood as natural law, became the basis for a new philosophy of religion, Deism. Bolingbroke stood in this tradition, a tradition which was best systematized in the writings of John Locke until the time of Hume. Therefore Jefferson, in copying the doctrines of Bolingbroke in the *Commonplace Book* was accepting the position of the more systematic Deists along with something of the extreme Deism peculiar to the French school. For Bolingbroke had been exiled to France and had absorbed enough of the French viewpoint to express it in a "capricious and dilettante manner." A biographical sketch of Bolingbroke is pertinent to this study because of his pronounced influence on Jefferson's formative years. While not a great philosopher, Bolingbroke was nevertheless accorded a high place in the esteem of Jefferson.

Henry St. John Bolingbroke (1678-1751) had an extensive and influential political career in the stormy days of Queen Anne and George I. He ascended to the leadership of the Tories early in his career and maintained it even while in exile until his retirement. None of his creations were published and therefore they died with him, but it is generally conceded that he was one of the greatest orators of his day. In spite of the fact that his political fortunes and personal character evidenced a shallowness and superficiality for which even his admirers

1. Troeltsch, Art., III, 391-396.
2. Troeltsch, Art., III, 394.
apologized he was nevertheless an excellent writer. His works evidenced deep thought in the fields of politics, philosophy, and natural theology. He was a student of Locke and thoroughly understood the Lockian principles of investigation. His criticism of the church and the clergy was reasonably and capably argued; it was that part of his writing which most influenced Jefferson. In an attempt to give an estimate of Bolingbroke's style Jefferson compared him to Cicero.

Bolingbroke came into leadership of the Tories under Queen Anne and was made secretary of state in 1712. He was deposed with the ascendancy of George I and went to France in exile in 1715. While there, he devoted most of his time to the study of philosophy and political theory. Returning to England in 1723 under a new parliament, he was recognized as an eminent and outstanding philosopher, but this recognition quickly abated soon after his death in 1751. Today few people know of him and a complete edition of his works has not been published since 1841. Jefferson, who was introduced to his works by Fauquier, probably owned most of them by 1764, which was only thirteen years after Bolingbroke's death when he was still receiving the approbation of students on the continent and in the colonies. Adams said that he read through the Works of Bolingbroke five times. Since Bolingbroke represents a rather large school of thought which included such outstanding names as Locke, Voltaire,

and Hume, it is not difficult to understand why his works have not been widely read. He offered little that was novel and original then; now, he offers nothing that has not been said much better, in spite of his Ciceronian style.

Bolingbroke, serving as an interpreter of Locke for Jefferson, introduced the Lockian principles in such a way that they made a more lasting impression than those of any other writer. The Deistic, dual emphasis on reason and experience which are included in all of Bolingbroke's writings, are likewise reflected throughout the subsequent writings of Jefferson, both public and private. There is no question but what Bolingbroke had been strongly influenced by Locke's arguments against innate ideas in the Essay. In the realm of political philosophy Bolingbroke was not afraid to introduce novel principles into the government at a time when it was extremely dangerous to make any innovation whatsoever. He was exiled, but what is remarkable is that he maintained a following, his life, and English citizenship. Jefferson's defense in behalf of one who otherwise was a superficial thinker is justified at precisely this point.

Jefferson was acquainted with the pre-Christian ethicists and when Bolingbroke recommended the classics to him in 1764, he did not have to look them up. The readiness with which he swung to Bolingbroke's position would indicate that the ground had already been prepared. The Essay Concerning Authority in

2. Jefferson, II, 221; VI, 10; XIV, 197, 424; XV, 123.
Matters of Religion furnished him, early in life, with the critical habits of thought which were to cut away the irrelevant and preserve the valuable. This proved to be a lifetime task and finally ended with the Jefferson Bible, outlined but never completed before death overtook him.

But I am a rational creature, and am therefore obliged to judge for myself in all cases where reason alone is the judge of the thing itself; for even in the others secondary reason is the judge of the authority.

As Bolingbroke had used the Deistic theology to undermine the influence of the church on the English nation, Jefferson was to use it to disestablish the church of England in the colonies. He copied Bolingbroke's statement to the effect that "it is not true that Christ revealed an entire body of ethics, proved to be the law of nature." In all probability he would have also agreed with the following:

Traditional Christianity, or that artificial theology which passes for genuine, and which we all profess, is derived from the writings of fathers and doctors of the church, and from the decrees of councils. It is therefore the word of men... It requires therefore, no regard, nor any inward conformity to it.

Not only had men fashioned the doctrine of the church but they had fashioned them according to design, a design particularly adopted to the needs of the clergy and the institutional church. Just as the acceptance of the principles of reason and experience had moved Locke and

1. Bolingbroke, WOB, IV.
2. Bolingbroke, WOB, IV, 257.
4. Bolingbroke, WOB, IV, 647.
5. Bolingbroke, WOB, IV, 324.
Bolingbroke to broad principles of tolerance, it moved Jefferson to a universal regard for all religions and especially the many sects cropping out in the colonies. His sensitivity to the interests of these sects, combined with a study of the Old Testament influence on English common law and other considerations to be discussed later were to evolve into his doctrine of the separation of church and state.

The problem of the relation between morality and metaphysics formed the core of his thinking throughout his public career. One of the problems of this chapter, as well as the whole study, is to point out that Jefferson's off-hand dismissal of speculative thought did not mean that he actually had no metaphysics. However, it does mean that he was unsettled in his thought regarding the relationship of morality to ultimate principles. Few letters reflect this any better than a letter to Peter Carr in 1787. Moral philosophy, Jefferson advises the young man, is a waste of time for the conscience is sufficient as a moral guide, then, a few pages later in the same letter he wrote:

Your own reason is the only oracle given you by heaven, and you are answerable, not for the rightness but uprightness of the decision.

The works of Bolingbroke copied by Jefferson in the Commonplace Book fill thirty printed pages. The first eleven selections deal exclusively with the presentation of a materialistic

metaphysics revolving about the mind and body problem. Bolingbroke's desire to refute the claim to divine inspiration forces the problem into a strategic position.¹ Drawing upon the Lockian analysis of simple ideas, he declares that the primary qualities are solidity and extension, that we cannot have simple ideas of spirit or immaterial substance. Thus Locke's abstract ideas and intuitive knowledge are denied.

Bolingbroke and Berkeley lived and wrote at approximately the same time though there is little to indicate that they were aware of each other. Bolingbroke's criticism of Locke is strikingly similar to that of Berkeley and Hume but he did not join them in their respective experiments in mental architecture. Unlike them, he does not distinguish between the general and the abstract idea; consciousness, spirit, immateriality became for him, as they had previously for Hobbes, subjective secondary qualities, derivatives of material forces, names for a special type of physical phenomena. Instead of positing a substance of which we know nothing, Bolingbroke making questionable use of Occam's razor asserts that it is much more reasonable to posit consciousness as an attribute of extension. Extension then

¹ Inasmuch as the selections copied by Jefferson in the Commonplace Book were of obvious influence and since they form a consistent metaphysical position, this discussion will be limited to them. While there is no basis for the assumption that Jefferson agreed with each selection that he copied, there is ample evidence in his letters to indicate that the Commonplace Book was always close at hand and that he frequently referred to it as a source when Bolingbroke was discussed.
becomes the basic substance which supposedly is knowable through physical phenomena. Possibly at a later date natural science will be able to define the relationship.

As long as matter is senseless and inert, it is not a thinking substance, nor ought to be called so. But when, in any system of it, the essential properties, extension, solidity, etc., are maintained, that system is material still tho' it become a sensitive plant, a reasoning elephant, or a refining metaphysician.¹

Bolingbroke does not claim that thought arises from the primary qualities of solidity and extension but he does claim that there is nothing in the ideas of solidity and extension which contradict the idea of thought just as they do not contradict the idea of motion.² Thus there is a basic substance about which we know only two things, solidity and extension; we also know something that is unlike either of these two but not contradictory to either, that is, thought or consciousness. The persistence with which Bolingbroke employs the two terms, solidity and extension, at first suggests to the reader that he may be developing a basic dualism within the material substance and that in some way one or the other could be related to consciousness. But such is not the case. In another context he uses them interchangably with body and matter; solidity, extension, and matter are but three terms for the same substance and substance is used in the same sense in which Spinoza employed the term. It is that on which everything depends and which itself depends on nothing.

¹ Jefferson, CBP, 42. ² Jefferson, CBP, 42.
In far cruder terms and without the naturalist's background of scientific observation, Bolingbroke anticipates the Spencerian adaptation of Darwin's findings.

As these animal systems come to be more and more sensible to us, and as our means and opportunities of observing them increase, we discover in them, and according to their different species, or even among individuals of the same species, in some more in others fewer, of the same appearances that denote a power of thinking in us, from the lowest conceivable degrees of it, up to such as are not far, if at all remote from those in which some men enjoy it.\(^1\)

He concludes that there is in all animals one intellectual spring which is variously distributed for reasons unknown to us but which is nevertheless present. It has its origin in the lowest forms of animal life and is distributed throughout all species; it is first discovered as mere motion. There is no ultimate distinction within this faculty, there is only a difference in the degree to which it is exerted.\(^2\) Thus in those sections of Bolingbroke which Jefferson copied into the Commonplace Book, Bolingbroke is implying that motion is the source of consciousness although he does not make it explicit.

While copying these selections from Bolingbroke, Jefferson spent more time in the contemplation of metaphysical problems than he was to spend until he became interested in the Ideologists. Characteristically enough, he then turned to the field which most interested him and began copying selections which would give him a new basis for morality. His primary interest was

1. Jefferson, CBP, 43.
ethical, or cast in a slightly larger mold, human values. The twelfth paragraph of which there are some fifty-six, takes up this problem. If God is good, "almighty and alwise," argues Bolingbroke, then it is absurd to think of a being who would allow an inferior creature to deface his work and make life miserable for other creatures. Consequently, God must be either amoral, limited, or non-existent. Believing that God did exist and refusing to take from Him his omniscience or omnipotence, Bolingbroke concluded that God was amoral, at least to the degree that the world and certainly the universe was not fashioned with man in mind as an end. "I combat the pride and presumption of metaphysicians in a most flagrant instance, in the assumption by which man is made the final cause of the whole creation."2

Thus early in life Jefferson separated his ethical system from traditional religion and began the life-long search for a new foundation. In a letter to Carr in 1787, he completely separated the two by listing moral philosophy in a distinct category of its own; furthermore no reference is made to a religious tradition within the category of moral philosophy. However, in his recommendations concerning the rational approach to religion, he tells Carr that if after having studied religion from the point of view of a Deist he still believes in God, he may find there an "incitement" to virtue that he would not fine otherwise.

If you find reason to believe...that there is a future state, the hope of a happy existence in that increases the appetite to deserve it; if that Jesus was also a God, you will be comforted by a belief of his aid and love.¹

In the same letter he informs Carr that it is a loss of time to attend lectures in moral philosophy. "He who made us would have been a pitiful bungler, if he had made the rules of our moral conduct a matter of science."² For one person who is a scientist, and here he means science in the broad sense of the term, there are thousands who are not. Some provision must be made for them. The letter is replete with contradictions for immediately after saying this, he formulates a proposition which is peculiar to one type of moral philosophy, that of ethics. "An is destined for society, he argues and his morality must be formed to his object. But God endowed him with a sense of right and wrong which is relative to the social situation and this sense of right and wrong constitutes a conscience which is as much a part of his nature as the sense of hearing, feeling, etc. To say that he was inconsistent, unreasonable, is an understatement; he denies the value of all ethical philosophy at the same time he presents one particular type; he states that the conscience is structured by society but in the same paragraph adds that it is a part of the nature of man to the same extent that hearing is a part of man's nature. Thus his particular brand is lifted from the field of

¹. Jefferson, VI, 260-1.
². Jefferson, VI, 257.
controversy and placed on an unquestionable pedestal.\textsuperscript{1} With Locke, he claims that the moral sense, the conscience, arises from the social situation but unlike Locke he also states that it is innate to man.

Obviously the letter was written at a time when he was very much undecided as to where he stood; if Jefferson had left no other record of his thought this would leave the reader in a mass of contradictions. In all probability it reflects some personal disappointments in his own life, the nature of which it would be difficult to investigate. It is sufficient to note that he was continually striving with the problems which are being treated here more or less as abstractions and that it is impossible to say that this or that was the philosophy of Jefferson at a given time.

The balance of the selections copied by Jefferson from Bolingbroke have to do with a detailed analysis of the Christian religion as it is revealed by the scriptures and tradition.\textsuperscript{2} There is little here that varies from the general tradition of Deism wherein it is maintained that: reason is the judge of revelation, religion is universal, the Jews are not the chosen people, Christ is not divine, the early teachings were captured by the Academic school, the historical sections of the Bible are not authentic, the ethics of Jesus are insufficient, God is

\textsuperscript{1} Cf. Jefferson, XV, 225-6. Jefferson attempted to see to it that his grandson did not attend lectures in metaphysics and logic while in college. He was to read only Locke, Tracy, and Stewart on the subject.

\textsuperscript{2} Jefferson, CBP, 45-71.
revealed in the law of nature, and immortality is questioned because it rests on a moral argument of retribution. To all of this, natural religion offers a positive answer in which the precept, "'thou shalt love the lord thy god with all thy heart' will be effectual."¹

As has been seen, the first part of the Commonplace Book consists of an attempt to separate religion and ethics; the latter part is an attempt to find a new basis among the ancients. But the content of this chapter will not be limited to those whom Jefferson drew upon to fill the pages of the Commonplace Book although it does follow the design and intent of his extracts. The Deists who influenced him were instrumental in inducing Jefferson to find a new basis for human values, a search which was to lead him to the Stoics and Epicureans. Particular contributions demand investigation at this point. Among the Deists, Bolingbroke was outstanding but others were not without their influence also. They will therefore be treated in connection with Bolingbroke. In none of Jefferson's published correspondence does he mention Locke's Reasonableness of Christianity and it is to be supposed that he did not read it until late in life. Locke, unlike Bolingbroke, affirmed a belief in the messianic doctrine as it applies to Jesus; furthermore, he accepted the Kingdom of God concept. Both theories are much more consistent with Jefferson's later interest in the morals of Jesus.

¹Jefferson, CBP, 64.
Either Jefferson was ignorant of Hume's works in epistemology or he was blinded by Hume's justification of the Stuarts. The Tory tendencies in Hume's History were charged against him in the same denunciatory terminology originally reserved for Plato.¹ There is much in Hume's epistemology with which Jefferson would have agreed but Hume was judged in that area which held Jefferson's interest, political philosophy. He was not so harsh in the Tory tendencies of Bolingbroke.

Jefferson does not discuss the works of Francis Bacon (1561-1626) in detail but two references indicate that he had some knowledge of Bacon's contribution.² Although there are frequent references to reason³ and on at least one occasion he pauses to spell it with a capital "R"⁴ there is no indication that he distinguished inductive from deductive reasoning. Even in his later years this distinction is not drawn; after thanking the president of the Jefferson Debating Society of Hingham, Massachusetts, for the honor bestowed in the title, he outlines for them "the art of reasoning."⁵ Livy, Sallust, and Tacitus, he claims, are "pre-eminent specimens of logic, taste, and that sententious brevity which, using not a word to

¹. Jefferson, VIII, 32; XI, 223; XII, 405.
³. Jefferson, II, 221; VI, 10; XIV, 197, 424; XV, 123.
⁴. Jefferson, XV, 123.
V. Commonplace Book

spare, leaves not a moment for inattention to the hearer."
The terms used here hark back to Socrates' use of the term reason, that is, as sustained criticism but not induction or analysis.

Even though the distinction is absent from his correspondence it is not necessary to conclude that he missed the most important part of Bacon's Novum Organum and the result it had on later thought. Deduction was the means by which the scholastics had proved those doctrines which were so inimical to Jefferson's Deistic theology based on the law of nature. Thus it could not have been that when Jefferson referred to reason, he had in mind the subtle deductions of the scholastics. The laws of nature are reasonable but that reason is discovered through the observation of natural phenomena. Sufficient reference has been made to Bolingbroke's emphasis on induction to indicate that Jefferson agreed with Bacon's methodology.

Among the aphorisms of Bacon's first book of the Novum Organum, Jefferson could have read statements which anticipated some of the first great strides in scientific industry, technology. Today it is quite easy to criticize Bacon's methodology and point to the Aristotelian Forms and scholastic 'essences.' It is true that it was a science based on observation and classification rather than manipulation and operation, on deduction rather than induction.¹ Yet, even though the emphasis was on deduction still, his contribution

¹ Windelband, HOP, 384.
was on the side of induction; underdeveloped and halting as it was, it held high promise for the future. His criticism of the tendency to become completely dependent on deduction was not based on the skepticism of Sextus Empiricus; it was much less theoretical. He stressed observation because he believed that the secrets of nature could not be known until man subjected himself to nature itself.¹ For Bacon, active science is the employment of an hypothesis which is a means to an end.²

It cannot be that axioms established by argumentation should avail for the discovery of new works; since the subtlety of nature is greater many times over than the subtlety of argument. But axioms duly and orderly formed from particulars easily discover the way to new particulars, and thus render sciences active.³

Although Jefferson's reference to experience in a letter to Mr. Drayton, "the precept...is wise which directs us to try all things, and hold fast that which is good," does not reflect a technical knowledge of experimental process, there is no doubt but what he had such knowledge.⁴ In another instance he writes, "reason and experiment have been indulged and error has fled before them."⁵ Jefferson's oft-stated interest in science, both natural and speculative, revealed an understanding of scientific method which combined the hypothetical

⁵. Jefferson, II; Also Cf. 221.
and the empirical.¹ His interest in meteorology, geology, chemistry, etc., presented ample opportunity for the practical application of his theories and it is there as well as in his writings, that Jefferson's understanding of Bacon's doctrine of induction is evident. There is no evidence that Jefferson adopted Bacon's doctrine of Aristotelian forms in the second book of the Novum Organum.² With the help of Newton,³ Shaftsbury, and Bolingbroke, Jefferson was able to free himself of the scholastic principles which reached up to enshroud the mind of Bacon. Technological advance which was always of interest to him, was likewise conducive to this development. The whole spirit of Jefferson's life would have been in complete agreement with Bacon's polemic on what science could do for the advance of society. With all of its faults the methodology of Bacon had much to teach the eighteenth century and is hardly to be attacked today as being medieval by physicists who still introduce their students to the mysteries of "force" and "mass."

The contention of this study, that Jefferson's skeptical attitude toward metaphysics in general was actually a reaction to scholasticism and Platonism in particular, further supports the view that Jefferson was cognizant of the importance of induction. Deduction, the scholastic methodology would also

³. Jefferson, III, 31; VIII, 41; XIV, 128.
come under his condemnation; thus when he says that Lord Kames is too metaphysical even though all of Jefferson's writings on social theories presuppose a metaphysics, it is probable that he actually revolted against the methodology of classical metaphysics. In a man to whom science and philosophy are almost synonymous, it is not strange that such a distinction would be overlooked.

The social theories which had their foundation in the works of Bacon, Locke, Bolingbroke, and Newton were not in agreement with the central theme of the Puritan tradition which had achieved the same ends. Locke was identified with the Puritan revolt but he did not argue from the same grounds that Milton and Sidney employed for their parallel development of social theory. Each was equally effective in the overthrow of a tyrant but one was essentially philosophical while the other was theological. Few men illuminate the arguments peculiar to the Puritan tradition better than Milton. Hooker and Sidney would stand next to him in that order but even between the works of Hooker and Sidney there is a distinction which places Sidney at the opposite pole from Protestant scriptural theology. Jefferson chose the philosophical as opposed to the theological and where he could, he chose the empirical as opposed to the speculative but it is instructive to note that a parallel development was taking place within the tenets of the Christian religion, a development which Jefferson by in large ignored.

John Milton, poet and statesman, was in the eighteenth century known for his prose writings as well as *Paradise Lost*. Unreflected as they were, in the first political documents of the United States, they had a marked influence on the Puritan settlements in New England and it is one reason why the political descendants of the early Puritans could join hands with the southern colonies in declaring their independence from England. Milton is therefore of interest to this study for two reasons; the first is historical and the second is theoretical. He was instrumental in developing a theory of social contract which produced the same result as Locke's natural law in the American colonies. Theoretically, he is of interest because Milton achieved the same end but used a methodology which was at the opposite pole from that of Jefferson.

The Tenure of Kings and Magistrates, Milton's summary of the ideal theological-political contract between subject and ruler came from the press during the stormy days of the wars for the Commonwealth. It was written in justification of an action being taken. In the very first sentence it announces to the reader that it is not only a work on politics but a sermon as well, by placing the blame for political tyranny on the "blind affections within."¹ "None can love freedom heartily but good men," he states, in² anticipation of the doctrine of another great pietist, Kant. He goes on however

to present a theory of contract not unlike that of Locke.

It being thus manifest that the power of kings and magistrates is nothing else but what is only derivative, transferred, and committed to them in trust from the people to the common good of them all, in whom the power yet remains fundamentally, and cannot be taken from them, without a violation of their natural birthright.¹

Appeals are made to the "dignity of mankind,"² to Aristotle's doctrine that the laws are above the ruler,³ and Seneca's works.⁴ References are also made to secular history, but for the most part The Tenure of Kings and Magistrates is based on footnotes drawn from the Hebrew scriptures.

Two main points at which Milton varied from the scholastic political thought were, tradition on the one hand, and the church understood as being above the king, thus the supreme arbiter of all law, on the other. But otherwise, he, like Bacon, was unable to free himself from the morass of scholasticism at the same time he was serving as a stepping stone for others. All law was divine law and the ultimate criterion was the revealed word of God.⁵ Given the divine premise, he proceeded to a rationalistic conclusion which was marked by extreme intellectualism and reflected the problems of the times only in its far-fetched application, not at its point of origin. Thus, although Milton used reason⁶ for the same purpose as Hooker, and structured the Puritan thought which was later reflected in America, it was the doctrine of the independent

conscience characteristic of Protestantism itself which did
the most to prepare the soil for the revolt in America.¹

Milton agreed with Locke in his assertion that the king
must be worthy in order to rule and that when he rules
unwisely, the people have the right of deposition, even of
tyannicide. But Locke's appeal to natural law and the
natural state of man was altogether distinct from the basis
of Milton's thought. Jefferson, following Locke, not only
refused to accept revelation unquestioned by reason as final,
but went even further and refused to accept revealed scripture
as being anything more than another poorly written history.
It is significant that in the "Summary View of the rights of
British America," when Jefferson is making explicit appeal to
the early history of England he did not mention the establish-
ment of the Commonwealth under Cromwell as an outstanding
achievement in political freedom but on the contrary, grouped
it with the monarchies preceding and following in his blanket
denouncement of restrictive trade treaties.² This in turn
reflects the degree of immunity which he had achieved, immunity
from all arguments purporting to be based on divine law as
opposed to natural law. Searching desperately for a prototype
that would serve as a historical example, he did not favor the
establishment of the Commonwealth with so much as a nod, but
considered it a fight within the church. In part, this may be

¹ Becker, DOI, 34-5; Friedenwald, DOI, 186.
² Jefferson, I, 186, 189.
attributed to the fact that the Commonwealth practically ignored the colonial system while it was in power.

Jefferson possessed a sensitivity to morals and an interest in ethics not unlike that of Milton, but his basic motivation bore little resemblance to that of the Puritan poet. Wollaston, like Bolingbroke, disassociated ethics from religion. Truth was the highest virtue for Wollaston as it was for Shaftesbury, who was introduced to Jefferson by Fauquier and Ferguson. Although they are important as individual authors, there is little that they said which had not been said much better by men who have already been discussed. In this connection it is pertinent to point out that Jefferson's library was one of the largest in the colonies; not only was it large and comprehensive but it was used by its owner. Only John Adams may be said to have competed with Jefferson in this regard. Although it is evident that he never could have read all of the books that are listed in his catalogue he did have a cursory knowledge of most of them and his letters

1. Jefferson, XIV, 139.
2. Fire destroyed much of the Jefferson Library but the Library of Congress has on hand now 3,000 of the original volumes. A catalogue of these volumes is being prepared which will itself run into several volumes. Mr. Frederick R. Goff, Chief of the Rare Books Division writes in a letter dated August 4, 1949 that three of the volumes are ready for the press. The library intends to show how Jefferson used the books and this will be as important to a student of Jefferson as the knowledge of which books he owned. In addition to the books on which he spent a considerable fortune, many others were given to him later in life for his appraisal and recommendation.
are crammed with references to contemporary writers, both American and European, whose books are now oddities.

Of all the American pamphleteers whom Jefferson read, there was none more outstanding that Thomas Paine. It cannot be said that these men, coming as they did at the time of the revolution, influenced Jefferson's fundamental principles of government. However Paine's influence is noteworthy, not only because he was the most famous but because he was a personal friend and the recipient of several letters from Jefferson. There is no evidence that Jefferson took exception to any of Paine's writings but that does not necessarily mean that he agreed with all of them. Written as they were for popular reading and the influence they would have on laymen who had scarcely considered the fundamental principles of good government but were variously motivated to join hands in proclaiming separate existence from the British Empire, they do not touch on the philosophical presuppositions but by indirection.

In the most famous of all Paine's pamphlets, Common Sense, phrases were projected into the colonial vocabulary and arguments presented which were the direct cause of the popular appeal for the Declaration. Arguments are introduced in Common Sense which presuppose a doctrine of individual rights and it is written from that viewpoint but it does not treat the doctrine in detail. Paine is not unlike Rousseau when he states that government is "a mode rendered necessary by the inability of moral virtue to govern the world."\(^1\) He joins with Jefferson in making it

\(^1\) Paine, CS, 8.
the lesser of two evils. "Freedom and Security" constitute the true end of government. Drawing factual data neither from actual studies in anthropology or conditions as they existed at that time, he contrives in Lockian fashion to set up a hypothetical society as it would exist in its natural state. From this supposedly primitive colony, certain general conclusions are drawn and the basis for his own particular brand of natural right is laid.¹ From this vantage point attacks are leveled at the British Constitution² and the king of England.³ Hereditary succession is brought to the bar of utility and the citizens are invited to sit in the jury. The history of monarchy is traced throughout the Old Testament and needless to say it does not reach a favorable conclusion.⁴ "Monarchy in every instance is the popery of government;" William the Conqueror is termed, "a French bastard landing with an armed Banditti."⁵

The second part of the pamphlet discusses practical measures which can be taken in the American economy to support the war and ends with a ringing appeal for a declaration of independence. Arguments which were later to be reflected in the debates preceding the writing of the Declaration are for the first time summarized in the closing pages of Common Sense. Doubtless the success of Paine's pamphlets and Jefferson's own "Summary View" helped Jefferson in evaluating the American mind which he attempted to reflect in the Declaration. They

¹ Paine, CS, 6-8.  
² Paine, CS, 9.  
³ Paine, CS, 10f.  
⁴ Paine, CS, 12f.  
⁵ Paine, CS, 14, 15.
would have helped him to know what phrases and what wording attracted the popular attention of the people; the immediate success of the Declaration attests to the accuracy of his appraisal. Paine's interest in Old Testament chronology and his frequent appeal to a transcendent and just God in the Crisis Papers was not shared by Jefferson.1 Certainly Jefferson did not go so far as to say that it was his belief that

God almighty will not give up a people to military destruction, or leave them unsupportedly to perish, who have so earnestly and so repeatedly sought to avoid the calamities of war, by every decent method which wisdom could invent.2

Whether or not it was Paine's belief or whether he was attempting to reflect popular opinion is an open question. It can only be said that Jefferson trembled before a just God only once and that in connection with the issue of slavery. Paine, whom tradition has acclaimed no less a Deist than Jefferson, was evidently tempted beyond the bounds of his own beliefs on this and other occasions. But tradition is not always true history; we do have a record of what he wrote and if it is to be believed the reader can only conclude that Paine as the author of Common Sense must be placed somewhere in between the arguments advanced by Milton and those advanced by Locke. Later, Paine was to become more of a Deist.

Jefferson always addressed Paine in the most complimentary terms.

I am in hopes you will find us returned generally to sentiments worthy of former times. In these it will be your glory to have steadily labored, and with as much effect as any man living.¹

Again he says in comparing Paine with Bolingbroke, "they were alike in making bitter enemies of the priests and pharisees of their day."² The Rights of Man, Paine's book length refutation of Edmund Burke's Reflections on the Revolution in France, an attack on the politically restless masses of England and France, received high praise from Jefferson.³ The response to Paine's pamphlets confirmed Jefferson's belief in the destiny of an informed populace for it was on the backs of the people that Jefferson placed the sole responsibility for good government.

Writing for a different people and at a different time (1792), Paine based his Rights of Man on a thesis distinct from that in Common Sense. He used reason as Jefferson had used it, distinguishing it to that degree from the earlier, Common Sense. Reason is the basis of government by election and representation;⁴ ignorance is the basis of monarchy. Reason, was for him, systematic knowledge.

Government, in a well-constituted Republic, requires no belief from man beyond what his reason can give. He sees the rationale of the whole system, its origin and its operation; and as it is best supported when best understood, the human faculties act with boldness, and acquire under this form of government a gigantic manliness.⁵

Men are born with equal rights and utility is the only sound reason for making distinctions. All political organizations have only one justification, the preservation of the rights of man; the rights are imprescriptive and therefore cannot be abrogated by custom; also, they are natural. Varying only slightly from the Declaration, the rights consist of liberty, property, security, and resistance of oppression in comparison to life, liberty, and the pursuit of happiness.¹ Property and security are new additions which place the government in a more responsible position. If it were not for property, security could be taken to mean only physical security but it is explained further in the next category. For Paine, then, security meant economic security. The use of public taxes to feed and clothe the poor was recommended in the second part of the Rights of Man.² "The Nation," he declared, "is essentially the source of all sovereignty."³ While Jefferson did approve of the Rights of Man in general, there is no indication that he agreed with Paine's plans for economic security and his other writings omit reference to such a plan. But neither is there indication of rejection. In this respect, at least, Paine went much further than Jefferson who held that the government was only to place minimum regulations on the economy, not direct it.

In virtual retirement after repeated failures in trying to co-operate with the English and French revolutionists, Paine

¹ Paine, ROM, 181.  
² Paine, ROM, 254f.  
³ Paine, ROM, 181.
penned the little read and much maligned work on practical theology, *The Age of Reason*. It offers little that is novel in the tradition of French Deism although it is much more plain spoken than some of the French writings. Claiming that his mind is his church, Paine turns to an investigation of Biblical tradition not unlike the investigation previously discussed in reference to Bolingbroke.¹ Reason, now used in a more technical sense, is not equated with mere knowledge as opposed to ignorance, but becomes a criterion by which to judge all knowledge, religious or otherwise. Unlike Locke in *The Reasonableness of Christianity* he does not accept tradition as a guide for anyone but he who receives it.² However it is much more naive than the related works of Locke and Bolingbroke. By the time it was published in 1793, Jefferson had had ample opportunity to become acquainted with other works in the same field which no doubt had much more influence on him. If there had been any influence at all, it was probably in the other direction for the author of *Common Sense* was much more orthodox in his religious concepts than the same man nineteen years later after he had made the acquaintance of many Deists in America and abroad, including Jefferson.

After Jefferson had completed copying the selections from Bolingbroke found in the *Commonplace Book*, he began to transcribe miscellaneous selections primarily from the classics,

¹ Paine, AOR, 285.
² Paine, AOR, 287.
but from others also, in order to find a basis for human values. His primary interest in ethical codes is evidenced in the fact that only those selections which had some direct bearing on morals were copied into the Commonplace Book.\(^1\)

The selections thus copied amounted to little more than page after page of heterogeneous epigrams; to base a consistent philosophy on them would be a task comparable to finding a plot within the book of Proverbs. Therefore only the more important selections will be discussed and the whole will be understood as an attempt on the part of Jefferson to find a new basis for morals.

If it was Bolingbroke who freed the mind of Jefferson from the early orthodoxy of the established church, then it was Cicero to whom he turned first in order to find a Stoic basis for moral philosophy in his eclectic writings. The selections from Cicero in the Commonplace Book are second in length only to those of Bolingbroke.\(^2\) Here in outline form are some of the more important doctrines which were copied from Cicero by Jefferson: 1. submission to the implacable, 2. the law of nature as universal consent, 3. a basic interest in morality, 4. reason as universal, 5. virtue as innate, 6. a deterministic theology and 7. a slight tinge of pessimism. In addition to Cicero, Jefferson also read Epictetus and Seneca, each of whom will be discussed in connection with the above concepts.

Later in life, (1803) Jefferson was to criticize the morals of the Stoics but there is every indication that at least for a time, they dominated his thought almost exclusively and later works were judged by them. He had a thorough knowledge of not less than eleven of Cicero's works plus some ten works by Seneca. Jefferson was interested for the most part in the Stoic teachings on immortality contained in the eclectic writings of Cicero as most of the selections in the Commonplace Book are from the Disputationes Tuscalanæ.

A strain of mere pessimism runs throughout the sections which Jefferson copied and most have to do with the contemplation of death. "What is there agreeable in life, when we must night and day reflect that, at some time or other, we must die?" There is no answer but to learn how to die while one is alive and this may be done by separating the body from the soul through self-denial. "Now to separate the soul from the body, is to learn to die, and nothing else whatever." By so doing it is possible to enjoy a life in heaven while one is still alive and when the body is gone it will not be missed. In the meantime the wise man makes such provisions for his family as are necessary for their well being after his death. If death means only a change of abode, then there is nothing that could be better, if on the other hand, it means total extinction there are few things that could improve on a long sleep;

1. Jefferson, X, 379f; XII, 343.  
5. Jefferson, CBP, 73.  
either way, the wise man will be prepared and will not be disappointed. The pessimistic strain is transformed and made triumphant in the observation that there is nothing in death which is frightening or to be avoided.

He who is under no fear of death, not only because it is a thing absolutely inevitable, but also because he is persuaded that death itself hath nothing terrible in it provides himself with a very great resource towards a happy life.

The wise man for the Stoic is the man to whom nothing in this life is absolutely unbearable nor is anything of such a nature that he can be swept from his feet in ecstasy; somewhere in between he finds his happiness. Thus for Jefferson, another area in life is taken from the realm of orthodox theology and placed in the realm of secular philosophy. It also reflects Jefferson's deep interest in morality and natural religion which is one of the dominating characteristics of his thought. In throwing over the traditional concepts of historical Christianity, Jefferson did not go so far as to accept any form of atheism, even momentarily.

One section copied from Cicero reads, "There never was any nation so barbarous, nor any people in the world so savage, as to be without some notion of gods." All believe that there is a "certain divine nature and energy." The divine nature and energy is not further defined and it probably did not bother Jefferson at the time; at this stage in his life it

1. Jefferson, CBP, 76.
2. Jefferson, CBP, 76.
was enough to know that there was some other basis for a belief in God, a basis other than Christian scripture. The belief in the divinity does not proceed from opinions, customs, or laws; it is based on universal consent which is identical with natural law. "In every case the consent of all nations is to be looked upon as a law of nature." Natural law as universal consent is also divine law for God resides within each person and is known through those characteristics which are common to all of the people.

Natural law understood as universal law is reflected throughout the writings of the Stoics. Universal consent, for Jefferson, became in practice the law of the majority. Although it was not universal, he claimed that the law of the majority was natural for it came nearest approaching universality. "The lex majoris partis is a fundamental law of nature, by which alone self-government can be exercised by a society." Again, "The lex majoris partis /is/ founded in common law as well as common right." Jefferson even goes so far as to accept an extremely pragmatic position in this regard when he writes to Madison "I readily suppose my opinion wrong, when opposed by the majority."

The concept of natural law according to the Stoic doctrine found ready acceptance in the mind of young Jefferson and was influential in all of his later thought on the subject. Thus when he read Locke's *Second Treatise* and found there a similar concept, it rang a familiar note. Natural development was for the Stoics, rational development. However, reason was for them innate; while for Locke it was learned.

Jefferson did not accept the Lockian proscription of innate ideas, but was true to the Stoic concept. "The seeds of virtue are natural to our constitutions and were they suffered to come to maturity, would naturally conduct us to a happy life."¹ In 1814 he wrote to Thomas Law, "The moral principle... so much a part of our constitution as that no errors of reasoning or of speculation might lead us astray from its observance in practice." The familiar ambiguity discussed above is not lacking in this letter; after stating that it is part of our constitution, and meaning by that, that it is innate, he then argues, as if in memory of Locke's criticism, to the effect that exceptions do not invalidate the instinct. But, as Locke had pointed out, they do. When it is wanting, Jefferson continues, then education is used in an attempt to remedy the need and the unfortunate individual is given an artificial conscience. So much for individuals, when whole cultures differ, the difficulty is resolved by an appeal to "utility." In addition to a moral sense of right and wrong,

¹ Jefferson, CBP, 76.
nature has imputed utility to every man and by this he may judge whether or not he is justified in a particular action.\textsuperscript{1} Despite the injection of this relativism he repeats in the same letter, "I sincerely believe in the general existence of a moral instinct." Thus in theory at least the Stoics triumph over Locke in the mind of Jefferson in spite of Jefferson's ill-fated attempt to resolve obvious contradictions by the use of a novel terminology and false distinction. In actual practice the Stoic triumph is not so clear, he still writes to Madison that he considers his opinion wrong when it is opposed by the majority.

At such times his moral sense of right and wrong evidently fails him along with the rest of the minority, with which he sides, if but momentarily. The question at issue here is that of universal and innate truths on the one hand or pragmatic truths on the other. At those points in his correspondence where he gave it most attention\textsuperscript{2} Jefferson resolved himself into a logical contradiction although twenty-seven years separated the two letters. In other instances, some of which have already been mentioned, he alternated in his views. Pragmatic truth can never be known ultimately for each stage can only be judged by what follows, while innate truths can be known and are eternal, irrevocable. The term utility is a key concept in the thought of Jefferson at this point.

\textsuperscript{1} Jefferson, XIV, 143.
\textsuperscript{2} Jefferson, XIV, 138f; VI, 256.
Jeremy Bentham (1748-1832), one of England's great reformers, after some delay, finally had his Principles of Morals and Legislation published in 1789. Previous to that time it had been read and discussed by friends. The first paragraph of the first chapter introduces the word utility in its technical sense as pleasure and the remainder of the chapter is devoted to its development. French editions of Bentham's works were published in 1802 and he received immediate and far-reaching acclaim. Jefferson did not mention Bentham in his writings and there is no attempt here to indicate that Bentham influenced Jefferson. However the dates of their essays and correspondence do not preclude that possibility. In the "Syllabus of the doctrines of Epicurus" Jefferson uses the term utility in its technical sense and in the same syllabus defined the sumnum bonum as "not pained in body, nor troubled in mind."¹ Thus, although Jefferson did not draw upon Bentham's usage there is a striking similarity. Jefferson defined utility as the "standard and test of virtue."² Men, he explained, who live in various cultures and circumstances may have distinctive views of utility. The same activity may be useful in one culture and vicious in another. Jefferson did not make a point of basing utility on pain and pleasure as did Bentham in the Introduction to the Principles of Morality and Legislation.³ But otherwise, the way in which he used the term was similar

¹. Jefferson, XV, 224.  
². Jefferson, XIV, 143.  
³. Bentham, PML, I, i-xiv.
to the way in which it was used by Bentham. The principle of utility robs the moral instinct of all meaning for the moral instinct would be nothing more than the ability to be consistent once a given premise had been affirmed. The subject matter would be irrelevant. Two people might under these conditions have identical instincts and be diametrically opposed as to their moral interpretations of various human activities.

Thus utility committed Jefferson to the same moral relativism as it did Bentham. A. Koch, in her treatment of the philosophy of Jefferson, discusses this problem but somehow avoids the obvious contradiction in the writings of Jefferson. She resolves it by saying that Jefferson "moved away" from the earlier absolutistic moral sense theory. But in the letter to Law, Jefferson did not move away from a former position; both theories are entertained as complementary coordinates. Koch states that at least he realized it to be a technical and complex problem, that his contradiction was only a technical contradiction. Possibly, but it is a contradiction nevertheless.

Only a predilection to establish Jefferson as a philosopher of the first rank can account for labelling it a technical mistake. It is a philosophical error of the first order. It indicates Jefferson's impatience with rational systems; he possessed a pragmatic temperament but not a pragmatic philosophy.

2. Koch, POJ, 42.
Jefferson was pragmatic but he was not a Pragmatist; utility played a prominent part in his thought but he was not a Utilitarian in his moral philosophy. Neither was he an intuitionalist. This problem leads the reader to the margin of Jefferson's thought in moral philosophy; there is no justification for concluding that an answer to the dilemma is even implied. It ends in a contradiction and as such it is a judgment of Jefferson's philosophical grasp. As an Absolutist Jefferson could have isolated and categorized a few universal propositions which he believed would always hold true. As a Pragmatist he could have established a few principles which would serve as tested criteria, relative truths, but truths based on the additive experience of the race. He did neither.

Doubtless the Stoic doctrines were some of the first positive concepts to influence Jefferson and in all probability throughout a large part of his life he considered himself a Neo-Stoic. The Stoic doctrines are reflected throughout the Commonplace Book, in the works chosen from Homer, Euripides, the English poets and dramatists. Other than the misogyny which is interspersed with the philosophical selections from Euripides, there are also statements which could be taken literally from the Stoic teachers.1 "A man faithful amid adversities is fairer to behold than calm to mariners."2 "No man among mortals is happy."3 "To suffer is man's fate."4

"For men to sin is reasonable when gods offer the occasion."¹ From Pope's Homer he copied, "To labour is the lot of man below; and when Jove, gave us life, he gave us woe."² These selections, written in a changing script which indicates that the author penned them over a number of years, were the excerpts which most impressed him from the works of the ancients. There is no evidence that his personal morality underwent the same change; it remained permanent and fixed as one foundation was removed and another slipped in place.

In the previous chapter Locke's doctrine of natural law was discussed as a law based on Locke's hypothetical state of nature concept. In this chapter it has been pointed out that the Stoic concept of natural law was one of rational self-development. In both, reason is the criterion, but Locke did not place the same emphasis on development; his theory was static and stationary. However, there is no evidence that Jefferson investigated this distinction. Natural law, for him, meant the Stoic concept of rational development supplemented by Locke's more scientific analysis. Although Locke did not emphasize development, his state of nature theory was an idealized end product rather than the point of origin. It was a hypothetical people who had been relieved of all social modes and reshaped by purely rational forms. The two emphases could have been complementary in the mind of Jefferson.

¹ Jefferson, CBP, 108.
² Jefferson, CBP, 128.
Jefferson, like the Stoics, was interested in metaphysics only in so far as it was related directly to morality. Thus he copies the following as a foundation for a materialistic metaphysics of the body and soul question.

For if either the heart, of the blood, or the brain, is the soul, then certainly the soul, being corporeal, must perish with the rest of the body; if it is air, it will perhaps be dissolved; if it is fire, it will be extinguished.¹

Writing to Thomas Cooper in 1820 he speaks of spiritualism as a heresy which was not consistent with the Christian tradition, a tradition which he seldom bothered to defend. However on this occasion he quotes freely from the Church Fathers up to the time of St. Augustine in defense of his position.² Locke, again, is his mainstay and he is quoted to the effect that the soul is material. Furthermore, he defies anyone to so limit the powers of God that He will be prevented from infusing the power of thought into any physical body.³

In summary several conclusions present themselves at this point. Jefferson's knowledge of Locke's metaphysics was for the most part dependent upon the writings of Bolingbroke. It is quite possible that he had little acquaintance with any other metaphysical system. For instance, he admitted repeatedly that he simply could not complete a Platonic dialogue. The proof that Bolingbroke influenced Jefferson is not to be found

¹ Jefferson, CBF, 72.
² Jefferson, XV, 266-7.
³ Jefferson, XV, 266.
primarily in the Commonplace Book as Chinard indicates in his introduction. Influence is indicated only when it is corroborated by additional references in Jefferson's writings.

In the temper of his approach to problems Jefferson has much in common with the methodology of Bacon. He was a firm believer in scientific method to the degree that it had been developed at the time he wrote.

Puritan efforts to overthrow the king and replace him with a theocracy impressed Jefferson but little. He did not consider it as a popular revolution but as a battle between contending monarchies neither of which were primarily concerned with the rights of the people. He was not interested in overthrowing a king as such but in the establishment of a free government.

Paine, a friend of Jefferson's had little traceable influence, but undoubtedly did much to acquaint Jefferson with the American mind.

Jefferson's moral philosophy, his personal passion, reaches a high water mark in his discussions of utility; it is an impasse that he never transcends and the attempts to do so on the part of others are misleading. However, although his affinity for Bentham is not triumphant in his moral philosophy it will be shown later that the school founded by Bentham receives the palm in Jefferson's political thought.
Bereaved by the death of his wife on September 6, 1782, and overcome with the responsibility involved in rearing the children alone, Jefferson refused the appointment of Peace Commissioner to France. But later, when he was made minister to the court of Louis XVI, he accepted, and arrived in Paris in 1784. In the persons of Messrs. Franklin and Jefferson, the struggling colonies were paying high tribute to the nation which had done the most to succor them in their hours of extreme necessity and in so doing had impoverished itself.\textsuperscript{1} France became the United States port of entry into the other courts of the continent. England, which would have normally made the introductions, was still sulking from the wounds received during the revolution and was doing all in its power to break the economic back of the United States by refusing credit. Thus among other things, it was Jefferson's desire to find independent channels which would give the United States access to the international banking system with its axis suspended between Amsterdam and London. Needless to say, the American entrance had to be made via Paris and Amsterdam.

It was Jefferson's first trip abroad and the culture of France struck him as being in sharp contrast to that of the colonies. Notes hurriedly copied as he rambled throughout

\textsuperscript{1} Langer, EWH, 448.
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rural France filled reams of paper; one French invention after another was channeled into the stream of American ingenuity through the correspondence of Jefferson. He overlooked nothing. The French wines interested him in particular and he noted carefully the various processes involved in their production. Everything was copied with an eye for its immediate use in the United States and some items were deleted because it would take over a generation for them to be perfected and manufactured. Thinking of himself as a farmer and having a farmer's distrust of urban life, when the choice presented itself, he interested himself in novel agricultural processes at the expense of manufacturing. French educational institutions, the schools and colleges with which Jefferson became acquainted made a negative impression. American students and parents of aspiring students were encouraged by Jefferson to study at home. To the mind of Jefferson, there existed a superficial haze, a gaudy brashness that pervaded French educational institutions and hid from his somewhat puritanical personality the more erudite character of French scholarship. It would, he claimed, have a detrimental effect on the unsophisticated, naive student reared on the American frontier. Ample opportunity for study was provided in the American universities and although Jefferson was to claim France as a second home, he did not wish to transplant it to American soil.¹ French art he did admire and for it had

¹ Jefferson, V, 152.
nothing but praise. The architecture, sculpture, painting and music he coveted for the nation arising from the wilderness.

Later in life, within the pages of his Autobiography, Jefferson was to make a more objective appraisal of France and French culture. He had nothing but approbation for their science and was charmed by their manners. Doubtless, as is the case with even the most appreciative visitors, some of these characteristics were not fully appreciated until he returned home just as some American attributes were not noted until his trip to Paris. The mission to France and the influence which it had on his subsequent development falls easily into three categories: (1) the knowledge he gained in the practical affairs of international trade, (2) the impact of the French national culture, and (3) his acquaintance with French philosophy. This study is concerned in particular with the third category and the other two only in so far as they effect it. In many respects Jefferson played the part of an American De Tocqueville.

The leaders of the Enlightenment in France and England constitute a group of men who defy most attempts to be categorized in philosophical schools. But the majority had some characteristics in common such as the devotion to reason and to a crude methodology popularly described as scientific. Some were unorthodox and others were anti-orthodox in their

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religious and political views. They were spread over two nations, drew their influence from still other cultures and covered about two centuries from 1600 to 1800. The Enlightenment, the Age of Reason, and as one student has christened it, the Age of Voltaire, 1 was marked by a tendency toward deism in religion and materialism in metaphysics.

Although Lange's *History of Materialism* discusses most of the men on both continents, the term materialism does not quite fit. It was designed to cover a much longer period of time and does not do justice to the individual contributions made by some of the outstanding French philosophers. Materialism denotes a school of thought within metaphysics and many of the French thinkers were not, primarily, metaphysicians. Skeptics they were, but behind their skepticism they hid a positive belief in English materialism. Of course this represents only a trend in French thought and certainly did not include all. Descartes was the first in the French school to make the break with orthodoxy and he was followed by Gassendi though not in detail. Locke was the most important exponent of materialism in England although he was preceded by Hobbes. When Montesquieu and Voltaire began to write, their works showed the imprint of the English as well as the French thinkers. Thus although no one term can be used to designate the whole school, the term deism comes very near doing so and it will be the term used here. Granted, it will be little more than arbitrary in some

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1. Torrey, VAE, 1.
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instances.

As was pointed out in Chapter V, Bolingbroke was exiled to France in 1735 and it was during this time that he came to know and appreciate the small struggling French deists. Voltaire had not begun to write his scathing criticisms of the church and Montesquieu's *Esprit de Lois* was not published until 1748. Whether or not Bolingbroke was instrumental in the early development of Voltaire's thought, is an open question but it is certain that they were well acquainted and that Voltaire attributed many of his doctrines to Bolingbroke.\(^1\) Although Bolingbroke did not mention Voltaire in his writings, as in most such cases, in all probability the influence was reciprocal. Bolingbroke, along with the French deists, went far beyond the limits set by Locke but with the use of Locke's methodology. Their writings reflect an impatience with Locke's *Reasonableness of Christianity* and a determination to be openly critical of all religious doctrines, a determination not reflected in the early English deists.

Jefferson, while laboriously copying selections from Bolingbroke, had absorbed some French deism, if only secondhand. With this one exception, he had had little preparation for the French school of thought with which he was thrown during the French mission.\(^2\) Although there is a cleavage along national

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2. Torrey, in his *Voltaire and the English Deists*, argues that Bolingbroke had very little influence on Voltaire, that Bolingbroke was used because Voltaire needed the prestige accruing to the title. Sir Leslie Stephen, along with other commentators on their relationship, holds that the influence was for the most part genuine. The immediate problem of this paper is satisfied with noting the doctrines which they held in common.
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lines between the English and French deists, they were nevertheless interdependent and neither can be understood without the other. In the history of philosophy, the complexity of this relationship called for a subtle distinction bearing the marks of brevity and accuracy.

With discerning insight Sir Leslie Stephen provided just such a distinction, one that has proved fruitful in subsequent thought.\(^1\) Every system of thought, no matter how positive in its original construction, carries with it an implied criticism; likewise every criticism implies a point of vantage. Although they may be separated almost to the breaking point, they cannot be long parted and it is this logical implication which bound the two systems. English deism, Stephen holds, was more constructive than the French. The English were devoted to raising the structure and the French to deciding who could dwell there and who could not.

Constructive deism was characterized by an independent methodology based on a novel premise, a methodology designed to reach conclusions in both philosophy and theology which may or may not have resembled orthodoxy. Thus if rational empiricism came to orthodox conclusions it would further confirm the new method; but if not, orthodoxy had to stand condemned. Critical deism, on the other hand was almost parasitical in its tendency to thrive only where orthodoxy was strong.\(^2\)

\(^1\) Torrey, VED, 1.
\(^2\) Russell, Art., xi.
Indifferent to an independent metaphysics, it chose a methodology similar to the constructive deists but has as its goal the demolition of orthodoxy.

Lange, in his *History of Materialism* makes a similar distinction but applies it specifically to the national character or national mind of each country. The national mind of England developed toward materialism while the French developed toward skepticism. Thus, according to Lange, Hume would be more in the French tradition than the English, at least as far as his methodology is concerned. Although supposedly Pyrrhonism excludes all metaphysics, pragmatically it has always been forced to ally itself with some system in order to be intelligible. Thus the French school adopted an instrumental approach to English materialism, using it where it proved to be expedient and advantageous for the work at hand. For the most part they were satisfied to destroy orthodoxy and put nothing in its place; occasionally they were forced to be more constructive and when necessary they chose materialism as that metaphysics which most easily supported their methodology.

As Hume was an outstanding exception in England, so Gassendi and Lamettre in *L'Homme Machine* were exceptions in France. Montaigne, LeMothe, Le Vayer, Pierre Bayle, Diderot, and Voltaire were true to the French tradition and were more interested in abolishing orthodoxy than in establishing a

2. Lange, *HOM*, II, 9f.
thoroughgoing and systematic alternative. Roughly therefore, the two schools may be distinguished by the constructive tendency in England and the critical tendency in France. The outstanding leaders in English deism were discussed in Chapters IV and V; Chapter VI will be devoted to a study of the French schools of thought and their direct influence on Jefferson. Voltaire, Montesquieu, Holbach, and Helvétius are the French thinkers who most influenced Jefferson as critical deists. Rousseau and Tracy, who cannot be placed in that category, will be treated individually and subsequent to the first group.

Voltaire (1694-1778), a sophisticate whose wit and rascality can be hardly distinguished from the seriousness of his nature, was at the same time a genius and alternated between fearless attacks on the church and frequent resort to duplicity, a duplicity prompted by fear. He attracted the mind of Jefferson as he has attracted countless other minds during his lifetime and since. Although he was not the student that many of his friends and associates were, libraries that maintain on their shelves scarcely a single volume on his more scholarly contemporaries abound in studies and commentaries on his voluminous works.

Voltaire is first mentioned by Jefferson in the Notes on Virginia which was written previous to the French mission. The occasion is a discussion of the article on Coquilles in the Questions Encyclopédiques wherein Voltaire offered a novel hypothesis

1. Lange, HOM, 9.
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for the deposits of shells in the continental interiors. It may be safely concluded therefore that Jefferson had acquainted himself with much of the Encyclopédie by 1782. Voltaire's works were published in a 35 volume English edition as early as 1761 and another followed in 1779.\(^1\) Frequent listings of Voltaire's works in French can be found in American book catalogues previous to that time; Jefferson's acquaintance with the French language would have made him prefer these editions to the English. Thus it may be assumed that he was familiar with many of Voltaire's works.\(^2\)

Voltaire's influence on Jefferson was more indirect than direct for he is mentioned only twice in the Memorial Edition.\(^3\) However the French school of deism did have a marked influence as will be shown with the treatment of others in the group. Voltaire joined with the rest of the school in promoting the idea of progress based on reason and in the application of a crude and improvised scientific method. Voltaire placed an emphasis on novelty rather than accuracy in his methodology and it was in the correction of one of his erroneous observations that Jefferson became interested in him.\(^4\) Whether or not Bolingbroke directly influenced Voltaire, they availed themselves of a similar methodology. However, Voltaire in

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1. Barr, VIA, 12.
2. An exhaustive study of Voltaire's influence in America has been made by Mary-Margaret H. Barr in volume XXXIX of the Johns Hopkins Studies in Romance Literatures and Languages. From this the conclusion can be drawn that Voltaire's works were highly prized in the American colonies.
carrying it through to its logical conclusions, sometimes bordered on absurdity. The *Philosophical Dictionary* is replete with satire directed at the church and the laws of the nation; only occasionally did he discuss such problems as common sense and final causes in a way that did justice to the depth of his learning.\(^1\) Other topics which would ordinarily be treated at the same level such as faith,\(^2\) he treated in a cavalier and supercilious manner. This treatment was out of harmony with all of Jefferson's writings and in all probability he was not in the least interested in it. Jefferson could have been personally indifferent to the merciless extremes to be found in Voltaire's writing and at the same time appreciate its usefulness in breaking the tight hold of the clergy. It was Voltaire who popularized the Newtonian physics and with it displaced Descartes' metaphysics.\(^3\) He clothed it in a humorous and vivid style which sometimes sacrificed accuracy but nevertheless introduced it to readers who would never have read the *Principia*. And, he might have reasoned, the *Principia* was still available for those who wished to read it. Jefferson had as much to say against the church as Voltaire, but the particular abuses practiced in France were not those practiced in the colonies; therefore many of Voltaire's proscriptions were beside the point for Jefferson was concerned primarily with the excesses of the colonial church. Not only were they irrelevant as far as

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1. Voltaire, PD, 78, 133.
2. Voltaire, PD, 126.
3. Torrey, VAE, 1.
Jefferson was concerned but they have been irrelevant to countless other anti-clericals who have lived in non-Catholic countries. Whereas Jefferson objected stringently to political control, Voltaire\(^1\) aimed his arrows at the two targets of immorality on the one hand and amassed wealth on the other.

Voltaire disagreed with Locke's opposition to innate ideas and sided with the position which was later to attract Jefferson. Good and evil, justice and injustice could be discerned by a law engraved on each human heart.\(^2\) Some ideas were innate; thus an appeal was made to the Stoic doctrine of universals. Voltaire was not particularly interested in the necessary presuppositions to such a theory just as he was not interested in the presuppositions of Rousseau's theory of natural law which was caricatured rather than refuted. In \textit{L'Ingénuité} he has the simple ingenuous primitive say: "Vous êtes donc les bien malhonnêtes gens, puisqu'il faut entre vous tant de précautions."\(^3\) His superficial treatment of subject matter was not limited to the content of what he wrote but extended to the authorities which he quoted. He not only misrepresented others, but his quotations reveal little care in checking sources and an unscholarly dependence on mere hearsay.\(^4\)

That every student in the United States did not read Destutt de Tracy's \textit{Commentaire Sur L'Esprit Des Lois De Montesquieu},

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that it was not singled out by reviewers as the most outstanding single work on government, is an oversight which cannot be blamed on Thomas Jefferson.\(^1\) He used every channel of influence at his command, the number and power of which was not inconsiderable, to bring the *Commentaire* to the attention of the reading public. He supervised its translation into English, convinced a publisher friend that it should be printed, and promoted its sales.

Writing to Thomas Mann Randolph in 1790, Jefferson states that, "in the science of government, Montesquieu's Spirit of Laws is generally recommended."\(^3\) But then he adds some reservations by agreeing that although it does contain a large number of political truths, it nevertheless contains an equal number of heresies. He had recently read a letter written by Helvétius which had listed the specific reasons why he had advised Montesquieu not to publish the *Esprit de Lois*. Helvétius had explained that Montesquieu was an avid reader, one who commonplaced all of his reading and who attempted in the *Esprit de Lois* to resolve all conflicts within the compiled notes.

Jefferson's evaluation of Montesquieu (1689-1755) at this time is important for the next time he is mentioned, it is in connection with the newly arrived (1810) commentary by Tracy

\(^1\) Although the influence of Destutt de Tracy in the U.S. is slight, he did influence the thought of South America and Mexico. Cf. Ramos, HFM, 112; "La Ideología de Destutt de Tracy tuvo una gran difusión en América."

\(^2\) Jefferson, XII, 407. References to this endeavor are frequent throughout his correspondence.

\(^3\) Jefferson, VIII, 31.
and in Jefferson's zeal to prove it superior, Montesquieu comes in for some very hard criticism. It is incidentally, criticism which subsequent authorities have refused to second. Attempts to evaluate Montesquieu's influence on Jefferson\(^1\) have frequently failed to note that a commentary on any work, even if highly critical, is at the same time an implied compliment. Obviously, both Tracy and Jefferson held the work in high esteem or the former would have written an original work on government, and Jefferson would have encouraged him to do so. It is doubtful if Jefferson came to know any other basic book on government as well as he did the *Esprit des Lois*, if in no other way, at least through his close supervision of the translation of the *Commentaire*. He considered it a milestone in the development of political theory and his reaction to it in his correspondence and in his approval of Tracy's revision will not only be fruitful in determining Montesquieu's influence, but likewise in determining Jefferson's position as a political theorist.

It can be conceded generally that Montesquieu played a prominent part in holding before the eyes of the framers of the constitution, the threefold division of government with its consequent checks and balances.\(^2\) He was not alone in his influence at this point and there had been original experimentation along this line in the colonial governments,

\(^1\) Spurlin, MIA, 23.
\(^2\) Spurlin, MIA, 19f.
but he is frequently mentioned as having had significant influence. Jefferson repeatedly criticized Montesquieu for supporting the English monarchical government in his support of the English constitution.¹ He also frequently attacked Montesquieu's claim that only a small country could maintain a republic.² This was a point also made by Rousseau.

At the close of the Commentaire, Tracy writes, "malgré tous ses défauts, L'Esprit des Lois, quand il a paru, a mérite d'être attaqué par tous les ennemis des lumière et de l'humanité, et d'être défendu par leurs amis."³ Tracy's criticism of Montesquieu is basically metaphysical; it is much more than a commentary and amounts to a revision. Considerable space is devoted to attacking Montesquieu on such fundamental problems as the definition of the terms law and freedom. Montesquieu defines law as the "necessary relations arising from the nature of things,"⁴ and Tracy holds that it is not a relation. Positive law, he claims, is subject to natural law and natural law is the criterion whereby a positive law is proved just or unjust.⁵

Reste donc que les lois de la nature existent antérieurement et supérieurement aux nôtres; que le juste fondamental est ce qui leur est conforme, et que l'injuste radical

¹ Montesquieu, SOL, I, 162f. Cf. also 174 wherein he states that the laws of the English Constitution are just whether or not they are effectively enforced. Cf. Locke, TCG, XII.
² Jefferson, X, 232.
³ Tracy, CLM, xv.
⁴ Montesquieu, SOL, 1.
⁵ Tracy, CLM, 1-6.
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est ce qui leur résiste; et que, par conséquent nos lois postérieures doivent, pour être réellement bonnes, être conséquentes à ces lois plus anciennes et plus puissantes.1

Tracy defines natural law as that which is inevitable. "Ces lois ou règles de la nature ne sont autre chose que l'expression de la manière dont les choses arrivent inévitablement."

Crediting most of Montesquieu's errors to his definition of law, Tracy writes later2 in a footnote that if Montesquieu had analysed the term law, many of his errors could have been prevented. A similar criticism is leveled at Montesquieu's discussion of liberty.3 Here he follows Locke's psychological analysis of freedom as the ability to execute what one wills. But there is no freedom to will. "Concluons que la liberté n'existe qu'après la volonté et relativement à elle, et qu'elle n'est que le pouvoir d'exécuter la volonté."4

Equating freedom with personal and social happiness Tracy states that the best society is the one wherein the most people are happy and contented.5 Not the least significant point at which he disagrees with Montesquieu, is in the analysis of the English constitution.6 Tracy censors Montesquieu for

1. Tracy, CLM, 6.
2. Tracy, CLM, 31.
3. Montesquieu, SOL, XI.
4. Tracy, CLM, 143. Tracy does not say that he derived the doctrine from Locke but he does note that it is "aussi le sentiment de Locke."
5. Tracy, CLM, 149.
6. Tracy, CLM, 152f.
unreservedly praising the English constitution particularly when the latter in pointing out that there is a legislative, a judiciary and an executive, in the case of the executive "il approuve sans discussion qu'elle soit confiée à un seul homme, même héréditairement sans sa famille." This passage may or may not be the basis for a similar judgment by Jefferson but it is noteworthy that Jefferson asserted it in connection with a discussion of Tracy's work. Attention must be drawn at this point to an obvious contradiction in a footnote to the French edition printed in 1819.

It will be remembered that the first edition of the Commentaire was printed in English at Philadelphia in 1811 under the supervision of Jefferson because of the restrictions on the French press during the reign of Napoleon. But on May 1, 1819 during the second restoration of Louis XVIII, freedom of the press was granted along with several other liberal measures which immediately preceded and followed it. The French edition of the Commentaire was published in July, 1819, following close on the heels of "la liberté de la presse" clause. The generally unsettled conditions and the close margin under which he was operating may explain in part the two notes added to the French edition at the close of Book XI. In the first the editor takes exception to what he calls the "absolues et...tranchantes" conclusions which he is careful not to give specific designation.

2. Tracy, CLM, 153. 4. Tracy, CLM, 210-11.
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In the second Tracy makes the following statement which deserves careful scrutiny.

Je suis très persuadé que la monarchie constitutionnelle, ou le gouvernement représentatif avec un seul chef héréditaire, est et sera encore extrêmement long-temps, malgré ses imperfections, le meilleur de tous les gouvernements possibles pour tous les peuples de l'Europe, et sur-tout pour la France.  

He then continues the note by saying that all nations that have received constitutional rights from their monarchy are not the nations which he is discussing in the text. Specific reference is made to France and it is asserted that since they have accepted their charte constitutionnelle, "avec joie," they should endeavor to support it. "La franchise avec laquelle j'ai exposé mes opinions jusqu'ici, doit être un sur garant de la sincérité de celle que j'énonce en ce moment." The note is closed with the statement that he sees no contradiction if the reader keeps in mind the "abstractions de la théorie et les réalités de la pratique." It is significant that if Tracy had actually changed his theory of democratic government which he had been staunchly defending up to this point, he had ample opportunity to do so before publication of the French edition. But the text itself was left untouched according to the editor.  

1. Tracy, CLM, 211.  
2. Tracy, CLM, 211.  
3. Tracy, CLM, 211.
which Jefferson had singled out for approbation. This contradiction is understandable in the light of the times and inasmuch as restrictive legislation proscribing the press did begin the following year and became increasingly harsh until 1830. In fact, it was an exceedingly brave act for a man who had spent most of his adult life under an absolute and arbitrary monarch and who might well have foreseen the reaction to liberal thought which was quickly to follow. Therefore, it can be concluded that the note was written for government censors, not for students of political theory such as Jefferson. Jefferson never did allude to the retraction and it is quite possible that he had no opportunity to see it.

To turn now to a point by point discussion of the differences between Tracy and Montesquieu, the following are significant. Montesquieu divides all governments into three categories, despotism, monarchism, and republicanism. They are governed by fear, honor and virtue respectively. Tracy counters that any government which is founded on the rights of man must be founded on reason. In Book IV Montesquieu presents the argument that the education provided in a given country should be patterned after the government of the country in question and Tracy argues that a nation which does not recognize reason as its ultimate guide will warp the educational processes to fit its own need. Thus every commonwealth should educate the

1. Langer, EWH, 626f.
2. Montesquieu, SOL, I, 20f; Tracy, CLM, 221.
3. Tracy, CLM, 221-2.
people according to the laws of reason and not according to
the particular form which the government has taken. Tracy's
point here is that if this is not done there will be no
opportunity for the internal criticism of the government which
is vital to its success over a period of time. Tracy dismisses
the discussion of Book VI, which treats the principles of
various governments in respect to the simplicity of their
civil and criminal laws, and goes on to outline a dynamic and
progressive development in the history of political theory. The
first stage of civilization is defined either as the democratic
or despotic, the second stage as an aristocracy under one or
more leaders and the third as representative government under
one or more leaders. The last he acclaims as the best and the
one which brings the most happiness to the greatest number of
people. The first stage is governed by ignorance and force, the
second by opinions and religion, the third by reason.

One of Tracy's most marked contributions was his insistence
on the twofold freedoms, that of the press and individual or
private liberty.1 Because of the restrictions on the press
discussed above it is not difficult to understand why it was
uppermost in his mind as a necessary freedom.

In this discussion of the influence of Montesquieu on
Jefferson, which has necessarily detoured through the revision
by Tracy, there is little direct influence which can be seen.

1. Tracy, CLM, 210, 227.
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There is no evidence that Jefferson ever did approve the *Esprit de Lois* without serious reservations. There is ample evidence to indicate that he gave his complete support to Tracy's revision, and that, without reservation. Tracy's work is more a thorough-going revision than a commentary, for at many points he departs almost entirely from Montesquieu and follows Locke. In a comparison of Tracy with Locke however it is important to note that Tracy tended toward the representative type of government and even in a relatively small geographical area would not permit a pure democracy.¹ This was not true of Locke who placed the primary power in the people themselves.²

On first reading Tracy, it may be difficult to discern just why he cannot be given more credit as an outstanding democratic philosopher. At least one of the reasons is to be found here. Reason he ascribed to the people, but it was a power which he refused to place directly in the hands of the people. The public could elect and they had sufficient ability to choose their leaders, but not to lead themselves. Actually, it would have amounted to the same thing if the representatives were elected regularly. But it is evident that it was not the same for him; otherwise he would not have placed democracy on the level with despotism and said that they were both ruled by ignorance. Thus for him there was an irrevocable cleavage between democratic and representative government, a cleavage

¹. Tracy, CLM, 223.
². Locke, ECG, 461.
which has been reflected in the arbitrary and semantically unjustifiable distinction sometimes made between democracies and republics. That Jefferson wavered between the same alternatives cannot be denied. It was a last resort for those who could not give up the policy of centralized control and could find no valid justification for an aristocracy. Tracy had in mind an elected aristocracy, not an aristocracy that was such because of inherited wealth, but because of superior reasoning powers, intelligence. His analysis of Montesquieu was intellectualistic, placing more emphasis on abstract reasoning than on the people who were to use it.

Montesquieu was a relativist who believed that the laws should be fashioned according to the soil, the climate, the particular dispositions of the people and their occupations. Thus for him, there was no possibility of external criticism or comparison; the only possible criticism was that of pointing out the inconsistency within a given country. A law which did not fit into the framework of a given country was by that token, evil, one that did, was good.

There are many points at which Jefferson strongly differed with Montesquieu, in particular Montesquieu's ambiguous attitude toward slavery,¹ his justification of a hereditary monarchy, and his belief that the republican form of government is limited to a small territory. Although Jefferson approved of the threefold division of the government, there is no

¹ Montesquieu, SOL, I, 253-270.
indication that there was direct influence at this point. It may have come from any number of sources including his own firsthand experience with a similar type as an executive in the state of Virginia.

Jefferson does not mention Holbach (1723-1789) in his correspondence although it was Holbach who in *The System of Nature* introduced one of the most complete expositions of the extreme deistic position in France. If there was influence, it was indirect and relatively unimportant. Jefferson refused to accept one of Holbach's most important concepts, the identification of morality with self-perpetuation and preservation. Likewise Jefferson could not bring himself to a full rejection of the belief in innate ideas. This ambivalent attitude on the part of Jefferson was discussed fully in the analysis of Locke's influence.

Helvétius (1715-1778) is frequently referred to by Jefferson in connection with the former's criticism of Montesquieu, but only once does he discuss the ethics of the prominent encyclopedist. In this selection he claims that Helvétius does not go far enough in his doctrine of the ego as the sole motivation for the worthy act. It is true, Jefferson agrees, that the good act does give us pleasure, but the analysis of our motivation should not stop there. Significance cannot be attached to such a common sense observation.

1. Holbach, SON, I, 70f.
2. Holbach, SON, I, 75f; Jefferson, XIV, 141f.
3. Chapter IV.
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Importance can only be attached to an investigation of why we are pleased when we alleviate another's suffering. We are made happy because "nature hath implanted in our breasts a love of others...a moral instinct." Jefferson obviously does not see that when he has said this, he has not gone one step further than Helvétius, who has contradicted one of his central arguments against innate ideas.

The ideas supposed to be innate, are those which are familiar to, and as it were, incorporated with us; but it is always through the medium of the senses that we acquire them. They are the effect of education, example, and habit. Such are the ideas formed of God, which evidently proceed from the descriptions given of him. Our moral ideas are the fruit of experience alone. The sentiments of paternal and filial affection are the result of reflection and habit. Man acquires all his notions and ideas. The words beauty, intelligence, order, virtue, grief, pain and pleasure, are, to me, void of meaning, unless I compare them with other objects. Judgment presupposes sensibility; and judgment itself is the fruit of comparison.

Chinard, writing in the introduction to The Literary Bible, holds up the possibility that Jefferson might have been influenced by the Helvétius group in France to change over from the Stoic to the Epicurean concepts. He bases his judgment primarily on Jefferson's statement in a letter to William Short, "I too am an Epicurian." In the same letter Jefferson includes a syllabus of Epicurus's teachings compiled some twenty years previous. Then there follows a qualification that

1. Jefferson, XIV, 141.
2. Helvétius, TMSN, 23.
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Chinard might well have overlooked; Epicurus' doctrines contain everything rational "in moral philosophy which Greece and Rome have left us."¹ In the same letter he describes his desire to compile a much more complete syllabus of Epicurus and add to it a syllabus of the teachings of Jesus. Remembering that only five years previously he had reaffirmed his belief in the moral instinct, a precept peculiar to the Stoic influence and being reminded also that one does not simply affix the doctrines of Jesus to those of Epicurus, it can readily be concluded that something of Jefferson's extreme eclecticism is seen coming to the fore.²

This letter to Short, although written many years after his trip to France, offers ample opportunity for speculation and is one of the key letters in any study of Jefferson's philosophy. From it, one may hastily gain several keys to the development of his thought. For example, he states that he is an Epicurean, and goes on to say that Epictetus has given the only true picture of the Stoics. But the great crime of the Stoics had nothing to do with their doctrines, no refutation is presented; their crime was that they misrepresented Epicurus. Obviously there is no basis for the statement here that Jefferson was a confirmed Epicurean, it is loose and friendly conversation designed not to set forth personal dogma but to establish rapport with a friend who called himself an Epicurean,

². Cf. a statement of this in Jefferson, XV, 77.
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an Epicurean by example rather than precept.

The Epicurean sage continues, "Epictetus and Epicurus give laws for governing ourselves, Jesus a supplement of the duties and charities we owe to others."¹ Jesus is further described as the "greatest of all the reformers of the depraved religion of his own country."² Hoping to find the time to do so, Jefferson writes that it is his wish to include the writings of Epictetus with extracts from the sayings of Jesus as if there were no contradiction between the Lord's Prayer³ and the Epicurean concept of the gods as "enjoying in their own sphere, their own felicities."⁴ There can be little doubt but what the significance of the letter lies in Jefferson's approbation of Galilean morals rather than in the transition from the Stoic to the Epicurean philosophy.

As with many of his other letters, this one is crammed with contradictions that defy justification in terms of the material at hand. The summum bonum of the Christian ethic is not, and never has been, the absence of pain in the human body nor the lack of a troubled mind.⁵ They are, of course, Epicurean and rightly belong in the Epicurean syllabus where Jefferson has placed them, but they would not supplement the ethic of Jesus; they contradict it. The statement that Jefferson is an eclectic philosopher is far too generous; he was only eclectic in the negative sense. That is, he did

¹. Jefferson, XV, 220; X, 381f.  
². Jefferson, XV, 220.  
⁵. Jefferson, XV, 224.
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choose from varied sources but eclecticism implies some
criterion of its own and is nothing if it is not self consistent.
A work cannot supplement that which it displaces and the
term eclecticism does not justify internal contradiction. At
least in so far as this letter is an index to the mind of
Jefferson, it indicates a superficial grasp of the material;
not only are there contradictions between Epicureanism and the
morals of the Galilean but also between Epicureanism and
Stoicism.

The Epicurean doctrines of free will and utility which
Jefferson did accept are opposed to the Stoic concepts of
determinism and universal conformity to basic moral precepts.
But Jefferson never did come to any final conclusions on the
distinction between utility and the moral instinct, thus he
had not left his stoicisms as far behind as he thought.1

The time has come for writers on Jefferson to dispense
with the idea that he was a man who was pushed from one school
of thought to the other, accepting or rejecting all of each.
He never did give himself completely to any system but stood
outside (not above) each. Furthermore, he was not thorough
in his consideration of them and was frequently incapable of
placing his finger on the most obvious contradictions. It is
quite possible that the French school reawakened his interest in
the Epicurean school of thought and that the works of Gassendi,
who had introduced Epicurus to French thought, also influenced
Jefferson. There are passages to support this, some of which

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have already been discussed, but the influence is not above question and the student of Jefferson can find many instances in which Jefferson draws on several systems to build a more or less heterogeneous philosophy of his own. Few criticisms could be more applicable to him than the one which he quotes from Helvétius concerning Montesquieu's *Esprit des Lois*. Helvétius described it as an attempt to reconcile the heterogeneous thoughts which he had spent a lifetime in commonplacing.

Turgot and Diderot are also mentioned within the French school but with little indication as to their influence. Rousseau (1712-78), one of the great revolutionary writers who helped to precipitate the French revolution, received but scant notice from Jefferson, and when he was mentioned it was always in a derogatory manner. Only vague reference is made to Rousseau's idealization of man in the primitive state, an anthropological premise with which Jefferson had little patience.

This leaves only Destutt de Tracy (1754-1836) through whom the direct influence of the French school may be traced. Tracy was the first to refer to the new development in French rational psychology as Ideology and by that ambiguous name it came to be known. Ideology was a continuation of the scientific analysis of the human mind begun by Condillac and

2. Windelband, HOP, 457.
continued by his successors with only slight improvement. They held that the main problem in philosophy was the positivistic analysis of the mental conceptions aroused by sensations in the material world. Because political science was the interest of the day, the French materialists who followed the Ideological trend, built a political superstructure on an epistemological basis. There are few works of the period which better illustrate this than the *Traité d'Économie Politique* of Destutt de Tracy, the third division of his four part work, *Éléments d'Idéologie*. Because the work received Jefferson's full approval, it will be treated in some detail.

Jefferson attempted to have it published in the United States in 1813 by the same publisher who published the *Commentaire*. He describes it as a review of the principles of the Economists, of Smith and of Say. He tried again to have it published in 1816 and as with the *Commentaire*, he supervised its translation and wrote a rather long prospectus to be published with the English version. The French edition was published by 1816 and the American edition came from the press in 1817. The copy which will be used in this discussion is a French edition which was published at Paris in 1823, a small volume of fine print. No reference is made to previous editions, English or French, throughout the work.

Tracy is one of the few men whom Jefferson praises without

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reservation; it is also significant that he discusses his work in some detail.¹ He singles out the latter part of the book for particular recognition,² as it is devoted entirely to specific problems of political economy. Jefferson either approved or disapproved of a particular metaphysical position; he seldom discussed them in detail.³ This is likewise true of Tracy's works, except that in this case there are few instances of disapproval.⁴ Jefferson's refusal to discuss a metaphysical position in detail thwarts all efforts to give a detailed and direct analysis of his own position. Therefore throughout this dissertation the emphasis necessarily has been placed on the man whom he mentioned or of whom he specifically approved.

Characteristically enough, the psychology of Tracy forms the introduction to the treatise on political economy. The needs and means, the rights and duties of man are derived, Tracy claims, from the will. The being which does not will is less than human; the individual who does not will is undistinguished.⁵ The will is thus the supreme mark of the personality for all means and needs, all rights and duties, all riches and poverty, all justice and injustice must have reference to a personality, an individual with the power to will.⁶

La volonté,...est une partie de la sensibilité;

5. Tracy, TEP, 4.
6. Tracy, TEP, 5f.
It is impossible to will without having feeling or sensation and since all of our thoughts are of things felt or sensed, the terms think and feel are equivalent; likewise the terms perception and idea are equivalent. To perceive a thing is to have an idea of it and if one has not perceived a thing, one can have no idea of it.\(^2\) Tracy, who is here following Locke rather closely does not make room for the active will, conceived as rearranging our perceptions, thus giving them distinctive novelty in the abstract idea. The faculty of the will is that which distinguishes between those things which effect us as being agreeable and those which effect us as being disagreeable.\(^3\) It is from our ability to distinguish between different effects and thus between ourselves and other things that we arrive at the idea of personality or propriety.\(^4\) Thus from the basis of this pure sensationalism which up to this point can scarcely be distinguished from Hume's theory of the self, Tracy derives also the idea of liberty and restraint, rights and duties. Once it has been shown that these ideas are derived directly from the sensations of which we are in receipt he goes on to establish his theories of political economy. But before this is taken up, the

\(^{1}\) Tracy, TEP, 7.  \(^{3}\) Tracy, TEP, 9.  
\(^{2}\) Tracy, TEP, 9.  \(^{4}\) Tracy, TEP, 10f.
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psychology should be pursued further.

In the faculty of the will, Tracy like Locke, introduces an intuitive factor which makes full provision for the idea of the self. "Le moi de chacun de nous est pour lui sa propre sensibilité."¹ The type of sensation known as the will is the source of our idea of the self or our idea of propriety and to have an idea of the self, there is no necessity for a faculty other than that of the will. This truth, he claims is the basis of all morality and all economy, which are in turn, two aspects of the same science.²

All of our needs and our means arise likewise from the faculty of the will for all desire is a need "et tout besoin n'est jamais que le besoin de satisfaire un désir. Le désir est toujours en lui-même une souffrance."³ When the sensations act on the muscular system the desires can direct our actions in such a way that the means of satisfying the desire will be produced. Thus it is through the will that "passion et action, souffrance et puissance"⁴ are rendered.

Everything which assists in the attainment of needs is a means and is therefore a value. If one is wealthy then he has at hand, so Tracy claims, the means to attain his needs or his ends.⁵ Wealth and poverty here are not to be thought of in the narrow sense of those terms. To be wealthy is to have in one's

¹. Tracy, TEP, 332.
². Tracy, TEP, 332.
³. Tracy, TEP, 333.
⁴. Tracy, TEP, 333.
⁵. Tracy, TEP, 334.
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possession the means of satisfying needs whether or not those needs are economic. The more limited economic terminology is used in the discussion of psychology to make it fit more easily into the second section.

Since liberty is the power to execute our desires, our needs, it likewise is derived from our will. "Toute contrainte est souffrance, toute liberté est jouissance." Constraint is the lack of power to satisfy our needs; our duty is to augment our liberty and appreciate its value.

Rights are derived from needs and duties from means. Human feebleness is the source of human rights and power is the source of duty. "Un être sentant et voulant, mais incapable d'action, aurait tous les droits et point de devoirs." A being which had the necessary powers of satisfying all of his needs would have all of the rights but only the duties which followed from the circumstances. This concludes the résumé of the first six chapters of the psychology.

In the chapter on society, the first chapter devoted exclusively to political theory, Tracy holds that the three-fold advantage of society is the unified strength expressed by the combined and cooperative powers of the people, the increase and conservation of knowledge, and the division of labor. Society considered only in its economic relations is a "suite continuelle d'échanges." The transactions are such that

1. Tracy, TEP, 335. 3. Tracy, TEP, 336.
2. Tracy, TEP, 335. 4. Tracy, TEP, 80, 339.
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the two parties to the exchange always gain and the natural strength of the primitive is increased. Production is defined as that which endows an object with utility; thus production may involve either change of form, a change of place, or both.\(^1\) Farms as well as factories are productive units; the laboring classes are producers but the absentee owners who do not work, belong to the non-producing class.\(^2\) Utility is that which augments our enjoyment of a thing or decreases our suffering.\(^3\) We can measure what a thing is worth to us by the number of sacrifices which we are willing to undertake in order to gain its possession. The price of a particular item is determined "par le balancement de la resistance des vendeurs et des acheteurs, une chose, sans etre moins desiree, devient moins chere quand elle est plus facilment produite."\(^4\) Thus the advancement of the arts and sciences is encouraged and subsidized.

In all industry, Tracy claims, there are three stages of development, theory, application, and execution.\(^5\) This three fold division is derived from the theory of economics introduced by M. Say, an author who was particularly influential in the subsequent economic treatises of Tracy. Capital is money which has been accumulated in previous production and can be used by the entrepreneur to pay for the

\(^1\) Tracy, TEP, 339.  
\(^2\) Tracy, TEP, 339.  
\(^3\) Tracy, TEP, 340.  
\(^4\) Tracy, TEP, 340.  
\(^5\) Tracy, TEP, 97f., 341.
knowledge and labor necessary to produce the new product. In
the case of agriculture, "les propriétaires de terre qui ne
cultivent pas sont étrangers à l'industrie agricole. Ce sont
le simples prêteurs de fonds."¹ Sharply distinguishing
between the entrepreneur and the laborer, Tracy emphasizes the
essential nonproductiveness of the mere money lender. Industry
in its embryonic stage had not experienced the ventures which
made risk capital highly prized and the entrepreneur who would
risk wealth, a man sought after. Agriculture is the first and
primary art in relation to necessities but not in relation to
wealth; the means of existence and the means of subsistence
are distinct. By contrasting these two terms, Tracy attempts
to give an account of the growing distinction between agricultural
and manufacturing centers. Today it is taken for granted but
at that time there was considerable debate concerning which of
the two were the most important. Tracy² calls to the attention
of the reader, the fact that, there were large manufacturing
centers which did not raise anything but were nevertheless
capable of supporting themselves comfortably on the proceeds
of their manufactured products. He does not admit that farming
is the primary industry from all points of view and strives to
justify the industrial revolution which was taking place at the
time.

The life of an economic unit is to be found in its
commerce and transportation, the very essence of exchange.³

¹ Tracy, TEP, 341.
² Tracy, TEP, 127f.
³ Tracy, TEP, 342, 130f.
Commerce between nations is justified by the inducement which it provides for internal production; new values can be attained through transporting an item as well as changing its form. Although commerce can be carried on for a time without money, a complicated economy demands that there be a common unit of durable value. Precious metals have served this purpose, but Tracy, claims, it is the nation which must regulate the value; only then does it become real money. Silver is chosen as the best metal for this purpose; the use of paper money produces an unstable economy for it has no real value. Bankers are taken to task for issuing it in lieu of real money and are accused of pocketing the actual wealth of the country.

Declaring that inequality is a constituent part of human nature, unlike Rousseau, Tracy assumes that a nation's wealth will be distributed necessarily on that basis. Lamenting the fact that the human species is naturally strong but nevertheless lives in misery, he attributes its misfortune to the fecundity of the race.\(^1\) He concludes that "L'intérêt des hommes, sous tous les rapports, est donc de diminuer les effets de leur fécondité."\(^2\) Throughout the chapter he quotes at length from Malthus.\(^3\)

\(\text{Il est, au moins à ma connaissance, de tous les auteurs qui ont écrit sur la population, celui qui a le plus approfondi le sujet, et qui en a le mieux développé toutes les conséquences.}\)\(^4\)

1. Tracy, TEP, 347. 2. Tracy, TEP, 197. 3. Tracy, TEP, 194, 196. 4. Tracy, TEP, 194.
Since numbers are the source of human misery, and the alternative of increasing production through technics was scarcely entertained, the only possible answer was a decrease in the number of births.

Although within a given society there is opposition between those of unequal means, everyone is at the same time both a consumer and a producer. This fact in itself despite the heterogeneous tendencies, constitutes a sufficient basis for welding the society together. Because the poor are as a rule the primary producers, that which benefits them benefits society as a whole. They should be provided for and their needs should be understood; the salaries should be sufficient to provide for their livelihood and the tendency for salary fluctuation should be decreased, because it breeds injustice but can offer few aids for its reduction. 1 Although the well ordered society reduces the advantages accruing to pure physical strength in a primitive society, it augments the arbitrary power of the wealthy and this amounts to about the same thing.

Landowners and those who own the manufacturing plants but contribute nothing else are a loss to the commerce of the society for only a small percentage of their revenues find their way back into the common exchange. On the other hand, a large part of the salaries of the producers do find their way

1. Tracy, TEP, 348f.
2. Tracy, TEP, 351.
back thus increasing the wealth of a nation.¹ Likewise the government which is one of the heaviest consumers does not live from its profits but from its revenues. Taxes are a sacrifice demanded of the people and because they deplete the public wealth it is necessary for them to be moderate, varied, and scaled to the national income. It is to the advantage of the people as well as the government that the latter never go into debt.² Thus Tracy concludes his treatise on political economy, a work which could scarcely touch the wealth of material used in Adam Smith's Wealth of Nations but one which nevertheless had a profound effect on the later life of Jefferson.

This chapter began the study of the French influence with Jefferson's arrival in Paris and by far the most substantial part of that influence is found to have been most effective long after Jefferson's retirement from active political life. Since there is little evidence that Jefferson altered his political views to an appreciable degree after his retirement, the real value of Tracy's work is to be found in what Jefferson was prepared to accept as valid rather than in the degree to which it altered Jefferson's views. Ample evidence is at hand for the student who desires to illustrate the impact which French culture had on the life of Jefferson, an impact that can be measured by the statement that he thought of it as a second

¹ Tracy, TEP, 266f., 352f.
² Tracy, TEP, 354.
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home. On the other hand, evidence to support the proposition, that Jefferson derived many of his political theories from French thinkers, is lacking. Search as one will throughout his correspondence, with a list of the great French thinkers at hand, there will be little to indicate that they made a substantial contribution to his thought. That is, until the works of Tracy, but Tracy began to publish in 1805, the year following Jefferson's reelection to the presidency. There is little doubt but what a series of unjustified motives, not the least of which have been political in nature, on the part of Jeffersonian students have contributed to the popularly held opinion that Jefferson was strongly influenced by French thinkers. It must be repeated here that Jefferson went to France, not as a student of political theory but as an instructor.

In so far as the ready acceptance of Tracy's works by Jefferson constitute an index to his previous thought, that is, in retrospect, there is one point which is of vital importance. It has to do with the last part of Tracy's treatise. Although the work is a study of political economy, government as such is not mentioned except in the last chapter where he maintains that it has little, if any economic justification. Indeed society viewed solely as an economic unit finds the government to be an instrument of exploitation and since society is nothing more than a "suite continuelle d'échanges," there is no other point from which to view the government. Thus political economy for Tracy does not mean government economy but the economy of
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the body politic. There is one exception, the government is useful as an agency to standardize the unit of exchange. But if this could be maintained through another agency most other government agencies would be expendable. Tracy, like Smith, based the government on the economy and gave it an incidental derivation. Both agreed that it was not the business of government to equalize the distribution of wealth but to crystallize and confirm the inequality already existent. The fact that Smith was unremorseful and Tracy wrote with a tear in his eye is beside the point; both reached similar conclusions at this point. Jefferson sided with Tracy and unlike Rousseau did not see the institution of government as a tool to prevent inequality.

The whole treatise is consistent with Jefferson's view of government as emanating from the people and being tolerated by them only for certain specific ends. Government is incidental to society and is useful only as the scarecrow is useful to the farmer, to drive away the forces which ordinarily plague an economic unit. The emphasis placed by Jefferson on the value of agriculture as opposed to manufacturing in the Notes on Virginia is not reflected in his full approval of Tracy's work which was in many ways a justification of the industrial revolution. But then the America of 1817 was far different from the America of 1780-4; it had changed from an agricultural to an industrial economy. By studiously observing the scientific development of France and forwarding it to American engineers, Jefferson inadvertently participated to no small degree in that transformation.
CHAPTER VII

REVOLT AGAINST THE CHURCH

Jefferson the statesman, the architect and the philosopher; so reads the accepted triad of attributes as applied to his multi-faceted career. Statesman he was in every sense of the word, an architect of whom America can always be proud, but philosopher he was not, at least not in the academic sense of that term. Jefferson's correspondence abounds in violent contradiction at just those points where the student is compelled to press for clarification. Jefferson's claim to the title is the same claim that the more primitive philosophers maintain, more in the spirit of Thales than Aristotle, more Socratic than Platonic or Spinozistic. His approach was that of the thinker who confronts the world with a set of problems indigenous to his own experience, not that of the professional who is primarily interested in solving problems hallowed by tradition. A problem is solved when Jefferson is personally satisfied and from the viewpoint of technical philosophy there were many times when it took little to satisfy him. He was a philosopher in the sense that his mind would not permit him to act in an heterogeneous, unrelated or irrelevant fashion. The fact that he frequented the primary springs of human thought in search of answers has given rise to the supposition that he had attained a similar level of rigor. Doubtless he was far above most men of his time but there can be no question but what he was far below the prominent names in the history of philosophy. Either because of a lack of interest, a lack
of ability or both, he did not reach the same status in philosophy that he reached as a statesman and as an architect.\footnote{1}

As has been pointed out in Chapter V, in so far as Jefferson was a philosopher, his primary interest lay in the field of moral philosophy. However the student will look in vain who attempts to explain Jefferson's objection to the church in terms of moral philosophy. Although there was a parallel intellectual development toward deism, the mainsprings of his action must be interpreted in the light of the established church in the colony of Virginia. It will be the contention of this chapter that the "Act for establishing Religious Freedom" (1779) was, among other things, a product of Virginia's colonial church history.

The fact that the colonial church had not provided for a distinction between political and religious freedom compelled the American citizen to break the religious as well as the political ties with Britain. In his mind they were inseparable. Because the Anglican church provided the machinery for the divine right of kings theory it was necessarily held suspect from the first. Bolingbroke's statements concerning the church and theistic Christianity in general are to be kept in mind, but the emphasis in this chapter will be historical. The established church presented specific problems to the mind inclined to be

\footnote{1. Cf. Koch, POJ, xi, xii. Chinard withholds the title entirely but Koch attacks Chinard in justification of her dissertation.}
free, problems which cannot be over-emphasized. A survey of the status of the church in colonial Virginia promises to be a fruitful approach to Jefferson's statements concerning it, a background on which to base the reaction that followed.

Included in the catalogue of instructions issued to Sir William Berkeley, governor of Virginia, in the year 1650, is the following:

That in the first place you be careful, Almighty God may be duly and daily served, according to the form of Religion established in the Church of England, both by yourself and all the people, under your charge, which may draw down a Blessing upon all your endeavors.¹

In the same article of instructions the Governor is obligated to provide ministers for the colonial parishes, a parsonage, and two hundred acres of "Gleable Land."² For the clearing of the land every minister was to be furnished day labor by his parishioners. All of this was to be provided by the governor who worked with the local vestrymen. If the vestrymen did not fulfill their obligations, the governor was held responsible to the king for their failures. Again in 1679 Governor Culpepper was instructed to be especially careful that God will be duly served in all government actions. This was to be done through the reading of The Book of Common Prayer each Sunday and Holiday. No minister was to be preferred by the governor "without a Certificate from the Lord Bishop of London" stating that the minister was conformable to the doctrine

¹. Perry, HCV, 1.
². Perry, HCV, 1.
and discipline of the church.\textsuperscript{1} Several interesting letters relating to the efforts of Commissary Blair on behalf of the governor and church of the colony are included in Perry's Papers Relating to the History of the Church in Virginia. Motivated by a desire to lay the groundwork for the establishment of a college, the letters by the Commissary give an incidental though detailed account of the relationship existing between the church and the state. It is not a detail which can be lifted from the larger picture of the same relationship in England, for it isn't a copy of the former.

The colonial church government is complicated through the intervention of the governor who stands between the bishop of London and the Virginia clergy.\textsuperscript{2}

When the governor was delinquent in his prescribed duties, as in the case of Governor Andros, the church suffered and there was no agency which could circumvent his authority. Blair complained that it was a common maxim among the friends of Andros that they had "nothing to do with the Bishop of London nor no church power."\textsuperscript{3} The governorship of Andros furnishes ample opportunity to study the tight and arbitrary control maintained by the governor; even the commissary to the bishop was barred from the colonial council and rendered virtually ineffective. At all times the commissary was burdened with a quasi status and could in no sense supplent the office of a

\textsuperscript{1} Perry, HCV, 1-2.  
\textsuperscript{2} Perry, HCV, 10.  
\textsuperscript{3} Perry, HCV, 16.
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bishop. He was actually little more than an official reporter for he could not initiate action. The vestrymen of each community were, on the other hand, more autonomous than they were in England. Since they were frequently members of the House of Burgesses, the governor would favor them in their capacity as vestrymen in order that he in turn might be favored by their votes.¹

An example of this tacit working arrangement is to be found during the governorship of Andros. By overlooking his obligation to induct a minister if it were delayed by the vestry more than six months, he permitted the vestrymen to hire and release the ministers at will.² The autonomy vested in the governor and by his permission, procrastination, or indulgence, in the vestrymen, permitted the locus of church authority to be moved about at will so that specific characterizations covering a long span of time are prohibited. It can be said however that on several occasions the political machinations of the governor brought to a standstill what might have been constructive efforts on the part of the church. Statements

¹. McIlwaine, RTV, 11f.
². Perry, HCV, 36f. This section of the "Papers" is purported to be "a true Account of a Conference at Lambeth, Dec. 27th, 1697." Seven were present, including the Archbishop of Canterbury and the Bishop of London. The Commissary, Mr. Blair successfully defended himself against the charges leveled by a representative of the governor, one Mr. Byrd. Mr. Blair then brought charges against the governor defending his offense as well as his defense. The remarks of the Archbishop are models of judicature. The conference is concerned with a thorough investigation into the obstructionist tactics employed by the governor to delay the building of the college.
by the Bishop of London and even the Archbishop of Canterbury
evidence the difficulty involved in obtaining ministers for
the plantations;¹ thus only ministers poorly equipped in
morals and education frequented the shores of the colony.
Even they were anxious to return as soon as opportunities for
advancement presented themselves. The fact that there was no
great resistance on the part of the people to the arbitrary
action of the vestrymen and that when a cause was pleaded for
the clergy, it had to be pleaded by the clergy, implies an
undercurrent of popular dissatisfaction which had not reached
the surface.

Originally, it was the policy of the English government
to allow the colonies to govern themselves in so far as they
did not obstruct the loosely constructed colonial system.
This extended to recommendations concerning the choice of the
governors and is another reason why the governor respected the
local church and political leaders. At times the popular
pressure was sufficient to overrule the commissary, governor,
and clergy combined.² Instead of being held together by the
authority of a bishop or other ecclesiastic such as the
resident commissary, the vestries were virtually autonomous.
The church of England in Virginia was fast becoming non­
conformist even to the liturgy and vestments.³

At least part of this early spirit of non-conformity

¹. Perry, HCV, 39.
². McIlwaine, RTV, 14.
³. McIlwaine, RTV, 14.
stemmed from the Puritan movement which had been formally dispossessed in the Act of Uniformity, 1662. All of the Independents did not leave the church and some who had tasted of increased ecclesiastical emancipation longed for more. An exact evaluation of the Puritan movement in Virginia in numerical terms is impossible.¹ But it can be said that in the councils of the colony and in the parish vestrys their combined strength was significant. The discretionary political freedom enjoyed by the early colonists likewise had its religious reverberations.

By the year 1700, the church in Virginia had done so much to wrest the arbitrary powers away from the bishop and governor, and had been so deeply influenced by the Puritan movement that it was to all intents and purposes a free and autonomous church. But such a condition could not last indefinitely for although the hierarchy made few demands, the state which provided for its upkeep, and other communions, which were at first prohibited from entering the colony, began to make demands that were to effect seriously its future development. Already other churches were making inroads on the established domain and some of the subsequent governors prohibited them only for a price. After the threats to the effectiveness of its establishment had been made manifest, the established church became rigid and intransigent. Previously its internal history was similar to that of most other churches

1. McIlwaine, RTV, 15.
struggling for survival in a colonial culture.

Baptists, Presbyterians, and Quakers compete today for the honor of having been the most aggressive nonconformists in colonial Virginia. Quakers were resident in the colony before either of the other two. The Baptists and Presbyterians who came after the beginning of the eighteenth century, following the Quakers by almost half a century were much better organized in their attempts to either ignore, on the one hand, or actively obstruct the establishment, on the other. There are no indications that the Quakers had entered the colony before the year 1656. From the time of governor Berkeley's appointment in 1660 laws were passed specifically naming the Quakers; in 1663 they gained negative recognition as being at least a separate sect. Little correspondence can be found between the Protectorate of Cromwell and the toleration of Quakers in Virginia. Even in England the Quakers under Cromwell were highly suspect. It was four years (1648-1752) before Governor Berkeley, the royal governor of Virginia, recognized the Protectorate and only then after troops had been sent to enforce allegiance. Cromwell was too busy with internal affairs to concern himself with the colonial governments. The colonists, largely unacquainted with the excesses of the monarchy, were too loyal to the king to concern themselves with the Protectorate. Thus the colony continued in relative independence until the restoration in 1660. In 1663 the laws were revised in favor

1. McIlweine, RTV, 19.  
3. Flippin, RGV, 31f.
of leniency, but not toleration, for the nonconformists. In 1663 "An act prohibiting the unlawful assembly of Quakers" was placed in the great body of Virginia law. Comprised in the six articles of the act were provisions limiting the congregating of more than five adult Quakers, fines for ship masters importing Quakers, fines for persons who entertained Quakers, and fines for colonial officers who failed to carry out the provisions of the act.

The absence of early court records makes it impossible to determine how thoroughly the above provisions were enforced, although it is probable that their effectiveness depended on the local temper. Later developments point to the conclusion that their effectiveness was checkered rather than uniform.

As the Quakers themselves were accepted in each community on the basis of secular rather than religious merit, the extreme harshness of the code was ignored. By 1672 the law was almost inoperative and in 1680 when Lord Culpepper was made governor the tendency toward tolerance was accelerated. In the southeastern section of the colony, the old Puritan stronghold, the Quakers found a climate favorable to their religious beliefs. By 1689 the Toleration Act had been incorporated into the laws of Virginia and nonconformists were given the right to hold religious services provided they were licensed by the government. Two Presbyterian churches were organized under

1. McIlwaine, RTV, 21f.
2. McIlwaine, RTV, 21f.
3. McIlwaine, 22.
this act but they did not flourish. By 1727 there were at least nine public meeting houses in Nansemond, the stronghold of the Quakers.\textsuperscript{1} In a letter from Mr. Forbes to the Bishop of London written in 1724 the Baptists are mentioned for the first time.\textsuperscript{2}

The subsequent competition between the established church and the nonconformists was aggravated by the loss of prestige on the part of the establishment.\textsuperscript{3} Deism is for the first time mentioned in the colony by Mr. Forbes in a letter to the Bishop. He also spends some time in describing an attack by a Quaker teacher on the Anglican Church, an attack which, although it was made in the County Court, went unpunished.\textsuperscript{4} “Even miracles could not maintain the Credit of that Church where such lewd and Profane Ministers are Tolerated or Connived at.” Arguing that the Bishop of London should send another visitor commissary to the colonies Mr. Forbes wrote:

> In Nansemond a large Populous and wealthy County, the Quakers do sensibly encrease not only in offspring but also Proselytes; and so many are the offended Persons there high and low, at the Ministry of the Church, that I think, there wants but little more, than a learned, talkative, and Subtle Quaker Preacher to persuade a great number of them to Quakerism.\textsuperscript{5}

This was of course not the first mention of competition between the two groups for as early as 1697 one Mr. Nicholas Moreau had written to the Bishop of Litchfield and Coventry;

\textsuperscript{1} McIlwaine, RTV, 33; Perry, HCV, 333.
\textsuperscript{2} Perry, HCV, 328; McIlwaine, RTV, 33fn.
\textsuperscript{3} Perry, HCV, 332f.
\textsuperscript{4} Perry, HCV, 332.
\textsuperscript{5} Perry, HCV, 333.
God has blest my endeavors so far already that, with his assistance, I have brought to church again two families, who had gone to the Quakers' meeting for three years past, and have baptized one of their Children three years old.¹

The Hugenot and German Protestant settlers were willing to accept the established church although no pressure was used to make them do so. The government in an attempt to encourage their coming had made no provisions which limited their freedom of worship.²

During the administration of Governor Gooch frontier expansion was vigorously encouraged and by 1727 all applicants for admission were granted without restrictions concerning religious beliefs. Presbyterians, Lutherans, Quakers, Mennonists, and Tunkers settled the frontier counties until in 1738 the nonconformists and dissenters far outnumbered the members of the established church.³ An attempt was made to place an established minister there and from all reports he was amenable to the sentiments of the Dissenters, to the point of allowing their ministers to occupy his pulpit. However after more Presbyterians had entered the frontier colonies and brought their own ministers the membership in the established church dwindled away. The Presbyterians were better organized than the Quakers had been and were able to bring ministers there under conditions similar to those of the Anglican Church.

According to one authority the Baptists entered Virginia

¹. Perry, HCV, 30.
². McIlwaine, RTV, 35f.
³. McIlwaine, RTV, 40f.
as early as 1714\(^1\) and settled in Isle of Wight. Since the letter quoted above by Mr. Forbes was written from there in 1724 and the Anabaptists are mentioned, this is probably factual. Two other groups, one in 1743 and another in 1754 entered the colony and established churches. Although they were required by law to be licensed, when the licenses were not forthcoming, they established churches without them.\(^2\) This was particularly true of the Separate Baptists who were most extreme in their religious observances. The outrages perpetrated against religious liberty in colonial Virginia are for the most part directed against the extreme Baptist groups.\(^3\) They took place during the twenty-five year period between 1750 and 1775. Since other groups, namely the Quakers and Presbyterians, had long since received licenses to worship, the question arises as to why the Baptists were thus persecuted.

As has been mentioned, the liberal policies instituted by the colonial government in an effort to establish settlers on the frontier permitted the admission of many nonconformist groups. The central government abided by these policies and it is significant that the outrages perpetrated against the Baptist ministers were limited to the county government. Also, they were counties which constituted the older sections of the colony. Thus it was the petty officers of the colony, not the Governor and House of Burgesses, who arrested and imprisoned the ministers.

\(^1\) James, RLV, 12.
\(^2\) James, RLV, 26.
\(^3\) Thom, RFV, 15f.
The question immediately comes to mind as to whether the motivation for the arrests stemmed from the machinery of the established church acting through the government or the isolated actions of individual petty officers who did not know what to do with a mob thrown into spastic convulsions by an eloquent plea for the second birth. There were no provisions in the colonial law for the imprisonment of dissenting preachers; little or no evidence attests to the Baptist charge that their arraignment for disturbing the peace was a blind to hide the machinations of the local clergy. Were not the Presbyterians worshiping peacefully? Even with the extremely tolerant position of the United States today, such occasions are still forthcoming from extreme groups which frustrate the very best efforts of petty officers to keep the peace.

Significance may likewise be attached to the fact that when the ministers were arrested, they were not ordered to change their religious convictions, to stop preaching, or to leave the county, but they were threatened with jail if they did not agree to refrain from preaching in that country for one year. The magistrates might have based their decisions on the belief that a cooling off period was required to bring the colony back to its senses. From 1765 to 1775 the Baptist movement acquired the proportions of a colony wide revival, a phenomena unique to Virginia colonial history and the spasmodic, local persecutions did little to stem the tide.1 Although there were

1. Thom, RFV, 15.
The many arrests beginning with the imprisonment of John Waller, Lewis Craig, James Childs and others in 1768, in relation to the scattered activity of the Baptists, they were the exception rather than the rule.¹ Frequent attacks were made on the Baptists by mobs and of course they received little protection from the local authorities. If the Anglican ministers provoked the mobs into action, evidence is lacking to prove it.

Of the Anglican ministers who were concerned with the problem, most believed that the inroads of the dissenters were due to the paucity of competent, established clergymen and the absence of a resident bishop.² There is little question but what the inability of the Anglican church to send competent men to America, the absence of a bishop, plus the lack of a school to train incumbents resulted in substantial membership losses. Jefferson gives this as a cause in his Autobiography.³

The historical antecedents to Jefferson's revolt against the church are not exhausted with a survey of the church in colonial Virginia. On the other hand a study of his reaction would be inadequate without it. Chinard, one of the great students of Jefferson and a man whom no subsequent study can ignore with impunity, has nevertheless made several shortsighted

¹. Cf. James, RLV, 28; Thom, RFV, 15f.
². Throughout Perry, HCV, letters can be found presenting this thesis. The letter from Mr. Forbes, 323f., is a case in point.
judgments concerning Jefferson that cannot go unchallenged. The volume of his work may be responsible for this. In the introduction to his The Commonplace Book of Jefferson Chinard makes the following statement in referring to Jefferson's studies of the ecclesiastical influence on early Anglo-Saxon laws.

This is undoubtedly the historical background of the Bill for religious freedom...it was simply the protest of a legalistic mind convinced that the privileges enjoyed by the Church in the State of Virginia rested upon an unsound foundation.¹

As was pointed out in Chapter III, Chinard was particularly interested in establishing this influence and it led him on several occasions to minimize all other sources. Since Chinard edited the commonplace book of government and was the first to use it extensively, and because it contained numerous references to Jefferson's interest in early Anglo-Saxon law, the hypothesis must at least be entertained that Chinard was too enthusiastic. That he was, is one of the conclusions of this dissertation. His arguments fall too readily into the age old pattern of the conflict between philosophers and historians. Not only is he primarily interested in history, but it is a history which is inclined to exclude the influence of ideas as a determinant in the affairs of men. The history of philosophy was a field in which Chinard was ill at ease; he seemed to have missed the whole point of the commonplace book in his introduction. Jefferson could find no more biting condemnation of Montesquieu than that the latter attempted to

¹ Chinard, TJ, 51f.
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reconcile the heterogeneous entries in his commonplace book. Yet Chinard assumes that Jefferson's commonplace book was a homogeneous mass of material, every word of which received Jefferson's approbation. In trying to prove the influence of Montesquieu on Jefferson, Chinard writes,

He would not have read Montesquieu and would not have copied these passages, if he had not approved of them, if they had not corresponded to something which he already felt to be true, and if they had not awakened some consonant echo in his mind. That much at least is proved beyond any doubt by the Commonplace Book.

It is not the intention of this dissertation to discount Chinard's contribution in editing the Commonplace Book of Jefferson's ideas on government. But it is important to point out that many streams flowed into the main current, that they were historical, legal, and philosophical. Chinard need not be surprised that Jefferson's reaction to the church "was not in any way comparable to the measures taken against the Church by the men of the French Revolution."¹ The observation, though true, does not justify the conclusion that therefore Jefferson must have received his sole stimulus from the history of the early church. One very simple explanation may be found in the fact that the church in France and the church in Virginia had little in common. At least two significant points of dissimilarity immediately come to mind. The church in France had a long and bloody history of arbitrary intolerance while

¹ Chinard, Art., 57.
the church in Virginia did not. The church in Virginia carried with it connotations of foreign rule not shared by the church in France.

The legal reaction to the church was discussed at length in Chapter III. It was Jefferson's belief that the inroads made upon English common law by the church were monkish fabrications and that they had not had legislative approval. Although the fact that they had had the tacit approval of the people up until his time was not discussed, Jefferson's criticism was an excellent point and well taken. Other than that, his only reference to the early history of the church, to be found in his commonplace writings, refers to the fact that the early church did not demand tithes until the fourth century. As important as these references are, it can hardly be said that they constitute the sole basis of Jefferson's efforts toward the separation of church and state.

Jefferson's theoretical basis for separation is to be found for the most part in his statements affirming the deistic position. It is significant that he considered himself in external opposition to the church although it was the church in which he had been reared. He regarded himself as an alien to the church in the same sense that the sects were aliens and in the Autobiography he based his argument on the rights of the

2. Jefferson, XIV, 72f. This letter contains an excellent summary of Jefferson's charges.
sects. His criticism of the church was not intrinsic in the sense that he was particularly interested in the spread of institutional Christianity in the states. He probably believed that the church as an institution would be seriously injured because of the separation. It was schools, not churches, which were needed by the colony.

Jefferson's primary interest in the cause did not stem from a desire to see orthodox Christianity furthered and the religious apologist who looks to Jefferson as the advocate of the unfettered church is placing the emphasis at the wrong place. Siding with the sects, he was not allied with them because he approved of their theology or methods; he devoted himself to the task in order that they might receive freedom and equal status. Far from being unique in the canons of Protestant history, this phenomenon has been repeated at each stage of its development. Protestant historians would do well to reflect how often the movement has found allies among those who had no particular interest in the Christian faith as such, but requested only personal freedom of thought or the right to think at all. Jefferson compared his allies to Bedlam; they were not above referring to him as an atheist, a term not considered complimentary at the time.

Sharing neither their fundamental beliefs nor their goals, he crossed their path, nevertheless, in the Virginia state legislature from 1776 to 1779. When Jefferson spoke of the

"loathsome combination of Church and State," he was much more concerned about the state than the church. He was referring to the church when he wrote, "for I have sworn upon the altar of God, eternal hostility against every form of tyranny over the mind of man."  

When in his Autobiography Jefferson referred to the cruel intolerance practiced by the Anglicans, he seems to have been remembering the laws of Virginia rather than recorded cases. Furthermore his easy association of the church with the actions of mobs is unwarranted. The church was a potential rather than an actual threat to the other groups, a distinction which Jefferson failed to make. Although his position would have still remained the same if there had been no single overt act, he did nothing to stem the extravagant claims made against the church at the time, claims that were frequently manifestly invalid. The term "spiritual tyrant," was not applicable to the Anglican clergy of colonial Virginia and would have been more fitting for the continent during the Middle Ages. The clergy was marked more by an attitude of indifference than tyranny.

The student who has followed Jefferson's proscriptions against the institutional church, the union of church and state, and the clerical tyrant is not prepared for the affirmation of faith which became a part of the Virginia state

law, an affirmation penned by Jefferson. The "Act for establishing Religious Freedom," passed the Virginia Assembly in 1786. Jefferson's pen vied with those of the Church Fathers in cramming the text with theological references; he was prepared to offer a theological common denominator in deistic terms. However much the establishment and the sects had to sacrifice in order to reach agreement, it is evident that Jefferson sacrificed nothing. If the preamble has any reference whatsoever to the act itself, then it amounts to a philosophical contradiction, for the act is founded upon a closely defined deistic position.

Without any attempt to document the sources, the act declares that God is omnipotent, that he has "created the mind free," and that all attempts to influence the mind by "temporal punishments or burdens" beget hypocrisy and meanness. Such attempts at coercion are contrary to the plan of the "Holy Author of our religion, who being Lord both of body and mind yet chose not to propagate it by coercions on either, as was his Almighty power to do." Fallible and uninspired civil and ecclesiastical legislatures have been impious in their presumptions and have attempted to set up their own creeds. They have endeavored to propagate these false religions by taxing the people, a practice not only tyrannical but "sinful" as well. Furthermore by supporting the ministry through the state they have taken from the clergy those temporal rewards which should

be forthcoming only if they have lived up to the precepts of their faith.

Thus the preamble becomes a confirmation of the criticism of the attempts of fallible and uninspired legislatures, though this time not ecclesiastical. Although the clergy will be spiritually benefitted by depending for their "temporal rewards" on individuals who agree with them, their dependence on a state that demands conformity is nothing less than bribery with "worldly honors and emoluments."

The preamble falls into two sections. The second section is introduced by a statement that seems to divorce it from the thought contained in the first. If taken literally it discounts the foregoing theological propositions. "Our civil rights have no dependence on our religious opinions, more than our opinions in physics or geometry." The remainder of the preamble is concerned with a doctrine characteristically deistic, that of natural law. This may have been an attempt on the part of Jefferson to raise it above the level of the more controversial religious and historical doctrines. Truth, abstract truth, is described as being able to vindicate itself if it is not hampered by human interposition which limits debate and argument. The core of the act is to be found in the following paragraph.

That no man shall be compelled to frequent or support any religious worship, place or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion,
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and that the same shall in no wise diminish, enlarge, or affect their civil capacities.¹

The second paragraph which was enacted by the Assembly recognized the fact that they could not declare the act irrevocable but stated that if it were revoked, it would contradict natural law. Thus a philosophy of law is introduced to preclude the possibility that the act will be revoked. The act which motivated several years of heated debates was opposed by the church and most of the large land holders. Jefferson believed that a popular majority in favor of the bill had long existed in the colony but the representatives did not represent the majority.² The larger land holders were the only ones who were able to be away from their plantations and were the only ones which had an education suitable for the responsibilities of a legislator.

In this survey of the "Act for establishing Religious Freedom," one of the first questions that comes to mind is whether or not such a bill can be, or should be, framed in religious terms, deistic or otherwise. Would it have been possible for Jefferson to have formulated the preamble in purely non-religious terms? For the person who believes that the religious motive pervades all existence, non-religious must necessarily mean that part of existence which is least pervaded by religious motivation. The paragraph quoted above, the core of the act itself, was defined in purely negative

¹ Jefferson, II, 302-3.
² Jefferson, I, 52f.
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terms but the paragraph which followed was not; it carried overtones of the Stoic-Deistic tradition with which Jefferson was fully acquainted. The preamble did not make one single reference to legal tradition, the happiness of mankind, or universal consent. It did imply a doctrine of religious development toward the divine plan and appealed to the abstractions of truth and natural law. The religious background in the state of Virginia permitted the acceptance of the preamble but an atheist could only accept the paragraph which has been quoted in full above.

A thoroughgoing bill for religious freedom such as the first amendment which has no preamble cannot be defined in religious terms. Freedom in the legal sense of the term can only mean complete objectivity, an objectivity which amounts to indifference, and for any particular religious body that must always be in some sense a compromise. Apart from specific forces it is an abstraction; to be meaningful it must be indigenous to particular situations. But it cannot grow out of those forces for it must be the judgment of an agency essentially indifferent to their outcome. The step which this act took was not a step from complete subjection to liberty but from toleration to liberty where toleration implies one or more favored churches. Freedom implies technical equality. The authorship of this act was one of the contributions of which Jefferson was most proud; it was the product of his own religious development and was completely consistent with his point of view.\footnote{Cp. Jefferson, X, 374f.} It was not only consistent...
with Jefferson's view, but it had religious motivation. For the organized religious groups this was not the case; for the established church and the competing communions it was a secular working arrangement. Not only the church, but the theology was disestablished; the state became the new church to the degree that it assumed full responsibility for the development of a new creed. Fortunately for the nation, subsequent state and national documents did not echo the sentiments written into the preamble.

A fact frequently overlooked is that the Anglican church was the only institution which transcended national boundaries after the revolution and furnished a direct tie with Britain. Only one bishop was resident in America previous to 1786 and he was ordained under questionable circumstances in America by Americans. Thus the issue of separation was aggravated to some extent by the fact that Virginia recognized the same church recognized by Britain and that the American clergy were dependent on English bishops for their ordination. This did not receive overt expression in Jefferson's published writings but there is little doubt but what it carried great weight among some of the dissenters. Furthermore some of the clergy had remained ambivalent in their attitude toward the revolution; they had supported few of the early revolutionary movements and some continued to pay allegiance to the British crown throughout the war.

The established church was the same church which provided
the machinery for the divine right of kings theory and it was this theory to which Jefferson was particularly opposed. There can be little doubt but what these considerations played a prominent part in Jefferson's reaction to the church as it was established in the colonies and later in some of the states. Disestablishment brought with it the cessation of state support; it is not difficult to conclude that several factors combined to bring about Jefferson's efforts on the side of disestablishment. It would be impossible to single out one and make it of primary importance; the history of Virginia, of Anglo-Saxon England, legal traditions, political considerations, and the religio-political concepts of his mentors combined to produce Jefferson's attitude toward the church.

In addition to the influence of Bolingbroke which has already been treated, mention should be made of Priestley, a friend of Jefferson, and a friend on whom he relied heavily for his own religious development. He stated in a letter to Adams that he had read Priestley's Corruptions of Christianity repeatedly. His devotion to Priestley is another indication that he drew his deism from the English rather than the French sources. The curve of Jefferson's relationship to the institutionalized forms of religion cannot be plotted without a considerable amount of attention being given to the Jefferson Bible.

In the winter of 1816-17 Jefferson completed the text of Jefferson, XIII, 352.
the compilation which has come to be known as the Jefferson Bible. At present the original text is in the Library of Congress and has been photolithographically reproduced in the Memorial Edition. The text consists of a harmony arranged in parallel columns in four languages, Greek, Latin, French, and English. Each column is therefore reproduced four times so that it covers two pages; the whole covers 83 pages. Although at one time in its preparation he referred to the compilation as "The Philosophy of Jesus of Nazareth,"¹ the title page of his bound volume reads: The Life and Morals of Jesus of Nazareth Extracted Textually From the Gospels in Greek, Latin, French & English.²

Jefferson frequently mentioned his desire to compile such a book because later in life he considered the teachings of Jesus as being second to none.³ Yet such are the fragments remaining as to show a master workman, and that his system of morality was the most benevolent and sublime probably that has been ever taught, and consequently more perfect than those of any of the ancient philosophers.⁴

In a letter to Doctor Joseph Priestley Jefferson included a short and pertinent summary of his religious views which end in the above approbation of Galilean morals. But the approbation is prefaced with the assertion that in outlining his religious position he would first survey the moral doctrines of the most outstanding ancient philosophers including

¹ Jeffresson, XIV, 385.² Jeffresson, XX, Appendix.³ Jeffresson, X, 374.⁴ Jeffresson, X, 375.
VII. The Church

Pythagoras, Epicurus, Epictetus, Socrates, Cicero, Seneca, and Antoninus. He then planned to review the ethical deism of the Jews and point out the degraded state of their development.

I should proceed to a view of the life, character, and doctrines of Jesus, who sensible of incorrectness of their ideas of the Deity, and of morality, endeavored to bring them to the principles of a pure deism.

Jesus, Jefferson said, reformed the Jewish religion with the standards of reason, justice, and philanthropy. Jefferson erroneously concluded that it was Jesus who instituted the belief in a future life. The outline was to purposely omit reference either to his divinity or inspiration and would take special account of the difficulties involved in the transcription of his teachings.

It was not so much the interpolations which preceded their transcription, as it was the Platonisms which found their way into the biblical canon along with the teachings of Jesus, that worried Jefferson. The term Platonism served Jefferson as a general category into which almost everything he disliked, disbelieved, or found undesirable could be thrown. Since the teachings of Jesus had been misrepresented by the platonistic interpolations of self-appointed interpreters, many students had been tempted to overthrow the whole Christian structure, a gesture which Jefferson could not condone. But if the

teachings of Jesus could have been freed of the false interpretations, Jesus would be recognized as the greatest moral philosopher who ever taught. This, combined with a desire to purify the scriptures for the use of the Indians, were the motives from which the Jefferson Bible sprung.

Jesus, who was an early victim of the jealousy between the altar and the throne, had not sufficient time to complete his system and reach the maximum contribution of which he was potentially capable. 1 Thus his doctrines considered as a whole were defective. But in spite of this he was the greatest moral philosopher. Jefferson threw himself outside the orthodox Christian tradition and employed his own reason as the ultimate arbiter to determine the authenticity of the statements attributed to Jesus.

In the New Testament there is internal evidence that parts of it have proceeded from an extraordinary men; and that other parts are of the fabric of very inferior minds. It is as easy to separate those parts, as to pick out diamonds from dunghills. 2

2. Jefferson, XIV, 72. Few contemporary scholars would claim that it is as simple as that. It is a metaphor which Jefferson used on several occasions in connection with his New Testament studies and is another indication of his superficial approach to many fields in which he had little actual knowledge. Most critical biblical scholarship comes after the time of Jefferson's compilation and of course it was not available for his perusal. As much importance must be attached to the fact that Jefferson considered himself capable of such a task as to the actual text itself. A detailed criticism of Jefferson's Bible from the point of view of modern biblical scholar- ship might be pertinent to this study but space does not permit nor experience qualify.
Jefferson's efforts to overhaul the teachings of Jesus in favor of the deistic position may be compared to Locke's *The Reasonableness of Christianity*, although Jefferson went much further than did Locke. His method was arbitrary and extreme although no more so than similar efforts by theists throughout the orthodox Christian religion. So many of the teachings must be removed for no other reason than that they are in disagreement, in order to make Jesus reasonable, deistic, and without any claim to revelation, that Jefferson's methodology is highly questionable. With this in mind, the contents of the Jefferson Bible will be brought into closer view.

This compilation of the life and morals of Jesus is drawn from the first four gospels but because all miracles and references to the divinity of Jesus and his divine inspiration are excluded, few passages are taken from John. For the most part it is arranged in chronological order but this is not always the case.\footnote{Jefferson, XX, App., 4. Compare references to Mark I and VI.} The text is made up of those selections which have to do with the narratives and the precepts of Jesus. The Sermon on the Mount with the Beatitudes are lifted from the fifth, sixth and seventh chapters of Matthew. All of the parables are included and in one instance\footnote{Jefferson, XX, App., 64.} a selection was chosen which refers to the flood analogously. With this exception,
none of the miracles are even mentioned as they would be contrary to natural law. In at least two instances the same selections are repeated; they are the references to the money-changers in the temple and the immediate destruction of the temple. It concludes with the death and burial of Jesus.

The Jefferson Bible is not a triumph of Jefferson's scholarship; it is one thing to say that you agree with only certain sections of the New Testament; it is quite another to say that the sections with which you agree are the only ones which are valid and which Jesus approved. The latter is a problem in the historicity of the man and the texts which Jefferson made no attempt to solve. He stood at the opposite pole from that of Augustine but was guilty of the same error. Augustine interpolated into the teachings of Jesus the precepts of Plato, Jefferson's archenemy in philosophy. Jefferson misrepresented by omission the sayings of Jesus, with the deism of the Stoics and Bolingbroke in mind. Both forced Jesus into preconceived patterns and neither made a serious effort to find out exactly what he meant. Jefferson was thus involved in a serious error for which he must assume full responsibility; he had no external evidence whatsoever to sustain his claim that his compilation represented the valid historical Jesus.

With the conclusion of this estimate of the Jefferson

Bible, several threads of thought can be converged into a unified evaluation of his intellectual development. After surveying the previous evolvement of his thought, the realization that he has returned to the teachings of Jesus as his ultimate guide strikes the student of Jefferson as being totally out of character. Manifold alternatives present themselves, no one of which becomes a constant that is capable of distinguishing between the variables without a sweeping revaluation. The heterogeneous selections may be considered as a contradiction and reversal of all previous writings, as a sentimental return to his early childhood, as an effort to satisfy an unconscious sense of guilt, as a political expedient to thwart those who would denounce him as an atheist, or as an effort to purify the scripture according to deistic canons. Although the list is by no means exhaustive, these partial alternatives must be given serious consideration by anyone who would attempt to trace the evolution of Jefferson's thought. The most obvious explanation is that Jefferson, after wandering far from the Christian fold, finally returned to the haven of his early childhood. It is quite possible that he had not wandered so far as he thought.

Meagre as the sources relating to Jefferson's childhood are, there are at least three factors which indicate the nature of his early development. The first such indication is purely formal; Jefferson was tutored by ministers of the Anglican church, the church of which he was a member, and undoubtedly
imbibed some Christian teachings along with his studies in Latin and Greek. In the second place he went to a school which was owned and maintained by the church; his thorough knowledge of the Bible attests to the supposition that it was at about this time that he was introduced to it, either formally or informally. The third and most important indication is to be found in the fact that when he later rebelled at the orthodox doctrines, he thought them of sufficient importance to consider all time consumed in proving them invalid to be time well spent. He spared no effort to base his morals, a morality which was by in large characteristic of his station and status in life, on a substantial foundation. When he could no longer accept the intellectual basis of the orthodox faith, he turned to other sources. It should be remembered that Jefferson had no quarrel with the morals which the church was willing to condone, morals which had more in common with the gentlemanly virtues of Aristotle than with the teachings of Jesus. He might have found the conduct of individual ministers in the colony despicable but if he did so, he blamed the men, not the church and where he found one that was not a gentleman, he found dozens who were, and who as such, were not in conflict with the church. It was the system rather than the morality with which Jefferson could not agree. In the sense that he was deeply concerned to protect and support his moral system at any cost, Jefferson can be considered throughout his life as being profoundly devout, if not fully religious.
It was Bolingbroke who along with others came to his aid at this stage in the transition of his thought. Bolingbroke, who was in all probability recommended to him by Governor Fauquier, gave him an external point of vantage which combined with the systems of the ancients provided first a critical and then a positive basis for a morality that remained substantially unchanged. As a deist Jefferson began to draw upon the writings of the Stoics, and the Epicureans as interpreted by Gassendi, Locke, and Bolingbroke. As a materialist he turned against the doctrine of immortality and identified the mind with the body. Natural law was accepted as the hand of God at work in history and that phenomenon which evaded or refuted the reasonable mind was termed evil. If Jefferson realized that in the most extreme expressions of his materialistic system he was substantiating a morality with which few contemporary Christian ministers would have found themselves at odds, he did not mention it. If they had disagreed, it would have been on a theoretical rather than a pragmatic basis. Of the two, Jefferson was undoubtedly the most consistent but his theoretical revolt produced few external changes in personal conduct and was thus much more tame than he realized.

Coincident with his intellectual development was a growing realization of the favored place of the church in the community, a historical observation which undeniably interacted with the trend of his thought. This stream of influence grew from his personal experience with the church as a political
agency. The establishment had congealed into a cartilaginous structure of codified law, a potential rather than an actual threat to dissenters. Again, it was the lack of consistency to which he objected; the usurpations of legal tradition by Christian precepts had to be rooted out. His case against the supposed intolerance of the establishment disregarded the record. The argument based on the early status of the church and the frauds which it had perpetrated in order to impose itself on the state fell on deaf ears. It was the church as the one remaining direct tie with Britain and all that it represented as the heavy arm of the British empire which attracted popular support to his cause. Many of his statements are bitingly anti-clerical and as such they are frequently linked to similar denunciations of monarchies. The clergy who tacitly or actively supported the Tories and the divine right of kings theory may have been in the back of his mind and may have been responsible for such extreme statements.¹

Jefferson's experience with an all-powerful monarchy and an all-powerful state led him to be distrustful of strong institutions as such. The state became a referee for opposing churches just as the national government became a referee for opposing states. Jefferson had no affinity for the Baptists, his strongest allies in the conflict. He certainly did not agree with their theology, but he believed that they

¹ Jefferson, XV, 305.
had as much right to worship as the Anglicans. In plotting
the curve of Jefferson's religious development there is a
temptation to say that at this point he had least in common
with the religious tradition but that the subsequent compilation
of the scripture known as the Jefferson Bible marked a complete
return to the Christian teachings.

This is true in only one sense. He did reaffirm his belief
in immortality after having given it up altogether. Jefferson
was interested in Christianity only because it furnished the most
consistent morality; it was positive and more concerned for the
welfare of others. Jefferson did not really return to
Christianity but thoroughly revised it; he did not submit to
it but conquered it. Reason was still the ultimate criterion
and an unreasonable Christianity would have been no more
relevant than an irrational Pyrrhonism. From the time of his
departure from the orthodox position, he never did return and
the Jefferson Bible is the best indication of his intransigence.
His treatment of scripture is completely consistent with an
outline which he inscribed to Peter Carr as early as 1787.
"Fix reason firmly in her seat, and call to her tribunal every
fact, every opinion."

It is true that his earlier deism was corrected and
extended; he became more interested in the concept of Christian
brotherhood and extended his concepts to include it. But
this is perfectly consistent with his earlier thought on the
subject; it does not constitute a contradiction.
CHAPTER VIII

SOME HISTORICAL ANTECEDENTS OF THE NATURAL LAW AND SOCIAL CONTRACT THEORIES

As the author of the Declaration and as a noteworthy commentator and early interpreter of the Constitution, Jefferson played a unique role in relation to the two primary documents of the American government. Chapter IV treated the influence of Locke on Jefferson in writing the Declaration; Locke's use of natural law and its relation to positive or civil law was discussed. In the Declaration Jefferson had occasion to make specific reference to the laws of nature using them as a court of appeal against which to cite the unconscionable acts of King George III. With the exception of the general terms used in the preamble and the implied argument from design drawn from the catalogue of protests, the content of the Declaration is philosophically negative. That is, it still left open the question as to just what constitutes positive law based on natural law. The Declaration based on "self evident" principles does not detail the machinery of a people's government or the rights of that people.

It is true of peoples as well as nations that the formulation of a protest precedes, and assists in the delineation of, a goal, the need, and then the ambition. The Declaration was a defensive tactic in international relations and against a negative bill of particulars turbulent passions could be united in the common cause. A common source of pain
is much easier to identify than a common source of pleasure; fear could unite the states temporarily but a positive force was demanded to make of that temporary unity a permanent union. Hurried agreement may be reached as to the nature of natural law in reference to urgent needs, but it is an altogether different matter when the same agreement must be reached to support civil or positive law based upon the natural law theory. Men that had stood shoulder to shoulder to sign the Declaration, quickly partitioned themselves into small vocal cliques when faced with the problem of structuring a federal constitution.

The preamble to the Declaration is a high moral challenge appealing to the people in resonant tones charged with emotion and resolve; the Constitution is a compromise. It will be the contention of this study that the Constitution is the historical culmination of the social compact theories, of the thinkers who were anticipating the practical application of the theretofore vague statements concerning natural law. The social compact is one of the pragmatic and positive assertions of the natural law theory. But such a statement cannot go undocumented and before the discussion of Jefferson's commentary on the Constitution to follow in the next Chapter, some attention will be given to the historical antecedents of the social compact.

Locke's treatment of natural law was introduced in Chapter IV and it was concluded that Jefferson accepted Locke's
definition of natural law as reason, reason understood as analysis or deductive logic. However, it may well have been even at that time, that when he used the term loosely he meant it only as a synonym for intelligence. Because of the abstract and negative characteristics to be found in the Declaration, there still remains a breach between theory and practice that can only be bridged by an understanding of Jefferson's commentary on the Constitution, that is, natural law in its positive and detailed unfoldment. The social compact theorists such as Hooker, Hobbes, Locke, and Rousseau, were not the first to make some application of the principle of natural law however, for they were preceded by the Stoics and the Roman jurists. Therefore, this historical résumé will begin with the Stoic doctrine of natural law.

After the fall of the Greek city states the Hellenistic philosophies were marked by a decisive alteration in their political theory, systems that were as a whole dependent on earlier Greek models. At first this alteration was a shift toward individualism, personal ethics, and the good life for the individual ego. Here, the Epicurean thinkers were inclined to remain, but the Stoic leadership such as Panaetius, who penetrated the Roman world, and particularly those who lived and taught in and around Rome itself, began to emphasize the universal characteristics of man. The adult Universal Man did

1. Cf. Sabine, HPT, 141f; Tarn, HC, 73f; Carlyle, HMPT, 2; Windelband, HOP, 163.
not reach maturity in Stoic philosophy. Previous to the Stoic development in Rome the doctrine of natural harmony had not been emphasized unduly. It is true that they had ready at hand the suggestive philosophical postulate of the World Soul, but if they had not been presented with the opportunity to find explicit confirmation in specific examples of universal human characteristics, there is every likelihood that the idea of Universal Man would not have developed. Thus the Stoics were disposed to stress that science which would confirm these doctrines, would give them operative validity.

They had not far to look for such phenomena; it was no accident that the Stoics in and near Rome discovered it first for Rome was an experimental laboratory in political science. From the viewpoint of legal history the series of problems which confronted the Roman jurists were fortunate indeed. At first, trying desperately to stretch the skein of traditional, theoligico-political law, they were forced to break with the past and become the leaders of a self-conscious, experimental discipline. The Stoic thinkers found support for their postulates in the growing body of Roman law known as *jus gentium*. *Jus gentium*, or law of the tribes, is built upon the concept of equity (*aequitas*) which in turn was a product of the actual decisions handed down by the *praetor peregrinus* (created in 247 B.C.). The *praetor urbenus* had charge of the cases arising between Roman citizens and as such drew upon the traditional body of law, but the *praetor*
Peregrinus was appointed specifically to adjudicate the cases involving the large number of colonials living in Rome.

Because of the varied social customs reflected in the cases brought before him, the praetor peregrinus was given ample freedom and forced to rely on individual initiative. Considerable objectivity was achieved and gradually there developed a body of experimental postulates which could transcend the varied social habits reflected by the colonials. Using trial and error, then with experience, approved hypotheses, the praetor peregrinus became the laboratory technician in political science. A disinterestedness was achieved in the Roman concept of equity that was not to appear again until the recrudescence of the natural sciences in the 17th century.¹ The praetors were self-consciously and intentionally searching for judicial principles that would meet the needs of any culture. They turned a sensitive ear to stories describing other societies and began to collect not an inconsiderable amount of informal anthropological data. The contestants at the trial frequently were given the opportunity of relating the mores and customs of their respective homelands.

Although subsequent English and French political theorists drew heavily on a scanty knowledge of anthropology, it is not to be compared to the first-hand experience of the praetors. The theorists of the 17th and 18th centuries did ¹Note that technical objectivity need not necessarily precede social disinterestedness.
not have the opportunity to study human tribal customs in the manner of the praetors. There was not the motivation for doing so, nor was there the professional dedication to objective principles of observation.

Here then, is to be found one of the first applications of natural law. Jus naturae in Stoic thought was universal law, that law which is applicable to all peoples and cultures. The World Soul was revealed in the tiny spark of moral consciousness within each individual. Each man is reasonable and at least potentially capable of placing justice above his immediate requirements. But the term jus naturae was at first reserved for the vague theories of universalism derived from the Stoic metaphysics while jus gentium was the term used to designate the actual body of law compiled by the praetor peregrinus. The praetors, because of their individual status, decided cases independently of each other and were in frequent disagreement. Each jurist dug freely in the great storehouse of mores which had been deposited like driftwood on the Roman coast. Undoubtedly this is one source of the elasticity and applicability to be found in the jus gentium. The jus civile was barnacled over with the ceremonies, now considerably telescoped, that had constituted the law court before the legal canons had been adopted in the form of the Twelve Tables. Thus the jus civile as jus scripta contained much of the elementary and crystallized dramatics of the jus non scripta.
Jus naturae was too vague and undefined to lend anything but questionable moral support to the best legal theory. But jus gentium pushed back the racial, geographical and ethnic barriers of the day with unequaled efficiency. It was not international law or law between the states; it was a code which united the individuals of distinct cultures, the people as individuals.

From this time on the growth of Roman law can be traced by the gradual coalescence of these three concepts. Later Roman jurists with a philosophical bent began to use the terms jus gentium and jus naturae interchangeably. One after another the praetores urbani began to incorporate it into their decisions, first informally and then formally. The injection of jus gentium into Roman law constituted the fermentation which precipitated the leap into the future, the leap that anticipated legal development from the 5th to the 17th century and spread the Roman code over the continent.¹

It is herein maintained that without the concept of equity which during the Hellenistic era was wedded to natural law theory, the latter would never have commended itself to succeeding generations. Whatever natural law might have meant

¹ Full treatments of the effect jus gentium had on natural law may be found in most comprehensive histories of legal theory. One of the best is to be found in Carlyle, HMPT, I, Chaps. i, iii, and vii. Shorter passages may be found in Sabine, HPT, Chaps. viii and ix; Elliott, WPJ, Chapt. v; and Brinton, IAM, 131f. The writings of Cicero in legal theory are the best original sources to be found on the subject, particularly The Republic and The Laws. Although many histories treat the fusion of the two streams, so far as the author knows none of them place quite the same
to the philosopher, it meant to the lawyer a class name for the highest legal tradition. 1 It is the golden thread of legal theory, not because of its metaphysical justification, but because of its nearly universal application, its pragmatism. The term "natural" serves to suggest an absolute sanction, not an approximate universal but a universal without exception, and it served quite well until a much later date. Its classic denouement came with J. S. Mill's little essay entitled Nature, which will be discussed in the following chapter. However the point to be made here is that natural law for many centuries denoted a superior quality in legal codes; it only connoted and that very vaguely, superior authorization, where and when that authorization was needed.

This, of course, is a historical judgment and has no immediate reference to what natural law might have meant in any particular metaphysical system. It is an explanation that provides for the historical fact that natural law theory, although it is crammed with overtones of authoritarianism, has nevertheless usually been on the side of free and liberal thought. 2 A history of natural law theory is a history of

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1. Cf. Carlyle, HRPT, I, Chapt. iii; Note particularly page 36f. Carlyle is not saying quite the same thing but he does emphasize the legal confusion as to the metaphysical aspects of natural law.
2. The outstanding exception here is Hobbes who will be taken up later in this chapter. Hobbes' theory of natural law was consistent with his metaphysics in a way that the Stoic natural law theory was not consistent with the Stoic metaphysics. Cf. Gurwitch, Art.
legal renovation, a chronology of the highpoints in legal theory. Time and again it has been employed by the chanting mobs, the people, as they beat on the fortresses of legal tradition. It has been described as being universal when actually individualism is intended, as intuitive when empiricism formed its content, as rational when it was marked by experimentation, as international when it relied on the code of the market place, and it has suggested traditionalism when novelty and change were sought. Unless it is interpreted in some such way it is fraught with contradiction. From the viewpoint of the liberal tradition its value lies in its use as a touchstone for individualism, reformation, and elasticity. It provides the original dogmatism necessary to initiate a new policy and stir the followers to fanatical allegiance at the same time it anticipates a graceful exit once that policy is no longer operative. Its universality lies not in positive codes that have been tested and tried in all conceivable human situations, but in its ultimate unintelligibility. Historically it has been used as a name for whatever has seemed good at the time. What has seemed good at the time has usually been stated normatively as in the cases of Cicero, Locke, and Jefferson. With this hypothesis in mind the historical development of some of the outstanding exponents of natural law will be continued.

For Cicero, justice was necessarily implicated in the definition of the state; where justice did not prevail, the state did not exist. Although Cicero was at many points a
follower of Plato, unlike Plato he did not define justice as vocational harmony with an imposed ruling hierarchy. He was slightly closer to Aristotle's theory of the state but even here there is a considerable break. Aristotle visualized the good state as deriving its justification and support from the consensus of a select group in a mutual rotation of responsibility. For Cicero, everyone was potentially capable of participating in the government by reason of their moral nature. This is one of the primary reasons for drawing such a heavy line between the doctrines of the Greek political theorists and those of the Roman lawyers. Justice for Cicero meant equality and equal participation, *jus consensu.*

But at the same time it was Cicero who did more than any other Roman thinker to bind the natural law doctrine to the best tradition of Roman law. It was he who in explicit contradiction to Carneades of the Middle Academy and Epicurus, advanced the theory of law as universally binding on everyone, as being above the immediate needs of specific groups and cultures. Others such as Panetius had advanced the theory of natural law in a vague manner with a metaphysical basis but

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1. Cicero, *De Leg.*, I, v, 17. "You must understand that in no other kind of discussion can one bring out so clearly what Nature's gifts to man are, what a wealth of most excellent possessions the human mind enjoys, what the purpose is, to strive after and accomplish which we have been born and placed in this world, what it is that unites men, and what natural fellowship there is among them. For it is only after all these things have been made clear that the origin of Law and Justice can be discovered." Cf. *De Nat. Deo.*, II, xxxf.

2. Cicero, *De Leg.*, III, i. 2-11. 5.

it was Cicero who gave it specific application. Cicero was the first to present explicit legal models and give content to the theory of natural law. It is those specimens that are of most consequence in the study of natural law theory. Therefore the immediate problem is to determine what natural law meant, what it effected, for Cicero.

Cicero's writings are manifestly and admittedly eclectic. If there is novelty at all it must be found in his style and the unique combinations of past traditions. They were not original except in their novel combinations of previous traditions. But if this is so, the commentator on Cicero will be hard pressed to explain why there was such a break in political theory between Aristotle and Cicero if he does not place considerable emphasis on the Roman legal tradition previous to Cicero. In *De Re Publica* and *De Legibus* Cicero is quick to recognize the need for explicit examples of natural law, particularly in the latter. In *De Legibus* he gives such an example in his outline for a constitution. Even here he is admittedly unoriginal but draws heavily upon the Roman Constitution.\(^1\) It is his belief that his edition of the Roman Constitution is an example of natural law, so again, natural law becomes a name for a slightly idealized version of the best legal tradition. In formulating his criticism Cicero uses reason\(^2\) plus his experience as a practicing lawyer in Rome.

2. Cicero, *De Leg.*., I, vi., 19. "Law is a natural force; it is the mind and reason of the intelligent man."
VIII. Historical Antecedents

The constitution in *De Legibus* appeals to justice and invokes *jus consensu*. Cicero meets the threatened extreme relativism of Carneades with theoretical absolutism but when he begins to apply this absolutism he finds it manifested in a particular historical tradition. It is just this which he enveighs against in Book I of *De Legibus* but it is what he does in Book III. Although he intends to cover "the whole range of universal Justice and Law in such a way that our own [Roman] civil law, as it is called, will be confined to a small and narrow corner," when he is called upon to do so, that small and narrow corner penetrates and occupies the total concept. Cicero's motivation in invoking natural law was little more than opportunism; it was a defense of traditional values in the face of the imminent downfall of Roman constitutional government. At no point is this better expressed than in the following selection.

But if Justice is conformity to written laws and national customs, and if, as the same persons claim, everything is to be tested by the standard of utility, then anyone who thinks it will be profitable to him will, if he is able, disregard and violate the laws. It follows that Justice does not exist at all, if it does not exist in Nature, and if that form of it which is based on utility can be overthrown by that very utility itself. And if Nature is not to be considered the foundation of Justice, that will mean the destruction of the virtues on which human society depends. For where then will there be a place for generosity, or love of country, or loyalty, or the inclination to be of service to others or to show gratitude for favours received? For these virtues originate in our natural inclination to love our fellow-men, and this is the foundation of Justice. Otherwise not mere

consideration for men but also rites and pious observances in honor of the gods are done away with; for I think that these ought to be maintained, not through fear, but on account of the close relationship which exists between man and God.¹

Cicero goes on to say that if the principles of justice were based on the decisions of judges, the edicts of princes or the people, then justice would be called upon to admit robbery and adultery, and the forging of wills. Pools may vote against justice but in so doing they have not altered it, they have not made the right into the wrong.² Obviously Cicero is here employing nature as a sanction to reinforce his criticism of law as it existed, particularly the civil law in the lower courts. The validity of natural law consists in its ability to guard the traditional and approved virtues, not in its own right; furthermore they are the virtues, not of the plebiens, but of the aristocracy, the patricians. Wisdom becomes a product of virtue for only those who exercise their innate virtue could discern the value of natural law; it is based on the moral nature of man. The ramifications of this theory were not carried further by Cicero, it remained for Seneca to complete the metamorphosis.

After Cicero, in the writings of Seneca and the subsequent Roman lawyers up to the sixth century attempts were made to connect the theory of natural law with imaginary primitive states. This is particularly true in the case of arguments

¹. Cicero, De Leg., I, xv.
². Cicero, De Leg., I, vi.
revolving around slavery. But in the writings of Cicero no such meaning is evident; likewise, there is not the emphasis on natural necessity that will be found later in the writings of Hobbes.

One of the most noteworthy statements to be found in the above quotation is that "these virtues originate in our natural inclination to love our fellow-men, and this is the foundation of Justice." It is to be remembered that Cicero preceded the Christian era and that here he is introducing a basis for justice not unlike the best attempts of the Church Fathers. At least in this one instance he is equating the love of fellow-men with natural law, the moral nature of man. Obviously he is not referring to a state of affairs in the past, or even to the advanced Roman legal codes; here he is underlining the normative aspect of natural law, what men should be or what he is potentially able to become. Cicero did not continue the rigid distinction that had existed between the barbarian and the civilized man in Greek thought. "The homogeneity of the human race was in the Roman Empire no mere theory of the philosophers, but an actual fact of experience, a reality in political and social conditions."¹

Any attempt to find logical consistency in the writings of Cicero will be fruitless and no such endeavor will be made here. He is important to this study not because of his

¹. Carlyle, HMPT, I, 11.
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philosophical criticism of natural law but because of the historical importance to be found in that with which he equated it. Time and again he leaves the way open for basic criticisms against this ambiguous and contradictory use of the phrase. His basic opportunism and superficiality have already been indicated, but this was not to be discovered for some time to come. Throughout the middle ages his identification of natural law with the highest Roman tradition was accepted, approved, and manipulated to a subordinate position under divine law. The Church Fathers were much more interested in placing divine or revealed law over natural law than they were in making a critical analysis of what was meant by the term natural. 1 Whatever the basic contradictions involved, Cicero's theories went virtually uncriticized until the time of the Enlightenment and beyond. This is not only true of his political theories but of his other works as well. They were undeservedly influential in succeeding eras.

By way of summary; natural law for Cicero resulted from the interaction of the Stoic World Soul and the tradition in Roman law that culminated in the Roman Constitution. The latter, of course, had drawn heavily upon the jus gentium discussed above. It was a means of holding the best legal traditions of the past up to the reader as norms. From its Stoic heritage it gained a doctrine of man, of man as rational

1. Cf. Carlyle's six volume History of Medieval Political Theory in the West for a treatment of this.
and having an innate desire to live in harmony with his fellow
man. From the same theoretical background it carried
metaphysical overtones of absolutism and urgency, although it
did not reflect the cosmic determinism to be found in Stoicism.
From its Roman heritage it drew upon the doctrine of equality
and universality; although equality may have been practiced for
some time in Roman courts of law, it had only recently been
formulated in the legal tradition of justicium. Cicero did
not mean by natural law, primitivism, necessitarianism, or the
Epicurean utilitarianism. Essentially it was, for him, an
agency of conservation.

By subsequent thinkers some of these attributes were not
given the same weight that they were given by Cicero, but most
of the above characteristics continued to constitute what was
generally meant by the term. As has been indicated, natural
law was relegated to a subordinate position during the middle
ages and was generally understood to have been the highest type
of law between the Fall and the coming of Christ. It was still
operative for heathens and secular nations that ruled without
the benefit of divine or revealed law as it was interpreted by
the Church. Therefore its treatment during the middle ages will
not be developed here. Rather, attention will be turned
immediately to Thomas Hobbes (1588-1679).

In tracing the history of the natural law and social
contract theories, Thomas Hobbes plays such a unique role that
a consideration of his writings is imperative, if for no other
reason, then to indicate the extremes to which the theories have been pressed. It may have been for purely facetious reasons that Hobbes chose to use both terms, but he gave them a twist from which they have never fully recovered. There is substantial historical evidence to indicate that he did not mean by the terms anything that had been meant before and that therefore he had no right to use them. Herein it is maintained that Hobbes did give the natural law theory the first metaphysically consistent and meaningful interpretation. Even if Hobbes' use of the two concepts was nothing more than pure rationalization for an otherwise unsavory doctrine, it attests to the strength of the doctrines in that they were intended to have a beneficent effect upon his readers. Just why the social contract theory, in particular, should have such an effect can readily be seen from the history that immediately preceded this era.

The idea of social compact in the 17th century was derived from two primary sources, the dissenting church bodies, and the feudal contract between the liege and the lord. Added to these two streams of influence were the new studies in anthropology that were being undertaken at that time. They were of an informal and unscientific nature; for the most part they were the fabricated and glossed over stories of returning sailors but an authentic literature was gradually accumulating and the public interest, at least, was genuine.

The dissenting Protestant groups had frequently separated
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themselves for reasons of church government. Having disposed of hierarchical authority they were thrown upon their own initiative to form a new type of church government. In both England and Colonial America, the churches were "gathered" and each member was given a vote. The ministers were then "called" and could be dismissed by vote of the church. Thus large numbers gained first-hand experience through individual participation. The new method commended itself to groups wherever new governments were established, for the most part in the colonies. This was the death blow to the theory of transcendental and divine law that had dominated the middle ages; the Protestants believed in revelation but because it had to be individually interpreted, it nurtured political nominalism. Just as the church was not identified with the bishop, more and more thinkers during the 17th century concluded that the state was not identified with the king. The way was thrown open again for a natural law theory derived from common consent. The recognition that many Protestant bodies chose this type of church government is not intended to imply that the various ecclesiastical leaders within the sects promoted political individualism. There is no necessary connection from one to the other and many thoroughly democratic churches were quite at peace with the monarchies of the 17th and 18th centuries both in England and Germany. Nevertheless it was a constant reminder that there were other types of government.

The feudal contract was an agreement between the leige
and the lord whereby the lord would protect the liege in return for a certain percentage of his harvest. In time of war the liege was to assist the lord in the common defense. Originally these contracts were freely entered upon and the liege was often the one to voluntarily surrender his lands in return for protection. According to the Magna Carta\textsuperscript{1} the liege was not obliged to pay more than the contract called for except for the ransoming of his body, the making of his oldest son a knight, and the marriage of his oldest daughter. In both Spain and England the coronation oath was taken by the king in the form of a feudal contract so that the idea of contractual responsibility was well grounded in the minds of the peasants during the 17th century.

As has been mentioned, the anthropological data gathered during the 17th century were fictionalized, scanty, and generally inaccurate. The data were a product of the era of geographical discovery that had suddenly erupted during the preceding century. Returning traders twisted their reports in order to attract more sailors on their hazardous journeys; foreign investments and colonial ventures were encouraged and gave rise to the idea of the noble savage, later to be exploited by

\textsuperscript{1} The position is maintained here that the Magna Carta was not an advance in feudal political theory but was rather an attempt to continue it against the encroachments of King John. The above conditions of the feudal contract while inscribed in the Magna Carta June 15, 1215, had actually been in effect for centuries. A discussion of early feudal contracts is presented in Chapter III.

Montesquieu and Rousseau. On the other hand there were stories, sometimes more authentic, of headhunters and cannibals that could also be misrepresented to increase their shock value. The political theorist could choose that report which best suited his temperament and philosophical prejudices. This, in fact, was what happened as can be seen in the works of Hobbes and Locke.

Because of Hobbes' materialistic metaphysics, his political theory was nothing more than a problem in mechanics and technology. Once his premise is granted as to the nature of man, the rest follows in perfect logical order. For him, both psychology and axiology are based on a concept of man as the machine, the self-moving automaton. "For what is the heart but a spring; and the nerves but so many strings; and the joints, but so many wheels, giving motion to the whole body." 1 All men are inclined toward a "perpetual and restless desire of power after power, that ceaseth only in death." 2 Every man is worth what another will pay for his power, not the value that he places upon himself. Life is "solitary, poor, nasty, brutish, and short." 3 The state of nature for men was not Cicero's harmony with the elements but the state of continual and unrelenting war. All social forms were artificially imposed though they were desirable in order to enforce the peace. Reason, according to Hobbes, is not an innate characteristic of each mind, but an

achievement that few minds can attain; the passions will always rule the large majority of people. Since this is so, only force can be relied upon to produce a reasonable society.

In Hobbes' analysis of natural man, he contradicts himself when he posits a universal desire for peace that would ultimately justify total submission to higher authority. If life is really what Hobbes claims that it is, poor, nasty, and brutish, then there is little room for the overwhelming desire for peace and security that would lead the brute into the trap. It is true that Hobbes equates the kingdom won by force with the kingdom created by mutual consent but the whole intent of his work is to establish the latter as a feasible and workable theory.

The only law of nature recognized by Hobbes was the law of self-preservation, the one law that could not be abrogated. On this fundamental drive he placed his total social structure; in order to achieve it man would be willing to give up all of his other so-called "rights." All individual liberty is surrendered in abject submission and the attempt is made to base a moral consciousness on brute necessity.

Justice, for Hobbes, consists in keeping valid covenants but there must be a power capable of enforcing them. Thus the contract for Hobbes was a tour de force to institute the absolute sovereign. Men were equal in the state of nature because each had the power to end the life of the other, what one lacked in physical power he made up for in cunning and
reason. As equals they could enter upon a contract where each would have one vote and with that vote transfer all of his rights to the sovereign.

The sovereign guarantees internal peace to the state and that is his sole reason for existing; the subject can make no other request. The majority institutes the contract because the majority is more powerful than the minority; once begun, the minority will perforce accept it. The sovereign may invoke divine aid in proclaiming the laws and fabricate myths to reinforce his statutes. He is the highest authority and no parallel organization such as the church can threaten his supremacy. Plato, Mohammed, and Machiavelli had made similar use of myths as a crutch to support the precarious status of the upper levels in the hierarchy. In the Leviathan Hobbes only devoted a few paragraphs to the concept of the social contract as such, but it was nevertheless the cornerstone of his system; for once the contract was accepted, the sovereign became its overt manifestation. The sovereign could do no wrong because his mistakes were actually the mistakes of the subjects, the members of the contract. In this sense the contract was continuous but in every other sense it was concluded with the creation of the sovereign. Nevertheless this thread of continuity is important for it makes of every sovereign decree a direct outgrowth of natural law, the drive for self-preservation.

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Through the method of the social contract what virtue can be found in the brutes is carefully collected and deposited in the sovereign. With a benevolence somehow born of tyranny he will provide for the subjects in such a way that life will be more tolerable for them than it would be in the state of nature. The Leviathan is a closely woven treatise that cannot be attacked at intermediate points; as with the Ethics of Spinoza, if it is to be disproven, error must be found in the major premise, either in the metaphysics, or the doctrine of man derived directly from the latter.

Hobbes bears a considerable degree of likeness to Machiavelli in The Prince. Both are sophistic in their general view of man but Hobbes was more interested in the philosophical justification for force, while Machiavelli was primarily interested in the mechanics of government, granted that force. Both were quite willing to use any means to achieve an end and both were prophets of absolutism. The concept of motion in Hobbes' metaphysics became the concept of political force in his theory of the state. Since this force was derived from the elementary drive, the law of self-preservation, it is clear that natural law in Hobbes' political theory was immediately derivable from physical law in the natural sciences. As such it contributed a new element to the doctrine of natural law, that of historical necessity, determinism, or as it is sometimes termed, historicism.

Historicism is the belief that the implacability to be
found in the relentless changing of the seasons is to be found in history, that man is not a determinant in history as a rational, creative being, but as a link somewhere between the original mechanical impulse and the effect. The Stoics had held to such a theory of history but it was a macrocosmic process that gave little attention to detail. When Cicero borrowed from the Stoic concept of natural law, the details of historical necessity were left out. Historicism may be understood as a product of the rationalists as opposed to the empiricists, the realists during the middle ages as opposed to the nominalists.

If it had not been for the mechanistic metaphysics of Hobbes and his willingness to equate man with the machine, his nominalism would have placed him on the side of the democratic state bound together with mutual ties of equality and purpose. A part of his historical importance is to be found in the suggestiveness of his treatise for the later, more liberal thinkers. This is found in his doctrine of equality and his characterization of reason as achievement. Unlike Cicero, he did not accept the analysis of man which pictures him as desiring to live in total harmony with his fellow man; he included the primitivism and necessitarianism which Cicero had not maintained. To the absolutism implied in the natural law doctrine he gave the highest place and the greatest weight. It is the quality of absolutism that forever places Hobbes on the side of the most

1. Hobbes was of course an empiricist in his epistemology but like Locke, he was a rationalist in his metaphysics.
extreme political thinkers; he is representative of a pole of thought which in the West has generally been considered the most suspect and has given rise to the worst forms of totalitarianism.

Thus in Hobbes, the natural law concept finds its most extreme and consistent exponent. There is nothing vague or undetermined about his analysis and there is no room for doubt as to what he means. The hypothesis is here maintained that if succeeding thinkers had followed Hobbe's analysis of natural law as implacable historicism, it would not have succeeded in catching the eye of subsequent political reforms. It was natural law as understood by Cicero, not Hobbes, that was accepted by later thinkers such as Locke and Rousseau. Or, it may be stated in another way; the nominalism, equality, and reasonableness to be found in the Leviathan subsequently triumphed over the concept of absolute historical necessity.

The implications of Hobbes' theory were more suggestive to succeeding thinkers than his conclusions. It was Hobbes' theory of the contract which survived and became increasingly important in the writings of Locke and Rousseau, important because of its ready applicability and assumption of equality. Since there is no evidence that Jefferson was influenced by Rousseau, Locke will be discussed.

The three cultural emphases that led to the social contract theory already discussed in relation to Hobbes, were even more pronounced for Locke. He was more receptive to them
and spent more time in their elucidation. Locke was intimately acquainted with the Protestant dissenters and their problems are discussed in his *Letters on Toleration*. He was also cognizant of historical contract patterns but had made few preleminary studies in anthropology. His was an imaginary anthropology, that is, his primitive society was contrived by stripping 17th century society of its civilized forms and then formulating an imaginative description of it.

As was pointed out in Chapter IV, reason, for Locke, is learned, an end, an achievement as it was for Cicero; he maintains the ultimate rationality of the world but the concept of natural law does not derive from the mechanical laws of nature. Even the moral consciousness arises from education; man is free and can use his creative reason to structure history, he is not a mere product of his drives and passions. Life, liberty and property rights are derivable from this concept of natural law as reason. Unlike Hobbes, for Locke, most people are reasonable.

Like Hobbes, Locke was an epistemological empiricist and all knowledge was dependent on individual perception; once having established this nominalism Locke does not destroy it as Hobbes did in the absolute state. Rather, it is carried to its ultimate conclusion in the constitutional, representative state.

As has been mentioned, the "state of nature" as described
by both Locke and Hobbes was erroneous.¹ Hobbes leaned to the brutal, Locke to the noble, savage; both warped the report to fit the needs of their system. However Hobbes' natural law concept could have been derived solely from his mechanistic metaphysics and psychology while for Locke this was not the case. The state of nature for Locke constituted his concept of natural law; in this sense Locke was much more dependent on his anthropological data, erroneous or not, than was Hobbes.² From natural law realized in the state of nature Locke derives his concepts of liberty, equality, and property. The latter is implicated in his idea of labor and the needs of life, a man owns what he needs to sustain himself and what he can employ to that end.

For Locke, the social contract is derived immediately from his doctrine of natural law, the reasonableness of man, of the satisfaction of a desire given to him by God to establish a society. The contract finds its first analogy in the family, "a voluntary compact between man and woman."³ Although the family exists as a patriarchy, the woman has the right of separation when the union becomes unbearable.⁴ Just as men enter the marriage contract they also enter the

¹. Locke, ECG, 118f; Hobbes, LEV, 110f.
². Locke, ECG, 119. "The state of Nature has a law of Nature to govern it, which obliges every one, and reason, which is that law, teaches all mankind who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty or possessions."
³. Locke, ECG, 115.
⁴. Locke, ECG, 156-7.
social contract to form a state and by the state formed in this way, with due respect to the rights and liberties of the individual, they are elevated from a state of nature to a society. However, if an attempt is made to form a government in which there would be only one ruler and one source of sovereignty, then it is not a society at all but the return to the state of nature. Chapters XI, XII, and XIII of An Essay Concerning the True Original, Extent and End of Civil Government are committed to the description of just such a representative government with the threefold division into the executive, legislative, and federative powers. Unlike Hobbes, for Locke the contract is continuous in every sense of the term. The end of society is the protection of private property and that government which does not protect property may be dissolved at will by the society. The society may exist in an informal manner without the government, but the government can never exist without a society.

What was said of Cicero holds true for the most part with Locke for in many ways they were similar. The emphasis for Locke is placed on the contract or the proposed constitution with the threefold division of government and the implied individual rights. This constitutes his primary contribution to succeeding thinkers and not his metaphysics (in the Second Essay) or his doctrine of natural law proceeding from the idealized state of nature. The articles in the contract outlined in Chapter XII of the Essay are a summary of the
current governmental practices of which he approved and it places considerable strain upon his natural law theory to show how they were necessarily derived from it. Thus it is here contended that since he could not have used natural law as what had already existed or what must necessarily exist, he must have understood it in the normative, idealized sense, as what could be if men allowed their reason to rule their passions. Like Cicero, he is holding up that tradition of which he approved for succeeding political theorists to read as a guide, not as an objective description. The term natural is a means of justification, if need be, absolute justification, a reassuring and semi-fictional point of vantage from which to strike at the mythically sanctioned monarchies of the past.

Actually, by relying on nature he is substituting one absolute for another and if he had followed it through logically, or been explicit in his original meaning, he would have created another totalitarian state. But he did not choose to do this; instead, he used it as a means for legal reform. It is a way of introducing the problem and giving external validity to a system of government that might otherwise have seemed to approach anarchy. The objection Locke had to Hobbes is not to be found in his metaphysics but in his totalitarian system of government; indeed there is little in Hobbes' epistemology with which Locke did not agree and he was more of an epistemologist than a metaphysician. Their disagreement
on the state of nature concept is not to be based entirely on contradictory anthropological data but on the ideal government each had in mind, for neither made a serious study of the primitive. For that matter, Hobbes did not make a serious study of any history previous to the Stuarts and had nothing but scorn to heap upon the current revival in Greek and Roman literature. Locke on the other hand looked more to the future and what could be accomplished with the growing tendency toward individualism. Hobbes attempted to halt the Enlightenment in his political philosophy, Locke attempted to further it.

As was pointed out in Chapter IV there is a contradiction between Locke's *Essay Concerning Human Understanding* and his *Second Essay on Government* if it is maintained that Locke believed there was an innate reason in everyone. The former is dedicated to the destruction of the belief in innate ideas. There is considerable evidence for this contradiction in theory but not in practice, not as it works itself out in the contract and proposed constitution. Thus while Locke may be attacked on the basis of logical contradiction, he cannot be accused of dual intent or purpose. The nominalism to be found in his doctrine of simple ideas is consistent with the individualism of his political theory. This further contributes to the thesis being presented here that the concept of natural law, was not, as such, a constitutive part of his system but was rather a means of justifying what seemed to him to be

useful at the time. Natural law theory rested lightly upon his shoulders.

Of the three men, Hobbes, Locke, and Jefferson, none was so little concerned with the relation of studies in primitivism to political theory as was Jefferson. At the same time it should be added that only Jefferson had a ready acquaintance with primitive peoples and had devoted a considerable amount of his time to the science of anthropology. For Jefferson it was a science and as far as his studies carried him, they were accurate. This can be seen in his Notes on Virginia mentioned previously. But he evidently did not believe that the American Indian could instruct him in government or that a thorough-going natural law theory could be based on their tribal behavior.

The introduction to this chapter pointed out that Jefferson's attitude toward the social contract could be determined from a study of the Declaration and his commentaries on the American Constitution. Chapter IV dealt with the Declaration and Chapter IX will deal with the Constitution. Natural law is invoked in the preamble to the Declaration but the bill of particulars which constitute the major content of the document make explicit just what he meant by natural law. Likewise the Constitution, which is a reflection of previous theories of the social contract, is understood as a product of natural law. Whether Jefferson viewed the Constitution as having authoritative validity in its own right or as a tool
for the promotion of good government, can be gained from a study of his commentaries upon it. That will constitute the subject matter of the chapter following.
CHAPTER IX

JEFFERSON'S COMMENTARY ON THE CONSTITUTION

On November 15, 1777, the Articles of Confederation were finally agreed upon by the hastily gathered and war-weary Congressmen. While the war was in progress and until the treaty with Great Britain was signed on September 3, 1783, the problem of mutual defense served to cement the newly-founded states together. But once the war was concluded, the Articles of Confederation were found inadequate to meet many serious problems confronting the new Confederacy. Thus on September 17, 1787, the Constitution was signed by the Constitutional Congress which represented some of the most outstanding leaders of the country. It was placed in operation by New Hampshire's vote to ratify in June, 1788 and the Republic was formed.

The Articles of Confederation were based on state representation and as such, guaranteed the states individual sovereignty in Article II of that document. Although attempts were made to enforce laws mutually beneficial to all of the states, when one state did not wish to concur, it proceeded to ignore them. It had been useful as an instrument of war as long as the individual states volunteered men, but once the emergency was past, the war-born document found it difficult to control a peace economy.¹ This was particularly so with the suddenly overwhelming demand for manufactured articles, articles

¹Jefferson, VIII, 35.
that for the first time were to be made in the states.

In comparison with the Articles of Confederation the Constitution made provision for a highly centralized government with popular, not state representation. The people elected Congress in the same manner that they elected the powerful state legislatures; both the House of Representatives and the Senate were popularly elected. Furthermore, the elections of Representatives were based on population distribution which contributed to the trend toward popular rule. The Constitution, like most democratic documents, reflected months of legislative compromise between the large established groups of the country.

With some modification, the Constitution was a direct descendant of the social contract theorists discussed in the previous chapter. This is not to say that the authors of the Constitution depended solely on these theorists in the penning of the document; rather, it is to affirm that the Constitution realized the social contract ambition, both (1) in the manner of ratification and (2) its subject matter. Furthermore, as was pointed out in Chapters IV and VIII of this study, it was in full accordance with Jefferson's meaning of natural law and was a product of the same.

In turning to a careful scrutiny of Jefferson's Commentary on the Constitution a number of problems should come to light: (1) The manner in which Jefferson adapted natural law theory to specific problems in government; (2) the relation of a

1. Locke, EGG, XII.
primary document derived directly from natural law, to secondary, civil, or positive law; (3) Jefferson's consistency as a commentator before, during, and after fulfilling positions of public responsibility and trust, where ample opportunity was given to execute it. Jefferson served as Secretary of State under Washington and as President for eight years. As Vice-President under Adams, he did not have direct authority and was embarrassed by Adam's opposition to Republican policies. A documentary answer to the above points should in turn establish the degree to which Jefferson relied on natural law theory, whether for him it was only a term with psychologically suggestive overtones of approval or an absolute rule rising from the harmonious nature of the law-abiding universe. Stated differently, the primary problem of this chapter will be resolved when it is understood whether or not Jefferson's natural law theory was an *apriori* concept. It is in the answer to this question that the primary justification for this whole study will be found.

A hurried survey of Jefferson's comments on the Constitution reveals a startling lack of consistency if each statement found in his letters and elsewhere is to be equated with every other. At the risk of seeming arbitrary they will therefore be separated into three groups, those made before, during and after his terms in public office. The justification for the division is to be found in their relative consistency within each time period and in the distinctive character of the
problems facing him in office. It is believed that the subsequent parcelling will be useful if it is remembered that a single man is being studied and that the divisions must ultimately be dissolved before general statements can be made as to the nature of his thought. They are functional, not elemental distinctions.

The Constitution, signed in mid-September, 1787, was received by Jefferson, in Paris, well before the end of the year and a number of first impressions are available from that time. In a letter to John Adams on November 13, 1787, Jefferson expressed forthright disapproval. Beginning with the question, "How do you like our new constitution?" he continues, "I confess there are things in it which stagger all my dispositions to subscribe to what such an Assembly has proposed." Two outstanding and devastating criticisms are levelled against it in this letter. In the first place, he points out that the "house of federal representatives" will not be able to manage foreign affairs. In the second, he claims that the absence of a clause forbidding the reflection of the executive will ensure the success of some future attempt to establish a monarchy.¹

The Presidency, he claims, is a bad edition of the Polish king. The paragraph is concluded with the following observation:

Indeed, I think all the good of this new constitution might have been couched in three or four new articles, to be added to the good, old venerable fabric which should have been preserved even as a religious relique.²

¹ Jefferson, VI, 370.
² Jefferson, VI, 370.
The extensive quotations from this letter to Adams are important for they are the first criticisms that he leveled against the Constitution and he is never to speak of it in such derogatory tones again. While in Paris, Jefferson's knowledge of what was happening in America was dependent on letters sent from trusted friends, many of whom were outstanding leaders in the authorship of the Constitution and in the subsequent movement to have it ratified. Undoubtedly, it is this fact that later tempered his statements and reduced his criticisms to two well-defined points. The two, one of which is contained in the above letter are: (1) The need for a bill of rights, and (2) the desirability of making it impossible for the president to succeed himself. In subsequent letters to Madison these points are made clear. The first was picked up immediately by the various state legislatures and finally Massachusetts ratified the Constitution only on the condition that immediate steps would be taken to provide a bill of rights. Thus, even before Jefferson returned to Monticello from Paris, such a movement was well under way and was to gain momentum as ratification progressed.

The letters Jefferson wrote to Madison and others while in Paris after he had received a copy of the Constitution first go through a period of disapproval, then neutrality and finally limited approval, once the bill of rights amendment gained support. From time to time there was also another criticism that he made in reference to the third paragraph of Article VI.
The officers, he claimed, should not be required to take an oath to uphold the Constitution. This opinion was mentioned in a letter to Madison in December, 1787 and taken up again at various periods throughout his life.¹ By July of 1788 Jefferson had written to Madison that it was a "good canvass on which some strokes only want retouching."² The "retouching" of which he spoke was the much needed bill of rights. In May of the same year he had written to William Carmichael that, "It will be more difficult if we lose this instrument, to recover what is good in it, than to correct what is bad, after we shall have adopted it. It has, therefore, my hearty prayers."³ Writing to Rutledge the same year he says, "Our government needed bracing. Still, we must take care not to run from one extreme to another: not to brace too high."⁴ During the nine odd months when the Constitution was in process of ratification, Jefferson wrote to several of his friends that the nine required states should ratify the document but the other four should wait until the bill of rights was added, thus making it incumbent upon the first nine to speed the process. But after Massachusetts had included a clause along with the vote for ratification, to the effect that immediate steps be taken to amend, he concluded that the remaining states should accept this as a model.

It was with some reluctance that Jefferson relinquished the right of the states to conduct all of their elections and

have state delegates appoint the federal representatives; this was the method employed in the Articles of Confederation, Article V. However, between 1787 and 1789 his reluctance was displaced by full approval in a letter to F. Hopkinson; the approval was based on the recognition that the federal government levied direct taxes on the individual. A section of the letter to Hopkinson bears quoting for it is an excellent summary of his views. It will be noted that he speaks approvingly here of the federalists, that is, those who are supporting the Constitution, not the Federalists of the bank controversy which will be discussed later.

I am not a federalist, because I never submitted the whole system of my opinions to the creed of any party of men whatever, in religion, in philosophy, in politics or in anything else, where I was capable of thinking for myself. Such an addiction, is the last degradation of a free and moral agent. If I could not go to heaven but with a party, I would not go there at all. Therefore, I am not of the party of federalists. But I am much farther from that of the anti-federalists. I approved, from the first moment, of the great mass of what is in the new Constitution; the consolidation of the government; the organization into executive, legislative, and judiciary; the subdivision of the legislative; the happy compromise of interests between the great and little States, by the different manner of voting in the different Houses; the voting by persons instead of States; the qualified negative on laws given to the executive, which however, I should have liked better if associated with the judiciary also, as in New York; and the power of taxation.

Throughout this time period Jefferson reveals a

considerable elasticity of judgment, a willingness to alter his view when new facts are presented, but at the same time an attitude of self-reliance. His judgments of the Constitution are independent and based upon his own experience in similar controversies. Yet at the same time he reveals a high regard for the views of others and it is easy to trace the metamorphosis in his writings. Koch, in her Jefferson and Madison, places considerable emphasis on Jefferson's reading of The Federalist which he received while in Paris, as a key to the modification of his opinion.\(^1\) In a letter to Madison in 1788, Jefferson deprecates two of the hands that had a part in its authorship, but on the third he places his almost unqualified approval. He erroneously believes that Madison wrote the greater part and it is not at all certain he guessed correctly in distributing the articles among the authors.\(^2\) "It does the highest honor to the third, as being, in my opinion, the best commentary on the principles of government, which ever was written." He goes on to say, "I confess, it has rectified me on several points." The one point that had not been rectified was the necessity for a bill of rights; he continues to plead for this basic code of individual freedom with relentless reiteration. Jefferson does make it quite clear here that his primary sympathies were with Madison; in fact, his ready reference to the articles written by Madison leads the reader to believe

\(^1\) Koch, JAM, 46f.
\(^2\) Koch, JAM, 54; Jefferson, VII, 183f.
that they were with Madison regardless of what he wrote, and by the same token he was opposed to Hamilton and Jay. Although Jefferson was later to be at odds with the patrician from New York, it is to be remembered that he had not yet weathered the storm of the bank issue in Washington's cabinet. It is doubtful therefore if as much emphasis can be placed on Jefferson's reading of *The Federalist* as Koch maintains. Her title commits her to the task of proving a degree of intimacy, mutual accord, and inter-dependency that with all of its evidence fails to create another Jonathan and David.

This is not to question the importance of *The Federalist* in promoting constitutional ratification and approval in state legislatures. It is to maintain that Jefferson had not read it too carefully at the time of the above writing, was not certain of the authorship, much of which is still in question, and was consequently too hasty in his ready recommendation. He had altered his opinions on the Constitution before receiving a copy of *The Federalist* and he did not make a substantial change again after reading it.

One of the most controversial of Jefferson's letters to Madison has been purposely excluded from the foregoing discussion for consideration at this point. This is the well-known "the earth belongs...to the living" letter which is not directly but indirectly related to the discussion of the Constitution.¹ It is cast in a much larger framework and includes all laws

¹ Jefferson, VII, 454.
passed by any one generation. No man can, by natural right, he claims, legislate for a generation yet to appear, for the sum of the rights of the individuals are equal to the rights of the whole at any given time. Slicing directly across the theories of the state advanced by Hume and Burke, Jefferson is therefore denying a necessary continuity to the state as such, along with the denial of a sovereignty superior to the people. Furthermore, he does this in the name of natural right. In other letters on the same subject he alters the span of a generation from 34 to 19 years, but the length of time is unimportant here. It is important that he repeatedly advances the theory that each generation should be left free to begin anew with an indigenous legal system of its own choosing. With death, all property rights are dissolved for where there is no substance there can be no accident. That others did not take up the theory, indeed that most for whom he outlined it were in active opposition, did not dissuade Jefferson from repeating it throughout his life.¹

Clearly this is one of his most extreme statements, with the possible exception of his insistence that periodically the tree of liberty must be watered with the blood of the heroes. The problem of simple mechanics, of just how each generation was to consciously deny the past and begin again, a problem frequently pointed out to him by his friends, did not daunt his resolve. The argument is so extreme and denies so many

¹ Jefferson, XV, 318.
historical implications, of which Jefferson was fully aware in other areas, that it would be almost beside the point if it did not represent a pole of thought the opposite of which was no less absurd. The combined effect of both Burke's and Hume's political writings on the subject was pointed toward the conclusion that the state which was best would necessarily be the state which was oldest. Thus Jefferson's position, while it lacked practical application, could well serve as an antidote to Hume and Burke. In this letter the political nominalism of Locke reaches its logical conclusion and is applied not only quantitatively to individuals but temporally to generations. If this is to be taken literally and in its extreme form as Jefferson gave every indication that it was to be taken, then it is a denial of the accumulative and additive forces in history. It leaves no doubt as to what he means by the state and if this letter is to be taken as indicative of his political philosophy it will leave no room for argument as to the central problem of this chapter. Natural law would be taken to mean nothing more than a cross section of public opinion at any given time. 1 Needless to say this is certainly not what Hobbes had in mind, or for that matter, Locke. But first his official decisions regarding the Constitution must be discussed.

Jefferson was Secretary of State from February 14, 1790

1. Jefferson, XV, 33f. "A government is republican in proportion as every member composing it has his equal voice in the direction of its concerns."
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to December 31, 1793. During this time his most important single controversy was with Hamilton over the proposed bank bill.\(^1\) The Secretary of the Treasury issued his recommendation concerning the incorporation of a bank on December 13, 1790. The bank was to be incorporated by the government but privately owned; however the government was to receive a part of the proceeds, a part commensurate with its original investment.

Jefferson wrote his compendious opinion of the proposal on February 15, 1791. It was unalterably opposed to the bill for two reasons. The first was that it was unconstitutional and inconsistent with the development of legal tradition; a number of such traditions were cited specifically. The second reason was based on its supposed economic effect, once it was passed. However, the bulk of the objection was based on the unconstitutionality of the bill, not its economic effect on the commonwealth. The previous legal traditions are cited with an intended authoritative effect and as having a definite bearing on the efforts of the new nation to construct its economy on a sound basis. His criticism here is based on a limited and strict construction of the Constitution.

If such a latitude of construction be allowed to this phrase as to give any non-enumerated power, it will go to every one, for there is not one which ingenuity may not torture into a convenience in some instance or other to some one of so long a list of enumerated powers.\(^2\)

\(^1\) Cf. Koch, JAM, 108f. Again Koch is concerned to indicate the cooperation of Jefferson and Madison on the bank bill question.

\(^2\) Jefferson, III, 149.
Without entering the tortuous channels of precise legal interpretation and construction, one point seems quite clear in the opinion presented by Jefferson to the President. If Jefferson had been consistent in the structuring of his opinion, consistent that is with his previous commentary on the Constitution, he would have placed the emphasis on the situation, the economic aspects of the proposed bill. These he hardly touched and at no point did he go into them in detail. It would be to evade the point to argue that he did not feel qualified to discuss the bill from an economic standpoint. There were few fields in which Jefferson did not feel qualified to speak and even those areas which were foreign to him could be brought rapidly into the range of comprehension given a few days in his library. Furthermore, his letter to friends while in Paris had been crammed with the fiscal and commercial policies of the United States, not only the policies of his own nation, but the management of much larger and more experienced national treasuries. Thus, to have been consistent with his previous stated policies he should have explained that it was unacceptable because of its economic consequences. Clearly, in this situation he shifted from the \textit{aposteriori} to the \textit{apriori} basis. While a distinction between theory and practice, objective conjecture from across the ocean and subjective responsibility in office, might be helpful in a biography, such a distinction does not absolve him of a philosophical contradiction.
In another opinion written in April, 1793 Jefferson takes up the problem of treaty status when a nation is torn by revolution. The country in this instance is France. The opinion is rather long and concludes with a harmony of selected quotations from Grotius, Puffendorf, Wolf, and Vattel, in that order. In the body of the text and in these quotations it is maintained that the treaties remain valid because the people are the same and the state is to be identified with the people. Whether or not "people" extends beyond one generation is not made clear. He further adds, "questions of natural rights are triable by their conformity with the moral sense and reason of man." In the event that there is disagreement between philosophers of natural law then the individual reader is thrown back upon his own reasoning and "feelings" to guide him. This is more consistent with his previous pragmatic and contextual views.

John Adams, the second president, during his first term of office was so infuriated with France and French citizens as a result of the X, Y, Z affair that the Alien and Sedition Acts were passed in 1798. The Alien Act provided for the expulsion of aliens at the will of the president, but no alien was returned to his homeland because of it. However the Sedition Act which placed sharp curbs on the freedom of speech and press, when either means was employed to attack governmental policy, was placed in effect and several Republican publishers were

1 Jefferson, III, 235.
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jailed. Jefferson, who had opposed the strong measures taken during the Whiskey Rebellion in 1794, measures that had elicited some unwarranted and unguarded strong arm statements from Washington, was equally opposed to the Alien and Sedition Acts of Adams. But opposition was difficult for he was the Vice-President under Adams and direct assault would have been inadvisable.

Through close friends he precipitated a series of moves that were veiled in secrecy, a disguise that was maintained surprisingly well. Kentucky was chosen as the first state in which to voice serious opposition to the laws and it was Jefferson who penned the Kentucky resolution and had it introduced to the state legislative body by a close friend. The Resolution\(^1\) made the point that the compact nature of the Constitution permitted each state to determine for itself what was, and what was not, constitutional. This, it will be remembered, preceded the well-known supreme court decision rendered by Chief Justice John Marshall in 1803, "Marbury v. Madison," in which the right of judicial review was proclaimed.

It was the opinion of the Kentucky House that the Alien and Sedition Acts were unconstitutional, therefore it proclaimed them null and void. Soon after the passage of the Kentucky Resolution a similar resolution was passed by the state of Virginia; the resolutions did not have an immediate effect

\(^1\) Copies of the Virginia and Kentucky Resolutions may be found in Foley, TJC, App., 977.
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upon other states but considerable sentiment was aroused throughout the country and a Republican administration was seated in government with the "revolution of 1800." ¹

The urge to speculate upon the contrary-to-fact conditionals in history is almost overwhelming and one of the most interesting in this connection has a direct bearing on Jefferson's unique position in the government at the time he wished to formulate an opposition policy. The Kentucky and Virginia Resolutions forever place him at the extreme "states-rights" pole of American political thought. If he had not been Vice-President and if he had been in a position to bring more direct pressure upon the federal government, it is doubtful if he would have penned this extreme "states-rights" document at all. No one spoke more approvingly of the Constitution than Jefferson at the time of his inaugural into the presidency and no one has used more effectively the peculiar powers of the executive under the Constitution to suppress unwelcome legislation. When Jefferson became president all persons held under the Sedition Act were released and no others were convicted until it expired. This is not to question that Jefferson was an advocate of individual state rights, but it is to suggest that he would not have been so strong an advocate if it had not been for the peculiar position he held at that

¹ Koch, JAM, 174. The emphasis here is again placed upon the dual role of Madison and Jefferson. Madison penned the Virginia Resolution in the same manner that Jefferson penned that of Kentucky. Madison's resolution was somewhat milder than Jefferson's.
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time. As Vice-President to a president who was a member of an opposing party Jefferson was somewhat limited in his overt political alliances.

From the time that he penned his Notes on Virginia, Jefferson revealed a predisposition toward agrarianism as opposed to the large centers of manufacture and finance.¹ In various letters mentioned previously and in his Notes in particular, it has been pointed out that Jefferson believed the farmer was the bulwark of freedom and democracy because of his first-hand acquaintance with the sweat shops of Europe and the lack of individualism observed there. He had a basic distrust of large manufacturing centers and had never felt at home in New York or Philadelphia. On his plantation he instituted a number of experiments to prove that a farm could be completely self-supporting. In a letter to his daughter, Martha, Jefferson states that, "it is a part of the American character to consider nothing as desperate, to surmount every difficulty by resolution and contrivance. In Europe there are shops for every want..."² In America few shops were to be needed.

His predisposition toward agrarianism is also reflected in his desire to have the capital situated away from the large

¹ Cf. Beard, EQJD, 415f. Beard is here more interested in investigating the great economic background involved in the shift toward Jeffersonian democracy. While Beard's study goes a long way in explaining the economic basis for Jefferson's support and the conflict between the agrarian and manufacturing economy, it is not felt that it contributes materially to this study.

² Jefferson, WOJ, IV, 373; Foley, TJC, 762.
financial centers of the growing nation. He believed that it would be less prone to graft, fraud, and bribery.\footnote{Jefferson, WOJ, III, 458; Foley TJC, 926.}

Jefferson became president on March 4, 1801 after John Adams had made a number of last minute appointments from among the Federalist ranks, some of which he forgot to deliver. Adam's unwillingness to remain for the inauguration was considered in bad taste and its effect was not lost on Jefferson. A long friendship was thus brought to an abrupt end, a friendship that was to be renewed much later, however.

Jefferson unlike Washington and Adams, did not deliver his messages to the legislative bodies personally. He instituted the practice of delivering written messages which did not have to be answered by an inexperienced congress. However, the First Inaugural was delivered in person and amounts to a summary of his views on government at that time. Jefferson was the first president to have been elected by the numerical superiority of one party as opposed to another after bitter conflict. Therefore his inaugural was an attempt to heal the breach and is marked by a conciliatory tone, "we are all republicans--we are all federalists."\footnote{Jefferson, III, 319.} In a classic statement designed to strike at the heart of the intentions embodied in the Alien and Sedition Acts he related the following:

\begin{quote}
If there be any among us who would wish to dissolve this Union or to change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it.\footnote{Jefferson, III, 319.}
\end{quote}
It is in the First Inaugural Address that Jefferson reaffirms his belief in the Constitution and the primary principles of the American government. The Constitution is defined as a "sheet anchor of our peace at home and safety abroad."\textsuperscript{1}

The phrase is a happy one and a metaphor that may well typify his opinion of natural law and compacts derived from that law. A sheet anchor is used by the captain of the ship in time of emergency; it is usually larger than the other anchors.

As was mentioned above, when Jefferson became president he found on his desk a number of undelivered appointments made by John Adams to fellow Federalists in and around Washington. Jefferson held them, claiming that an appointment was not completed until it was received, until then it had only potential validity. His power to do so was contested in the famous case of "Marbury v. Madison" in 1803. Madison had in the mean time become Secretary of State and it would have been his responsibility to execute the appointments if he had been secretary at the time. Therefore it was the Secretary of State against whom the suit was brought. Since the court ruled it had no jurisdiction in the case, it was a technical victory for Jefferson, but Chief Justice John Marshall added a section to the decision which not only struck an effective blow against the Republicans, but made subsequent legal history. It was the decision in which he established the precedent of judicial review,\textsuperscript{2} a precedent still honored but

\textsuperscript{1} Jefferson, III, 321. \textsuperscript{2} Marshall, Art., 185-9.
not explicitly defined in the Constitution.

Jefferson had maintained that each department in the government had the right to decide for itself whether its own actions were, or were not, constitutional. In the Kentucky Resolution he had further maintained that the states as sovereign members of a mutual compact, had the right to pronounce any law null and void, a practice that found its precedent in the old Articles of Confederation. Thus Jefferson had in effect suggested two alternatives to the doctrine of judicial review, neither one of which was accepted. The Kentucky and Virginia Resolutions had doubtless done much to provoke the decision rendered by Marshall. There was really nothing in the suit of "Marbury v. Madison" that called for the ruling even if the case had been declared within the jurisdiction of the court. As it was, it could have been interpreted as little more than a well-aimed blow at a "states-rights" and "equal-powers" administration.

From the time of this decision on, Jefferson was a confirmed enemy of the United States Supreme Court. Marshall had been an advocate of the Federalist position and had aligned himself with Hamilton and Adams. Jefferson argued that the right of judicial review gave that wing of the government which was least dependent on popular approval, a negative over the other two.¹ Thus the right of judicial review was out of harmony with the spirit of the Constitution, a biased

¹ Jefferson, XV, 213.
construction designed to grab power for one department at the exclusion of others. In 1802, before the above decision, Jefferson had written to Albert Gallatin, his Secretary of the Treasury, the following concerning the Constitution.

If on one infraction of the Constitution, we build a second, on that second a third, any one of the powers may be made to comprehend every power of government.¹

In that letter he is quite concerned to bring the acts of the executive branch within the intent of the Constitution. His opposition to Marshall was therefore on these same Constitutional grounds and it was the Constitution alone which became the criterion of judgment. There can be little doubt that here, as in the case of the bank, Jefferson is employing a tight construction of the Constitution to further the goals of his own party and that he does not hesitate to rely upon the Constitution when those goals can be thus furthered. At such times, for him, it is placed on an extraordinarily high pedestal.

In 1802 Jefferson had written to Joseph Priestley the following:

Though written constitutions may be violated in moments of passion or delusion, yet they furnish a text to which those who are watchful may again rally and recall the people; they fix too for the people the principles of their political creed.²

Along the same lines he penned a similar letter to C. Nicholas

¹ Jefferson, X, 338.
² Jefferson, X, 325.
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in 1803.

I had rather ask an enlargement of power from the nation, where it is found necessary, than to assume it by a construction which would make our powers boundless. Our peculiar security is in the possession of a written Constitution. Let us not make it a blank paper by construction.

On the basis of the preceding comments it is herein concluded that Jefferson's statements concerning the Constitution while he was in a position of power, as Secretary of State, as Vice-President and as President, were based on a rather strict construction when it suited his purposes. To be sure, there is nothing in the document that gave him the authority to buy the Louisiana Territory or participate in the construction of roads and canals, a project undertaken by Albert Gallatin his Secretary of the Treasury. These somehow went unnoticed as far as the Constitution was concerned reflecting only the willingness of Congress to support all attempts at western expansion. But at just those points where the Constitution was immediately involved, Jefferson gave it a limited interpretation. It was that basic legal code which bestowed upon him his official prerogatives. Also, a part of the motivation may be traced back to his primary interest in the Bill of Rights which he had worked so hard to obtain and the feeling that the whole structure of government rested ultimately upon these fundamental natural rights.

With Jefferson's retirement from public life in 1809

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there came an entirely different attitude. Immediately after returning to Monticello he wrote to his previous Secretary of State and successor to the presidency, that "no constitution was ever before so well calculated as ours for extensive empire and self government." But after several years a different sentiment is expressed along with the continued bitterness against the Supreme Court. In a letter to William Johnson in 1823 he writes the following.

On every question of construction, carry ourselves back to the time when the Constitution was adopted, recollect the spirit manifested in the debates, and instead of trying what meaning may be squeezed out of the text, or invented against it, conform to the probable one in which it was passed.

Here the emphasis is placed not on a literal reading but "the spirit" of the founding fathers, what they intended to do. It is contextual rather than transcendent for its emphasis is on the intent rather than upon the document itself.

The distinction here has numerous implications in the philosophy of history and politics to say nothing of the parallels in the history of philosophy. The so-called liberal interpreters of a legal document may well argue that they maintain more continuity with the author of the document than those who follow a literal or dogmatic construction. The contention is based on the fact that a ratio exists between problem and answer which may be valid for all problems, whereas

no specific answer can anticipate future needs. Consequently, the literalist in the very act of attempting to maintain the tradition, thwarts, frustrates, and eventually destroys it. Mockery is nothing more than precise and faultless imitation out of context. Jefferson, in saying that he followed the spirit or intent of the Constitution, believed that he was nevertheless, following it, maintaining legal continuity. It was the method he used in culling from the New Testament what he believed was the historical Jesus.

Later in life Jefferson described the Constitution as a "compact of independent nations" reverting back to the powers implied in the Kentucky resolution. A point must be added here. When Jefferson spoke of the Constitution as a compact of independent nations, as he did on several occasions, he had reference to the method of ratification. It will be remembered that the Constitution was ratified by states, or rather by nations, as nations. But once it was instituted the unique position of the states as independent entities ceased and the machinery of the Constitution called for direct, not indirect, representation. Jefferson was thus making of the Constitution nothing more than a revision of the Articles of Confederation. There is little doubt but what this was what he had in mind as the "sage of Monticello" after his retirement from public office. In a long and rambling letter to Samuel Kerchival in 1816 he gives a succinct and precise wording to many thoughts only implied in other letters on the same subject. Turning
back to the days when the Constitution was written he says that at that time and under the stress of war, the leaders had imagined every government that was not expressly monarchical must have been, by that token, republican. But republican government is only achieved when every member has an equal voice in its affairs. Republicanism then is not to be found in the Constitution but in the attitude of the people which make up that government. The success of the Constitution was not derived from the provisions of that document but from the spirit of the people, a spirit that has prevailed "in spite of" the Constitution. The functionaries of government have succeeded because they were generally honest and it is this presupposition of fundamental honesty which the Constitution must presuppose before it can be effective.

Some men, Jefferson adds in the same letter, look at the Constitution as if it were the ark of the covenant and as if it could not be touched under any circumstances. Succeeding generations have ascribed to the founding fathers a wisdom that they did not possess, and that human beings could not be expected to possess.

I knew that age well; I belonged to it, and labored with it. It deserved well of its country. It was very like the present, but without the experience of the present... I am certainly not an advocate for frequent and untried changes in laws and constitutions... But I know also, that laws and institutions must go hand in hand with the progress of

the human mind... We might as well require a man to wear still the coat which fitted him when a boy, as civilized society to remain ever under the regimen of their barbarous ancestors.\(^1\)

Clearly, this is a return to the sentiment expressed before he accepted public responsibility as Secretary of State and as President. The oath to uphold the Constitution, an oath to which Jefferson objected, may nevertheless have been taken quite seriously by him, but it is questionable if this is the only reason for his altered attitude. The position outlined above plus other statements in the same letter is an echo of the thought he first conveyed to Madison, that the land belongs to the living. It is the spirit of reform, change, frequent alteration and experimentation.

From the foregoing study of Jefferson's regard for the Constitution before, during, and after his appointment and election to public offices, it is quite clear that it meant most to him while he was serving in office, when he was in a position of public trust. It is also quite clear that at no time in his life was it ever considered above the will of the majority and his faith in the document lay in its capacity for amendment. The controversies that raged between the Federalists and the Republicans colored the waters considerably and make it almost impossible to arrive at clear and objective conclusions. There is little doubt but what his conflict with the Supreme Court resulted in a deep bitterness toward

\(^1\) Jefferson, XV, 40-41.
that body, a bitterness that made every subsequent court decision suspect. Jefferson possessed an unbounded faith in the decisions of the majority, in the individuals ability to fully appreciate a situation and reach definitive conclusions concerning it during his own lifetime. He was fond of turning the question on his reader and asking who, if not the people, could decide their fate. It was a faith based on reason but reason understood as a derivative of public opinion. The majority was not right because it was reasonable but it was reasonable because it was always right; reason represented for him a cross section of public opinion. It is herein suggested that natural law for Jefferson was synonymous with majority opinion, that the social contract was not only continuous as opposed to Hobbes' theory, but eternally self-renewing. The Constitution was for him a social contract in the sense that it represented a cross section of public opinion at the time it was ratified.

For Jefferson the distinction between statute and constitutional law was a functional, not an ultimate partition. Thus there was no ultimate distinction between natural law and civil law and nothing inconsistent in declaring that two laws could both be natural although contradictory, if legislated at different times to satisfy distinct needs. If it had any significance whatsoever for Jefferson, it was a historical or psychological significance. The historical significance was derived from its use in the past. Because of
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its previous use it had an emotive connotation. Tutored in an atmosphere of traditional legal philosophy, that had been influenced by what Mill\(^1\) chooses to call "sentimental deism," Jefferson continued to use a term to the end of his life that had long since lost the qualities of normative prediction or determination.

In his little essay, "Nature," John Stuart Mill makes a number of helpful distinctions and subsequent criticisms of the concept. The first meaning to which he attributes the term, is that which is, and the second, is that which was before it was reconstructed by the voluntary activity of a rational being.\(^2\)

In the first instance it is understood that natural scientists do not break natural laws and have never done anything "unnatural" in their lives, for that matter, neither has anyone else. If an irregularity does appear in relation to what was previously known as a law, then the law is rewritten, but nature remains as it is. From this point of view it is absurd to label any operation unnatural; when you have applied the term to another term such as law, you have contributed nothing intelligible to the latter, it has not been limited in any way.

The second meaning and one, that might well have been shared by the political philosophers who began with an analysis of primitive societies, holds that everything previous to the rational creature was natural. Thus all civilized forms and

\(^{1}\) Mill, Art, 6.
\(^{2}\) Mill, Art, 5.
all advances in technology are unnatural. But here again it was the primary point of these thinkers that natural laws could transcend a civilized culture; they were not, with the possible exception of Rousseau in his earlier essays, opposed to civilized rational forms as such. They instituted those forms and spent most of their time in implementing them to build the good society. To have been consistent they should have recommended a return to primitive societies.

Mill points out that no natural law theorist has really intended either of the above meanings but rather has used the concept to convey a normative connotation, a description of what ought to be. Thus societies should comply with natural law, should set such laws up as an ideal for possible future achievement and realization. But if they meant this, then they could only mean that a person should act rationally, that he should use some laws to counteract others, that he should make decisions which would place him in rewarding situations. But this is not complying with nature as such, it is using some natural phenomena to overcome others. Natural, when not opposed by some theory of the Supernatural, is an all-inclusive term; it does not delineate one phenomenon and oppose it to another. One could conclude on the basis of reason and intelligence that in order to live one must eat and set in process a series of operations that would yield an edible object. It would be unreasonable to say that man does not need food in order to live, but neither the wording of the proposition
nor dietary abstinence would be unnatural. What is meant here is not the ability to comply with natural laws which cannot be violated anyway, but the ability to act rationally, or intelligently.

Mill's essay was written over twenty-five years after Jefferson's death and it was not published until after the death of Mill in 1873. There is no evidence that Jefferson ever did make a serious study of the term nature but if he had there is little question but what he would have been in full agreement. This can be seen from a comparison with the three men discussed in the previous chapter.

In the last chapter the social philosophies of three men were studied in some detail, those of Cicero, Hobbes, and Locke. Each had a definite meaning for the phrase natural law and each used it as a constitutive part of a general political philosophy. Cicero, drawing on the Stoic cosmic scheme of materialistic determinism used it as a general concept with little necessary connection to specific content. The content, for him, therefore consisted in surveying past legal systems and deriving from them an ideal legal system. As a Roman, it was the Roman code embodied in the Roman Constitution that most appealed to him and it became in effect, what he understood as naturally inspired positive law.

Cicero attempted to maintain historical continuity with the past, to maintain it with modification to be sure, but still to maintain it. He did not have in mind a state that was to
be purified periodically by civil wars and revolutions, but a state developing from its own past, corrected, modified, and reorganized if need be, but not revolutionary. As was pointed out in the previous chapter, there was a compulsion to maintain the customs of the past, the rites, and the religiously inspired codes. Indeed natural law was brought in as a type of conserving agency which would guarantee the conservation of the past and project the better aspects of it into the future. This capacity for conservation was implied in holding up an idealized version of the Roman Constitution for the instruction of future lawyers; it was further implied in the act of surrounding the code with a protective ontology at the very time it was being seriously threatened. The act of taking the code from its contextual courtroom setting and placing it on a philosophical basis may well have been motivated by this threat.

Jefferson did not follow Cicero in employing the concept of natural law as an agency of conservation, although on occasion he did seem to imply this. Its use in the Declaration and some letters written at the time indicate that he might well have had this in mind. But the thesis that the land belongs to the living, first introduced while he was in Paris, but continued throughout his life in one form or another, places the opposite construction upon it. On several occasions Jefferson outlined a criterion that might well be relevant at just this point. "When an instrument admits two constructions, the one safe, the other dangerous, the one precise, the other
indefinite, I prefer that which is safe and precise.\textsuperscript{1}

Jefferson's ambiguous use of the term natural does admit of at least two constructions. In choosing between the rationalism and traditionalism implied in his use of the natural law concept, an implication for the most part gained by reading into it what previous thinkers had meant, and the political positivism clearly asserted time and again, it would seem that the latter is much more "safe and precise." Where there is doubt, the position outlined in positive, discrete terms is superior to implied meanings. Viewing his lifetime as a whole it must be concluded that as he grew older, he grew less and less conservative, or rather, more and more liberal. The instances where the implied traditionalism may be found in his meaning of natural law become fewer and farther between as time goes on.

The hypothesis must at least be maintained that during his terms in public office Jefferson employed the concept for its mythical qualities, a political occultism in the Platonic and Machiavellian mode. That it was probably unconscious is beside the point. That he used it thus less than either Cicero or Locke is important. Later in life it was almost non-existent and he did more than most of the Founding Fathers to purge it from the American tradition. No judgment is being entered here, either for, or against the political myth. It has its corollaries

\textsuperscript{1} Jefferson, X, 418.
in other realms of human endeavor, both religion and science. Some form of it is in every culture and Jefferson was striking at the root of an American variety when he reminded his reader that the Founders were much like other men. Ironically this political Saint George, who slew his share of dragons, has since become a candidate for a more recent democratic mythology.

It should not be forgotten in this discussion of Jefferson's decisions concerning the Constitution while he was in office, that it was a document produced by his own generation. Technically, even when he revered it for its own sake, he was fulfilling the doctrine that he instituted in the letter to Madison. He had no objection to Constitutions as such; he objected to their being passed from one generation to another. Thus when Jefferson used the Constitution to support a particular decision there is a sense in which he was acting within the framework of his political theory.

On being elected to the presidency Jefferson made a number of changes in the protocol established by Washington and Adams; he attempted to establish the presidential office as a type of secretariat, a clearing house for the state governors. He referred to his own election as a triumph for the Republicans, an event that constituted nothing less than a popular revolution.\(^1\) Thus, "the revolution of 1800," it has come to be known by historians.\(^2\) Needless to say it was a very peaceful revolution and may have reflected nothing else than the tendency

\(^1\) Jefferson, X, 217.
\(^2\) Cf. Langer, EWH, 766.
for the people during their first well-organized party election to phrase the sharp lines of conflict in military terms. Nevertheless, the tendency for Jefferson to ignore tradition and to label his republican policies revolutionary, is further indication of his disregard for the past and his willingness to support frequent and radical changes. This was not the meaning attached to the concept of natural law by Cicero.

Although earlier in life Jefferson may have used natural law to suggest overtones of absolutism, he used it in this sense even less than Cicero. However, as with Cicero, it always contained for him the presupposition of equality. The element of Epicurean utilitarianism, avoided by Cicero, was prevalent in Jefferson's writings. Jefferson did not justify the use of natural law to bolster religiously or politically inspired rites, ceremonies, and ethical codes. Cicero's refusal to use it in a necessitarian or deterministic sense was reflected in Jefferson's use of the term; both avoided the references to primitivism as an analytical basis for the concept.

The precise rationalism of Hobbes, based on sensationalistic empiricism, gave to the concept of natural law, a rigid, necessitarian, and deterministic bent. He employed the analysis of primitive cultures and derived from them a doctrine of natural universalism in his first law of nature. Although he began with a doctrine of equality, natural law was pictured as demanding its revocation and instituting a permanent hierarchical state in its place. Of the three, Cicero, Hobbes,
IX. The Constitution

and Locke, only Hobbes gave the concept of natural law a meaning which could meet the criticism of Mill. There is a real sense in which Hobbes, writing an apology for the Stuarts, meant by natural law, that which is. Whatever else may be said of his thesis, it is not vague, obscure, or indefinite. Beginning as he did with a nominalistic empiricism and concluding with political realism by making the state synonymous with the sovereign, he does indeed, contradict himself at the point of transition. Although Cicero and Locke are opposed to Hobbes' meaning of the concept, it is Jefferson that stands at the opposite pole of thought. Only the tendency toward nominalism, with which Hobbes began, is shared by Jefferson. A hurried survey of Jefferson's writings may incline the reader to interpret him from the viewpoint of Hobbes because of the logical appeal in the latter's meaning of natural law. To that tendency the findings of this study are unalterably opposed.

Locke, following more in the general tradition of Cicero, used the concept of natural law as a term of approbation. He began with an imaginative primitivism but his unwillingness to base it on a systematic survey of some particular culture prevented it from being anything more than an ephemeral point of origin. The nominalism, equality, and sensationalism embodied in his Essay, was continued in fact, though not in theory, in his Second Essay on Government. Cicero's universalism derived from the tradition of jus gentium in Roman civil law, was not continued by Locke. Jus gentium represented an attempt
to arrive at a common denominator, a compromise, but Locke left the minority outside the organized state, remaining in the state of nature. Both Cicero and Jefferson were much more practical statesmen than Locke, or for that matter, Hobbes. When a society contrives to form a compact there can be no one left outside, so the compact is in fact a compromise unless it follows the model in the *Leviathan*. For both Cicero and Jefferson it was a compromise.\(^1\) In this sense therefore Jefferson's social contract theory included a doctrine of universalism and it was with that in mind that he cautioned Madison against opposing the minority supporting the bill of rights when the Constitution was being ratified. The Constitution reflects the same degree of universalism in denying the right of a simple majority to carry an amendment. As in Rousseau's *Social Contract*, the size of the majority must be proportionate to the importance of the question. Thus two opposing parties may operate under the same constitution.

The absolutism and determinism to be found in Hobbes is lacking in Locke and Jefferson although Locke uses the natural law concept as an agency of conservation in a way that Jefferson did not. Locke provided for the right of revolution, a provision conscientiously copied into many early state constitutions, but he did not suggest that there be a studied effort to replace the old, with a new, social contract each generation.

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\(^1\) Jefferson, XV, 72. "But everyone knows, that that constitution was a matter of compromise; a capitulation between conflicting interests and opinions."
In Locke's epistemology, he distinguishes between three levels of verification, first the intuitive, second the demonstrable, and last the sensational. The term reason as used in the Second Essay is the second level in the epistemological hierarchy, that is, analytic logic. It contains an authoritative validity not possessed by pure sensationalism which is merely probable, so that his theory of the state tended toward rationalism. As was pointed out in Chapter IV, there is little doubt but that when Jefferson penned the Declaration he meant something of the same thing. But as time passed reason came to mean nothing more than mere intellect, cognition without *apriori* principles of thought. Thus a temporal distinction must be included in any evaluation of Jefferson's thought; during his lifetime his political philosophy shifted from an early implied rationalism to a political positivism.

The phrase, political positivism, calls for further investigation. Both Hume and Bentham were contemporaries of Jefferson but if he read from either, with the exception of Hume's *History*, there is no mention of it in his published correspondence. Locke, on whom he did rely quite heavily instituted the empiricist movement that finally culminated in Hume's positivism. Likewise Bentham's utilitarianism eventuated in Mill's analysis of Nature. The positivism to be found in Hume's *Enquiry Concerning Human Understanding*, not his *History*, is likewise reflected in the nominalism of...
Bentham and the Mills. This stream of thought was foreign to Jefferson and there is no indication in his other commentaries that he would have fully appreciated all of it, if it had been made known to him. A seeming dislike of, or possibly, impatience with, metaphysics runs through much of his writing even though he frequently reverted to a metaphysical terminology. Aside from Jefferson's references to Locke and his popularizer, Bolingbroke, the only index to his thought along this line is to be found in his full approval of Tracy's writings. It is true that Tracy was roughly in the same general tradition, at least, his extreme sensationalism would indicate such, but at best he was a poor French edition of the original and left much to be desired. Tracy's treatment of the will in his rational psychology prevents him from being labelled a positivist in the Humeian sense.

In characterizing Jefferson as a political positivist, no attempt is being made, even by inference, thus to characterize any other area of his thought. It is an attempt to point to the close similarity that exists between his theories and Hume's Enquiry. Jefferson took a position in his political thought that might well have been expected from Hume's writings on the state; Jefferson did to previous theories of the state what Hume did to previous theories of substance. By continually reiterating the theory that each generation must find for itself its own fundamentals of government and by admitting of no qualitative distinctions among individuals,
he denied historical cause and effect and identified national greatness with numerical and geographical superiority. A corollary may be found in Hume's treatment of time and space. For Jefferson the state was nothing more than two or more individuals in temporary agreement on a common method of government.

Others, including Cicero and Locke, had destroyed qualitative distinctions between individuals and to that extent had been positivistic but only Jefferson denied the accumulative effect of history. The fact that other than Plato, Jefferson approved of Hume less than any other political theorist, and certainly would not have appreciated being linked with him, is an instance of historical irony.

In his *An Enquiry Concerning Human Understanding* Hume attacks the theory of causation; in his *A Treatise of Human Nature* he attacks previous theories of substance. If the doctrine of "impressions" in Hume's psychology is equated with the doctrine of man in Jefferson's political philosophy, it is evident that Jefferson treated previous realistic theories of historical causation and political bodies in the same way that Hume treated realistic theories of causation and substance. Ideas are faint copies of impressions and are atomic in their structure; they are related to other ideas only by habit.¹

¹ Hume, ECHU, 15f.
necessary causality.\textsuperscript{1}

Causality therefore is nothing more than psychological anticipation, the habit of expecting a cause for every event. Causality understood as a necessary connection or as an invisible force is denied.\textsuperscript{2} In the same way as has been shown, Jefferson denied the relevance of accumulative forces in history designed to shape and mold future social forms. At least, formal documents such as the Constitution were to be renewed with each generation and the state, as such, has no more self identity than Hume's concept of the human personality.\textsuperscript{3} That is, its identity exists only in its memory, its record, not in an additive and accumulative tradition. The Constitution understood as a temporary crystallization of political aspirations was valid but as a compact with posterity it was an imposition on the generations yet to be born. For Jefferson, the state is nothing more than the individual people living within it at any given time.\textsuperscript{4}

As was mentioned above, Hobbes' theory of the state provided for the creation of a sovereign who in turn became the embodiment of the state. Hume, in his \textit{History} and Burke were to identify the state not with individuals or mere groupings of individuals but with its tradition and history. These

\textsuperscript{1} Hume, \textit{ECHU}, 15\textit{f}, VII, 1, 64.
\textsuperscript{2} Hume, \textit{THN}, I, vi, 241.
\textsuperscript{3} Hume, \textit{THN}, I, vi.
\textsuperscript{4} Cp. Hume, \textit{THN}, I, vi, 239. "For my part, when I enter most intimately into what I call myself, I always stumble on some particular perception or other, of heat or cold, light or shade, love or hatred, pain or pleasure."
theories suggest a force or power, substantial and determinant somehow related to, yet, above, the individuals living within the state. From such a viewpoint the state may be spoken of as apart from the citizens, even opposed to them in some matters.

Jefferson veering away from this viewpoint fell within the tradition of Cicero, Locke, and Tracy but went further than any of them in denying temporal self identify to a state when that identity is understood to be anything more than a bare record of events. The state is in no sense a corporate self, a force as such.

From time to time throughout this dissertation the question of whether or not Jefferson was a philosopher has arisen. Obviously it cannot be answered categorically as at least one fundamental distinction is necessary, a distinction between his moral and political philosophy. It can be said without hesitation that he was not a metaphysician, perhaps because of a basic lack of interest. On the other hand, even though he was extremely interested in moral philosophy in this field he must be thought of only as a lay philosopher. His heterogeneous writings are scattered, contradictory, and loosely contrived. What is even more important he made no contribution even by way of critical analysis. Although he read widely, his interest was passive rather than constructive.

In the field of social philosophy however he did make a significant contribution and that contribution has been the
primary concern of this dissertation. To be sure, even at this point his thought suffers from the lack of a summation, a self-conscious attempt to consider his previous writings in orderly and coherent form. Nevertheless, it has become a guidepost in American thought and has tended to prevent the creation of a state which was anything more than the people who are living within its geographical boundaries at any one time.
CHAPTER X

GENERAL CONCLUSIONS

The general conclusions of the dissertation may be stated in the following manner.

1. Jefferson cannot be spoken of as a philosopher in the classic sense of that term.

2. Previous attempts to place Jefferson in a traditional philosophical school before the writing of the Declaration of Independence have been unrewarding. Even later in life, this is extremely difficult to accomplish.

3. Jefferson was unsuccessful in his attempt to prove that true English law had its origin in a proto-democracy which had preceded the feudal era.

4. Jefferson's draft of the Declaration of Independence found its origin in the varied thought patterns and needs of the American people and drew upon Locke's phrasing of a deistic metaphysics for support.

5. The Declaration of Independence was not designed primarily to chart a novel course in government but to reaffirm the traditional political practices of the colonies which had gained considerable autonomy under British rule.

6. Metaphysics, as such, interested Jefferson but little and his moral philosophy reaches an indeterminate impasse in his discussion of the moral sense and the principle of utility.

7. Jefferson went to France not as a student but as an experienced instructor in revolutionary movements.
8. Jefferson's approval of Tracy's thought does not indicate a source for his own views. At best it is a partial index to Jefferson's previous theories.

9. Jefferson's doctrine of the separation of Church and State rested on (a) the decision to sever the last remaining official tie with Britain and (b) to found the state on a deistic rather than a theistic metaphysics.

10. The Jefferson Bible did not constitute a return to Christianity. Rather, it was a careless attempt to revise Christian doctrine.

11. Jefferson was in the general tradition of Cicero and Locke, but opposed to Hobbes, in the interpretation of Natural Law.

12. Jefferson used the Natural Law theory for its instrumental value in unseating a government resting upon the divine right of kings doctrine. He did not attempt to define it positively as a basis for the new government.

13. Jefferson's commentary on the American Constitution constitutes the key to his thought on natural law in practice.

14. For Jefferson, the state was nothing more than two or more individuals in temporary agreement on a common method of government.
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THE PHILOSOPHICAL PRESUPPOSITIONS

OF

THOMAS JEFFERSON'S SOCIAL THEORIES

Abstract of a Dissertation

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ABSTRACT

The problem of this dissertation is that of tracing the philosophical presuppositions of Jefferson's social theories. This is done in two ways: (1) by determining his own implied presuppositions and (2) by tracing those presuppositions in the history of ideas. Although other aspects of his social thought are treated briefly, primary emphasis is placed upon his political philosophy. Jefferson cannot be called a philosopher in the classic sense of that term. The attempts to place Jefferson in a traditional philosophical school during the first twenty-five years of his life have been unrewarding if not misleading.

Jefferson wrote the Declaration of Independence when he was thirty-three years of age and there is little indication that he had developed a systematic political philosophy. He interested himself in the early foundations of English common law and attempted unsuccessfully to establish the doctrine that true English law had its origin in a proto-democracy which had preceded the feudal era.

Jefferson's draft of the Declaration of Independence found its origin in the varied thought patterns and needs of the American people. Because of the importance of the step, a thoroughgoing philosophy was implied complete with a metaphysics to meet the demand for intellectual justification. Locke's Second Treatise on Government came in handily at this point, even to the phrasing. The colonies had possessed considerable
freedom up to the years immediately preceding the Revolution and the Declaration is, in part, a conservative document designed to reaffirm the former autonomy in self-government.

Metaphysics, as such, interested him but little and there is nothing to indicate that he had mastered a metaphysical system other than that of Bolingbroke's rephrasing of Locke's thought until quite late in life. Jefferson's moral philosophy, his personal passion, reaches a high-water mark in his discussions of utility; it is an impasse that he never transcends and the attempts to do so on the part of subsequent interpreters have been misleading.

Jefferson arrived in Paris when he was forty-one years of age and there is no instance of French influence before that time. Although the French culture had a considerable impact on the subsequent life of Jefferson, it did little to alter his political views. Jefferson went to France not as a student but as an experienced instructor in revolutionary movements and his French acquaintances accepted him on that basis. Jefferson's unreserved approval of Tracy's works serves as an index to his previous thought rather than an original source. Jefferson agreed with Tracy that government had a utilitarian derivation but he did not concur in defining society merely as an economic unit.

Jefferson was reared in the church, was tutored by clergymen and attended a church school. Furthermore, he considered time spent in finding a religious basis for morals as time well spent. Jefferson had no quarrel with the morals of the church
or with the clergymen as individuals; he was opposed to the principle of the establishment. After the revolution, the established church constituted the one remaining institutional tie with Great Britain. This, rather than the freedom of the sects, motivated Jefferson's objection to the establishment for he had little in common with the sects and his claims that they had been persecuted by the church do not agree with the facts. Furthermore, he was not interested in separating the state from religion as such but only from the theistic churches; the preface to the bill for religious freedom is a deistic confession of faith.

For the most part Jefferson accepted and lived by the Christian ethic thinking it much superior to the Stoic or Epicurean. Also, later in life he reaffirmed his belief in immortality. The Jefferson Bible is not a return to Christianity nor a rejection of it, but a careless attempt to revise its doctrinal content.

As the author of the Declaration and as a noteworthy commentator and early interpreter of the Constitution, Jefferson played a unique role in relation to the two primary documents of the American government. The American Constitution is the logical and historical culmination of the social contract theories. The social contract is one of the pragmatic and positive assertions of the natural law theories held by Cicero, Hobbes, and Locke.

Cicero, as the outstanding thinker in the Hellenistic legal tradition aided in welding together the concepts of
just gentium, jus naturae and natural law as it had been defined by the Stoic metaphysicians. From that time on natural law theories have constituted the golden thread of legal history and denoted a superior quality in legal codes. Natural law theory, although it is replete with overtones of authoritarianism, has nevertheless usually been on the side of free and liberal thought. Throughout the middle ages Cicero's identification of natural law with the highest Roman legal tradition was accepted, approved, and given a subordinate position under divine law. With the breakdown of the Holy Roman Empire and the dominance of the Church, it was rediscovered and given an ultimate status. In practice Cicero's natural law embodied the principles of rationality, harmony, ethical absolutism, equality, and universality. Cicero did not mean by the phrase, primitivism, necessitarianism, or Epicurean hedonism.

It was Thomas Hobbes who gave natural law the first metaphysically consistent and meaningful interpretation. Hobbes is employed here to indicate a pole of thought against which both Locke and Jefferson were to react. Hobbes contributed the element of historical necessity, determinism, or as it is sometimes termed, historicism, to the concept of natural law. The nominalism, equality and consistency also to be found in the Leviathan subsequently triumphed over the concept of absolute historical necessity.

The writings of Locke are in substantial agreement with
those of Cicero; Locke likewise used natural law as an instrument of legal reform. Locke used natural law as an instrument to destroy the doctrine of the divine right of kings, but having used it, gave his attention to the explicit delineation of methods of government.

Jefferson's commentary on the American Constitution constitutes the key to his thought on natural law in practice. The commentary may be divided into three chronological periods, before, during and after his terms in office. Before entering office he treated it with skeptical regard, approving and disapproving of certain parts but never raising it to the status of ultimate and unquestioned authority. During his terms in office he did give it an apriori status and used it as a cornerstone for his own legal thought. After his retirement he returned to the previous attitude giving it a liberal contextual interpretation. In this, he was not consistent but the most important part of his commentary on the constitution is his claim that "the earth belongs to the living."

This is Jefferson's primary contribution to political thought. Jefferson is a political positivist in the sense that he analyzed theories of statism in the same way that Hume analyzed substance and causality. By continually reiterating the theory that each generation must find for itself its own fundamentals of government and by admitting of no qualitative distinctions among individuals, he denied historical cause and effect and identified national greatness with
numerical and geographical superiority. For Jefferson the state was nothing more than two or more individuals in temporary agreement on a common method of government. Others, including Cicero and Locke, had destroyed qualitative distinctions between individuals, but only Jefferson denied the accumulative effect of history, the tendency for history to become History, tradition to become Tradition. The general conclusions of the dissertation may be stated in the following manner.

1. Jefferson cannot be spoken of as a philosopher in the classic sense of that term.

2. Previous attempts to place Jefferson in a traditional philosophical school before the writing of the Declaration of Independence have been unrewarding. Even later in life, this is extremely difficult to accomplish.

3. Jefferson was unsuccessful in his attempt to prove that true English law had its origin in a proto-democracy which had preceded the feudal era.

4. Jefferson's draft of the Declaration of Independence found its origin in the varied thought patterns and needs of the American people and drew upon Locke's phrasing of a deistic metaphysics for support.

5. The Declaration of Independence was not designed primarily to chart a novel course in government but to reaffirm the traditional political practices of the colonies which had gained considerable autonomy under British rule.
6. Metaphysics, as such, interested Jefferson but little and his moral philosophy reaches an indeterminate impasse in his discussion of the moral sense and the principle of utility.

7. Jefferson went to France not as a student but as an experienced instructor in revolutionary movements.

8. Jefferson's approval of Tracy's thought does not indicate a source for his own views. At best it is a partial index to Jefferson's previous theories.

9. Jefferson's doctrine of the separation of Church and State rested on (a) the decision to sever the last remaining official tie with Britain and (b) to found the state on a deistic rather than a theistic metaphysics.

10. The Jefferson Bible did not constitute a return to Christianity. Rather, it was a careless attempt to revise Christian doctrine.

11. Jefferson was in the general tradition of Cicero and Locke, but opposed to Hobbes, in the interpretation of natural law.

12. Jefferson used natural law for its instrumental value in unseating a government resting upon the divine right of kings. He did not attempt to define it positively as a basis for the new government.

13. Jefferson's commentary on the American Constitution constitutes the key to his thought on natural law in practice.

14. For Jefferson, the state was nothing more than two or more individuals in temporary agreement on a common method of government.
AUTOBIOGRAPHY

I was born in Seminole, Texas, March 3, 1922, the first child of Thomas Foster Lindley and Alice Irene (Franklin) Lindley. I attended schools in Seminole and Lubbock, Texas receiving my highschool diploma from the latter in 1939. I attended the following colleges: Texas Technological College, Lubbock, Texas, 1939-40; Southwestern University, Georgetown, Texas, 1940-41; Texas Technological College, 1941; Oklahoma City University, Oklahoma City, Oklahoma, 1941-43, receiving an A.B. degree from the latter in 1943. I attended Boston University School of Theology from 1943 to 1945 and received an S.T.B. degree.

While attending school I served the Second Methodist Church in Duncan, Oklahoma and the First Trinitarian Congregational Church in Scituate, Massachusetts on a part-time basis. I was married on October 2, 1943 to Miss Judy Smith of Brookline, Massachusetts and we have one daughter, Elizabeth Joy.

From 1945 to 1947 I served as minister of The First Methodist Church of Hotchkiss, Colorado. In 1947 I became the minister of The First Methodist Church of Enfield, N. H. and entered Boston University Graduate School as a candidate for the Ph. D. degree. In 1949 I became the minister of the West Congregational Church, Concord, N. H. and in 1950 accepted the position of Instructor in the Department of Philosophy, University of Connecticut, Storrs, Connecticut.