A culture of rights

The Bill of Rights in philosophy, politics, and law—1791 and 1991

Edited by

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Woodrow Wilson International Center for Scholars

and

Cambridge University Press

Cambridge

New York  Port Chester  Melbourne  Sydney
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Rights and wrongs: Jefferson, slavery, and philosophical quandaries

CHARLES L. GRISWOLD, JR.

Such is the government for which philosophy has been searching, and humanity been sighing, from the most remote ages. Such are the republican governments which it is the glory of America to have invented, and her unrivaled happiness to possess.

James Madison

Americans! your republican politics, not less than your republican religion, are flagrantly inconsistent.

Frederick Douglass

The civil status of a contradiction, or its status in civil life: there is the philosophical problem.

Ludwig Wittgenstein

The vocabulary of rights constitutes a continuous thread through the maze of contemporary American political culture. So pervasive is that

vocabulary that mutually exclusive sides of the same issue are normally argued by appeals to rights. The abortion debate is a prominent example. Positions on every issue, no matter how seemingly trivial, follow a similar pattern. Jefferson's open-ended list of rights in the Declaration of Independence seems now to stretch on indefinitely, indeed beyond the human species to animals and even nonliving entities. Correspondingly, we have not wanted for laments about the perceived vacuousness of contemporary rights discourse, or for judgments that rights discourse is inherently corrupt. Natural rights, we are told, are both cause and effect of a disintegrating society lacking any shared sense of community values. The bill of particulars continues further: Rights talk supplies no rational way of mediating disputes, and as a consequence, power politics (exercised through the megabureaucracies, the media, and "popular movements" led by altruistic, dedicated activists) replaces deliberation; rights talk fuels an endless culture of litigation, and of hopelessly arcane (not to mention expensive) legal interpretation; in practice it amounts to little more than a rationalization of the oppression of the poor and powerless by the rich and powerful; it is founded on epistemological and theological assumptions that were prevalent in the early Enlightenment but are now discredited.

Whether to abandon a key phrase in the vocabulary of American republicanism—an unlikely prospect, to be sure—or to attempt a restriction of its scope will depend in part on how we understand the past from which that vocabulary springs. Some who see our present discourse as

1 I refer to the beginning of the Declaration's second paragraph: "We hold these truths to be self-evident: that all men are created equal; that they are endowed by their creator with inherent & inalienable rights; that among these are life, liberty, & the pursuit of happiness" (emphasis added). From Jefferson's Autobiography, in Thomas Jefferson: Writings, ed. Merrill D. Peterson (New York: Library of America, 1944), 19. Unless otherwise noted, all page references to Jefferson's writings in this chapter are to Peterson's edition.

2 The best known recent indictment along the latter lines is offered by Abigail Macintyre, After Virtue (Notre Dame: University of Notre Dame Press, 1984), chapters 5–6. As the following sentences in my text suggest, criticisms have also been made from a number of other perspectives stretching from the Marxist to the postmodernist. See, for example, M. Horkheimer and T. W. Adorno's Dialectic of Enlightenment, trans. J. Cumming (New York: Herder and Herder, 1972), §5 passim. Also relevant here is Mark Turshen's "An Essay on Rights," Texas Law Review 62 (1984): 1365–1403.

3 One could, of course, set out a view of justice that claims to articulate systematically the intimations of the public culture of a democratic society, without engaging in further historical excavation. Compare John Rawls's "Justice as Fairness: Political, not Metaphysical," Philosophy and Public Affairs 14 (1985): 123: "Justice as fairness is a political conception in part because it starts from within a certain political tradition" (Rawls's discussion makes it plain that the American tradition is at issue). But the selection of the supposedly representative intuitions risks being one-sided, as William Galston points out
corrupt tend to think of the disease as coeval with the American founding and even further as rooted in the poverty or impracticality of rights discourse altogether. This type of argument is advanced not only by MacIntyre but also by the “classical” critics of that vocabulary, namely, Hume, Burke, Bentham, Hegel, and Marx. No amount of adjusting or restricting and no amount of reversion to “original” rights schemas could, the argument goes, relieve us of the burdens imposed by the vocabulary. Thus the poverty of rights talk may be graphically illustrated (and this point becomes crucial for my purposes here) by the fact that the architects of classical American liberalism—Jefferson, Madison, Washington, to mention only a few—owned slaves. From Marx’s standpoint in particular, the failure thus signaled is not one of implementation of rights talk; slavery is simply an especially graphic illustration of the inner collusion between the “ideology” of “natural rights” and oppression.7

The fact that America’s treatment of blacks is as much a part of our heritage as the principles of the Declaration of Independence—a heritage whose inner tension continues to be felt in myriad ways—may be interpreted in a more benign way. As Jefferson, Douglass (by 1852), and many others have argued, the American history of oppression represents the privation, not the negation, of the culture of rights defined by the Declaration and embedded in the Constitution. The poverty (if indeed it is such) of contemporary American political discourse might be taken as an indictment not of rights talk as such but rather of our decaying understanding of what such talk was meant to accomplish. Our current appeals to rights to justify contrary positions on every issue imaginable may be taken as the consequence of mistaken notions as to how rights are best implemented legally and institutionally. The theory of rights has nevertheless done valuable work in the past and can do so again. From this standpoint, definitional questions as well as questions of implementation must be addressed in saving the theory.

The issue of efficacious implementation is as old as the debates about the Bill of Rights. Obviously, the Bill of Rights has been central to the

dominance of the language of rights in American culture, especially in this century.8 “Publius’s” qualms as articulated in Federalist 84 anticipate later objections, and possibly prophesy correctly the developments just lamented. Two of Publius’s points are relevant here: The first is compressed into the statement that in the body of the Constitution (including the preamble) we have “a better recognition of popular rights than volumes of those aphorisms which make the principal figure in several of our State bills of rights and which would sound much better in a treatise of ethics than in a constitution of government.”9 In other words, enumeration of rights is too theoretical a project for a working political document. The conceptual and semantic complexities render any such enumeration more properly the subject of philosophical than political discourse. In a political context, enumeration leads to arcane interpretation and, we may infer, invites multiplication of “rights” until they fill “volumes.” The dangers are particularly pressing given the intrinsic ambiguity of language against which Publius warns in Federalist 37, and all the more so when combined with our natural propensity to disagree in political matters.10 As Publius goes on to say in Federalist 84, definition of a right is in the abstract virtually impossible: “Who can give it [liberty of the press] any definition which would not leave the utmost latitude for evasion?” (p. 514). Inherently fine distinctions better suited for a treatise on ethics provide occasion for political conflict and even, Publius warns in no. 84, for perversely standing intentions on their head: enumerating rights may be taken to imply that the federal government has authority in areas where it has none (pp. 513–14).11 Language that is tidy in theory becomes exceedingly messy in practice.

The foregoing objections to inclusion of a Bill of Rights in the Constitution may be said to concern the implementation of a conception of justice. The existence of these rights is not debated (and presumably was

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10 So precise is language that “when the Almighty himself condescends to address mankind in their own language, his meaning, luminous as it must be, is rendered dim and doubtful by the cloudy medium through which it is communicated” (p. 229). On disagreement, see Federalist 10, p. 79.

agreed on by Federalists and Anti-Federalists); what is at issue is the proper way of putting theory into practice. If, in Lincolnian spirit, we conceive of the Constitution as a "machine," geared toward implementing (as the preamble suggests) "justice" understood in accord with a theory of natural rights—say, a theory of the sort articulated in the Declaration of Independence—the problem Publius is flagging may be thought of as a second-order theoretical issue, namely, the issue as to how a (first order) theory of justice is to be put into practice (the latter understood concretely enough to include a complex historical setting). The question is one of the appropriate "inventions of prudence" (Federalist 51).

The problem of implementing a theory of rights in a concrete, suitably messy historical situation—say, a situation that includes a well-entrenched system of slavery, a struggling economy, the threat of civil war or at least of widespread faction, and possibly a renewed war with a powerful enemy—may seem to be not a philosophical but a technical or strategic matter. Such is not the case, however. I have referred to Publius's remark in no. 37 concerning the intrinsic equivocality and imprecision of words. He also speaks there of the immense complexity of the "works of nature," the intrinsic obscurity of the "institutions of man," and the limitations of the human understanding. Publius is explicit that these facts about the world and human beings have political implications: "We must perceive the necessity of moderating still further our expectations and hopes from the efforts of human sagacity" (p. 228).

Publius's warnings against inclusion of a Bill of Rights in the Constitution are immediately followed, in the final number of the Federalist, with an emphatic recommendation of the virtues of moderation and prudence in light of human imperfection (p. 523); the improbability that an equally auspicious historical juncture will recur; and a general reflection, taken directly from Hume, on the sheer difficulty and length of the process of trial and error by which societies gradually learn to govern themselves.

For example, the culminating quotation from Hume in Federalist 85 concerns a strong Scottish tone on a cluster of themes concerning the virtues of human nature, natural institutions, history, knowledge, and nature that surround any theory as to how moral theory ought to be practiced. The tension arises in part from the fact that Hume's arguments for prudence and moderation in politics are connected to an epistemology that denies the existence of natural rights and natural law (understood at Locke understood them), and indeed of the entire social contract tradition. White concludes his discussion of the Federalist with precisely this puzzle.

The American Enlightenment is a complicated affair, of course. Henry F. May, for example, distinguishes four distinct phases, or at least types, of Enlightenment in the early republic. See The Enlightenment in America (New York: Oxford University Press, 1976). These distinctions can be overlooked here.

See his letter to Madison of 20 December 1787 (pp. 914-16), the central point of which is repeated in letters to James Alexander Donaldson, July 1788 (p. 919), to Washington of 4 December 1788 (p. 930), to Francis Hopkinson of 13 March 1789 (p. 941), and again to Madison on 13 March 1789 (pp. 943-44). Jefferson's criticisms of the Constitution's lack of a Bill of Rights became public knowledge and a topic of debate, to which Jefferson responded in a letter to George Washington of 9 September 1792 (pp. 996-7). It is not clear whether Jefferson thought of the rights named in the Bill as "natural rights" at the very least the right to freedom of religion would seem to fall in that category for him.

Thus Publius's fears about a separate Bill of Rights and, more generally, his repeated recommendation of prudence and moderation—the political virtues in the Federalist—are heavily committed philosophically.

The "second order" issue concerning the efficacious implementation of rights theory is obviously linked to the ways in which that theory is defined. It is possible for tensions to exist between the philosophical assumptions of a rights theory and the assumptions governing the implementation of that theory. Indeed, it is has been held that this is a problem in the American founding itself. In this chapter I propose to focus on one key figure in the American Enlightenment who had a great deal to do with the formulation and propagation of rights theory, who thought and wrote about the problem of implementing that theory, and who did so with reference to the problem in the efforts in the post-Revolutionary period to implement the theory, namely, slavery. To be sure, Jefferson was not present at the Constitutional Convention, but he strongly supported the addition of a Bill of Rights. More broadly, if we read the Constitution (including the Bill of Rights) as the "machine" intended to implement principles of justice as broadly defined by the Declaration of Independence, we have further warrant for focusing on Jefferson. Two of the three accomplishments for which Jefferson wished to be remembered—authorship of the Declaration and of the Virginia Statute for Religious Freedom—are "rights" documents that have surely done much more than affect our
recollected of Thomas Jefferson. Through them, as well as through his regular invocations of “rights,” Jefferson has profoundly influenced the formation of our culture of rights. Moreover, Jefferson wrote philosophically about the sources of rights theory as well as the “second order” problem of implementing that theory. He provides us with a partly completed synthesis of ancient and modern thought intended as a basis for a sound affirmation of both the theory and the practice of rights. Jefferson thus offers an excellent subject for reflection on these issues and a reasonably generous window to the sources of American political culture.

As mentioned, Jefferson owned slaves, even as he wrote frequently about slavery in ways that explicitly connect with the “how to implement rights in a complex historical situation” issue. The latent inconsistency between theory and practice here would not be so bothersome in the case of lesser men who owned slaves. Jefferson, however, knew that slaveholding was wrong in principle—on that point he did not waver—and at odds with the ethical principles to which he had dedicated his life. Jefferson’s famous passion for justice, outstanding intelligence, well-documented strictness of morals and character, and tremendous learning all heighten the inconsistency between his words and deeds—an inconsistency to which he himself fully admitted and which has struck many others then and now. The historical issues have, of course, been extensively studied in the literature—indeed, an entire book has been devoted to the topic, not to mention numerous articles and chapters of other books.

[References to primary sources are omitted for brevity.]

My purpose in this chapter is not to reexamine the historical evidence but to examine Jefferson’s philosophical synthesis that, as already suggested, underlies his view about the nature of rights and their implementation in an imperfect world. It does not suffice to say that Jefferson’s ownership of slaves and his stance toward the institution (and these two issues are to be distinguished, as I shall argue) are a reflection of hypocrisy and nothing more. For that judgment may well assume a theory as to how a doctrine of natural rights is to be acted upon—what it means to stand on principle, in effect—that Jefferson did not share. In fact, Jefferson self-consciously espoused a “prudential” theory of moral deliberation that committed him to take seriously the conceptual messiness of concrete cases, the importance of the consequences of actions, and other factors. He rejected the “immediatist” view of the resolution of the slavery question to the effect that the moral thing to do under the circumstances is to act on principle without regard for consequences. Judged by that immediatist standard, Jefferson was a hypocrite, and his protests to the contrary, philosophical or not, are rationalizations. Analogous interpretive choices arise with respect to other Enlightenment figures, including John Locke. My view is that Jefferson’s position deserves to be taken seriously in its own right, however, before the hypocrisy conclusion is drawn.
As an illustration of this last proposition, it may be pointed out that the alternatives Jefferson understood himself to face on this question are still with us in other forms. The debate between gradualists and immediatists reproduces itself, for example, in current arguments about the relative virtues and vices of an American policy of "constructive engagement" versus "disengagement" toward South Africa. The immorality of apartheid is not the issue; the issue concerns the right thing to do by way of extrapting the institution.

My purpose is not to eulogize Jefferson but to understand his views, allowing him as rich an argument as he demands, and in a way that elicits philosophically the genuine tensions and complexities at play. I conclude that even when interpreted as generously as possible, Jefferson's rationale not just for his personal ownership of slaves but also for the institution of slavery is unpersuasive. And I argue that this failure is directly traceable to the underlying incoherence of his philosophical position, a position that is an attempted synthesis of Epicureanism and a "moral sense" theory of natural rights extracted in part from a "demythified" Christianity. Jefferson's synthesis of Epicurean tranquility, blacks, for they hold, (the Founders) would have been righteous. Tense's decision would have followed if a certain theory about moral action is accepted, but that was not the theory proposed by Jefferson, as we shall see. David B. Davis notes in The Problem of Slavery in the Age of the Revolution, 1770–1821 (Ithaca: Cornell University Press, 1975), 166, that in the 1830s to 1850s abolitionists cited Jefferson's words in their favor, while their opponents cited Jefferson's deeds, ascribing the Declaration of Independence to Jefferson's youthful enthusiasm.

Moral philosophers have paid a good deal of attention recently to the semi-Kantian view that in reality moral reasoning is an extremely messy affair, little assisted by universal rules, thoroughly infected with a spectrum of contingencies and variously valued goods all of which must somehow be appropriately weighted and sorted. If there are no clear a priori rules for acting morally in an imperfect world, reflection on historical situations as well as literary representations (especially those in drama) become important to understanding what it would mean to judge well. History and literature do not simply provide illustrations for an abstract treatise in ethics; they provide an important experiential basis for understanding the nature of moral judgment. Jefferson's struggles with slavery, then, seem to provide an excellent opportunity for understanding not only issues in American political culture and history or issues in rights theory, but issues in moral deliberation. This it particularly so because, since Kant, prudence has rarely been taken by philosophers as a virtue, though ordinary language still preserves a moral connotation of the term. For a sample of the discussion, see the papers in "Ethical Theory: Character and Virtue," Midwest Studies in Philosophy 13 (1988).

My intention is neither to write a short history of ideas that influenced Jefferson nor to ignore the fact that he did not write a systematic treatise on ethics rigorously addressing the issues in question. Hermetically, I shall assume that Jefferson's ideas on the issues to be examined should be reconstructed as though they might form a coherent whole (an assumption that can be instantiated, of course, so to speak, of a single text that Jefferson
passions or sentiments, the appeals to utility, the equation of happiness with tranquility, the privileging of the "private" over the "public"—are widespread in both the Enlightenment and in contemporary modernity.

My discussion begins with Epicurean philosophy and Jefferson's points of intersection with it. Next comes a discussion of Jefferson's "supplement" to Epicurus, that is, his "other regarding" moral sense theory and his synthesis of Epicurus and moral sense theory. The last part of the first section serves as a transition to the issue of moral action in an imperfect world and examines the differing "virtues of self" available to Jefferson and his immediate opponents on the slavery issue. In the second section, I examine the implementation of Jefferson's Epicurean moral sense theory with respect to the problem of slavery—the "second order issue" (the issue as to how best to implement moral principle). I also examine some boundary conditions on the invocation of prudence—some taken from Jefferson's "Opinion on the French Treaties" and others stipulated by Jefferson himself (one concerns the importance of preserving the Union; the other deals with the extermination of the slaves). Then I consider Jefferson's ownership of slaves and his words and deeds with respect to the institution of slavery. In the third section I discuss the difference between prudence and rationalization with specific reference to Jefferson's handling of the slavery issue; I argue that Jefferson's rationalization of his actions reveals the incoherence of his overall philosophical synthesis. I conclude by briefly tracing the fault line of Jefferson's attempted synthesis through his views on public service (including his own service) and public education.

PRINCIPLES

"As you say of yourself, I too am an Epicurean." 27

Epicurus and Jefferson. After declaring himself an Epicurean in this letter to William Short, Jefferson proceeds to show why Short's understanding

of Epicurus is fundamentally wrong in its equation of indolence with happiness. Jefferson provides an accurate if extremely skeletal summary (some twenty years old, according to Jefferson's own testimony in this letter) of some central teachings of Epicurus. I flesh out the skeleton somewhat as I discuss the main points.

In Jefferson's summary we are told, first, that happiness, understood as freedom from mental anxiety, is the aim of life. The summum bonum is tranquility, which is understood as the absence of mental anxiety (ataraxia) and freedom from physical pain (apopisia). This tranquility Epicurus takes to be pleasurable. 28 This is the linchpin of the system. That happiness is the summum bonum is a fact determined by nature; we are constructed as creatures whose chief aim is happiness so understood. 29 The desire for happiness is irreligious, part of our affective makeup. But nature does not give us a clear understanding of what happiness consists of; reflection and experience are required to see that the goods proposed by the imagination and the senses—wealth, power, physical pleasure—do not yield happiness and must be restricted. Happiness requires a comprehensive ordering of the soul so that all remaining desires are satisfied. Thus the nature of happiness is not subjective, it is something about which mistakes are systematically made, something that requires self-knowledge to achieve. Epicurus is in this sense a rationalist: our affective beliefs are dependent on our cognitive beliefs about self and


28 Of course this controversial view would require a great deal of explanation, far more than I can offer here. My purpose is much more limited. I note that Epicurus assumes that we want happiness for ourselves understood as extended through time (for our future as well as present self), an assumption that, Thomas Nagel has argued in a different context, underlies the possibility of prudence. Nagel, The Possibility of Altruism (Oxford: Clarendon Press, 1970), chap. 6. Responses to Nagel include Janet Broughton's "The Possibility of Prudence," Philosophical Studies 43 (1983): 233–66; and Richard Kraut, "The Rationality of Prudence," Philosophical Review 81 (1972): 351–9. As this debate is not essential to the purpose here, I have sidestepped it.
the world. Epicurean eudaemonism requires reason—"prudence"—for its fulfillment.

For Epicurus a chief fruit of happiness is self-sufficiency or freedom. To be happy is to cease to desire those things that make one dependent on other people (and also lead one to make other people dependent on oneself). Indeed, the tranquil person does not even fear death, for reasons I shall briefly discuss in a moment. To be happy is to be invulnerable to fortune; ideally, the sage could remain tranquil under any external conditions. Diogenes Laertius ascribes to Epicurus the view that "even on the rack the wise man is happy."

In addition to his profession of Epicureanism and his summary of Epicurus, Jefferson seems regularly to equate happiness with tranquility. Hence his eudaemonism is not fruitfully interpreted along Aristotelian lines, and the evidence weighs against a Stoic interpretation. Once it is recognized (as Jefferson saw) that Epicurus's morals are actually quite strict, the temptation to see the doctrine as leading to a thoroughly un-Jeffersonian laxness of personal morals is removed.

on the uncertain combinations of the head. She [prudence] laid her foundation therefore in sentiment, not in reason. That she gave to all, as necessary to all to a few only, as sufficient with a few" (p. 874). Charles Miller argues (with insufficient evidence) that the Heart represents the Epicurean viewpoint (Jefferson and Nature, p. 99).

Compare Adrienne Koch, The Philosophy of Thomas Jefferson (New York: Columbia University Press, 1943): "The happiness of others, which to Jefferson signified his own best interest, was a part of the secular, practical, and modern morality which Jefferson admired. He valued it as a realistic reinforcement of the proto-Christian morality, the latter remaining indispensably the most perfect pattern of conduct, while the former represented the desirable average compromise which a wise legislator would be glad to have realized by the citizens of a state. That is why Aristotle's "eudaimonia" is a closer approximation to Jefferson's use of the happiness concept than the more contemporary "hedonism" (p. 42). In the note to this passage Koch remarks, "Sometimes Jefferson interpreted happiness in the Epicurean sense," but adds that "Jefferson always approached Epicureanism via Gassendi, in its Christianized and Secularized version, so that nothing really conflicting with the eudaemonistic has a place in Jefferson's system."

On Stoicism, see the following note. I see no evidence that Jefferson examined or approached Epicureanism in that manner, though he was in fact fond of Gassendi; and that he saw, as did Laertius, that he self-consciously synthesized Epicureanism and Christianity in such a way as to alter the latter's orthodoxies radically. It seems to me that the Aristotelian element is only superficially present in Jefferson's synthesis.

Of course, Jefferson once mentioned (as Aristotle) in the course of his famous letter to Henry Lee (8 May 1825): the Declaration places "before mankind the common sense of the subject" and "an expression of the American mind", "all its authorities rest then on the harmonizing sentiments of the day, whether expressed in conversation, in letters, printed essays, in the elementary books of public right, as Aristotle, Cicero, Lucullus, Sidney, etc." (p. 1501). It is also possible that Jefferson was thinking of Aristotle's advice in the Politics about the necessity of farmers, and all the virtues they embody, to a free republic. In "The Intellectual Origins of Jeffersonian Democracy," Yale University, 1964, Douglas Adair argues that "Jefferson and Madison were concerned with the [the "honest farmer"]... not because they themselves were planters from Piedmont, Virginia, but because they were eighteenth-century inheritors of the agrarian tradition that runs directly back to the fourth century before Christ and Plato and Aristotle, Xenophon and Thucydides, attempted with varying degrees of scientific precision to delineate man at a political animal" (p. 30). But consider Jefferson's other reference to Aristotle, in the letter to L. W. Tudor of 26 August 1816: "But no difference was the style of society then and with those people from what it is now and with us that I think little education can be obtained from those writings on the subject of government. They had just ideas of the value of personal liberty, but more at all of the structure of government best calculated to preserve it..." The introduction of this new principle of representative democracy has rendered useless almost everything written before on the structure of government, and in a great measure relieves our regret if the political writings of Aristotle or of any other ancient have been lost or are unfathfully rendered or explained to us. My most earnest wish is to see the republican element of popular control pushed to the maximum of its practicable exercise, I shall then believe that our government may be preserved," (The Political Thought of American Statesman, Morton J. Fisch and Richard G. Stevens (Ithaca, N.Y.: Cornell University Press, 1973), 35-6.)

Whether Stoicism should play a role in a reconstruction of Jefferson's position is a complicated question. I limit myself to pointing out that while in the letter to Short (31...
Happiness thus requires "virtue," and the test of virtue is its utility—that is, its ability to bring about mental tranquility. Jefferson lists four Epicurean virtues: prudence (phronesis), temperance, fortitude, and justice. In his "Letter to Menoecus" Epicurus states:

Of all this [the pursuit of freedom from anxiety, i.e., happiness] the beginning and the chief good is prudence. For this reason prudence is more precious than philosophy itself. All the other virtues spring from it. It teaches that it is not possible to live pleasantly without at the same time living prudently, nobly, and justly, nor to live prudently, nobly, and justly without living pleasantly; for the virtues have grown up in close union with the pleasant life, and the pleasant life cannot be separated from the virtues. (p. 57)

Prudence is not, as with Kant, merely a skill in achieving any end the agent desires.8 This Kantian sense inevitably reduces to the computation of what will lead to one's own happiness, that is, to self-interest narrowly conceived.9 Rather, for Epicurus prudence evaluates desires and possible courses of action in light of the agent's summum bonum. Presumably the prudent person leads a unified life in which the virtues are harmonized with each other. The basic values or goals are naturally given us by our desires or emotions (among which Jefferson includes moral sense) and clarified by reflection (of the sort exhibited in Epicurus's writings), whereas the means are provided by prudence. As Jefferson insists, "Nature has constituted utility to man the standard and best of virtue."10

"Self-interest and virtue coincide."

"Natural justice," in turn, is "a compact resulting from expediency by which men seek to prevent one man from injuring others and to protect him from being injured by them."11 From this Epicurus infers—presumably against Plato, who is also one of Jefferson's favorite targets—that neither justice nor injustice exists in the abstract, and that neither is good or evil in and of itself. Their goodness and badness result solely from their utility relative to the summum bonum of individual happiness (this is not a utilitarian scheme, of course, as the agent is concerned solely with his own happiness). Epicurus's teaching about justice is thus entirely unmetaphysical. Epicurus claims that an adherent of this teaching will be perfectly just (though the meaning of the term just may vary in different societies), for he recognizes that justice simply is not worth the price in terms of mental tranquility. It is rational to be just. But what is justice? Again, Epicurus has no "Platonic" answer to this question, nothing to say about it in the abstract. Epicurus's teaching about justice is in one sense strictly conventionalist; the just is whatever a given community takes to be just. Whether an agent will obligate himself to follow the given rules of justice depends on his understanding of whether doing so furthers his tranquility (the costs of deviating from the given rules will also be a factor).12 Contracts and promises do not in themselves generate any obligation on the part of the Epicurean.13

Given the distinction between true and false happiness and the connection between cognitive and affective states, the Epicurean can claim

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8 The quotation is from Jefferson's letter to Thomas Law, 11 June 1818 (p. 1138). For a similar point see his letter to William Short, 4 August 1820 (p. 1437).
9 Kant's, Doctrine of Virtue (1797, p. 105).
10 Consequently, the Epicurean cannot be wholly indifferent to threats of physical punishment. While he does not fear death and claims invulnerable to the acts of others, in general he finds it less disturbing to avoid transgressing the rules of justice and risking punishment. He seeks to avoid physical pain and to satisfy the "natural and necessary" desires, including the desire for life. (Whether this is really reconcilable with the vulnerability premise may be doubted.)
11 As noted by Mawd, Epicurus' Ethical Theory, p. 80.
that he will have no motive to do injustice, understood as the taking
of the property (defined broadly) or lives of others. Presumably, a society
of Epicureans would be entirely free from internal strife and would not
require rules of justice. So justice is useful to the Epicurean as a member
of a society of non-Epicureans.42 It is important to stress for the purposes
here that (putting aside any self-imposed obligations resulting from
friendships) the Epicurean has no theory as to the intrinsic "moral worth"
of others, and this is the point at which Jefferson saw the need of a
"supplement." From the Epicurean standpoint, there is nothing wrong
in principle with slavery or with owning slaves. In fact, Diogenes Laertius
reports that Epicurus owned slaves.43 It might or it might not be just for
an Epicurean to own slaves. It is hard to imagine that an Epicurean would
find grounds to wage a battle against the institution of slavery.

More generally, Epicurus would seem to have little interest in statecraft
and still less motivation to engage in it, because it would appear to
interfere with the pursuit of true happiness. Or at least he would see
reason to engage in statecraft only so far as is required by prudence.
The goal the individual pursues is fundamentally private, because it amounts
to the cultivation of the individual's own soul. Whatever commitments
to the promotion of the happiness of others this teaching entails would
be based on deliberation about how the friendships or deeds in question
lead to one's own tranquility. Whatever occupation of life best exhibits self-
sufficiency? Epicurus does not say; his own life consisted of quiet reflection,
writing, and teaching. It seems easiest to imagine a life of this sort
unfolding in a context shielded from the hustle of the city.44 The Epicurean
emphasis upon the private life weights heavily against the valuation of
honor, not to mention the other goods mentioned earlier. One imagines
that an Epicurean might find the life of a gentleman farmer fitting to
the pursuit of happiness.

The parallels with Jefferson are striking, although Jefferson's deeds
are not in harmony with this teaching. From an Epicurean standpoint
the private stands above the public, and indeed in an important sense,

42 See ibid., 89–90, for useful citations and discussion of this point.
43 Diogenes reports that Epicurus treated them well and that he maintained several
on his death. Lives X,10 (p. 147), X,21 (p. 153), X,118 (p. 163). At X,3 (p. 143) Diogenes
reports that Epicurus allowed a slave to be his student.
44 Jefferson's praise of the farmers is praise, in part, for self-sufficiency as the ground of
virtue. The picture of the farmer is thus "freedom" from the realm of the psychological
and shows how it might be exhibited in the world. See Jefferson's letter to John Jay of
23 August 1785 (p. 818).

the public is a hindrance to the private pursuit of happiness." As Jefferson
would seem to have agreed, the polis is not the arena that virtuous persons
require in order that the excellence of their souls may flourish and the
agent's happiness may be found.45 Politics is drudgery—a view in many
ways congenial to Jefferson.46 Correspondingly, Epicurus was accused of
shirking his civic duty.47 For the unreconstructed Epicurean, the art of
statesmanship might at best consist in devising a set of rules that will
allow individuals to be as free as possible from the power of others, and
so to be free in the deeper sense implicit in happiness. It would therefore
be appropriate for the Epicurean to encourage a system in which the
liberating pursuit of knowledge—especially science—was protected, and

45 Jefferson expressed over and over his desire to leave public life and to return to the more
satisfying sphere of the private. Compare Lucrétian's discussion in book V of On the
Nature of the Universe about the futility of the search for political power and fame, and
praise for the modest tranquillity of the non-ambitious. In these pages he also suggests
that the rule of kings is inherently unstable and that the pervasiveness of violence led
men to form a social contract or constitution "based on fixed rights and recognized
laws."
46 Consider Jefferson's remark in a letter to David Rittenhouse of 19 July 1778 (p. 763) that
"nobody can conceive that nature ever intended to throw away a Newton upon the
opportunity of a country." Similarly, see the letter to James Madison of 20 May 1786
(p. 250): "If the public are made in some degree for others, yet in a greater are we made for ourselves. It
were contrary to feeling and indeed ridiculous to suppose that a man had less right in
himself than one of his neighbors or indeed all of them put together. This would be
slavery, and not that liberty which the bill of rights has made inviolable and for the
preservation of which our government has been chartered." To think otherwise is "to
annihilate the blessing of existence; to contradict the giver of life which gave it for happiness
and not for wretchedness; and certainly to such it were better that they had never been
bom. . . . The emphasis on happiness and the Epicurean sense of privacy
associated with the term (the context of the letter, in fact, concerns the extent to which
public service, with all the "private misery" and destruction of "mental quiet" it entails,
are duties for the individual). See, too, John P. Diggins, The Lost Soul of American Political
42: "Jefferson stripped the traditional idea of virtue of its essential political content. The
arena in which virtue manifests itself is not the public sphere but the private circle of
effort and reward... the "moral sense" merely informs men what is in his own interest,
not what is in the interest of the "general good" as defined by classical philosophers of
the Old World."
47 If so, then Jefferson's participation in public life becomes difficult to explain. I return to
the problem at the end of this chapter. The devotion of public service for Jefferson and
others among the framers is also noted by Diggins, The Lost Soul of American Politics,
48 See Epictetus's Discourses III, viii.19–23. Diogenes Laertius tells us that the Epicurean
wise man will not "make elegant speeches... Nor will he take part in public life... Nor
will he aid the tyrant.": Lives X,118–19, pp. 165–7. David Konstan notes that "the
Epicurean injunction against the political life did not mean that the school was actively
hostile to established political authority." Some Aspects of Epicurean Psychology (Leiden,
so a system in which religious zeal was prevented from arming itself with political power. The corresponding art of statesmanship would require a thorough knowledge of human history and of the various attempts to construct workable regimes. Similarly, history is a subject Jefferson recommends with great enthusiasm.49

Jefferson’s moral sense “supplement” to Epicurus (discussed later) prohibited him from taking a straightforward Epicurean stance toward his ownership of slaves or the institution of slavery. There is, then, only partial overlap between Epicurus and Jefferson on the issue of slavery. But he did retain Epicurus’s insistence on the centrality of prudence as a virtue, including as a virtue of statecraft. That Jefferson’s politics was thoroughly infused with notions of prudence is evident most famously from his use of the term in the Declaration of Independence: “Prudence indeed will dictate that governments long established should not be changed for light and transient causes” (the point is echoed in the letter to Samuel Kercheval of 12 July 1816). But it is also evident from the reasons he gave for his position on the slavery issue. Jefferson approached that issue, among others, with the mind of a practicing statesman informed by a thorough knowledge of Western history, so by a sense of what is and is not possible to accomplish at any given moment. He assumes that at different historical periods different forms of government are suitable. Writing to Pierre-Samuel Du Pont de Nemours (24 April 1816) Jefferson says,

But when we come to the moral principles on which the government is to be administered, we come to what is proper for all conditions of society. I believe with you that morality, compassion, generosity, are innate elements of the human constitution; that there exists a right independent of force; that a right to property is founded in our natural wants; that no one has a right to obstruct another; that justice is the fundamental law of society. These, my friend, are the essentials in which you and I agree; however, in our zeal for their maintenance, we may be perplexed and dicide, as to the structure of society most likely to secure them. (pp. 1386–7)

Jefferson goes on in this letter to discuss the constitution of Spain, which contains a novel provision; he affirms it on the basis that it is what is needed in Spain at the time. And with reference to de Nemours’s proposed constitution for the “Equinoctial republics,” Jefferson says: “Like Solon to the Athenians, you have given to your Colombians, not the best possible government, but the best they can bear” (p. 1388). Jefferson thinks that constitution unsuitable for the United States, however (p. 1385). For similar prudential reasons, Jefferson was not averse to letting the king of France retain a limited role in the new republic, and argued that the changes in France should be brought about in a carefully controlled way.50 He writes to William Short (3 January 1793) that he deplores the killing of the innocent that has occurred in the course of the French Revolution, but adds: “The liberty of the whole earth was depending on the issue of the contest, and was ever such a prize won with so little innocent blood? My own affections have been deeply wounded by some of the martyrs to this cause, but rather than it should have failed, I would have seen half the earth desolated” (p. 1004). In another letter to de Nemours (18 January 1802, p. 1101), Jefferson states: “What is practicable must often confound what is pure theory; and the habits of the governed determine in a great degree what is practicable. Hence the same original principles, modified in practice according to the different habits of different nations, present governments of very different aspects.”

Central to the purposes here are Jefferson’s remarks in the letter to John Holmes of 22 April 1820. Jefferson says that he wishes Americans to be relieved of the reproach of owning slaves “in any practicable way” (p. 1434). When the opportunity for purchasing the Louisiana territories arose, Jefferson acted, even though he did not believe that the action met the standards of the Constitution strictly interpreted, and he wanted a retroactive amendment to the Constitution legitimating the action (see his letter to John C. Breckinridge of 12 August 1803 [pp. 1136–41]). In his letter to Samuel Kercheval of 12 July 1816 Jefferson says, “I am certainly not an advocate for frequent and untried changes in laws and constitutions. I think moderate imperfections had better be borne with; because, when once known, we accommodate ourselves to them, and find practical means of correcting their ill effects. But I know also, that laws and institutions must go hand in hand with the progress of the human mind” (p. 1401). It is true that Jefferson, like others among the Founders, saw the United States as an “experiment,” but one with a good probability of succeeding, given the various empirical factors (including

49 Jefferson recommends, as part of his general plan for public education, that at the first level of schooling (that to which the bulk of students will be exposed) students be taught not religion, but history (Query XIV of the Notes, pp. 273–4). Jefferson indicates that a knowledge of history is crucial to the people’s ability to rule themselves.

50 See the letter to Lafayette of 14 February 1815 (pp. 1360–6).
the character of the citizens) involved. Speaking with reference to various measures concerning domestic manufactures, Jefferson says that "the maxim to be applied will depend on the circumstances which shall then exist; for in so complicated a science as political economy, no one axiom can be laid down as wise and expedient for all times and circumstances, and for their contraries." (Letter to Benjamin Austin, 9 January 1816.) Examples supporting the contention that Jefferson was committed to a non-Kantian, "prudence" view as to how one puts a moral principle into practice, could be multiplied.

Jefferson's Epicurean might thus reason as follows: In an imperfect world over which one person has very limited control, prudence will often require a course of action that is far from ideal but justifiable in that it is the best practicable under the circumstances. The gap between an ideal world (in which tranquillity, natural rights, and prudence are perfectly reconciled) and our real world means not only that all choice-worthy goods cannot be realized simultaneously and that some goods must receive less than their due at least in the short run, but also that improving the situation is a matter not entirely within the individual's control. As a consequence, prudence may well require tolerating great evils such as slavery in the name of justice. The remedy for great evils may require (supposedly) lesser evils such as—to use one of Jefferson's examples—the forcible expatriation of black people from the land of their birth (America), the separation of mothers from their children, and so on. Prudential action would not have to measure itself solely by the agent's happiness and the duties owed others, but it would have to distinguish between levels of good states of affairs relative to these criteria. Given the vastly complex context of empirical life, the path to the highest good is bound to contain a complex sequence of causes and effects, of means and ends. Thus one might recognize that slavery is evil but that the preservation of the political order sanctioning slavery is just, if it is probable that preserving the present order will make the abolition of slavery more likely. That is precisely how Jefferson argued, especially concerning the controversy over whether Missouri should be admitted to the Union as a state sanctioning slavery. Indeed, Jefferson's Epicurean may hold that because the goodness of actions consists in their utility relative to the end of tranquillity and consistent with the strictures of moral sense, strictly speaking it is immoral (not to mention irrational) to act imprudently, with an eye solely to abstract principles of right and wrong.

There also exists broad (though not complete) agreement between Jefferson and Epicurus on the destructive role of organized religion and the positive, liberating role of science. Epicurus clearly thinks that adherence to conventional religion is not a necessary condition of morality. Atheists, too, can be moral, a point made by Jefferson. Moreover,
Epicurus argues that religion as conventionally conceived destroys happiness. The doctrine of immortality, heaven, and hell is not only unprovable scientifically but dangerous psychologically. Recognition, and acceptance, of our finitude frees us from the fear of death (which is really the fear of what may come after death), and is thus the precondition of true morality. Epicurus’s love of natural science is sanctioned by the necessity to rid the mind of religion, which in his terms is the equivalent of superstition. Science enlightens and liberates. Like Jefferson, then, Epicurus must take a dim view of the mystifications of religions, as well as of “metaphysical” philosophers (the chief mystical mystifier being, for Jefferson, Plato). Certainly Jefferson believes that he has found such a religion in the “pure” Christianity stripped of all the “heresies” with which religious sects have infected it.

For Epicurus, science frees the mind of superstition and so makes for tranquility. One infers that science also destroys rationales by which non-Epicureans control other non-Epicureans. I take it that Jefferson sees science as operating in a similar ground-clearing manner. Shortly before he died, Jefferson wrote to Roger C. Weightman, “All eyes are opened, or opening, to the rights of man. The general spread of the light of science has already laid open to every view the palpable truth, that the mass of mankind has not been born with saddles on their backs, nor a favored few booted and spurred, ready to ride themlegitimately, by the grace of

will support the true religion, by bringing every false one to their tribunal, to the test of their investigation.” As Eugene R. Sheridan notes in his introduction to the Excerpts (pp. 10–11), Jefferson’s myriad enemies found this statement thoroughly offensive and used it, especially in the 1800 election, in their efforts to portray Jefferson as an atheist whose election would lead to the destruction (possibly by God) of the Republic. I shall later return to the coherence of Jefferson’s stance in the civic religion issue.

Letter to Pythodorus 116, p. 81; and ibid., 85, p. 57: “We must not suppose that any other object is to be gained from the knowledge of the phenomena or the sky, whether they are dealt with in connection with other doctrines or independently, their peace of mind and a secure confidence, just as in all other branches of study.

See, for example, his letter of 29 March 1801, to Elbridge Gerry: “The mild and simple principles of the Christian philosophy would produce too much calm, too much regularity of good, to extract from it’s disciples a support for a numerous priesthood, were they not to sophisticate it, vilify it, split it into hairs, and twist it’s texts till they cover the divine eloquence of it’s author with mysteries, and require a priesthood to explain them. The Quakers seem to have discovered this. They have no priests, therefore no schisms. They judge of the text by the dictates of common sense and common morality” (p. 1190).

In a letter to Mrs. Samuel H. Smith, 6 August 1816 (p. 1410), Jefferson wrote, “For it is in our lives, and not from our words, that our religion must be read. By the same test the world must judge me. But this does not satisfy the priesthood. They must have a positive, a declared assent to all their interested absurdities. My opinion is that there would never have been an infidel, if there had never been a priest.” Neither Epicurus nor Jefferson was committed to outright atheism, however.

God” (p. 1517). The light of science shows us that nature has furnished each of us with an understanding of our end—happiness—and at least embryonically with the means (the capacity for prudence and virtue). There is no hierarchy sanctioned by supernatural forces according to which some are by nature allotted a lower place in the great chain of being. The liberating role of science consists, we are to infer, in the dissolution of mystifications created by self-interested persons for their own advancement and accepted by non-Epicureans as a result of their lack of scientific knowledge and lack of reflection on the nature of true happiness. Nature and reflection are a sufficient guide to happiness and peace. Once we have removed the wrong sorts of motivations from our own selves, as well as destroyed the rationale for oppressive action, egoism diminishes and benevolence arises.

For Epicurus, science establishes that phenomena previously attributed to immaterial entities such as “gods” or “soul” have perfectly “natural” explanations. Epicurus is a materialist. There is no immaterial soul; the composition and character of the human self are purely material and are to be understood in accordance with the laws of nature. Epicurus does not claim that scientific knowledge is apodictic; he is an empiricist and promises probability only, all knowledge being crucially dependent on the senses. His scientific research suggests the hypothesis that the world is composed entirely of atoms and the void. Human nature is just a particular arrangement of atoms in space. The study of human nature will be part natural science and part anthropology. Clearly the latter will require a knowledge of natural history and of the history of cultures, languages, and the like.

Jefferson shared Epicurus’s materialism. In his letter to John Adams of 15 August 1820, Jefferson says that the only existence he admits to is that of matter and the void, and that his only basis for knowledge of the world is sensation. Thought is to be explained in material terms. “When once we quit the basis of sensation, all is in the wind. To talk of immaterial existence is to talk of nothing. To say that the human soul, angels, god, are immaterial, is to say they are nothings, or that there is no god, no angels, no soul. I cannot reason otherwise: but I believe I am supported in my creed of materialism by Locke, Tracy, and Stewart” (pp. 1443–4). Jefferson also asserted “I am a Materialist” in his letter to


Conraden, for example, the Letter to Herodatus, 30, on the origins of language.

Koch has provided a good discussion of Tracy in The Philosophy of Thomas Jefferson,
needs “supplementing” with the basic Christian regard for the happiness of others, he presumably means that the true Christian teaching does not supersede or conflict with Epicurus.

“I am a Christian, in the only sense he [Jesus] wished any one to be.”

“I am of a sect by myself, as far as I know.”

The supplement. Jefferson thought that Epicurus’s teaching was incomplete with respect to its understanding of our moral obligations toward others. As we have seen in our discussion of Epicurus’s notion of justice, Epicurus’s moral views are developed from the standpoint of the agent’s regard for his own happiness. Jefferson thought it necessary to supplement Epicurean with an other-regarding moral principle that may be summed up under the rubric of “moral sense.” This means that Jefferson will have three fundamental principles in his system: tranquility, prudence, and moral sense (closely connected to natural rights for him). Of course, more is packed into Jefferson’s appropriation of the “supplement” design (letter to John Adams, 11 April 1823): in observing the workings of nature it is impossible “for the human mind not to believe that there is, in all these, design, cause and effect, up to an ultimate cause, a superintending power over all things from matter and motion, their preserver and regulator which permitted to exist in their present forms, and their regenerator into new and other forms.” He concludes: “Of the nature of this being we know nothing” (p. 1467). An Epicurean could admit that our psyche is shaped in such a way that as we observe the world unscientifically we often cannot help feeling or inferring the existence of that Cosmic Designer (so long as we admit to knowing nothing about the Designer), for the feeling or inference is merely a comment on the structure of our minds. It would seem that an Epicurean could not admit to a separate (let alone immaterial) God, unless in the sense of a separate natural force somehow responsible for the ordering of the universe and its continued existence (a doctrine of “eternity,” for example). Such a separate natural force might well be referred to as “nature’s God” (a phrase understood as synonymous with “naturae”), or, somewhat loosely, as “the Creator.”

Jefferson to Benjamin Rush, 21 April 1803 (p. 1122); and to Ezra S. S. Ely, 23 June 1819, in Extracts, 387.

In this letter to Rush (21 April 1803), Jefferson makes a similar point about the limitations of the ancient philosophers: (Pythagorean, Socrates, Epicurus, Cicero, Epicurean, Seneca, and Antonius are named as he does in the 1819 letter to Short: “Their precepts related chiefly to ourselves, and the government of those passions which would disturb our tranquility of mind. In this branch of philosophy they were really great. In developing our duties to others, they were short and defective. They embraced, indeed, the circles of kindred and friends, and incited patriotism, or the love of our country in the aggregate, as a primary obligation toward our neighbors and countrymen; they taught justice, but scarcely viewed them as within the circle of benevolence. Still less have they incited peace, charity and love to our fellow man, or embraced with benevolence the whole family of mankind” (p. 1124).
than a moral-sense version of Epicurean friendship. The supplement also provides him with the doctrine of natural rights.

Clearly, orthodox Christianity and Epicureanism do not mesh well. Jefferson overcomes the difficulty by stripping Christianity of everything in it that implies revelation or a violation of observable natural law (violations such as miracles, the virgin birth, and the divinity of Christ), implies that religion contains truths inaccessible to a sensible and reasonable person, or implies that the divine is a "mystery" (including, for Jefferson, the doctrine of the Trinity). 64 Jefferson was convinced that most of the teachings conventionally associated with Christianity were distortions invented by the clerics partly out of desire to increase their own standing (they being the only ones who understand the Word) and partly out of flights of imagination. 65 What remains is, according to Jefferson, the moral essence of Christianity, namely, the praiseworthy virtues of benevolence, sympathy, humility, and charity and the condensation of worldly ambition, honor, and pursuit of wealth. 66 The "true Christian" teaching, in effect, amounts to Jefferson's moral-sense doctrine,

64 See Jefferson's letter to Peter Carr, 10 August 1787 (p. 1927), for the view that every assertion of religion must be examined by reason and must accord with the laws of nature. His recommended reading list Jefferson attached to this letter included under "Moralities" the Socratic dialogues and books by Cicero, Harris, Heretius, Locke and Lucretius. Under the "Religion" category are books by Locke, Middletown, Belsham, Hume, Voltaire, and Beccaria. This is scarcely a list intended to lead the reader to any of the established doctrines of Christianity. For Jefferson's "syllabus" of the true teachings of Jesus see his letter to Rush of 21 April 1803 (pp. 1122 ff.). Similarly, see Jefferson's letter to Short of 4 August 1820, on "the course of nature" as the criterion of truth. That Jefferson felt comfortable with the Gospels only after they had been significantly edited should come as no surprise in light of his attempted synthesis.

65 See Jefferson's letter to Joseph Priestley, 9 April 1803 (p. 1121); Jefferson's letter of 12 October 1813, to John Adams (p. 1300 ff.), which links Platonic to false Christianity. In his letter to Mrs. Samuel Smith, 6 August 1816 (p. 1404), Jefferson writes: "I have ever thought religion a concern purely between our God and our conscience, for which we were accountable to him, and not to the priests"; in his letter to Adams of 11 April 1823, he writes: "The truth is that the greatest enemies to the doctrines of Jesus are those calling themselves the expositors of them. . . . But we may hope that the dawn of reason and freedom of thought in these United States will do away with all that artificial scaffolding, and restore to us the primitive and genuine doctrines of this the most venerable reformer of human errors" (p. 1409). See also the letters referred to in the preceding note. In the letter to Ely of 23 June 1818, Jefferson asserts again that efforts to define the nature of God—metaphysics, in short—are the causes of schisms between believers (Excerpts, 357).

66 Jefferson liked the Unitarians. See his letter to Benjamin Waterhouse of 26 June 1822: "I rejoice that in this blessed country of free inquiry and belief . . . the genuine doctrine of our only God isreviving, and I trust that there is not a young man now living in the United States who will not die an Unitarian" (p. 1459); "the doctrines of Jesus are simple, and tend all to the happiness of man" (p. 1458; I note that Jefferson calls this letter a "sermon"). See also Jefferson's letter to Thomas Cooper, 2 November 1822 (p. 1464).
tote. Let me try to clarify the sources of Jefferson's notion of nature, and with it his notions of natural law and natural rights, with an examination of several important texts. I begin with the sense of nature implied by the natural-law formula.

Jefferson sees in nature a basis for both science and morality, and the phrase law of nature is used in both contexts, never with any indication that substantially different senses of law of nature might be at work. Speaking with reference to the Bible, Jefferson holds that claims about occurrences that violate the laws of nature (or the "course of nature") should be dismissed. The laws of nature do not permit us knowledge of the spirit-world.\(^71\) The laws of nature can characterize geographical configurations—which themselves may play an important part in political developments—as well as the connection between the habits humans or animals form and the characters they end up with.\(^72\) We observe that human beings can live in societies that are closer to nature's laws or further removed from them, that is, in less and more civilized nations.\(^73\)

The laws of nature are to be distinguished from the conventional laws, the latter being, from the moral standpoint, subservient to the former.\(^74\)

Jefferson frequently mentions the right to voluntary emigration or emigration. This "right which nature has given to all men" seems to stem in the way just noted from the individual's rights to self-preservation, liberty, and pursuit of happiness, as well as from the fact that one's place of birth is not chosen by the individual and so entails no obligation on one to remain there.\(^75\) This reasoning suggests that there is a hierarchy of individual rights. Indeed, the natural rights of individuals seem to be the basis of the conventional rights of societies. The rights of societies to control their own lands and institutions, to have representative government, and so forth seem to derive from the rights of individuals to "life, liberty, and the pursuit of happiness."\(^76\)

Thus nature or, as Jefferson occasionally says, nature's law is the source of rights (by means of the moral sense). One of the most interesting examples of his (attempted) derivation of rights concerns his thesis, repeated several times throughout his life, that "the earth belongs to the living." That notion is closely tied to Jefferson's intense dislike of national debt, banking interests, and commerce, as well as to his praise of the self-sufficient life of the farmer. His view that each generation is entitled to write its own constitutions and laws follows from the thesis in question. In a letter to John W. Eppes of 24 June 1813 Jefferson writes: "But what limits, it will be asked, does this prescribe to their powers? What is to hinder them from creating a perpetual debt? The laws of nature, I answer. The earth belongs to the living, not to the dead. The will and power of man expire with his life, by nature's law" [p. 1280]. Further on in the same letter, Jefferson adds, in reply to the question of whether one generation is bound by the debts or laws of the preceding generation: "Every one will say no; that the soil is the gift of God to the living, as much as it had been to the deceased generation; and that the laws of nature impose

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\(^71\) See the letters to Peter Carr, 10 August 1787 (p. 902); to William Short, 4 August 1820 (p. 935); and to Isaac Story, 3 December 1801 (Extracts, 325).\(^72\) See Jefferson's letter to Short, 13 April 1820 (Extracts, 395), and to John Langdon, 5 March 1810 (p. 1221). On the issue of geography, consider Jefferson's remark in the letter to John C. Breckenridge, 12 August 1803, to the effect that the United States will exercise "the natural right we have always insisted on with Spain, to introduce a nation ... to possess the ocean" (p. 2137). Presumably that natural right is unilaterally to be derived from the right of self-preservation possessed by the individuals constituting the society (the society having been formed for the purpose of securing their mutual self-preservation). In the "Draft of the Kentucky Resolutions," we read that "every State has a natural right in cases not within the compact to nullify of their own authority all assumptions of power by others within their limits" (p. 453); and in Jefferson's "Response to the Citizens of Albemarle" (12 February 1799), we are told that "the will of the majority, the Natural law of every society, is the only sure guardian of the rights of man" (p. 491).

\(^73\) Letter to William Ludlow, 6 September 1824 (p. 1496): "These savages [he would observe in the earliest stage of association living under no law but that of nature, subsisting and covering themselves with the flesh and skins of wild beasts]. Letter to John B. Calhoun, 20 September 1810 (p. 1231): "A strict observance of the written laws is doubtless one of the high duties of a good citizen, but it is not the highest. The laws of necessity, of self-preservation, of saving our country, when in danger, are of higher observation. To lose our country by a scrupulous adherence to written law, would be to lose the laws themselves, with life, liberty, property and all those who are enjoying them with us; thus absurdly sacrificing the end to the means." On the relationship between the law of self-preservation and conventional law, see also the beginning of the "Opinion on the French Treaties."
no obligation on them to pay this debt. And although, like some other natural rights, this has not yet entered into any declaration of rights, it is no less a law, and ought to be acted on by honest governments” (p. 1282).

Writing on the same subject to James Madison some twenty-four years earlier (6 September 1789), Jefferson claims that it is "self-evident" that the earth belongs in usufruct to the living. He allows, of course, that governments may, for this or that reason of utility, establish laws regulating the transfer of property, but these laws do not have the force of "natural right" because they are not based on self-evident natural law (p. 959). Between society and society, and generation and generation, "there is no municipal obligation, no empire but the law of nature" (p. 962). Natural rights, then, can belong only to the living.79 In another

79 So far as I am aware, this passage contains the only use of the term self-evident in Jefferson’s writings, other than in the Declaration of Independence. For Madison’s sober and pragmatic reply of 4 February 1790 to Jefferson’s letter, see The Mind of the Founder: Sources of the Political Thought of James Madison, ed. Marvin Myers (Hanover, N.H.: University Press of New England, 1991), 176-9. For example, Madison remarks: “If the earth were a blank slate, to be divided between the living, their title can extend to the earth in its natural state only. The improvements made by the dead form a debt against the living, who take the benefit of them. This debt cannot be otherwise discharged than by a proportionate obedience to the will of the Authors of the improvements.” The distinction between natural and conventional law is nicely illustrated in Jefferson’s discussion of patents on ideas, see his letter to Isaac McPherson of 13 August 1813. Jefferson points out that although it is a “most important question whether the origin of any kind of property is derived from nature or art,” it is agreed that “no individual has, of natural right, a separate property in an acre of land, for instance.” So far as natural rights go, however, property in a particular piece of land exists only while it is occupied. Conventional law may, for reasons of utility, confer stable ownership. Nature has made ideas nearly as public as public as land. While an idea is kept secret in a man’s head, he may be said to have exclusive right to it. Once it is divulged, it belongs to all. For nature has “benevolently” constructed things in such a way that ideas can be easily shared without diminishing them, like the air in which we breathe and move. “Inventions then cannot, in nature, be a subject of property. Society may give an exclusive right to the profits arising from them, as an encouragement to men to pursue ideas which may produce utility” (pp. 1291-2). Jef- ferson’s arguments for the “More General Diffusion of Knowledge”—that is, for publicly supported education—are of necessity utilitarian. Public education, which is most useful in helping people to exercise their natural rights freely, is also a way of destroying the “pseudo-aristocracy” and substituting the natural aristocracy of “the virtuous artisan” (see Jefferson’s letter to John Adams of 28 October 1813). Jefferson denies that talents, which are unevenly distributed by nature among mankind, provide their possessors with a natural right to rule others.

80 In his letter to P. S. Du Pont de Nemours of 24 April 1816, Jefferson says that “a right to property is founded in our natural wants, in the means with which we are endowed to satisfy those wants, and the right to what we acquire by those means without violating the similar rights of other sensible beings.” It is worth noting that Jefferson was as much, perhaps more, worried about the excessive accumulation of property and saw no natural right to infinite accumulation of property. The regulation of the accumulation of specific property was for him a utilitarian issue. Hence he denies that the abolition of entail—a development that he did so much to effect—deprived anyone of their natural rights (Autobiography, 32).

81 In the Summary View Jefferson says: “That these are our grievances which we have thus laid before his majesty, with that freedom of language and sentiment which becomes a free people claiming their rights, as derived from the laws of nature, and not as the gift of their chief magistrate” (pp. 120-1). Several sentences further Jefferson refers to “the rights of human nature” (a phrase used on p. 116 as well, with reference to the injustice of slavery); thus the “laws of nature” here must mean “the laws of human nature.”

82 There may be a connection between Jefferson’s argument (as I have just reconstructed it) and the fact that Jefferson leaves open the list of natural rights. The attribution of rights would seem to depend, for him, on our ability to sympathize and on the capability of the entity sympathized with to be the subject-of-a-life. And this scheme might lead to the discovery of new rights. Our determination of the entity’s ethical status might
Jefferson's argument sustaining the inference from nature to morality is painfully sketchy here, and his position has correspondingly puzzled many commentators. Thus far the inference seems quite unpersuasive, but Jefferson has another card to play. The connection between nature and rights seems effected through two observations about the constitution of human nature. Nature has "created" us so that we possess a "moral sense," a faculty or characteristic that Jefferson sometimes refers to as "conscience" or simply as moral "feelings." "Common sense" seems to function for Jefferson as a nearly analogous term. The moral sense provides all human beings, or nearly all, with the perception of the difference between right and wrong. For Jefferson, it is the possession of the moral sense that makes an animal human. That a particular person proceeds as though lacking any moral sense does not, Jefferson thinks, disprove the rule. He takes it as an empirical truth that moral sense is the species itself depend heavily on our ability to sympathize, so that, for example, a particularly vivid imagination might enable people to sympathize with and see as ethical subjects certain higher primates, who would then be thought of as having rights. Further, the specific rights to be attributed to accepted rights-bearers might itself be a function of the ability to sympathize, while well-trained sympathy might lead one, say, to attribute to a person in dire need of health care a right to that health care. In a letter to Peter Carr of 10 August 1787, Jefferson remarks: "The moral sense, or conscience, is as much a part of man as his leg or arm. It is given to all human beings in a stronger or weaker degree, as force of members is given them in a greater or less degree." (p. 901). Toward the start of the "Opinion on the French Treaties" we read that "For the real principles of society—such as the balance of power and the principle of national law—I appeal to the true foundation of evidence, the head and heart of every rational and honest man. It is there Nature has written her moral laws, and where every man may read them for himself" (p. 423). And further on in the same treatise: "Questions of natural right are triable by their conformity with the moral sense and reason of man. Those who write treatises of natural law, can only declare what their own moral sense and reason dictate in the several cases they state. Such of them as have the feeling and reason coincident with those of the wise and honest part of mankind, are respected and quoted as witnesses of what is morally right or wrong in particular cases. Grotius, Pufendorf, Wolf, and Vattel are of this number. But where they differ, and they often differ, we must appeal to our own sense and reason to decide between them." (p. 428). In Query XI of the Notes Jefferson says, with reference to the Indians who live without government and written law: "Their only controls are their manners, and that moral sense of right and wrong, which, like the sense of tasting and feeling, in every man makes a part of his nature" (p. 220). In Query XIII of the Notes (p. 251) we read that "it is the natural law of every assembly of men, whose numbers are not fixed by any other law" to determine what will count as a question. Occasionally Jefferson refers to "natural reason" (e.g., Query VIII of the Notes [p. 211]); the phrase seems equivalent to "moral sense." I refer to his letter to Thomas Law of 13 June 1814. Jefferson agrees that the creator did not plant the "moral instinct" in every man, for "there is no rule without exceptions." Although some people are born without sight, hearing, or hands, they nevertheless "enter into the general definition of man. The want or imperfection of the moral sense in some men... is no proof that it is a general characteristic of the species." (pp. 1337-8). Jefferson did seem to think that there has been an improvement of humankind through history, culminating in the American experiment; but this seems not to be an improvement in the moral sense as such. In the letter to P. S. Du Pont de Nemours, 24 April 1816, Jefferson remarks: "Although I do not, with some enthusiasts, believe that the human condition has ever advanced to such a stage of perfection as that there shall no longer be pain or vice in this world, yet I believe it susceptible of much improvement, and must of all, in matters of government and religion, and that the diffusion of knowledge among the people is to be the instrument by which it is to be effected" (pp. 1337-8). Also, in the "Report of the Commissioners for the University of Virginia," 4 August 1818, we read: "Education generates habits of application, of order, and the love of virtue; and controls, by the force of habit, any innate obliquities in our moral organization. We should be far, too, from the discouraging persuasion that man is fixed, by the law of his nature, at a given point; that his improvement is a chimera, and the hope delusive of rendering ourselves wiser, happier or better than our forbearers were" (p. 461). As is also suggested by May, The Path to Autonomy in America, 246. In his letter to Benjamin Rush of 9 January 1816, Jefferson refers to the actions of England and France as "setting at defiance all those moral laws established by the Author of nature between nation and nation, as between man and man" (p. 1371). At the start of the "Opinion on the French Treaties" we read: "The first paragraph contains the only [the moral law to which Jefferson has been subjected by his creator, and of which his feelings, or Conscience as it is sometimes called, are the evidence with which his creator has furnished him" (p. 423). Thus "the laws of nature and of nature's God" phrase in the first paragraph of the document in his Autobiography of the Declaration of Independence should be read as (substantively as well as grammatically) as "the laws of nature and [the law of] nature's God." The "nature's God" phrase used here in possessive or subjective genitive and seems to mean "the God belonging to nature." (This first paragraph contains the use of the word God in the Declaration). In the second paragraph of the Declaration we read once of all men being "created equal," and once of a "creator" who endows men with inalienable rights. The creator in question is nature. The Declaration does not have a loose reference to "divine providence." Of course, it is possible that Jefferson and his colleagues thought that the readers of the Declaration would interpret "creator" in a more conventional sense, and even that Jefferson wished readers to do so, without himself subscribing to that conventional sense. But the "nature's God" phrase seems striking enough to serve the moderately attentive reader (although it was used, by Alexander Pope, for example, before Jefferson). From a more conventional Christian standpoint one would presumably speak of "God's nature" or "the nature created by God" rather than "nature's God." The point is controversial. Of course, Morris Wome argues that Jefferson's "moral sense" doctrine of natural law and natural right is suggested in good part by Burlamaqui's more conventional theses that "these duties [towards God, oneself, and other humans] are inferable on the basis of the nature and states of man, which indicate the intentions of
religious vocabulary, but on the reading I am proposing he is not compelled to.  

Further, Jefferson assumes that we are social or other-directed animals who by nature care about others and their evaluations. In some passages this characteristic of human nature seems to be assimilated to the moral sense.  

I take it that this caring will require sympathy (or better, em- 

pathy), and so an exercise of the imagination. I conjecture that if Jefferson were to spell out the steps leading to his normative conclusion about the existence of natural rights that we are obligated to respect, it would be through a Huxlean strategy—one in keeping with his obvious predilection for a naturalized ethics, his Epicurean suspicion of any theological arguments for ethical norms, his materialism and interest in seeing psychology founded on biology, his view that basic ethical principles are taught to the heart rather than the head (i.e., by moral sense), and his notion that we are naturally social. The line of reasoning would seem to go as follows: It is through our ability to empathize with others—to see them as being human like us; as possessing moral sense; as being capable of choice, ethical understanding, and responsibility—that we draw the inference that others are to be treated in a certain way. This is not so much an attempt to infer a normative thesis directly from an observation about certain traits as an observation that a properly constituted, impartial, and enlightened community would accord recognition to certain traits. We Jeffersonians—enlightened by science, freed from the fictive hierarchies proposed by the superstitious or by metaphysical Platonizers—find it self-evident that persons (defined as possessing, at a minimum, moral sense) have rights, given the way nature has constituted us. Obligation is derived from moral sensibility enlightened in the appropriate way.


I note two striking omissions in Jefferson's account as understood. First, a notion of the common good does not seem to play an important role in the argument (in contrast with Huxley, but in keeping with Jefferson's Epicureanism). The pursuit of happiness figures prominently in his writings, but seems not to do the work that we would expect from a notion of the common good. Second, Jefferson does not even hint at his Epicureanism by making any mention of pleasure and pain as bases for rights. That strategy, for which there is Huxleyan precedent, would be proto-utilitarian in character and would mesh nicely with the emphasis on prudence. It would also provide Jefferson with a reason for keeping open the list of rights and of the species of rights bests. Huxley was an
the letter to Thomas Law of 13 June 1814, namely, through refinement of the "broader sense" of egoism that Jefferson there attributes to Helvétius (p. 1337). Correspondingly, prudence will not amount simply to the agent's pursuit of happiness at the expense of any consideration of others. The performance of moral acts with regard to others gives us pleasure in a psychological, not a pecuniary or bodily, sense. Jefferson says that "this is indeed true," and goes on to assert that we derive pleasure from others because of the natural moral sense implanted in us. Human beings by nature possess moral sense and so sociability, and their happiness depends on acting morally. That is, one could attempt to reconcile Epicurus and "true Christianity" by defining happiness or tranquility so that it includes the pleasure of performing selfless action, given that our "sociability" is part of our natural makeup. Epicurus's stress on friendship is expanded and diluted so as to encompass the "family of man," a broadened care for others that is somehow a component of the agent's summum bonum. The sentiments of benevolence and the like are, Jefferson wants to insist, in our self-interest—they are part of our pursuit of happiness. To repeat, duty and self-interest coincide when rightly understood. Jefferson's synthesis as I have construed it continues to

"animal rights" exponent, for example. For some discussion of Hutcheson (and some of his predecessors) on animal rights, see Thomas Reid: Practical Ethics, ed. Knud Haakonssen (Princeton, N.J.: Princeton University Press, 1990), 378, n.3.


See Jefferson's letter to Robert Skipwith, 3 August 1771 (pp. 741–2), in which Jefferson commends literature as a vehicle for exciting the "sympathetic emotion of virtue" in the reader.

In Query XIV of the Notes on the State of Virginia, Jefferson says that blacks may be inferior to whites in both body and mind but indicates that (and more unambiguously in other writings) that they possess the essential trait of "moral sense" (p. 269). For example, in his letter to Henri Gregoire on 25 February 1809, Jefferson says: "Be assured that no person living wishes more sincerely than I, to see a complete refutation of the doubts I have myself entertained and expressed on the grade of understanding allotted to them by nature, and to find that in this respect they are on a par with ourselves." After stating that his observations were expressed only with hesitation given their limited empirical basis, he adds: "whatever be their degree of talent it is no measure of their rights. Because Sir Isaac Newton was superior to others in understanding, he was not therefore lord of the person or property of others" (p. 1202). But with respect to the physical beauty of blacks, Jefferson says without ambiguity that what whites are superior, a judgment that seems associated with his fear of miscegenation and his correlative insistence on expatriation. On the questions of physical beauty and of the mixing of the races, see Query XIV of the Notes (pp. 364–5); the letter to Madison of 24 November 1801 (p. 1097); and the letter to Edward Coles of 25 August 1814 (p. 1345).

Presumably this would require abandonment of Epicurus's association of happiness with invulnerability, because the happiness of others cannot be entirely within our control. Furthermore, it would seem difficult for Epicurus to defend a more than instrumental view of friendship (as some of my language above suggests). That is, it is difficult to see how Epicurus could make room for the type of friendship Aristotle describes as being a joint pursuit of a shared good; even though Epicurus does tell us that "all friendship is desirable in itself, though it stems from the need of help" (Sent. Var. XXIII, p. 109). (For discussion of Epicurus's difficulties in accounting for friendship, see once again Minton's Epicurus's Ethical Theory, chap. 3 and pp. 117–28.) The tension between happiness and friendship is already evident in Epicurus. Jefferson's supplement to Epicurus adds further strain to the position. In the end the strain overwhelms Jefferson's attempted synthesis.

See Jefferson's letter to Caesar A. Rodney, 10 February 1810, in which he says, with reference to America's struggle with Britain: "All those calculations which, at any other period, would have been deemed honorable, of the existence of a moral sense more or less extended, or associated, of the connection which the laws of nature have established between his duties and his interests, of a regard for honest fame and the esteem of our fellow men, have been a matter of reproach to us, as evidences of imbecility. As if it could be a fully for an honest man to suppose that others could be honest also, when it would be so easy to be so" (p. 1317). The three dependent clauses beginning with "as" should be understood as parts of an extended parallel construction. See also the letter to Jean Baptiste Say of 1 February 1804: "Morality consists in this [the view that in America laborers should be concentrated in the agricultural sector], and to industriously do the laws of nature create our duties and interests, that when they seem to be at variance, we ought to suspect some fallacy in our reasonings" (p. 1144). In the letter to George Logan of 12 November 1816 (Extracts, 381) Jefferson refers to "the truth of the maxim that virtue and interest are inseparable."
privilege the Epicurean side in at least this sense, namely, that the happiness of the individual remains the summum bonum.

As already intimated, Jefferson's version of moral sense and natural rights does not require sacrificing his materialism, antidualism, suspicion of metaphysics, critique of orthodox religion, or affirmation of science. The supplement preserves Jefferson's effort, so characteristic of the Enlightenment, to redeem nature; for nature is so structured as to provide us with all we need to function as social and happy beings. Deviations from moral sense are taken not as an indication of the presence in the human soul of an intrinsic or natural tendency to evil, but as an indication of ignorance. The supplement does expand the role that imagination and sentiment will play. It both retains and expands the complexity of the role of prudence with respect to deliberation about how an individual or community may best act on the imperatives of moral sense, not just within the framework of natural rights (understood as side constraints) but also in the implementation of these rights. Prudence would remain central to an individual's understanding of the status that moral sense and the imperatives it illuminates have in the well-ordered life.

Another element present in Jefferson's synthesis, namely, his views about historical progress, should be made more explicit before we continue. Jefferson seems to have thought that the capacity for the right exercise of moral sense had progressed; the increasingly humane treatment of prisoners of war was an example. Jefferson never quite abandoned his optimism that Americans eventually had to see the light with respect to slavery. The Founders had made known the principles of justice; the next generation would, if properly led, implement them with respect to slavery. Jefferson also suggested that great evils do not go unpunished forever. He seemed to arrive at this point in part via inductive generalization from the past and in part through hope: "Had Bonaparte reflected that such is the moral construction of the world, that no national crime passes unpunished in the long run, he would not now be in the cage of St. Helena." Jefferson articulates a similar point in the famous passage in Query XVIII of the Notes on the State of Virginia. But he does not present us with anything like a philosophy of history. Presumably, the moral-sense doctrine, combined with belief in the progress of science and the possibility of wrongdoing, are elements of his vaguely articulated view.

Nevertheless, his view about the course of history is important to a doctrine of prudential action in the political sphere. Because political prudence as Jefferson understands it is deliberation about contingent events, he needs a view about contingency that tells him not simply whether patterns of events exist through time, but whether improvement in the patterns can be expected as a result of intelligent choice. The reasonableness of Jeffersonian prudence here depends on two assumptions: (1) that causes are connected to effects in some knowable way and (2) that the vast network of interconnected events is so structured that it is rational to expect that prudent action may lead to desirable results. If one held that the world is in the process of decaying very rapidly, spinning off into chaos, it would make little sense to argue that moral

78 Letter to François De Marbois, 14 June 1817 (p. 1410). See also the conclusion of the "Answers and Observations for Démontier's Article on the United States in the Encyclopédie Méthodique, 1786." Jefferson there remarks, in reference to the extermination of slavery: "But we must await with patience the workings of an overruling providence, and hope that that is preparing the deliverance of these, our suffering brethren." (p. 592).
79 "And can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are the gift of God? That they are not to be violated but with his wrath! Indeed I tremble for my country when I reflect that God is just: that his justice cannot sleep for ever: that considering numbers, nature and natural means only, a revolution of the wheel of fortune, an exchange of situations, is among possible events: that it may become probable by supernatural interference! The Althorp has no attribute which can take side with us in such a contest—but it is impossible to be temperate and to pursue this subject through the various considerations of policy, of morals, of history natural and civil. We must be contented to hope they will force their way unto every one's mind. I think a change already perceptible, since the origin of the present revolution. The spirit of the matter is abating, that of the slave rising from the dust; his condition mollifying, the way I hope preparing, under the auspices of heaven, for a total consummation, and that this is disposed, in the order of events, to be with the consent of the masters, rather than by their extermination" (p. 289). What are we to make of Jefferson's reference to "supernatural interference," given his materialism and his implicit denial of a separate and purposeful God? I prefer the line of interpretation set out earlier, though ultimately, as I suggest later, Jefferson is not consistent on the question of whether citizens' belief in such a God matters (whatever the truth of the question is).
principles and practice can be brought together through prudential action. If we ask ourselves whether action X was a rational choice even though, as we now know in retrospect, it failed to bring about the desired end, we could answer affirmatively by saying that it was the best choice given the circumstances and information available at the time. But that affirmative answer loses a great deal of force unless we also assume that it is rational to expect that things can get better. Prudence would then become a merely defensive, literally conservative, strategy—a means for fending off for as long as possible the inevitable decay.

Jefferson's assumptions about history seem closely tied to his prudence-centered view of moral and political action, especially with respect to the slavery issue. Assuming that things would get better helped make it possible for him to postpone taking any radical steps to free his slaves immediately, to campaign vigorously for universal emancipation, and so forth. Of course, Jefferson did not assume that things would get better without the conscious efforts of Americans; he was also clear that in the absence of such conscious efforts, things would get worse. He was convinced, for example, that the slaves would get their freedom one way or the other, and not in the distant future either. The historic improvement in the situation takes place in the realm of the humane—the science of morals has progressed, the moral sense is more finely honed, human rights are much better understood than at any previous time, and so forth. These examples provide the main evidence that moral progress (at least as reflected in the political arena) is possible. Progress itself is defined by reference to the Epicurean doctrines, supplemented by the teachings of moral sense and sociability.

By way of transition to the question of the coherence of this synthesis in light of the slavery issue, let me turn to Jefferson's differences with early abolitionists. This will help me flesh out Jefferson's view of the virtues of self.

**Moral action and virtues of self: how to do the right thing.** The preceding section indicates that Jefferson's notion of Christianity does not require that what is right in theory be acted on without regard to the complexities of the empirical situation. Of course, it is also true that much of Christian teaching as traditionally understood did not require the abandonment of prudential morality, and so of slavery. However, a number of the abolitionist movements active during Jefferson's lifetime were sustained by an interpretation of Christianity that did not leave much room for a prudential view of moral action, particularly the Quakers and the various evangelical or revivalist sects that grew out of the Great Awakening. In the course of his summary of John Wesley's *Thoughts upon Slavery*, David B. Davis notes that Wesley thought that "no argument of utility could justly debasing a rational creature to the level of a brute." And several lines further: "But Wesley's most compelling thoughts had nothing to do with reason or nature. His ultimate message was that the sins of this world would soon be judged." Davis goes on to show that the revivalist movement as a whole (including the Methodists) had as one of its chief targets "the trend toward natural religion." "They were revolt ing not only against moral decay and the laxness of a worldly and self-centered clergy, but also against the entire drift of British thought from Locke and Tolstoy to Shaftesbury, Bolingbroke, and Hutcheson." And "If the philosophy of benevolence was associated with an expanded view of man's capacity for virtue, the very core of evangelicalism was a renewed conviction of original sin." Sin came to be interpreted as self-

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99 For an outstanding treatment of the connection between Christianity and the slavery issue, see Davis, *The Problem of Slavery in Western Culture*. It should be noted that some of the proponents of the "positive" theory of slavery came close to arguing that a principle of Christianity sanctions the endowment of blacks, for, they argued, although God created all men equal, He also made it clear that the descendants of Ham were to be slaves; further, the Bible does not provide a clear-cut condemnation of all slavery for all time. As John Miller notes (Wool by the Ears, 51), "Jefferson's intangible views were entirely compatible with a separate creation of the various races of man." This could not have been so if he had accepted the theory of monoogenesis affirmed in the Bible, that is, if he had accepted the Bible as truth. His "purified" Christianity thus left the equality of human beings resting on a quasi-evangelical basis.

100 Davis, *Slavery in Western Culture*, 383–4. Davis adds that the revivalists "interpreted man's predicament within the old framework of sin and grace, and consequently spoke a language which was meaningful to those who had never heard of Locke or David Hume." For a discussion of similar themes in connection with the Transcendentalists, see Stanley M. Elkins, *Slavery: A Problem in American Institutional and Intellectual Life*, 3d ed. (Chicago: University of Chicago Press, 1976), 157–93. As Davis puts it in "The Emergence of Immediate in British and American Antislavery Thought," in *From Homicide to Slavery: Studies in American Culture* (New York: Oxford University Press, 1986), "The policy of gradualism was related to certain eighteenth-century assumptions about historical progress, the nature of man, and the principles of social change; but we have also noted a subjective, moral aspect to antislavery thought that was often revealed as an immediate consciousness of guilt and a fear of divine punish-
centeredness and greed, both being at the heart of slaveowning; salvation required profound inner changes and (at a minimum) immediate cessation of the sinful activity.107 The human being was seen as the scene of inner turmoil and moral struggle between good and evil—a scene an Epicurean would surely have taken as a sign of deep conceptual confusion. To make a complex story short, acting in accordance with the true principle of salvation meant maintaining a personal opposition to slavery, an opposition exhibited without prevarication in practice.108 From that standpoint there can be no prudential justification for possession of slaves, let alone for involvement with the slave trade. Jefferson certainly took a dim view of the revivalists, and his comments about the Quakers are mixed.109

The term immediate was used in this connection by abolitionists including Anthony Benezet. See Davis, "The Emergence of Immediate," 240. As Davis notes in these pages, immediate might mean different things, from a declaration of opposition to slavery to actual action. To the latter could be added to the list of activities that Jefferson held in high esteem. For it was a form of action that was immediate and that it would belong to prudence to determine whether an abolitionist, or gradualist, approach was warranted. The point here is that the choice would not be made, for Jefferson, by reference to the sorts of virtues of self, or theological beliefs, that hold for this debate.110

Davis, Slavery in Western Culture, 386, n. 48: "One may note that the nineteenth-century abolitionist, A. A. Phelps, said that carrying out the decision for immediate emancipation was like acquiring sanctification after conversion." See Davis's discussion in those pages for the various qualifications of the view that evangelical religion in practice encouraged the antislavery movement in a way that required immediate emancipation of the slaves.

For the connection between the antislavery movement and the Quakers, see Davis, Slavery in the Age of the Revolution, chap. 5, for example. "It would be difficult to exaggerate the central role Quakers played in initiating and sustaining the first antislavery movements." In the twenty years or so preceding the American Revolution, the Quakers took steps to free themselves from any involvement with slavery, as part of their policy of self-purification. Of course they also took numerous steps to extricate the slave trade and the institution of slavery itself, though they did not always call for the immediate emancipation of all slaves. In the same book Davis also notes that "the Quaker ideology was apparently responsible for the temporary and unpopular Virginia law of 1782 allowing private emancipations." By 1785 Virginia laws had barred any efforts to enslave former slaves from being inhuman in freedom suits and had "virtually prevented humanitarians from advising or aiding blacks in any legal action for freedom." (p. 197).

Jefferson criticizes the Quakers in the following vein: "You observe very truly, that both the state and present administration conducted the government on principles professed by the Friends. Of our efforts to preserve peace, our measures as to the Indians, as to slavery, as to religious freedom, were all in accordance with their professions" (letter to Samuel Kercheval, 19 January 1810 [p. 1214]). For Jefferson's criticisms of revivalist religion, see his letter to Thomas Cooper of 2 November 1822 (pp. 1463 f.). Of course, the Quakers were not always co-equal in Jefferson's view, for their declarations of opposition to slavery are sometimes in contradiction to the conviction that "slavery should be abolished absolutely and without compromise, though not necessarily without honest preparation" (p. 239). The latter phrase begins to introduce a notion of prudence. I am more interested in present purposes in the former construct, but acknowledge that it is complex.

For one could argue, as Davis does, that the abolitionists who were immediately active were sometimes prudent, and that it would belong to prudence to determine whether an immediate or gradualist approach was warranted. The point here is that the choice would not be made, for Jefferson, by reference to the sorts of virtues of self, or theological beliefs, that hold for this debate.110

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The "good
Rights and wrongs

A number of Jefferson's writings announce the doctrine of natural rights and then tell us that particular deeds—say, the actions of the British or the institution of slavery—violate the doctrine. But rarely does Jefferson specify the kind of obligation to act or not to act that his theory entails or the boundary conditions (beyond natural rights) under which prudence would have to operate. Having examined the general features of Jefferson's position, I wish now to focus on the issue of slavery in order to show steps how Jefferson's general position collapses. I begin by trying to spell out further the boundary conditions of Jefferson's moral theory. Then I look specifically at Jefferson's stance on slavery, first with respect to his ownership of slaves and then with respect to the institution of slavery.

Prudence and slavery boundary conditions. It seems apparent that Jefferson accepts the "liberal" distinction between politics and morality. As is particularly evident in his discussions of freedom of religion, the theory of rights imposes restraints on the actions that individuals (whether singly or as incorporated into a government) can take against others. The politically relevant concept of the "right to the free exercise of religion," for example, amounts to a prohibition against any interference with an individual's exercise, or lack of exercise, of religion. His theory of rights is, to use imprecise language, a theory of negative duties that isolates those aspects of a person's activities with which others are obliged not to interfere physically or directly. Morality is the province of positive moral duty [articulated by the virtues of the "true Christian-

106 Davis, "The Emergence of Immediatism," writes that immediatism "was part of a larger reaction against a type of mind that tended to think of history in terms of linear time and logical categories, and that emphasized the importance of self-interest, expediency, moderation, and planning in accordance with economic and social laws. Immediatism shared with the romantic frame of mind a hostility to all dualisms of thought and feeling, an allegiance to both emotional sympathy and abstract principle, an assumption that mind can rise above self-interest, and a belief that ideas, when held with sufficient intensity, can be transformed into irresistible moral action." (p. 257).

107 On Judiasm, see Jefferson's letter to William Short, 4 August 1820 (pp. 1435–6); letter to Benjamin Rush, 21 April 1803 (p. 1242); Jefferson links Calvin to Plato in his letter to John Davis, 18 January 1824 (Extracts, 413). In numerous letters Jefferson links Platonic Judaism, and the corruptions of the true teachings of Jesus. For Jefferson's comments on the Republic, see his letter to John Adams, 5 July 1814 (pp. 1341–2)

imperfection of both self and world as well as the difficulties of implementing morality in such a world: "Such is the malignity of religious antagonisms that, allow the laws will no longer permit them, with Calvin, to burn those who are not exactly of their creed, they raise the hor and cry of Heresy against them, place them under the ban of public opinion, and shut them out from all the kind affections of society." Letter to George Tochar, 26 January 1824 (Extracts, 413). In his letter to John Adams of 22 August 1813, Jefferson says: "But I have read his [J. Priestley's] Corruptions of Christianity, and Early opinions of Jesus, over and over again, and I rest on them, and on Middletons writings, especially his letter from Rome, and to Waterland, as the basis of my own faith." In Thomas Jefferson and his Library (Hanover, Conn.: Archon Books, 1977), Charles B. Sanford remarks that "it turns out that Jefferson had more sermons in the religious section of his library than any other type of work... The authors whose sermons Jefferson collected were mostly Anglican clergyman and there were also Presbyterian, Congregational, Catholic, Unitarian, Dutch Protestant, Episcopalian, and Quaker clergy." Among these were sermons on the issue of slavery (pp. 136–7).

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We must conclude that, from the Jeffersonian standpoint, the slaves had
a perfect right to revolt against their masters (to the best of my knowledge,
Jefferson never implies anything different). It also follows that people
have an obligation not to hold others in bondage, and that in principle
the government has the authority to compel people to honor this obli-
gation (what level of government—state or federal—ought to exert this
authority is a separate matter). It does not necessarily follow that the
government can coerce an individual to compel other individuals not to
own slaves. However, it would be morally incumbent—insofar as the
moral sense requires it in a way consistent with tranquility—for an
individual to try to abolish the institution of slavery.

At the beginning of this chapter I distinguished between two levels of
the problem of Jefferson and slavery: the one concerning Jefferson’s ow-
nership of slaves, the second concerning his views on and actions about
the institution of slavery. Given what I have said in the preceding para-
graphs, Jefferson’s stance toward the institution of slavery appears to be
defensible only if it satisfies the following conditions: One must do nothing to extend
or enlarge the institution (for then one is actively violating the rights of
others), and one is morally obligated to do everything possible to help to
abolish the institution. A wide spectrum of actions are, in principle, ac-
cetable in satisfying the “do everything possible” demand; and the Jeffer-
sonian actor will take a variety of goods as contributing to his or her
tranquility and as demanding their due. It is the task of prudence and
moral sense to determine what is due others. Nevertheless, whereas Jeffer-
son might not think that simply living in a nation in which slaveholding
exists constitutes the doing of injustice on the part of nonslavehold-
ing citizens, he would presumably hold the actor morally responsible for
taking steps to help extirpate the institution.112

With respect to owning slaves, however, the situation differs, for a
slave’s master is violating the natural rights of the slaves. Here, too,
Jefferson will retain a “do everything possible” demand, but presumably
with greater insistence on the cessation of unjust action on the part of
slaveholders. But Jefferson simply is not clear—and here the strains of
his synthesis begin to show clearly—about just how much weight that
insistence should have relative to the claims of other goods in a prudent
life. In any event, he seems to make it clear that cessation of the injustice

111 Jefferson’s synthesis would require an account of this demand for responsibility in terms
of the agent’s sumnum bonum (tranquility) and the moral sense. It will rapidly become
evident that under the pressure of the case, however, his synthesis comes apart.
is not a good that outweighs all others; indeed, he seems to think its realization is desirable only if it is adequately coordinated with other ends, including the subsequent welfare of the aggrieved parties and the welfare of the nation as a whole. Jefferson seems to believe that there are conditions under which it is moral to violate someone else's natural rights. This is essentially how Jefferson describes his stance with respect to his own slaves. He grants (or if it can be inferred from his views) that his slaves have a right to revolt against him; he grants that in principle he has an obligation to free them, for slavery is unjust; but he also believes that he has a moral obligation not to free them except under certain conditions. Until those conditions are satisfied, prudence requires various schemes to bring the hoped-for day closer. For example, at one point he argues that, in renting them out so as to generate income (and thus putting them at risk of being abused), he is acting in a way that is ultimately the most useful to himself and his slaves, and so acting as benevolently as possible.13

Of course, this position seems dangerously close to an easy rationalization for paternalism. Jefferson's position can be filled out a bit more in light of his "Opinion on the French Treaties."14 Jefferson begins his argument by addressing himself to the "Moral law of our nature," which he claims is exactly the same between individuals in the state of nature as between societies. As individuals are not released from these "duties" when they form a society, neither are societies when they form treaties or alliances. Thus "compacts then between nation and nation are obligatory on them by the same moral law which obliges individuals to observe their compacts" (p. 423). Jefferson goes on to specify two conditions under which contracts (between societies or between individuals) can legitimately be broken by one party, namely, when the performance becomes impossible and when it becomes self-destructive (for in the latter case the law of self-preservation overrules the laws of obligation to others). The basis for all this is to be found, as always, in the moral sense that nature has implanted in us (p. 423). And the moral sense also informs us that moral obligations cannot be annulled simply because they have become useless or disagreeable. Danger can serve as a reason only if the danger is imminent and great (p. 424). The mere possibility of danger is insufficient to dissolve a party from its contract. "Obligation is not suspended, till the danger is become real, and the moment of it so imminent, that we can no longer avoid decision without forever losing the opportunity to do it" (pp. 424-5). At that point, performance of a moral obligation would contradict the law of self-preservation. As to how to determine precisely when either of these escape clauses should operate, Jefferson reminds us: "Questions of natural right are triable by their conformity with the moral sense & reason of man." Ultimately we cannot simply rely on the learned books of law; we know when to affirm their conclusions (or which to affirm when they disagree with one another) by appealing "to our own feelings and reason" (p. 428).

Prudence and slavery at home. Let us attempt to apply these principles to Jefferson's position on the slavery issue. Although the specific context of the "Opinion" concerns the question of the nonperformance of a contract—the breaking of a promise, in short—the doctrine of obligation there is explicitly said to have validity in the state of nature, that is, not to be simply a creature of convention. Because Jefferson believed that all humans possess by nature the same rights and because society is understood as a contract, a just political contract between individuals requires, on the political level, reciprocity or equality of treatment.15 Consec-
Rights and wrongs

be not only freed his slaves in Illinois but also was instrumental in abolishing slavery from that state. In his reply to Coles of 25 August 1814, Jefferson asks whether Coles is right in “abandoning this property [the slaves], and your country [Virginia] with it”; for “the laws do not permit us to turn them loose, if that were for their good: and to commute them for other property is to commit them to those whose usage of them we cannot control.” In the meantime we should feed and clothe the slaves well, and “require such reasonable labor only as is performed voluntarily by freemen, and be led by no repugnancies to abridge them and our duties to them.” Jefferson urges Coles to stay in Virginia and to “become the missionary of this doctrine truly christian; insinuate & inculcate it softly but steadily, through the medium of writing and conversation” (p. 1346) until a critical mass of opinion in favor of emancipation is reached. Jefferson suggests, that is, that it is legally impossible to manumit one’s slaves in Virginia—a claim that is not quite accurate—and that manumission would be detrimental to the slaves. Because Coles was not advocating the sale of his slaves to other owners, Jefferson’s point on that score is irrelevant. In Query XIV of the Notes Jefferson states the “emancipation is dangerous for blacks and whites” thesis in greater detail, evident phrase of the Declaration of Independence. Bancroft reproaches Jefferson for still owning slaves though believing in the truths of the Declaration.

For further details about Coles, see Miller, Wield by the Ear, 205–8.

The Virginia Act of 1806 (which repealed the Act of 1782) stipulated that manumitted slaves leave the state within one year, unless permitted to stay by the legislature. Many freed slaves were permitted to stay. Jefferson may be referring, however, to laws regulating manumissions in cases in which their owners were in debt (the purpose of the laws being to prevent people from avoiding payment by shifting—a relative who could be counted on retaining the slaves, for example—their capital, slaves). See McClellan, Slavery, 132: “The claims of creditors would, under Virginia law, have precluded or at least postponed such an emancipation, but even without these he had so many relatives committed to the plantation way of life that such an act Jefferson’s freeing all his slaves would have amounted to a disinheritance”, and A History of American Law, by Lawrence M. Friedman, 2nd ed. (New York: Simon and Schuster, 1985): “The law [in Virginia] was underwritten to prevent sales to satisfy the master’s debts, unless all other personal property had been exhausted. Legally, land could not be levied on until all the personal property had been sold to pay debts. Under this statute, then, the slaves were halfway between land and personality, in regard to creditors’ rights” (p. 225). For some further discussion, see Mark Tushnet, The American Law of Slavery 1810–1860: Considerations of Humanity and Interest (Princeton: Princeton University Press, 1981), 188–228; Mary Locke, Anti-Slavery in America, from the Introduction of African Slaves to the Prohibition of the Slave Trade, 1619–1818 (New York: Gram & Co., 1901), 74–122; and Luther P. Jackson, “Manumission in Certain Virginia Cities,” Journal of Negro History 13 (1930): 278–314; and A. Leon Higginbotham, Jr., In the Matter of Color: Race and the American Legal Process (New York: Oxford University Press, 1978), 47–59.

property the right of resisting rule. Putnam then adds: “And this equality we can call an equality of right, which has its origin in the fact that an obligation to cultivate a social life is equally binding upon all men, since it is an integral part of human nature as such” (p. 333). Putnam goes to some lengths to show that “the old idea handed down from the Greeks, to the effect that certain men are slaves by nature, merits complete disapproval” (p. 340), of course he has Aristotle in particular in mind. Consider, too, Putnam’s statement in vol. 2 of De Officio Homini et Civis foedum Legem Naturalum, trans. F. G. Moore (New York: Oxford University Press, 1927), chap. 3 (“On Natural Law”): “Thus man is indeed an animal most bent upon self-preservation, helpless in himself, unable to save himself without the aid of his fellows... Whence it follows that, in order to be safe, he must be sociable, that is, must be united with men like himself, and so conduct himself toward them that they may have no good cause to injure him, but rather may be ready to maintain and promote his interests. The laws then of this sociability, or those which teach how a man should conduct himself, to become a good member of the human society, are called natural laws. So much settled, it is clear that the fundamental natural law is this: that every man must cherish and maintain sociability, so far as in him lies. He who wishes an end, wishes also the means... The remaining precepts are mere corollaries, so to speak, under this general law, and the natural law given to mankind declare that they are evident” (p. 19).

For Coles’s letter, as well as his reply of 26 September 1814 to Jefferson’s reply of 25 August 1814, see Sketch of Edward Coles, by F. B. Washburne (Chicago: Jacome, McClung, and Co., 1882), 23–31. In the 31 July 1814 letter to Jefferson, Coles says: “My object is to entreat and beseech you to exert your knowledge and influence in devising and getting into operation some plan for the gradual emancipation of slavery” (p. 22). Coles suggests that this is a “duty” that devolves on Jefferson in particular given Jefferson’s prominent stand in favor of the slave trade. Even if Jefferson’s words have no legal immediate effect, Coles argues, they will “leave human nature the invaluable Testament...how best to establish its rights” (p. 23), a testament sure to have a positive effect eventually. See also Benjamin Rush’s letter to Jefferson of 19 August 1793, in which Jefferson is again asked to speak out. Bancroft comments: “Putnam contrasted the severity of blacks with the desire of the whites to free themselves from British rule, and quoted the “self...
arguing that emancipation would be stymied by (1) the continued prejudices of the whites, (2) bitter recollections of the blacks of the injuries they had sustained, and (3) "many other circumstances, which will divide us into parties, and produce convulsions which will probably never end but in the extermination of the one or the other race" (p. 264). Emancipation will lead to racial war, and because the blacks are in the minority, they will not benefit from emancipation. Ergo, it is not moral to emancipate one's slaves.

In his famous letter to John Holmes of 22 April 1820, Jefferson says that, with respect to slavery, "justice is in one scale, and self-preservation in the other" (p. 1434). "Self-preservation" could be extended to refer to the blacks, but it refers primarily here to the whites. Jefferson may have had in mind the economic self-preservation of the whites as well as their physical survival, which would be threatened by hordes of angry former slaves.

As already noted, the "impossibility" reason for Jefferson's not emancipating his own slaves is not persuasive, at least not so long as moral sense serves as the standard. With sufficient ingenuity and effort, he could have found a way to bring this about, but he might have had to leave Virginia, as Coles did. The "danger" rationale is not finally persuasive either. Indeed, Jefferson emphasized in his letter to Coles that "the hour of emancipation is advancing, in the march of time," either through the voluntary efforts of whites or through a bloody revolution (encouraged by foreign nations) comparable to that of Santo Domingo (p. 1345). A similar thought animates Jefferson's letter to Holmes of 22 April 1820. Thus not emancipating one's slaves seems as dangerous in the longer run, on Jefferson's own grounds, as doing so in the short term. In any event, according to the standards of the "Opinion," the danger must be immediate and direct to qualify as a reason for annulling a moral obligation. Jefferson does not show that emancipation of his own slaves met that criterion, and in fact it would not have done so, especially if Jefferson had moved out of the state.

Of course, emancipating his slaves would have meant immense trouble for Jefferson, as well as a drastic reduction in the level of his and his family's material welfare. But disagreeableness and lack of utility relative to one's own self-interest do not, according to Jefferson himself in the "Opinion," qualify as legitimate reasons for annulling a moral obligation, let alone one as serious as that in question. Indeed, in promoting the revolution against Britain, Jefferson was prepared to sacrifice his own property and the material welfare of his family (in fact, the British nearly captured Jefferson at Monticello, and while there took a number of his slaves and a good deal of his property). Nothing in the moral sense could warrant the continued enslavement by Jefferson of hundreds of blacks in the name of preventing economic hardship on the part of Jefferson and his family. Furthermore, there were alternatives to simply freeing slaves and throwing them out to fend for themselves, or to destroying one's farm in the name of emancipation. Jefferson formulated one such plan in France (it involved hiring the freed slaves as workers), but he abandoned it when he returned. Thomas Paine urged some similar alternatives. An Epicurean, by contrast, could find good reason for not emancipating his slaves, particularly if prudence pointed out another boundary condition that would have to be met.

Jefferson's objections to emancipation of his own slaves, as well as to the unqualified emancipation of all slaves, are tied to a conviction mentioned in his letter to Coles, namely, that the blacks should be expatriated. When in that letter to Holmes he remarks, to repeat, that "there is not a man on earth who would sacrifice more than I would to relieve us from this heavy reproach, in any practicable way" (p. 1434; Jefferson's emphasis), Jefferson explicitly stipulates that emancipation must be accompanied by the expatriation of the blacks. Practicability or utility must satisfy that condition as well, and not simply the general condition that the blacks not be endangered in an immediate way. The expatriation condition vastly complicated any scheme for emancipation and thus rendered emancipation far less likely. Because the expatriation condition is a sine qua non, for Jefferson, of emancipation of his own slaves or of any plan for general emancipation, let me say a few words..."
about its presumed moral status before I consider the legitimacy of Jefferson's stance toward the institution of slavery.\footnote{For the details of Jefferson's expatriation plan, see Query XIV of the Notes (p. 264); the letter to Sparks of 4 February 1824 (pp. 1484–7); the letter to Coles, 23 August 1818 (pp. 1345); the letter to John Lynch of 21 January 1811 (p. 1244). In the letter to Monroe of 24 November 1801 (pp. 1056–9) Jefferson argues against resettling the blacks anywhere in North America lest a "hot or mixture" on the continent result. Presumably following this advice would entail forcible resettlement of freed blacks.}

Why did Jefferson insist, from beginning to end, that the blacks be forcibly expatriated, that is, that they not form a permanent part of the American republic? In addition to the reason already mentioned—that Jefferson thought the hostility between blacks and whites so deep and so permanent as to destroy the bonds of trust and friendship required in a free republic—there is another, deeper, reason. I have already mentioned that Jefferson thought black persons ugly, and he very much feared the "degradation" of the whites as a result (by contrast, Jefferson encouraged the mixing of the whites and Indians, believing that the whites became more beautiful as a result).\footnote{Consider the remark in the letter to Chastellux of 7 June 1785: "I believe the Indian, then to be, in body and mind, equal to the white man. I have supposed the black man, in his present state, might not be so; but it would be hazardous to affirm, that, equally cultivated for a few generations, he would not become so." (p. 801). For a sensitive discussion of Jefferson's views on the Indians, see Ralph Lerner's The Thinking Revolutionary: Principle and Practice in the New Republic (Ithaca: Cornell University Press, 1987), chap. 4.}

Jefferson's pervasive fear of miscegenation goes far beyond physical beauty; for his "suspicion" that blacks are inferior to whites in body and mind would necessarily lead him to worry that mixing the two races would degrade the mental capacities of the whites, and indeed their very humanity.

My interpretation of Jefferson as an Epicurean helps explain Jefferson's fear of miscegenation. If there is no immaterial soul that belongs to all humans equally, "human nature" is material nature, and material nature can evolve through time.\footnote{Similarly, Hume thought blacks almost certainly inferior to whites. See "Of National Characters," in Essays Moral, Political, and Literary, ed. Eugene F. Miller (Indianapolis: Liberty Press, 1985), 208. n. 10: "I am apt to suspect the negroes to be naturally inferior to the whites. There scarcely ever was a civilized nation of that complexion, nor even any individual eminent either in action or speculation. No ingenious manufactures amongst them, no arts, no sciences... Such a uniform and constant difference could not happen, in so many countries and ages, if nature had not made an original distinction between these breeds of men. Not to mention our colonies, there are NEGROES slaves dispersed all over EUROPE, of whom none ever discovered any symptoms of ingenuity,... In JAMAICA, indeed, they talk of one negro as a man of parts and learning; but it is likely he is admired for slender accomplishments, like a parrot, who speaks a few words plainly... It is worth adding, however, that Hume disliked the institution of slavery, in part because of its evil effects on the character of the masters.}

The "moral sense" is the attribute that qualifies an entity as human, but moral sense is as much a biological attribute as eyesight. Although Jefferson indicated—as already noted—that blacks possess moral sense, he also wondered whether evolution might have accorded blacks less virtue in mind and body than nature did to whites.\footnote{Notes, Query XIV, p. 270: "I advance it therefore as a suspicion only, that the blacks, whether originally a distinct race, or made distinct by time and circumstances, are inferior to the whites in the endowments both of body and mind. It is not against experience to suppose, that different species of the same genus, or varieties of the same species, may possess different qualifications. Will not a lover of natural history then, who views the gradations in all the races of animals with the eye of philosophy, excuse an effort to keep those in the department of man as distinct as nature has formed them?" Jefferson's view that "the improvement of the blacks in body and mind, in the first instance of their mixture with the whites, has been observed by every one" (p. 267) suggests that he was inclined to the view that blacks are by nature inferior.}

In the passage in the Notes just cited, Jefferson explicitly indicates that the results of an empirical study of blacks might "degrade a whole race of men from the rank in the scale of beings which their Creator may perhaps have given them." Jefferson goes on to indicate that nothing in nature contradicts the possibility that there are distinct races of men as there are of other animals, some being superior to others. Entertaining the hypothesis that blacks are inferior to the whites in the endowments both of body and mind may amount to entertaining the hypothesis that blacks are less human than whites, if "body and mind" include the moral sense. Consequently when Jefferson articulates his fear of a black person "staining the blood of his master" (Notes, Query XIV, p. 270), he is thinking of the possibility that mixing the races might actually make the whites less human, and that is not a possibility he was willing to risk. Jefferson might have seen his moral obligation as weakened by the "danger" of miscegenation would present. Jefferson's views on politics and morals are thus heavily indebted to his views on nature—to his biology, in short. Equality, humanity, moral sense: these can only be "empirical" issues for Jefferson. If blacks turned out to be by nature "subhuman" (i.e., lacking moral sense), presumably they could be justly enslaved. Through the back door, as it were, Jefferson's Epicureanism and his "demystified" Christianity could join hands in "justifying" slavery. The science that liberates us from hierarchies could also reestablish hierarchies. This realization occurred to Jefferson, but he resisted abandoning his belief in the moral equality of blacks and whites.

The tensions within Jefferson's scheme of moral justification pointed to by his actions can be illustrated in another way. Let us assume that the distinction between long- and short-term time horizons can be mean-
ingfully used here. Even if it were prudent to tolerate certain evils for the short term in the name of ultimately removing the evil, it could not be prudent to make the evil still worse in the name of expiating it. Yet in at least one attested case—and some such case was inevitable—Jefferson did precisely this. Jefferson wrote in a letter that he had one of his slaves—James Hubbard—"severely flogged in the presence of his old companions" (in Jefferson's words) for having made repeated efforts to win his freedom. Although the preservation of the institution of slavery requires that the slaves not revolt, one could not simultaneously condemn the institution on the basis that it violates the natural rights of the slaves and take actions that make the condition of the slaves still worse. One could hardly argue that Hubbard was improved by the flogging. It might be prudent in the nonsensical sense of the term to flog freedom-minded slaves, but it could not be "prudent" to do so in the sense of the term Jefferson wishes to espouse.

I have argued that Jefferson rationalized in justifying his prudent actions with respect to his ownership of slaves. By this I mean that he falsely claimed to be doing the best he could under the circumstances relative to the dictates of moral sense. His failure should not be interpreted as being merely a personal one but as pointing up a deep problem in his "synthesis." From a strictly Epicurean standpoint, Jefferson's actions might well have been perfectly "just" in the sense of most conducive to his tranquility. The logic of Jefferson's stance here points to the Epicurean sumnum bonum as its justification, as well it might, given that in Jefferson's synthesis tranquility remains methodologically primary; yet he takes his supplement to be crucial. The attempt to proffer the dictates of moral-sense theory and of happiness by way of justification puts intolerable strain on the synthesis and shows that the sumnum bonum cannot, for Jefferson, accommodate both Epicurean tranquility and the enlarged circle of moral valuation entailed by moral sense.

[112] For the details of this episode, see William Cohen, "Thomas Jefferson and the Problem of Slavery," Journal of American History 46 (1959): 516; and Jefferson's letter to Reuben Perry (from which the words not quoted are taken) of 16 April 1812, in Thomas Jefferson's Farm Book, ed. Edwin M. Bets (Charlottesville: University of Virginia Press, 1987), 33–4. Jefferson claims that Hubbard "conquered a thief" along the way. Compare the letter to William Gordon, 16 July 1788 (Thomas Jefferson's Farm Book, 505), where Jefferson says that Cornwallis "carried off also about 30 slaves; had this been to give them freedom he would have done right, but it was to enslave them to inevitable death from the small pox and putrid fever then raging in his camp."

Rights and wrongs

Let us now briefly examine Jefferson's stance relative to the institution of slavery.

Jefferson and the institution of slavery. In the letter to Coles of 25 August 1814, Jefferson recounts some of the efforts he had made prior to 1800 on behalf of the blacks. In particular he mentions his authorship of an act in the Virginia legislature for extending the protection of the laws to blacks. The effort was roundly rejected and vilified (p. 1344). Even the act of 1782 making manumission much easier—an act promoted by Jefferson—faced opposition. These and other failed efforts rapidly convinced Jefferson that any public opposition to slavery was bound to be counterproductive, hence his great efforts to keep the Notes on the State of Virginia from being published. Jefferson feared not that the


[114] Miller notes that by 1777 Jefferson had suffered enough rebuffs to his efforts to commit him to the causes of "prudent and pragmatic action" (Wolf by the Ear, 19). See also Woodrow D. Jordan, White over Black (New York: W. W. Norton, 1977), 435. Jefferson "had good reason to think that antislavery pronouncements might subvert the institution."

[115] Jefferson wrote the Notes in 1781 in answer to a number of queries put to him by François Marbois, secretary to the French legation. Desiring to get copies into the hands of several friends, Jefferson revised and enlarged the text and published it anonymously, in a private edition, in France in 1783 (see Jefferson's letter to Chastellux of 16 January 1784 [p. 786]). In the Autobiography Jefferson claims that the decision to publish the Notes in France was made simply because printing costs there were cheaper (p. 56). However, doing so also had the advantage of increasing the chances of keeping the Notes private. In his letter to Chastellux of 7 June 1785, Jefferson says that the Notes were not to be circulated, for "The strictures on slavery and on the constitution of Virginia, are not of that kind, and they are the parts which I do not wish to have made public, at least, I know that their publication would do most harm or good. It is possible, that in my own country, these strictures might produce an irritation, which would induce the people towards the two great objects I have in view; that is, the emancipation of their slaves, and the settlement of their constitution on a firmer and more permanent basis." Jefferson contemplated the possibility of sending copies to "every young man at the College," for in the young lay his hope for change (pp. 799–800). In the letter to Madison of 1 September 1785, Jefferson remarks that "I am anxious to hear from you on the subject of my Notes on Virginia. I have been obliged to give so many of them here, that I fear their getting published" (p. 822). A copy did get into the hands of a French bookseller, and a poor French translation (with Jefferson's authorship stated) was scheduled for 1787. Jefferson could do little about it except to try to improve the translation (see his letters to Madison of 8 February 1786 [p. 489]; to John Page of 4 May 1786 [pp. 852–3]; to George Wythe of 13 August 1786 [p. 858]). Jefferson then decided to print an accurate edition in English, with his authorship public, in 1787. Soon after, the book was published in America, and it quickly become the center of considerable controversy, concerning which see Jordan, White over Black.
Jefferson was convinced that if he pushed the issue publicly, he would only hasten the split between North and South, and between Federalists and Republicans, the result being the destruction of the Union and the perpetuation of slavery in the South. Jefferson adds that this letter, too, is to be kept private. Prudence requires silence about the prudential reasons for the silence.

Jefferson had a further constraint to his advocacy of means for general emancipation as well, and this second constraint was crucial to his position on the controversy leading up to the Missouri Compromise (1820). I refer to his view that no solution to the slavery issue could be permitted to destroy the Union, the continued existence of the Union being a pre-condition for the liberties of all the peoples existing within it. In that sense the moral duty to preserve the Constitution for the long run was higher than the moral duty to abolish slavery in the short run. Jefferson thought that the Constitution could be preserved only if the distinction between state and federal authority was retained. Hence slavery could be abolished only by a decision of the individual states, not by a decision of the federal government (even though the Constitution requires that each state have a "republican form of government"). Jefferson's problematic position on the Missouri controversy is simply an extension of that sequence of inferences drawn from the second constraining premise (the premise that the Union must be preserved above all).

Furthermore, there seems to be a scholarly consensus that had Jefferson taken a sustained and public abolitionist stand, his chances for election to public office would have been small or nonexistent. It could be argued, then, that silence with respect to the institution was the price Jefferson paid for the privilege of serving his country. The opportunity for accomplishing great things—and, in Jefferson's eyes, for saving the Union by reversing Federalist policies—might have outweighed in Jefferson's mind the evil that his speaking out on slavery could perhaps
decision to emancipate depended on indirect strategies and by his perception, based on the general failure of his efforts before 1777 and on an assessment of the state of public opinion on the question of race, that prudence required an indirect, long-term approach rather than a direct, short-term approach to the problem of abolishing slavery.

The expatriation requirement cannot be defended on the “imminent danger” doctrine of the “Opinion on the French Treaties.” At best, Jefferson only suspected that there was a possibility of danger to the whites if their “blood” were mixed with that of blacks, but that suspicion does not justify any of the draconian measures associated with Jefferson’s plan for emancipation. Jefferson’s suspicion that blacks and whites would find it difficult to live together was not without basis, as subsequent history shows; but it does not justify (on his own grounds in the “Opinion”) expelling the native blacks any more than it does expelling the native whites. If blacks and whites are morally equal and being born in a certain place entails a right to citizenship (as Jefferson believed with respect to whites), then blacks possess that right as much as whites do.85 However, much Jefferson finds blacks lacking in beauty and unpleasant to see, that subjective feeling is not, on Jefferson’s own grounds, a sufficient ground for violating moral obligation.

The “states‘ rights” condition is not justifiable either, and as a consequence Jefferson’s position on the Missouri controversy is not justifiable. The basis for the argument that states and not the federal government possess the authority to determine who shall enjoy full civil rights can only be a purely technical one. That is, the state governments no more possess natural rights than the federal, county, or city governments do. The rationale for distributing powers among the different levels of authority is that doing so will create a mechanism that maximizes the chances that the natural rights of the individual will be protected.86 The
distribution of powers thus is purely a "technical" matter; moral authority derives from the doctrine of natural rights, and only individuals possess natural rights, not groups of individuals. Indeed, Jefferson did not see the Missouri question as a moral one so much as a question of power politics; the Federalists were using the slavery issue to increase their own power.\textsuperscript{136} Jefferson also thought that those who were genuinely against slavery but in favor of the Missouri Compromise were acting imprudently, that is, in a way that destroyed in the name of abstract moral principle the means required to implement abstract principle.\textsuperscript{137}

The principal problem with Jefferson's argument is that it seeks to implement means to the end defined by abstract principle (the equality of persons as defined by the natural-rights doctrine) that not only contradict that principle in the abstract but also have little chance from an empirical standpoint of bringing about the end. Refusing to limit the geographical spread of slavery could hardly have facilitated the abolition of the institution, or even have made Jefferson's expatriation condition any easier to carry out.\textsuperscript{138} The means to the end have at this point will be done for the best. What has destroyed liberty and the rights of man in every government which has ever existed under the sun? The generalizing and concentrating all cares and powers into one body" (p. 1380).

In the letter to Holmes of 22 April 1820 (p. 1434) Jefferson denies that the extension of slavery would create any new slaves. In the letter to Albert Gallatin of 26 December 1820, Jefferson repeats the point (pp. 1448–9), and adds that if there is any morality at issue, it lies on his own side, by spreading the slaves over a larger surface "their happiness would be increased, and the burden of their future liberation lightened by bringing a greater number of shoulders under it." Once Congress "goes out of the Constitution to arrogate a right of regulating the conditions of the inhabitants of the States" the floodgates are open and Congress will feel entitled to many usurpation actions (p. 1449). In \textit{Wolf by the Paws} Miller says, with reference to Missouri's efforts to prevent entry of free blacks into the state—despite the fact that "the United States Constitution made free blacks citizens of the United States entitled to all the privileges and immunities of white men"—that by Jefferson's silence on this issue, he "put himself in the anomalous and morally untenable position of advocating the opening of the West to black slaves and closing it to free blacks. Truly, for Jefferson, the Missouri controversy proved to be a Pandora's box filled with ambiguities, contradictions, paradoxes, and not a few sheer fantasies" (p. 248). Miller goes on to note that as the slavery issue was dividing the Union, it was also unifying the South; as the one iniquity capable of doing that, it prepared the way for the Civil War, as well as for the idea that the antislavery movement in the North was a plot designed solely to destroy the South. Jefferson's actions and words strengthened the planter aristocracy, Miller adds—the very aristocracy that he had tried to destroy in the Revolutionary days.

\textsuperscript{136} Consider, again, Jefferson's words to Holmes, 22 April 1820: "If they [the sons of the revolutionary generation] would but dispassionately weigh the blessings they would throw away, against an abstract principle more likely to be effected by union than by agitation, they would pause before they would perpetrate this act of suicide on themselves, and of treason against the hopes of the world" (p. 1435).

\textsuperscript{137} The most that can be said on behalf of Jefferson's "spread slavery further" view is superseded the end itself. Conventional states' rights are here placed above the natural rights of individuals. Simply preserving the Constitution, even when the natural rights of many persons are being suppressed, supersedes the principles of the Declaration of Independence that the Constitution is presumably intended to implement. Prudence has become rationalization.

At this point, the rationale for upholding the administrative mechanisms set out in the Constitution has collapsed. The criteria of impossibility and imminent danger that, according to Jefferson in the "Opinion," permit the annulment of moral obligation, cannot apply here. The danger is a danger to the means of self-government, not to its ends— but the means possess moral legitimacy only if they can be shown to lead to the ends (at least over the long term), and Jefferson did not show this with respect to the Missouri question. Jefferson could argue that his position on the Missouri question, while committing him to the continued violation of the natural rights of blacks, preserved the constitutional structure that protects the freedom of whites. To argue in that way, however, is simply to indulge in a crude utilitarian calculus that dispenses with the individual rights of the numerical minority altogether. Alternatively, Jefferson could argue that preserving the Union was the necessary condition for preserving the mechanism that would one day permit blacks to enjoy freedom as well. But because he insisted from beginning to end on expatriation as a precondition for emancipation, the status of the blacks after their emancipation could hardly have been paramount in his mind. The various boundary conditions are not consistent with one another.

As already noted, there is no question that any movement for emancipation faced tremendous obstacles in the form of vested interests and racist opinion. And it is arguable that at some junctures indirect tactics may have been superior to a direct and sustained rhetorical attack by Jefferson on the institution. Therefore it is possible to reconcile, in principle, prudence and rights. But it seems that after his second term as president (and perhaps before) Jefferson employed few if any indirect tactics other than silence and inaction. He seemed to place a certain faith in the younger generation, which would presumably be molded by the that in some states with a small proportion of slaves, such as Pennsylvania, abolition may indeed have been made easier by the fact that the vested interests in favor of the institution were relatively weak, as is argued by Adam Smith. See \textit{Wealth of Nations}, 1:388.
egalitarian ideals of the Revolution and so would be free from the prejudices of their parents. Jefferson’s assumptions about historical progress resonate here. At other times, though, Jefferson was pessimistic about the young. In any event, Jefferson did not seem to give full weight to the fact that the young needed to be inspired and led, and he above all possessed the moral authority to lead.

Jefferson’s quandaries may be illustrated by the example of Gabriel’s attempted rebellion in Virginia in 1800. Gabriel was a freed black. Let us suppose that Gabriel’s rebellion had no chance of success (it would not secure the long-term freedom of any of the slaves); that it would almost certainly lead to the death of the leaders of the rebellion and the reenslavement—this time under harsher circumstances, say, in the West Indies—of all others involved; to the reenslavement of some free blacks in the area, and generally to the imposition of further restrictions on free blacks; and to the arousal of fear among the majority white population, the result being a hardening of attitudes against blacks and so the diminution of the chances for general emancipation. In a Jeffersonian scheme, was Gabriel prudent in leading this rebellion? Are there any conditions under which it is prudent to act “ideally,” without regard to the probable consequences of one’s actions? The answers to both questions can be affirmative only if it is true that the conditions of enslavement or quasi-freedom (the latter characterized Virginia’s “free” blacks) were intrinsically worse than death and were agreed to be so by all those about to risk death or increased suffering. In principle, Jefferson would have to grant this much.

Are there any conditions under which it is prudent for one person to violate the natural rights of another and for the other to respond in kind? I raised this question earlier, when considering the possibility that Jefferson’s decision to hold other people in slavery might be, in his terms, morally prudent while the slave’s decision to escape might be equally prudent. Suppose that one of Jefferson’s slaves requested his freedom on the grounds that he was prepared to take whatever risks freedom entailed. Suppose that he had a usable skill with which to provide for himself once free, and so forth. Jefferson refused to grant him his freedom. The slave then forced Jefferson at the point of a knife to sign the emancipation papers. When Jefferson declared his intention of revoking the papers at the earliest possible moment, the slave killed him, cleverly concealed his deed, and succeeded in escaping to a life of freedom in the North.

Jefferson might have acted in full accord with his prudential morality, believing that it was genuinely better for the slave not to be free in the short run. Perhaps the slave did not have as good a knowledge as Jefferson did of the fate of “free” blacks in a hostile white society, and Jefferson did not want to set a precedent that would lead all his other slaves to demand their freedom—believing that an increase in the number of free blacks would only set back the cause of general emancipation and full equality. Jefferson could retain his tranquility in the belief that he was standing on principle in an effective way. The slave, in contrast, had a natural right to his freedom and wished to exercise his right in the belief that he would be more tranquil having done so. He would rather be dead than enslaved. I suggest that a case of this sort could be constructed so that both sides could be said to have acted according to Jeffersonian prudence.

But this seems to amount to a reductio ad absurdum of Jeffersonian prudence. I do not think that the conclusion to be drawn is that prudence should be rejected altogether as a category of moral reasoning. Rather, I have tried to suggest that Jefferson’s account of his action and inaction relative to the institution of slavery is at times internally inconsistent and at times just impersuasive—if one adopts the standpoint of the “Opinions” as the touchstone. That document is a moral-sense document.

Douglas Adair points out that, possibly as early as 1774, Jefferson decided to offer Betty Hemings’s boys their freedom once they reached a certain age. “Though seemingly only two of them exercised” this option (Home and the Founding Fathers, ed. T. Colbourn [New York: W. W. Norton, 1974], 185). Jefferson did not free Sally Hemings, one of Betty’s daughters, and Adair conjectures that the reason was that the only way that someone of Sally’s manner, style of behavior, and standard of taste—all of which “made her much too superior to associate with slaves in general”—could have survived in white society was to follow the “customary” path of “beautiful mulatto or quadroon girls.” That is, either staffing a brothel in a southern city such as New Orleans or if “lucky,” becoming the mistress of a wealthy young creole (p. 186). Adair notes that because Jefferson would have found such a possibility abhorrent, he decided not to free Sally. Was Jefferson’s decision prudent? (It turns out, according to Adair, that Sally had a liaison anyhow, at Monticello—with Peter Carr.)
however; and when we remember Jefferson’s Epicurean view to which the moral-sense doctrine is a supplement, we see that his prevarications are not so much a matter of personal failings as a symptom of the deep incoherence of his theoretical structure. It is as though Jefferson felt tugged in contrary directions by two of his principles: tranquillity and rights.

PRUDENCE, RATIONALIZATION, AND JEFFERSON’S SYNTHESIS

My discussion in the preceding section indicates that Jefferson’s appeals to prudence with respect to both levels of the slavery problem—his ownership of slaves and the institution of slavery—ultimately amount to rationalization on his part. In this section I wish to examine in slightly greater detail the difference between prudence and rationalization and to draw some conclusions. The issue of rationalization is complex philosophically, involving issues of self-deception, weakness of will, and the like. It is not my purpose here to work out the difference in the abstract so much as to reflect on it in terms suggested by Jefferson’s philosophy as set out earlier.

To rationalize is to attempt to justify a blameworthy course or plan of action in a way that in effect amounts to an excuse for continued indulgence therein. Rationalization should be distinguished from a failure of a prudent course of action to succeed. For sometimes even the best efforts may fail. Rationalization should also be distinguished from making a mistake. I assume that a person who has made a mistake with respect to the means to an end, and who truly wishes to reach that end, would correct the choice of means as soon as the mistake is pointed out. Someone who is rationalizing a course of action may not truly desire the end being professed, or at least may sense (but fail to face up to) some conflict between it and another end.

If wrongdoing cannot be avoided, rationalization has not occurred. But, as Jefferson informs us, “unavoidable” must be narrowly defined. If it is defined as “physically impossible to avoid” it reflects one sense in which the world is imperfect (i.e., simply out of one’s control) and does not present the problem of rationalization, at least not immediately. But

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when the issue is a good’s desirability relative to another standard, reflecting the imperfection of the world in the sense that not all choice-worthy goods can be realized simultaneously, the possibility of rationalization arises. Jefferson would want to use the judgment of the enlightened Epicurean of sound moral sense as the standard. The “right” goods are those worthy of a self so conceived.

Rationalization may occur when the reasons offered for a course of action being prudent are not persuasive on impartial examination as measured by (1) the internal coherence of the individual’s own scheme of constraints; or (2) the extent of the actual efforts made, given the particulars of the situation, to bring the real up to the level of the ideal over the long term; or (3) the soundness of the basic conception of the self that one would want to be. I have argued that on the slavery issue Jefferson has rationalized in the first two senses, and that his failure to act prudently reflects on the third.

The core difficulty is that Jefferson’s synthesis of Epicurus and moral sense leaves him with two principles, tranquillity and the duty to treat others in a certain way. Unfortunately, when push comes to shove, as it does in the case of slavery, the two principles are incompatible. Consequently, the claim to have responded prudently to the challenge—that is, in such a way as to approximate the ideal (defined by tranquillity and natural rights, in this case) as much as the situation permits (the situation being defined by empirical factors as well as side constraints contextually generated, such as the “preservation of the Union” condition)—becomes rationalization. It is rationalization because it pretends that prudent action was succeeding in realizing both the sumnum bonum (the agent’s tranquillity) and the dictates of moral sense, whereas in fact the latter was being sacrificed.

Correspondingly, I have tried to resist interpreting Jefferson’s quandaries solely (1) as expressions of the view that there are some unsolvable quandaries in moral life, (2) as manifestations of a personal failure, or (3) as indications that Kant is right in rejecting the view that prudence is in no way a moral virtue because it inevitably leads to self-serving choices and rationalization. With respect to the last of these, it might be noted that it is difficult to deny that prudence plays and is widely felt to play some legitimate role not just in our own lives but also in political life. Considerations of happiness, utility, and consequences of choices do figure in our moral deliberations, particularly in political life.

The root problem, to repeat, concerns the relationship between Jefferson's Epicurean conception of happiness and its supplement, namely, the other-regarding moral-sense doctrine. To put it starkly: if it is prudent to do what Jefferson did in the Revolution—to risk fortune and sacred honor and all else—tranquility cannot be the highest good. Those actions render the agent vulnerable in ways that would surely sabotage tranquility. Accommodation to the ruling power would have been more prudent. Or, again, if tranquility is the highest good and Jefferson's stance with respect to his ownership of slaves and to the institution is prudent, prudence is purchased at the price of justice understood in Jefferson's moral-sense way. Self-interest rightly understood (along Epicurean lines) and duty rightly understood (along the moral-sense lines) do not, in the end, cohere. Jefferson seems not to have a coherent picture of the sort of person he would want to be that can survive the challenge of the slavery issue. That is, he seems unable to articulate a picture of an ideal self such that, in a most difficult situation, that self could be both happy and virtuous. To revert again to Coles, I do not see that Jefferson ultimately has a way of explaining how Coles, having exiled himself to a remote region and freed his slaves, could be both happy and just.

This incoherence in the synthesis creates fault lines that are visible elsewhere in Jefferson's thought. He seems unable to explain not just his stance on the slavery issue, but his own public service. If politics is drudgery, anxiety, and lack of tranquility, why did he engage in it in the sustained way that he did? I do not see that invoking prudence supplies a persuasive answer. Although Jefferson devoted enormous amounts of time and effort to public life, he would just as soon have us forget that effort and remember him instead for his accomplishments as a philosopher, writer, and conveyer of knowledge. I refer to course of his epiphanies, which he so carefully scripted, trusting only himself to recognize what is worth memorializing. Serving as president of the United States and governor of an important state were too insignificant, in Jefferson's eyes, to be mentioned. Do not these striking omissions signal an inability to articulate how public service and individual happiness cohere? I suspect that the fault lines stretched through Jefferson's plans for public education and more broadly through his ideas about the mythology that provides the political creed and, as it were, civic education of all citizens.

I cannot embark here on a discussion of the etiology of the failure of Jefferson's synthesis or its significance for the coherence of the Enlightenment. Although Jefferson's quandaries seem to anticipate—if they did not actually help to bring about—quandaries in contemporary American life, this subject too is beyond the boundaries of this discussion. In conclusion, I venture to prophesy—with an eye on Charles Taylor's recent and monumental attempt to show us a way to a new synthesis through an analysis of modernity's roots and history—that whatever new synthesis we propose must be bound by three imperatives. First, it must include a "legitimation" of liberal political structures that assumes the political equality and "rights" of all persons. However much it is to be bent or straightened, that leg of Jefferson's triad will remain part of

144 Jefferson's founding of the University of Virginia recognizes the great benefit of liberal education to individual happiness, and no doubt the importance of liberally educated persons to a republic nation. But would the "natural aristocrat" educated along Jeffersonian lines find that contributing to the welfare of a liberal republic fits with the ends promoted by their liberal education?

145 I refer to the problem signaled above: in Query XVII of the Notes Jefferson declares that "it does me no injury for my neighbor to say there are twenty gods, or no god" (p. 283). And yet when he turns to contemplate the slavery problem in the very next Query, he seems pressed to suggest a contradictory view, namely that it matters a great deal what his neighbors believe in matters of religion: "And can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are of the gift of God? That they are not to be violated, but with his wrath?" (p. 289). In asking this question Jefferson seems to wonder whether the proviso in the statement just quoted from Query XVII refers to him personally; if it did, however, the argument for freedom of religious belief would presumably need recasting.

146 That Jefferson's position is an attempt at putting together a synthesis, indeed the synthesis of the elements in question, invites a Machiavellian analysis, for Jefferson could be seen as having no chance of success (and no interest) to merge incompatible (fragments of older traditions. (In After Virtue Machiavelli discusses Benjamin Franklin rather than Jefferson as critical to the development of the American Enlightenment.)

our body politic. Second, prudential moral deliberation in the political sphere seems equally inescapable (and that deliberation will be informed by everything from economics to history to psychology). The "second order" problem of implementing a theory of rights is not going to be solved by rejecting, on principle, prudential deliberation. This second leg of his triad will remain in one shape or another. We are left, third, with the task of articulating a notion of the self, its virtues, and its happiness capable of avoiding Jefferson's quandaries. The issues will involve religion, materialism, and our view of history, as we have seen. Through their very deficiency, Jefferson's views may help us to define the problem to be solved. Even here, Jefferson may again exercise remarkable influence.

109 Consider one of Taylor's concluding statements that follows a reflection on "the appalling destruction wrought to history in the name of the faith": "That is why adopting a stripped-down secular outlook, without any religious dimension or radical hope to history, is not a way of avoiding the dilemma [religious vs. secular humanism], although it may be a good way to live with it. It doesn't avoid it, because this too involves an 'imitation.' It involves shifting the response in us to some of the deepest and most powerful spiritual aspirations that humans have conceived. Thus, too, is a heavy price to pay. This is not to say, though, that if we have to pay some price, this may not be the safest. Prudence constantly advises us to scale down our hopes and circumscribe our vision. But we deceive ourselves if we pretend that nothing is denied thereby of our humanity" (Sources, 529).

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Practical philosophy and the Bill of Rights: perspectives on some contemporary issues

WILLIAM A. GALSTON

During the past generation, controversies over rights have generated a vast and diverse literature. Any effort, such as this one, that seeks to catalogue this outpouring is bound to become in some measure a third-order affair: a survey of surveys, a bibliography of bibliographies. I cannot hope to break much new ground. My purpose, rather, is to undertake a high-altitude overflight, affording the reader a glimpse of the terrain below.