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A culture of rights

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

Edited by

MICHAEL J. LACEY and KNUD HAAKONSSSEN

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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 unrivalled happiness to possess.

James Madison¹

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

Frederick Douglass²

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

Ludwig Wittgenstein³

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

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¹ Essay in the *National Gazette*, 20 February 1792, in *The Papers of James Madison*, ed. Robert A. Rutland et al. (Charlottesville: University of Virginia Press, 1983), 14: 234.

² "Fourth of July Oration" (1852) in *What Country Have I?: Political Writings by Black Americans*, ed. H. J. Storing (New York: St. Martin's Press, 1970), 35.

³ *Philosophical Investigations*, I. 125, 3d ed., trans. G. E. M. Anscombe (New York: Macmillan, 1968).

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,⁴ 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.⁵ 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.⁶ Some who see our present discourse as

⁴ 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, 1984), 19. Unless otherwise noted, all page references to Jefferson's writings in this chapter are to Peterson's edition.

⁵ The best known recent indictment along the latter lines is offered by Alasdair MacIntyre, *After Virtue* (Notre Dame: University of Notre Dame Press, 1984), chaps. 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), 85 passim. Also relevant here is Mark Tushnet's "An Essay on Rights," *Texas Law Review* 62 (1984): 1363–1403.

⁶ One could, of course, set out a view of justice that claims to articulate systematically the intuitions 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): 225: "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 decayed 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

in "Pluralism and Social Unity," *Ethics* 99 (1989): 725 passim: "But is the absolute priority of freedom over truth [entailed by Rawls's theory] really the polestar of liberal-democratic public culture?" Rawls distorts "our shared understandings," which include holding (contra Rawls) the principles of the Declaration of Independence to be universal truths.

⁷ See Marx's discussion of the constitution of Pennsylvania in "Bruno Bauer, *Die Judenfrage*," in *Karl Marx: Early Writings*, trans. T. B. Bottomore (New York: McGraw-Hill, 1964), 23–6 and context.

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

⁸ For some discussion of this point, see Michael Kammen's *A Machine That Would Go of Itself: The Constitution in American Culture* (New York: Vintage Books, 1987), 336–56.

⁹ *The Federalist Papers*, ed. Clinton Rossiter (New York: New American Library, 1961), 513. Subsequent references are to this edition.

¹⁰ So imprecise 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.

¹¹ For further discussion of the *Federalist's* criticisms of inclusion of a Bill of Rights, see Gordon S. Wood, *The Creation of the American Republic 1776–1787* (Chapel Hill: University of North Carolina Press, 1969), 536–43.

agreed on by Federalists and Anti-Federalists); what is at issue is the proper way of putting theory into practice.¹² If, in Lincolnian spirit, we conceive of the Constitution as a "machine,"¹³ 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,"¹⁴ 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.

¹² References to natural rights and natural law in the *Federalist* are to be found in nos. 2 (p. 37), 28 (p. 180), 40 (p. 253), 43 (pp. 279–80), 51 (pp. 324–35).

¹³ Borrowing from the title of Kammen's *A Machine That Would Go of Itself*. The relationship between the Declaration and the Constitution is controversial, of course. For argument in support of the proposition being advanced, see Morton White, *Philosophy, the Federalist, and the Constitution* (New York: Oxford University Press, 1987), 30–1, 211 *passim*.

¹⁴ Among which is the human mind: "The faculties of the mind itself have never yet been distinguished and defined with satisfactory precision by all the efforts of the most acute and metaphysical philosophers" (p. 227).

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.¹⁵

In this chapter I propose to focus on one key figure in the American Enlightenment¹⁶ 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.¹⁷ 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

¹⁵ For example, the culminating quotation from Hume in *Federalist* 85 confers a strong Scottish tone on a cluster of themes concerning the virtues, human nature, political 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 as Locke understood them), and indeed of the entire social contract tradition. White concludes his discussion of the *Federalist* with precisely this puzzle.

¹⁶ 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.

¹⁷ See his letter to Madison of 20 December 1787 (pp. 915–16), the central points of which are repeated in letters to James Alexander Donald, 7 February 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 15 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.

recollection of Thomas Jefferson.¹⁸ Through them, as well as through his regular invocations of "rights," Jefferson has profoundly influenced the creation 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.¹⁹

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 slaveowning 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.²⁰ 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.²¹

¹⁸ See Jefferson's own proposed epitaph, in *Writings*, 706.

¹⁹ I use the term *window* advisedly. A window provides a perspective to the spectacle on the other side. At the same time, some windows make for better viewing than others.

²⁰ The issues of moral principle and implementation of principle are evident in Jefferson's famous letter to John Holmes of 22 April 1820: "I can say, with conscious truth, 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. The cession of that kind of property, for so it is misnamed, is a bagatelle which would not cost me a second thought, if, in that way, a general emancipation and *expatriation* could be effected; and gradually, and with due sacrifices, I think it might be. But as it is, we have the wolf by the ears, and we can neither hold him, nor safely let him go. Justice is in one scale, and self-preservation in the other" (p. 1434).

²¹ The book referred to here is John C. Miller, *The Wolf by the Ears: Thomas Jefferson and Slavery* (New York: Macmillan, 1977). In addition to the works cited below, other important studies on the topic include David B. Davis, *Was Thomas Jefferson an Authentic Enemy of Slavery?* (Oxford: Oxford University Press, 1970), and his "Slavery and 'Progress,'" in *Anti-slavery, Religion, and Reform: Essays in Memory of Roger Anstey*, ed. Christine Bolt and Seymour Drescher (Hamden, Conn.: Archon Books, 1980), 351–66; William W. Frechling, "The Founding Fathers and Slavery," *American Historical Review* 77 (1972): 81–93; Bernard Bailyn, *The Ideological Origins of the American*

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 on—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 protestations to the contrary, philosophical or not, are rationalizations. Analogous interpretive choices arise with respect to other Enlightenment figures, including John Locke.²² My view is that Jefferson's position deserves to be taken seriously in its own right, however, before the hypocrisy conclusion is drawn.²³

Revolution (Cambridge, Mass.: Harvard University Press, 1971), 232 ff.; John P. Diggins, "Slavery, Race, and Equality: Jefferson and the Pathos of the Enlightenment," *American Quarterly* 28 (1976): 206–28; C. B. Galbreath, "Thomas Jefferson's Views on Slavery," *Ohio Archeological and Historical Quarterly* 34 (1925): 184–202. For some of the earlier remarks about the divergence between the theory of the American founding and American practice, see Samuel Hopkins, "The Slave Trade and Slavery," in *Family Articles on Slavery* (Boston: Congregational Board of Publication, 1854), 613–24; Thomas Paine, "African Slavery in America," in *Writings of Thomas Paine*, ed. Moncure Conway (New York: Putnam's, 1894), 1:4–9.

²² In various ways, Locke participated in the slave trade. See Wayne Glausser, "Three Approaches to Locke and the Slave Trade," *Journal of the History of Ideas* 51 (1990): 199–216. Glausser discusses three explanatory schemes: (1) that Locke's behavior is a personal moral lapse and nothing more; (2) that Locke's writings provide some justification for the slave trade, but only by a tortured logic at odds with the central thrust of his theories; and (3) that his writings provide, as part of their very fabric, a justification of slavery. Most readers of Jefferson choose the equivalent of (1), possibly with the additional observation—the equivalent of (2)—that there are racist passages here and there in Jefferson's writings.

²³ The long juridical interpretation of the Bill of Rights and the framers' intent also concerns itself with the second-order issue. But given the disagreements within that tradition, particularly with respect to slavery, we are compelled in order to adjudicate among them to regress to the level of philosophical theory. See Robert McColey, *Slavery and Jeffersonian Virginia* (Urbana: University of Illinois Press, 1973), 137, who notes that Justice Taney thought that the Founders could not have intended the Declaration to apply to

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.²⁴ The immorality of apartheid is not the issue; the issue concerns the right thing to do by way of extirpating the institution.

My purpose is not to exculpate 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 "demystified" Christianity.²⁵ Jefferson's synthesis of Epicurean tranquility,

blacks, for if they had, they (the Founders) would have been hypocrites. Taney's decision would follow 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, 1770–1823* (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.

²⁴ Moral philosophers have paid a good deal of attention recently to the anti-Kantian view that in reality moral reasoning is an extremely messy affair, little assisted by universal rules and heavily 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 is 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).

²⁵ 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. Hermeneutically, 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 falsified), as parts, so to speak, of a single text that Jefferson

prudence, and moral sense collapses under the pressure of the slavery issue.²⁶

The failure of his philosophical resources to meet the overwhelming challenge of the day suggests, ultimately, that his notion of what it means to be a "self" is unpersuasive. As my task in this paper is archeological, I cannot also explore the extent to which Jefferson's philosophical failure has affected us today. I limit myself to noting that although other figures in the American founding would undoubtedly have found Jefferson's position bizarre or repugnant (or both), its constituent elements—the role of science, the materialism, the origin of moral principles in natural

could have acknowledged as his "meaning" had he worked through his views more systematically. The ideas in a single text may, of course, evolve without a sacrifice of unity—particularly if the later ideas represent the full articulation of what their earlier formulations aimed for. I shall also attempt to take Jefferson at his word, as when he claims to be an Epicurean. Several of the themes central to my discussion—moral sense, the existence of natural rights and the wrongness of slavery, and errors of conventional Christianity—seem constant from the early to the late Jefferson (in the case of religion, see the relevant entries in Jefferson's "Literary commonplace Book"). For discussion of the general hermeneutical issue, see the introduction to my *Self-knowledge in Plato's Phaedrus* (New Haven, Conn.: Yale University Press, 1986). At the same time, I grant from the outset that evidence contrary to my interpretation can be found in Jefferson's writings; unfortunately, this is an obstacle that every interpretation of Jefferson must face. My aim is to reconstruct a Jefferson so as to tell a coherent story that accounts for the gist of Jefferson's most important pronouncements on the issues I examine and that takes seriously his self-understanding (none of which excludes the possibility that his self-understanding is defective). I take the position that historical and rational reconstruction are inseparable in fruitful interpretation. On that point see Richard Rorty's "The Historiography of Philosophy: Four Genres," in *Philosophy in History*, ed. R. Rorty, J. B. Schneewind, and Quentin Skinner (Cambridge: Cambridge University Press, 1990), 52–3, n. 1.

²⁶ My argument may thus be taken as an interpretation of David B. Davis's view that "Negro slavery in the eighteenth and nineteenth centuries posed a genuine moral problem that reflected deep tensions in Western culture and involved the very meaning of America." *The Problem of Slavery in Western Culture* (Ithaca: Cornell University Press, 1966), 28. The paradoxes I explore should be distinguished from Edmund S. Morgan's point that it was "slavery that enabled Virginia to nourish representative government in a plantation society, slavery that transformed the Virginia of Governor Berkeley to the Virginia of Jefferson, slavery that made the Virginians dare to speak a political language that magnified the rights of freemen, and slavery, therefore, that brought Virginians into the same commonwealth political tradition with New Englanders." Morgan, "Slavery and Freedom: The American Paradox," *Journal of American History* 59 (1972): 29. Similarly, I do not mean to explore the paradox evident in Adam Smith's argument (echoed later by Tocqueville) that "the condition of a slave is better under an arbitrary than under a free government" (*An Inquiry into the Nature and Causes of the Wealth of Nations*, 2 vols., ed. Roy H. Campbell and Andrew S. Skinner [Indianapolis: Liberty Press, 1981], 2: 587), or his argument that slavery is much more difficult to extirpate in a free society than one governed tyrannically (*Lectures on Jurisprudence*, ed. Ronald L. Meek, David D. Raphael, and Peter G. Stein [Indianapolis: Liberty Press, 1982], 186–7).

passions or sentiments, the appeals to utility, the equation of happiness with tranquillity, 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 immediatist 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 expatriation 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 Epicurian."²⁷

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

²⁷ Jefferson, letter of 31 October 1819, to William Short (p. 1430). Jefferson's Epicureanism is stressed by Charles A. Miller, *Jefferson and Nature: An Interpretation* (Baltimore: Johns Hopkins University Press, 1988), 23ff. For further discussion, see (in addition to the sources cited below) Gilbert Chinard's "Jefferson among the Philosophers," *Ethics* 53 (1943): 255–68; and Henry C. Montgomery, "Epicurus at Monticello," *Illinois Studies in Language and Literature* 58 (1969): 80–7. On the general issue of the transmission of Epicurus's views, see Howard Jones, *The Epicurean Tradition* (New York: Routledge,

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 tranquillity, which is understood as the absence of mental anxiety (*ataraxia*) and freedom from physical pain (*aponia*). This tranquillity 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 prerational, 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

Chapman, Hall, 1989). On Lucretius, see Wolfgang B. Fleischmann, "The Debt of the Enlightenment to Lucretius," *Studies on Voltaire and the Eighteenth Century* 25 (1963): 631–43. My (and Jefferson's) main source for Epicurus's writings is Diogenes Laertius. The main points of Epicurus's teaching that I am summarizing would have been available to Jefferson. The *Sententiae Vaticanae* are not in Diogenes and were not available to Jefferson, but they play only a minor role in my summary of Epicurus. Sowerby lists three editions of Diogenes Laertius (one in Greek and Latin, another in Latin, a third in French) as being in Jefferson's library. Millicent E. Sowerby, *Catalogue of the Library of Thomas Jefferson*, 5 vols. (Washington, D.C.: Library of Congress, 1952–9), 1:15–16.

²⁸ *Letter to Menoeceus* 128–9, p. 87. All quotations from Epicurus are taken from *Epicurus: the Extant Remains*, trans. and ed. Cyril Bailey (Oxford: Clarendon Press, 1926).

²⁹ Of course this controversial view would require a great deal of explanation, far more than I can offer here. My purposes are 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): 253–66; 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.³⁰ Epicurean eudaemonism requires reason—"prudence"—for its fulfillment.

For Epicurus a chief fruit of happiness is self-sufficiency or freedom.³¹ 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."³²

In addition to his profession of Epicureanism and his summary of Epicurus, Jefferson seems regularly to equate happiness with tranquillity.³³ Hence his eudaemonism is not fruitfully interpreted along Aristo-

³⁰ Phillip Mitsis notes that "Epicurus views the virtues as cognitive states." In *Epicurus' Ethical Theory* (Ithaca: Cornell University Press, 1988), 64, n. 15.

³¹ See the *Letter to Menoecius* 132-5, pp. 91-3; *Sen. Vat.* LXXVII, p. 117; and the *Kuriai Doxai*, p. 99, n. XVI: "In but few things chance hinders a wise man, but the greatest and most important matters reason has ordained and throughout the whole period of life does and will ordain." Freedom understood as independence from the pursuit of false pleasures and from dependence on others for the provision of those pleasures in turn assumes the possibility of a free act of choice on the part of the agent. How that freedom of will is to be reconciled with Epicurus's physics is a controverted subject; Jefferson would have faced a similar difficulty had he worked through the issue.

³² *Lives*, X.118, p. 165.

³³ On Jefferson's equation of happiness with tranquillity, see (in addition to his self-characterization as an Epicurean) his letter to Madison of 9 June 1793 (p. 1010); letter to John Randolph, 25 August 1775 (p. 749); the letter to P. S. Du Pont de Nemours, 18 January 1802, p. 1101 ("freedom and tranquillity" are the goal of the political experiments in France); the letter to Spencer Roane of 6 September 1819; the letter to Benjamin Rush, 21 April 1803 (p. 1124: the precepts of the ancient philosophers "related chiefly to ourselves, and the government of these passions which, unrestrained, would disturb our tranquillity of mind. In this branch of Philosophy they were really great"); letter to Edward Dowse, 19 April 1803 (*Jefferson's Extracts from the Gospels*, ed. Dickinson W. Adams and Ruth W. Lester [Princeton: Princeton University Press, 1983], p. 330); to William Duane, 12 August 1810 (pp. 1227-8); letter to William Short, 28 November 1814 (p. 1358); letter to Benjamin Waterhouse, July 19, 1822 (*Extracts*, p. 407). Consider, too, Jefferson's "Dialogue Between Head and Heart" in the letter to Maria Cosway (12 October 1786), in which the Head says that "the art of life is the art of avoiding pain: and he is the best pilot who steers clearest of the rocks and shoals with which he is beset. Pleasure is always before us; but misfortune is at our side: while running after that, this arrests us. The most effectual means of being secure against pain is to retire within ourselves, and to suffice for our own happiness." "Everything in this world is a matter of calculation. . . . Put into one scale the pleasures which any object may offer; but put fairly into the other pains which are to follow, and see which preponderates" (p. 872). The Heart objects that morals stem from the heart, not the head, and that "to you she [nature] allotted the field of science; to me that of morals. . . . In denying you the feelings of sympathy, of benevolence, of gratitude, of justice, of love, of friendship, she has excluded you from their controul. To these she has adapted the mechanism of the heart. Morals were too essential to the happiness of man to be risked

telian lines,³⁴ and the evidence weighs against a Stoic interpretation.³⁵ 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 [nature] laid their foundation therefore in sentiment, not in science. That she gave to all, as necessary to all: this to a few only, as sufficing for a few" (p. 874). Charles Miller argues (with insufficient evidence) that the Heart represents the Epicurean viewpoint (*Jefferson and Nature*, p. 99).

³⁴ Compare Adrienne Koch, *The Philosophy of Thomas Jefferson* (New York: Columbia University Press, 1943): "The happiness of others, which he [Jefferson] singled out as the essence of a virtuously motivated action, was a part of the secular, practical, and modern morality which Jefferson admired. He valued it as a realistic reinforcement of the loftier Christian morality, the latter remaining indisputably 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 'eudaemonism' is a closer approximation to Jefferson's use of the happiness concept than the more contemporary 'hedonism' was" (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 Stoicized 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 *always* approaches Epicureanism in that manner, though he was indeed fond of Gassendi; and in any case I shall argue 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 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 is "an expression of the American mind"; "all its authority rests then on the harmonizing sentiments of the day, whether expressed in conversation, in letters, printed essays, or in the elementary books of public right, as Aristotle, Cicero, Locke, Sidney, etc." (p. 1501). It is also possible that Jefferson was thinking of Aristotle's argument 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" (Ph.D. diss., Yale University, 1943), Douglass Adair argues that "Jefferson and Madison were concerned with him [the 'honest farmer'] . . . not because they themselves were planters from Piedmont, Virginia, but because they were eighteenth-century inheritors of an agrarian tradition that runs directly back to the fourth century before Christ when Plato and Aristotle, Xenophon and Thucydides, attempted with varying degrees of scientific precision to delineate man as a political animal" (p. 30). But consider Jefferson's other reference to Aristotle, in the letter to I. H. Tiffany of 26 August 1816: "But so different was the style of society then and with those people from what it is now and with us that I think little edification can be obtained from their writings on the subject of government. They had just ideas of the value of personal liberty, but none 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 unfaithfully 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 pure and perpetual." The letter is cited in *The Political Thought of American Statesmen*, ed. Morton J. Frisch and Richard G. Stevens (Itasca, Ill.: Peacock, 1973), 35-6.

³⁵ 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 tranquillity. 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.³⁶ This Kantian sense inevitably reduces to the computation of what will lead to one's own happiness, that is, to self-interest narrowly conceived.³⁷ Rather, for Epicurus prudence evaluates desires and possible

October 1819) Jefferson expresses a desire to translate Epictetus, he does not say, "I am a Stoic." Jefferson says here of Seneca that he is "a fine moralist, disfiguring his work at times with some Stoicisms" (p. 1431), and in a letter of 9 January 1816, to Charles Thomson, Jefferson says that he would like to "subjoin [to his "Philosophy of Jesus"] a translation of Gosindi's Syntagma of the doctrines of Epicurus, which, notwithstanding the calumnies of the Stoics and caricatures of Cicero, is the most rational system remaining of the philosophy of the ancients, as frugal of vicious indulgence, and fruitful of virtue as the hyperbolical extravagances of his rival sects" (p. 1373). In the letter to John Adams of 8 April 1816, Jefferson remarks: "And the perfection of the moral character is, not in a Stoical apathy, so hypocritically vaunted, and so untruly too, because impossible, but in a just equilibrium of all the passions" (p. 1382). These remarks do not convey a high praise of the Stoics, though Jefferson clearly had enough interest in them to keep reading their texts (in his 1 April 1818 letter to Wells and Lilly, Jefferson indicates that he has been studying Cicero [p. 1413]). However, because the summum bonum of the Stoics—self-sufficiency and tranquillity of mind—resembles that of the Epicureans, and because the Stoic and Epicurean list of the virtues also are similar, Jefferson's interest in Stoicism is not surprising.

³⁶ Kant says that "skill in the choice of means to his own greatest well-being may be called *prudence*, in the narrowest sense." *Fundamental Principles of the Metaphysics of Morals*, trans. T. K. Abbott (Indianapolis: Bobbs-Merrill, 1949), 33. The sentence that follows reads: "And thus the imperative which refers to the choice of means to one's own happiness, that is, the precept of prudence, is still always *hypothetical*: the action is not commanded absolutely, but only as means to another purpose."

³⁷ See *Fundamental Principles*: "The word *prudence* is taken in two senses: in the one it may bear the name of knowledge of the world, in the other that of private prudence. The former is man's ability to influence others so as to use them for his own purposes. The latter is the sagacity to combine all these purposes for his own lasting benefit. This latter is properly that to which the value even of the former is reduced" (p. 33, n. 4). Philosophers since Kant have for the most part reduced prudence to the level of skill, a connotation that seems prevalent in the popular use of the term, although our everyday speech has not entirely succumbed, as is suggested by William E. Davis, "Being Prudent and Acting Prudently," *American Philosophical Quarterly* 10 (1973): 57–60.

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."³⁸ 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."³⁹ 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 injustice simply is not worth the price in terms of mental tranquillity. 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 tranquillity (the costs of deviating from the given rules will also be a factor).⁴⁰ Contracts and promises do not in themselves generate any obligation on the part of the Epicurean.⁴¹

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

³⁸ The quotation is from Jefferson's letter to Thomas Law, 13 June 1814 (p. 1338). For a similar point see his letter to William Short, 4 August 1820 (p. 1437).

³⁹ *Kuriai Doxai*, XXXI, p. 103.

⁴⁰ Consequently, the Epicurean cannot be wholly indifferent to threats of physical punishment. While he does not fear death and claims invulnerability to the acts of others, in general he finds it less disturbing to avoid transgressing the given 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 invulnerability premise may be doubted.)

⁴¹ As noted by Mitsis, *Epicurus' Ethical Theory*, 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 tranquillity. What 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 bustle of the city.⁴⁴ The Epicurean emphasis on the private life weighs 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 also notes that Epicurus treated them well and that he manumitted several on his death. *Lives* X.10 (p. 147), X.21 (p. 155), X.118 (p. 165). 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 thus takes "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.⁴⁵ 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.⁴⁶ Politics is drudgery—a view in many ways congenial to Jefferson.⁴⁷ Correspondingly, Epicurus was accused of shirking his civic duty.⁴⁸ 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 Lucretius's discussions 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 occupations of a crown." Similarly, see the letter to James Monroe of 20 May 1782: "If we 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 charged." To think otherwise is "to annihilate the blessing of existence; to contradict the giver of life who gave it for happiness and not for wretchedness; and certainly to such it were better that they had never been born" (p. 779). Note 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, is a duty for the individual). See, too, John P. Diggins, *The Lost Soul of American Politics: Virtue, Self-Interest, and the Foundations of Liberalism* (New York: Basic Books, 1984), 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 man 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 demotion of public service for Jefferson and others among the framers is also noted by Diggins, *The Lost Soul of American Politics*, 62–3. James Nichols remarks on the depreciation of political life in Lucretius as well. *Epicurean Political Philosophy* (Ithaca: Cornell University Press, 1972), 145.

⁴⁸ See Epictetus's *Discourses* III.vii.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 act 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, Netherlands: Brill, 1973), 52.

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, and 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 divaricate, 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

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.

proposed constitution for the "Equinoctial republics," Jefferson says: "Like Solon to the Athenians, you have given to your Columbians, 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 controul 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

⁵⁰ See the letter to Lafayette of 14 February 1815 (pp. 1360–6).

the character of the citizens) involved.⁵¹ 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.⁵²

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

⁵¹ See Jefferson’s letter to Madison of 28 February 1796 (p. 1034).

⁵² For further references to prudence by Jefferson, see the letter to John Lynch, 21 January 1811, with reference to creating a settlement for blacks on the coast of Africa, in which Jefferson notes that the fact that few blacks would voluntarily consent to the move, or would be capable of self-government, “should not, however, discourage the experiment, nor the early trial of it; and the proposition should be made with all the prudent cautions and attentions requisite to reconcile it to the interests, the safety and the prejudices of all parties” (p. 1241). In the letter to Walker Jones of 2 January 1814, Jefferson says of George Washington: “Perhaps the strongest feature in his character was prudence, never acting until every circumstance, every consideration, was maturely weighed; refraining if he saw a doubt, but, when once decided, going through with his purpose, whatever obstacles opposed. His integrity was most pure, his justice the most inflexible I have ever known, no motives of interest or consanguinity, of friendship or hatred, being able to bias his decision. He was, indeed, in every sense of the words, a wise, a good, and a great man” (pp. 1318–19). In the letter to Lafayette of 14 February 1815 concerning the French Revolution, Jefferson notes that he urged at the time that a compact with the king be made and that several other measures for step by step improvement be taken, for “this was as much as I then thought them [the people] able to bear.” But those “unpractised in the knowledge of man” ignored the hazards and did not weigh “the imprudence of giving up the certainty of such a degree of liberty, under a limited monarchy, for the uncertainty of a little more under the form of a republic” (p. 1361).

the like. 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.⁵³ 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.⁵⁴

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.⁵⁵ Moreover,

⁵³ See the statement in the “Opinion on the French Treatise” (1793) that “Questions of natural right are triable by their conformity with the moral sense and reason of man” (p. 428). Although Christian virtue may teach us to treat our fellow humans with benevolence, reason must judge which actions are, in the imperfect world in which we live, most useful in instituting benevolence. As noted earlier, Jefferson would argue that in *not* freeing most of his slaves, he was in effect acting as benevolently as the situation permitted.

⁵⁴ As already noted, in the letter to Holmes of 22 April 1820, Jefferson emphasized that the solution to the slavery problem must be *practicable*, and concluded by contrasting the meager benefits of acting according to a moralistic passion inspired by pure theory with those of acting prudently: “I regret that I am now to die in the belief, that the useless sacrifice of themselves by the generation of 1776, to acquire self-government and happiness to their country, is to be thrown away by the unwise and unworthy passions of their sons, and that my only consolation is to be, that I live not to weep over it. If they would but dispassionately weigh the blessings they will throw away, against an abstract principle more likely to be effected by union than by scission, they would pause before they would perpetrate this act of suicide on themselves, and of treason against the hopes of the world” (pp. 1434–5).

⁵⁵ For Jefferson’s defense of the view that atheists can be moral, see his letter to Thomas Law, 13 June 1814 (p. 1336). Compare the famous passage of *Notes on the State of Virginia*, Query XVII (p. 285): “The legitimate powers of government extend to such acts only as are injurious to others. But it does me no injury for my neighbour to say there are twenty gods, or no god. It neither picks my pocket nor breaks my leg. . . . Reason and free enquiry are the only effectual agents against error. Give a loose to them, they

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.⁵⁶ 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 philosophical 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.⁵⁷

For Epicurus, science frees the mind of superstition and so makes for tranquillity. 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 them legitimately, 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 *Extracts* (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 on the civic religion issue.

⁵⁶ *Letter to Pythocles* 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 connexion with other doctrines or independently, than peace of mind and a sure confidence, just as in all other branches of study."

⁵⁷ 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, ramify it, split it into hairs, and twist it's texts till they cover the divine morality 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. 1090). In a letter to Mrs. Samuel H. Smith, 6 August 1816 (p. 1404), 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.⁵⁸ 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.⁵⁹

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 *nothings*. 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).⁶⁰ Jefferson also asserted "I am a Materialist" in his letter to

⁵⁸ *Letter to Herodotus* 63, p. 39.

⁵⁹ Consider, for example, the *Letter to Herodotus*, 30, on the origins of language.

⁶⁰ Koch has provided a good discussion of Tracy in *The Philosophy of Thomas Jefferson*,

William Short of 13 April 1820.⁶¹ Jefferson claims that the "heresy of immaterialism" is not the true teaching of Christianity at all, and adds that he will "rid himself of the Pyrrhonisms with which an indulgence in speculations hyperphysical and antiphysical so uselessly occupy and disquiet the mind" (p. 1444). The alliance with the "ideologues" is a natural one for an Epicurean.⁶² These extraordinary passages suggest that Jefferson saw little tension between his characterizations of himself as both an Epicurean and a Christian.⁶³ Thus, when he says that Epicurus

chap. 8. Jefferson was extremely enthusiastic about Tracy's thoroughly anti-metaphysical notion of "ideology." Tracy refers to himself as a continuator of the work of Bacon, Condillac, and Locke (Koch, p. 66). The central thrust of his epistemology is positivistic, and explicitly rejects teleology (Koch, p. 67). Tracy classifies ideology as a branch of zoology, and tries to transform the philosophical study of ideas into the scientific observation of the natural history of the mind (Koch, p. 68). The political implications of Tracy's approach directly threatened claims to "self-evident or transcendental knowledge" held by vested interests in church and state (Koch, p. 73). On the issue of materialism, see further Jefferson's letter to John Adams of 8 January 1825 (p. 605 of *The Adams-Jefferson Letters*, ed. Lester J. Cappon [Chapel Hill: University of North Carolina Press, 1988]), where Jefferson discusses with enthusiasm Flourens's work on the nervous system of animals, and particularly the experiments on the connection between the ability to think and the brain. (Flourens removed part of the brain; the animal was partially incapacitated, though still functioning in other respects.) With reference to these experiments, Jefferson wrote, "I wish to see what the spiritualists will say to this. Whether, in this state, the soul remains in the body deprived of its essence of thought or whether it leaves it as in death, and where it goes?" Jefferson very much liked the "ideologues," and wrote to Canabis (a member of that group) that he enjoyed Canabis's book on "the relations between the physical and moral faculties of man," adding: "That thought may be a faculty of our material organization, has been believed in the gross" (12 July 1803; and Peterson, p. 1135).

⁶¹ *Extracts*, 391.

⁶² For further discussion, see Miller, *Jefferson and Nature*, 27-9. For relevant texts and some discussion, see Gilbert Chinard, *Jefferson et les Idéologues* (New York: Arno Press, 1979).

⁶³ There appear to be two stumbling blocks to this dual membership, namely, the immortality of the soul and the notion of a separate God. First, Jefferson attributes to Jesus the teaching that the soul is immortal in a sense that permits rewards and punishments, that is, retains personal identity (letter to Benjamin Waterhouse, 26 June 1822 [p. 1458]). An Epicurean could admit to impersonal immortality—upon death, one's atoms (there being no immaterial soul), which are indestructible, are simply reabsorbed into the nature and continue on as constituents of other things. One wonders whether Jefferson might have put down the teaching of *personal* immortality as one of the few imperfections in Jesus's teachings, imperfections whose existence Jefferson explains with reference to an extremely delicate political situation in which Jesus found himself (letter to William Short, 4 August 1820 [p. 1437]). In his letter to Short of 13 April 1820, Jefferson indicates that he does not agree with Jesus in every respect: "I am a Materialist; he takes the side of spiritualism; he preaches the efficacy of repentance towards forgiveness of sin, I require a counterpoise of good works to redeem it etc. etc." (*Extracts*, 391-2). Jefferson goes on to suggest that the parts of Jesus's doctrines he rejects, that is, the "false" parts, are due to the excesses of Jesus's biographers. In any event, Jefferson could certainly admit to personal "immortality" in the sense of unending fame. Second, at one point Jefferson affirms (without, as he says, appeal to revelation), a loose form of the argument from

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."⁶⁴

The supplement. Jefferson thought that Epicurus's teaching was incomplete with respect to its understanding of our moral obligations toward others.⁶⁵ 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 Epicurus 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: tranquillity, 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 this, design, cause and effect, up to an ultimate cause, a fabricator of all things from matter and motion, their preserver and regulator while permitted to exist in their present forms, and their regenerator into new and other forms." He continues: "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 "energy," for example). Such a separate natural force might well be referred to as "nature's God" (a phrase understood as synonymous with "nature"), or, somewhat loosely, as "the Creator."

⁶⁴ Jefferson to Benjamin Rush, 21 April 1803 (p. 1122); and Jefferson to Ezra S. Ely, 25 June 1819, in *Extracts*, 387.

⁶⁵ In the letter to Rush (21 April 1803), Jefferson makes a similar point about the limitations of the ancient philosophers (Pythagoras, Socrates, Epicurus, Cicero, Epictetus, 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 tranquillity 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 inculcated 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 inculcated peace, charity and love to our fellow men, 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 truth inaccessible to a sensible and reasonable person, or implies that the divine is a "mystery" (including, for Jefferson, the doctrine of the Trinity).⁶⁶ 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.⁶⁷ What remains is, according to Jefferson, the moral essence of Christianity, namely, the praiseworthy virtues of benevolence, sympathy, humility, and charity and the condemnation of worldly ambition, honor, and pursuit of wealth.⁶⁸ The "true Christian" teaching, in effect, amounts to Jefferson's moral-sense doc-

⁶⁶ See Jefferson's letter to Peter Carr, 10 August 1787 (p. 902), for the view that every assertion of religion must be examined by reason and must accord with the laws of nature. The recommended reading list Jefferson attached to the letter includes under "Morality" the Socratic dialogues and books by Cicero, Kames, Helvetius, Locke, and Lucretius. Under the "Religion" category are books by Locke, Middleton, Bolingbroke, Hume, Voltaire, and Beattie. 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.

⁶⁷ See Jefferson's letter to Joseph Priestley, 9 April 1803 (p. 1121); Jefferson's letter of 12 October 1813, to John Adams (pp. 1300 ff.), which links Platonism 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 consciences, 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 this artificial scaffolding, and restore to us the primitive and genuine doctrines of this the most venerated reformer of human errors" (p. 1469). See also the letters referred to in the preceding note. In the letter to Ely of 25 June 1819, Jefferson asserts again that efforts to define the nature of God—metaphysics, in short—are the causes of schisms between believers (in *Extracts*, 387).

⁶⁸ 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 one only God is reviving, 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).

trine, and that doctrine could be made compatible with a range of views from atheism to agnosticism to Deism. Jefferson presents the moral sense doctrine as antithetical to the thesis that the basis of morality is self-love or egoism, a thesis that he thinks is empirically false in any event. As a matter of fact human beings do act, though not always, out of genuine regard for others.⁶⁹ But how does the moral-sense doctrine supplement Epicurus's view of the self? How does "nature" understood along Epicurean lines offer a basis for normative propositions about "natural rights" (a phrase Epicurus would undoubtedly have found very strange)? To answer these questions, Jefferson's "supplement" must be examined.

These questions bring us to a central puzzle in Jefferson's moral theory, namely, the connection between nature and morality. How can a theory of natural rights, which presumably has normative content, be generated from a materialistic theory that simply describes what *is* rather than what *ought* to be the case? How can an empiricist have a theory of "nature" that is arrived at noninductively and is at the same time an empirical generalization?⁷⁰ If the phrase *laws of nature* is used without equivocation in both a scientific and an ethical context, how can laws of nature serve as a moral standard for action? Can a theory of rights be generated from observation of "human nature" conceived of non-teleologically, without reference to metaphysics, revealed religion, or "soul"? To understand Jefferson's notion of prudence, we have to understand his natural rights theory, and so the sense in which he assumes that natural rights do and do not obligate moral choice in the real world. And to do this we must look at Jefferson's comments about the relationship among natural rights, natural law, and moral sense.

As already mentioned, Jefferson does not think it possible to provide a metaphysical interpretation of "nature" or "rights"; his Epicureanism and demythologized Christianity rule out a theological interpretation (in his mind closely connected to the metaphysical, especially Platonic); and he nowhere ventures the sort of teleological strategy proposed by Aris-

⁶⁹ See the letter to Thomas Law of 13 June 1814 (pp. 1336–7).

⁷⁰ I wish to avoid beginning with Charles Miller's statement that "in religion and ethics, in aesthetics, politics, and economics, in all the regions of value, Jefferson was ignorant of any problems associated with deriving a statement of value from a statement about being. Rather, and without thinking about it, he adhered to a variety of ethical naturalism, according to which nature gives direct and certain guidance on matters of human choice" (*Jefferson and Nature*, 91). My procedure is to assume that Jefferson understood the direction in which he wished to go (that of a naturalized ethics) and the direction he wished to avoid (that is, a theological ethics)—and then to see how far he succeeds.

totle. 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* or *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 expatriation or emigration. This "right which nature has given to all men" seems to stem

⁷¹ See the letters to Peter Carr, 10 August 1787 (p. 902); to William Short, 4 August 1820 (p. 1435); and to Isaac Story, 5 December 1801 (*Extracts*, 325).

⁷² See Jefferson's letter to Short, 13 April 1820 (*Extracts*, 393), and to John Langdon, 5 March 1810 (p. 1221). On the issue of geography, consider Jefferson's remark in the letter to John C. Breckinridge, 12 August 1803, to the effect that the United States will exercise "the natural right we have always insisted on with Spain, to wit, that of a nation holding the upper part of streams, having a right of innocent passage thro' them to the ocean" (p. 1137). Presumably that natural right is ultimately 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 1790), 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, subscribing and covering themselves with the flesh and skins of wild beasts."

⁷⁴ Letter to John B. Colvin, 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 law itself, 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."

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

⁷⁵ See the *Summary View*, 105–6. A similar sentiment is repeated in the "Bill Declaring Who Shall Be Deemed Citizens of this Commonwealth": "And in order to preserve to the citizens of this commonwealth, that natural right, which all men have of relinquishing the country, in which birth, or other accident may have thrown them, and, seeking subsistence and happiness wheresoever they may be able, or may hope to find them," no citizen shall be prevented from emigrating (p. 374).

⁷⁶ In the *Summary View* Jefferson says: "From the nature of things, every society must at all times possess within itself the sovereign powers of legislation. The feelings of human nature revolt against the supposition of a state so situated as that it may not in any emergency provide against dangers which perhaps threaten immediate ruin" (p. 118). And "From the nature and purpose of civil institutions, all the lands within the limits which any particular society has circumscribed around itself are assumed by that society, and subject to their allotment only" (p. 119). At the start of the "Opinion on the French Treaties" we read that "between society and society the same moral duties exist as did between the individuals composing them while in an unassociated state . . . Compacts then between nation and nation are obligatory on them by the same moral law which obliges individuals to observe their compacts" (p. 423).

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).⁷⁷ Between society and society, and generation and generation, "there is no municipal obligation, no umpire but the law of nature" (p. 962). Natural rights, then, can belong only to the living.⁷⁸ In another

⁷⁷ 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 Meyers (Hanover, N.H.: University Press of New England, 1981), 176–9. For example, Madison remarks: "If the earth be the gift of nature to 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 "moot question whether the origin of any kind of property is derived from nature at all," it is agreed that "no individual has, of natural right, a separate property in an acre of land, for instance." So far as natural right goes, 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 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). Jefferson'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 veritable aristoi" (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.

⁷⁸ 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 these wants, and the right to what we acquire by those means without violating the similar rights of other sensible beings" (p. 1387). It is worth mentioning that Jefferson was much 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

letter on the subject, to Samuel Kercheval of 12 July 1816, Jefferson answers: "The dead have no rights. They are nothing; and nothing cannot own something. Where there is no substance, there can be no accident" (p. 1402). And again, in a letter to John Cartwright of 5 June 1824, we learn that conventional laws cannot be unchangeable because "the Creator has made the earth for the living, not the dead. Rights and powers can only belong to persons, not to things, not to mere matter, unendowed with will. The dead are not even things" (p. 1493). The key terms here are *will* and *powers*. Death is as natural as life, and the condition of the deceased is as natural as that of the living. Why, then, grant natural rights only to those living, those who have "will" and "powers"?

The sentence following that just quoted from Jefferson's letter to Cartwright reads: "The particles of matter which composed their bodies, make part now of the bodies of other animals, vegetables, or minerals, of a thousand forms. To what then are attached the rights and powers they held while in the form of men?" Jefferson is excluding, in full accordance with his Epicureanism and demystified Christianity, one possible answer to his rhetorical question, namely, an immortal soul. Soul could be considered to be the "substance" of human nature that lives on after the dissolution of the body. In any event, for Jefferson, life is the presupposition of liberty, that is, the exercise of the will, and liberty would seem to be the presupposition of the pursuit of happiness. Even within the list of natural rights in the Declaration of Independence, then, there seems to be a logical order grounded in an understanding of the sense in which nature is the foundation for rights.⁷⁹

Presumably, in the absence of living possession of will, inner liberty, conscience, ideas, and powers, natural rights are lost because the living can no longer see the dead as subjects of choice, sociality, and so forth; the dead cannot be "sympathized" with in the relevant sense.⁸⁰

development that he did so much to effect—deprived anyone of their natural rights (*Autobiography*, 32).

⁷⁹ 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."

⁸⁰ 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.⁸¹ 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.⁸² 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; well-tuned sympathy might lead one, say, to attribute to a person in dire need of health care a right to that health care.

⁸¹ 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 reality of these principles [concerning the relationship between positive and natural law] I appeal to the true foundations 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 happen to have feelings and a 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, Puffendorf, Wolf, and Vattel are of this number. But where they differ, and they often differ, we must appeal to our own feelings 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 controuls 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 quorum. Occasionally Jefferson refers to "natural reason" (e.g., Query VIII of the *Notes* [p. 211]); the phrase seems equivalent to "moral sense."

⁸² 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

difference in our case. As far as I can tell, this doctrine of moral sense and natural law remains constant throughout all of Jefferson's writings from the earliest to the latest.⁸³ Our possession of moral sense is a result of the operation of laws of nature—the laws according to which we are constituted; according to which humans have evolved; or, in another formulation, the laws according to which we are "created."⁸⁴ Given my earlier observations about Jefferson's view of religion and of his materialism, it seems that he uses "nature," "nature's God," and "the creator" interchangeably.⁸⁵ Jefferson can and does characterize human nature in

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 will ever advance to such a state of perfection as that there shall no longer be pain or vice in the world, yet I believe it susceptible of much improvement, and most 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. 1387-8). 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 forefathers were" (p. 461).

⁸³ As is also suggested by May, *The Enlightenment in America*, 296.

⁸⁴ In his letter to Benjamin Austin 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). And at the start of the "Opinion on the French Treaties" we read: "The first of these only [the Moral law of our nature], concerns this question, that is to say the Moral law to which Man 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 (in Jefferson's reproduction of the document in his *Autobiography*) of the Declaration of Independence should be read (on substantive as well as grammatical grounds) as "the laws of nature and [the laws] of nature's God." The "nature's God" phrase used here is possessive or subjective genitive and seems to mean "the God belonging to nature." (This first paragraph contains the only 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 their inalienable rights. The creator in question is nature. The Declaration closes with 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 arrest 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."

⁸⁵ The point is controversial, of course. Morton White 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 [toward God, oneself, and other humans] are inferable by reflection on 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.⁸⁶

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.⁸⁷ I take it that this caring will require sympathy (or better, em-

God with respect to man. . . . Moreover, having proposed these as ends for man, God wills that man *should* labor for his own preservation and perfection in order to obtain all the happiness of which he is capable according to his nature and estate." *The Philosophy of the American Revolution* (New York: Oxford University Press, 1981), 162. White notes that Burlamaqui took God to be powerful, good, and wise; such an assumption seems hard to make in Jefferson's case, particularly if God is taken to be an individualized and active agent (an assumption that is difficult to reconcile with Jefferson's materialism). As White restates the Burlamaquian/Jeffersonian position: "We examine the essence God has given man and the states in to which he has put man, infer his intentions with respect to man, and then infer what God was led to decree, using along the way the premise that God, by his nature, can do nothing but good and nothing in vain" (p. 180). I am suggesting, by contrast, that Jefferson moves directly from moral sense to natural law and natural right, in a way closer to Pufendorf's strategy of arguing for natural law from human sociability (a strategy criticized by Burlamaqui; see White, p. 183), and probably still closer to Hutcheson. (For further discussion of Burlamaqui, see Chapter 1 in this volume.)

⁸⁶ Jefferson closes the *Summary View* by remarking: "The God who gave us life gave us liberty at the same time; the hand of force may destroy, but cannot disjoin them." The rights to freedom of thought and religion stem from the same basic source—nature (given my reading of what Jefferson means by "God"). In the "Bill for Establishing Religious Freedom" the argument for freedom of religion depends in part on the premise that "Almighty God hath created the mind free" (p. 346). The freedom of the mind is a characteristic of human nature and is valued by moral sense; therefore people have a right to freedom of thought and belief. To interfere with that freedom is, as the Bill makes clear, to interfere with other natural rights as well (e.g., Jefferson refers to "those privileges and advantages to which, in common with his fellow citizens, he [the individual] has a natural right" [p. 347]). In Query XVII of the *Notes* Jefferson states: "The error seems not sufficiently eradicated, that the operations of the mind, as well as the acts of the body, are subject to the coercion of the laws. But our rulers can have authority over such natural rights only as we have submitted to them. The rights of conscience were never submitted, we could not submit. We are answerable for them to our God" (p. 285). Jefferson did not make the correct workings of the moral sense depend on the existence of an immortal soul or a separate Creator and did not include such teachings in his educational schemes. His philosophy of history does seem connected, rather loosely to be sure, with the notion of an ordering principle, which along Epicurean lines could be interpreted in accordance with a belief (perhaps not scientifically warranted so much as psychologically ineluctable) that progress is generally taking place and seems guided. This sense of history is important to his doctrine of moral action, discussed later.

⁸⁷ See the letter to Thomas Law, 13 June 1814 (p. 1337): "Nature hath implanted in our breasts a love of others, a sense of duty to them, a moral instinct, in short, which prompts us irresistibly to feel and to succor their distresses. . . . The Creator would indeed have been a bungling artist, had he intended man for a social animal, without planting in him social dispositions." Those few persons deficient in moral sense must be educated to see its truth, or presented with a system of punishments and rewards that will appeal to their self-interest narrowly understood until they acquire the habit of acting in accordance with moral sense.

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 Hutchesonian 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.⁸⁸ 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.⁸⁹

⁸⁸ The influence of Hutcheson on Jefferson may well be indirect; so far as I know, Jefferson never quoted from Hutcheson. Jefferson possessed Hutcheson's *Short Introduction to Moral Philosophy in Three Books*, his *Synopsis Metaphysicae*, and the *Inquiry into Our Original Ideas of Beauty and Virtue* (Sowerby, *Catalogue of the Library of Thomas Jefferson*, 2: 1, 12, 13). Some discussion of the relationship between Jefferson and Hutcheson may be found in Garry Wills's *Inventing America: Jefferson's Declaration of Independence* (New York: Doubleday, 1978). I note that Hutcheson offered a strong critique of Aristotle's justification of "natural slavery" and of the institution of slavery. See Wylie Sypher's "Hutcheson and the 'Classical' Theory of Slavery," *Journal of Negro History* 24 (1939): 263–80. On that point see also Davis, *The Problem of Slavery in Western Culture*, 375–8. Aristotle's argument was widely cited in support not just of the enslavement of blacks but of Indians as well. See Lewis Hanke, *Aristotle and the American Indians: A Study in Race Prejudice in the Modern World* (London: Hollis & Carter, 1959).

⁸⁹ I note two striking omissions in Jefferson's account so understood. First, a notion of the common good does not seem to play an important role in the argument (in contrast with Hutcheson, 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 avail himself of his Epicureanism by making pleasure and pain the basis for rights. That strategy, for which there is Hutchesonian 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 bearers. Hutcheson was an

An argument along these lines does not provide the sort of justification a Kantian would require.⁹⁰ The argument gives an important place to the imagination in ethical reflection (as similar arguments in Hume and Smith do). The empirical determination that another person possesses moral sense would seem to require an imaginative grasp (what Smith calls "sympathy") of the other's world by which the other's capacity for moral feeling, sense of responsibility, and the like are understood. Jefferson does not explore the consequences of this point, but the path is certainly open to an important role, in Jefferson's supplement to Epicurus, for an aesthetics based in the imagination.⁹¹

In any event, because Jefferson takes it to be empirically true that blacks possess moral sense, he infers that they possess natural rights, regardless of any other respects in which blacks are (supposedly) inferior.⁹² Before we see how Jefferson thought the principle of moral equality was best applied in practice, let us examine further his attempted synthesis of Epicurus and moral-sense Christianity.

Jefferson's synthesis. An effort to integrate the "moral sense" view with the Epicurean might proceed in the way Jefferson indirectly suggests in

"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.

⁹⁰ For a discussion of the problem of equality and of the problem of drawing normative conclusions from factual statements about human beings, see Bernard Williams, "The Idea of Equality," in *Problems of the Self: Philosophical Papers 1956-1972* (Cambridge: Cambridge University Press, 1973): 230-49.

⁹¹ 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.

⁹² 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 there (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 of 25 February 1809, Jefferson says: "Be assured that no person living wishes more sincerely than I do, 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 noting 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 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. 264-5); the letter to Monroe of 24 November 1801 (p. 1097); and the letter to Edward Coles of 25 August 1814 (p. 1345).

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 tranquillity so that it includes the pleasure of performing selfless action, given that our "sociability" is part of our natural makeup.⁹³ 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.⁹⁴ Jefferson's synthesis as I have construed it continues to

⁹³ 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 starts from the need of help" (*Sent. Vat.* XXIII, p. 109). (For discussion of Epicurus's difficulties in accounting for friendship, see once again Mitsis's *Epicurus' 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.

⁹⁴ 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 in man, individually 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 on us, as evidences of imbecility. As if it could be a folly for an honest man to suppose that others could be honest also, when it is their interest to be so" (p. 1217). The three dependent clauses beginning with "of" should be understood as parts of an extended parallel construction. See also the letter to Jean Baptiste Say of 1 February 1804: "Morality listens to this [the view that in America laborers should be concentrated in the agricultural sector], and so invariably 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.⁹⁵ 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

⁹⁵ See Koch, *The Philosophy of Thomas Jefferson*, 18. In the letter to Samuel Kercheval of 12 July 1816, Jefferson discusses the "progress of the human mind" and the necessity that laws change to suit it (p. 1401). See also the letter to John Brazier, 24 August 1819: "To the moralist they [the Greek and Latin languages] are valuable, because they furnish ethical writings highly and justly esteemed: although in my opinion, the moderns are far advanced beyond them in this line of science" (p. 1424); and the letter to P. S. Du Pont de Nemours of 24 April 1816 (pp. 1387–8). Consider also Jefferson's letter to John Adams of 8 April 1816: "I think with you that it is a good world on the whole, that it has been framed on a principle of benevolence, and more pleasure than pain dealt out to us. There are indeed . . . gloomy and hypochondriac minds, inhabitants of diseased bodies, disgusted with the present, and despairing of the future; always counting that the worst will happen, because it may happen. To these I say How much pain have cost us the evils which have never happened? My temperament is sanguine. I steer my bark with Hope in the head, leaving Fear astern" (pp. 1381–2).

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."⁹⁶ Jefferson articulates a similar point in the famous passage in Query XVIII of the *Notes on the State of Virginia*.⁹⁷ 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 disutility 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

⁹⁶ Letter to François De Marbois, 14 June 1817 (p. 1410). See also the conclusion of the "Answers and Observations for Dèmeunier's Article on the United States in the *Encyclopédie Methodique*, 1786." Jefferson there remarks, in reference to the extirpation 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).

⁹⁷ "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? 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 situation, is among possible events: that it may become probable by supernatural interference! The Almighty 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 into every one's mind. I think a change already perceptible, since the origin of the present revolution. The spirit of the master 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 emancipation, and that this is disposed, in the order of events, to be with the consent of the masters, rather than by their extirpation" (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 purposive 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 human—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.⁹⁸

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

⁹⁸ Correspondingly, history would be an important subject for the Epicurean to study. Lucretius does present us with a historical narrative of the development of civilization, though presumably not with the intent of providing evidence of "progress" to be used in support of prudent statesmanship. On the complex relation between Lucretius and Epicurus, see Diskin Clay's *Lucretius and Epicurus* (Ithaca: Cornell University Press, 1983).

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.⁹⁹ However, a number of the abolitionist movements active during Jefferson's life 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 justify 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."¹⁰⁰ 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 revolting not only against moral decay and the laxness of a worldly and self-contented clergy, but also against the entire drift of British thought from Locke and Tillotson 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."¹⁰¹ Sin came to be interpreted as self-

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 good" theory of slavery came close to arguing that in principle Christianity sanctions the enslavement 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 (*Wolf by the Ears*, 53), "Jefferson's scientific 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 monogenesis 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-empirical basis.

¹⁰⁰ Davis, *Slavery in Western Culture*, 383.

¹⁰¹ 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 Immediatism 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.¹⁰² 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.¹⁰³ 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.¹⁰⁴

ment" (p. 246). And "immediatism was something more than a shift in strategy. It represented a shift in total outlook from a detached, rationalistic perspective on human history and progress to a personal commitment to make no compromise with sin. It marked a liberation for the reformer from the ideology of gradualism, from a toleration of evil within the social order, and from a deference to institutions that blocked the way to personal salvation" (p. 255).

¹⁰² The term *immediate* was used in this connection by abolitionists including Anthony Benezet. See Davis, "The Emergence of Immediatism," 240. As Davis notes in these pages, *immediate* might mean different things, from declaration of absolute personal opposition to slavery to the conviction that "slavery should be abolished absolutely and without compromise, though not necessarily without honest preparation" (p. 239). The latter construal begins to introduce a notion of prudence. I am more interested for present purposes in the former construal, but acknowledge hidden complexities. For one could argue that immediate action is sometimes prudent, and that it would belong to prudence to determine whether an immediatist, or gradualist, approach is 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 his antagonists in this debate.

¹⁰³ 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 these 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" (p. 215). 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 extirpate 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 "Quaker lobbyists were apparently responsible for the temporary and unpopular Virginia law of 1782 allowing private manumissions." By 1788 Virginia laws had barred any members of emancipation societies from being jurors in freedom suits and "had virtually prevented humanitarians from advising or aiding blacks in any legal action for freedom" (p. 197).

¹⁰⁴ Jefferson criticizes the Quakers in the following vein: "You observe very truly, that both the late and present administration conducted the government on principles *professed* by the Friends. 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

The point I wish to make here is that, in adopting a completely demystified version of Christianity, Jefferson rejected a theory of the virtues of self that might have required him to free his own slaves forthwith (and quite possibly to educate and otherwise prepare them for their freedom), and to speak out much more vigorously and frequently against the institution.¹⁰⁵ Because he did not accept the doctrines of revelation, sin, salvation, guilt, and the Last Judgment—none of which would make any sense from his Epicurean starting point—Jefferson did not feel compelled to abandon his doctrine of prudential action. Jefferson was in a position to own slaves all his adult life and still think of himself as having lived as purely moral a life as is practicable.

Jefferson's deep antipathy toward what he calls "fanaticism" is an objection to, among other things, the notion that the moral thing to do in an imperfect world is to act according to pure moral principle without regard to the this-worldly consequences of one's actions.¹⁰⁶ The "good

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 ff.). Of course, the historical issues are complicated here, for revivalist movements may have contributed directly to the notion of "individual freedom" so important to the founding. William G. McLoughlin remarks in his "The Role of Religion in the Revolution" that "the Great Awakening, sometimes seen as a religious reaction to Arminianism and sometimes as the upthrust of the Enlightenment in the colonies, was really the beginning of America's identity as a nation—the starting point of the Revolution" (in *Essays on the American Revolution*, eds. Stephen G. Kurtz and James H. Hutson [Chapel Hill: University of North Carolina Press, 1973], 198). McLoughlin goes on to argue that as a result of the Awakening "every individual was assumed to be in direct relationship to God and responsible only to him, and therefore their collective will was God's will. Or so, in its extreme and logical form, this theory evolved by the time of Thomas Paine's *Common Sense* and came into practice by the age of Jackson" (p. 200).

¹⁰⁵ At least given Jefferson's various assumptions about the side constraints I discuss later. Jefferson could, again, find it prudent to act immediately on a given issue; the point is that if he were to do so with respect to slavery, it would be for very different reasons than those animating the immediatist camp.

¹⁰⁶ Jefferson intensely disliked Calvinism, whose "demoralizing dogmas" include, according to Jefferson, the thesis that "faith is every thing, and the more incomprehensible the proposition, the more merit in its faith," as well as the view that "reason in religion is of unlawful use" (letter to Benjamin Waterhouse, 26 June 1822 [pp. 1458–9]). In his letter to Thomas B. Parker of 15 May 1819, Jefferson remarks on the "reveries, not to say insanities of Calvin and Hopkins; yet the latter, I believe, is the proper term. Mr. Locke defines a madman to be one who has a kink in his head on some particular subject, which neither reason nor fact can untangle. . . . This was the real condition of Calvin and Hopkins, on whom reasoning was wasted. . . . Were I to be the founder of a new sect, I would call them Apriarians, and, after the example of the bees advise them to extract the honey of every sect. My fundamental principle would be the reverse of Calvin's that we are to be saved by our good works which are within our power, and not by our faith which is not within our power" (*Extracts*, 385–6). For Jefferson, Calvinism stands for intolerance—the very opposite of reasonableness—that is, for the pure and self-righteous adherence to principle as opposed to the recognition of the

will" is not always good without qualification. Jefferson credits Jesus with understanding, in opposition to the Jews, "the social utilities which constitute the essence of virtue," and so with allowing a place for reason—prudence—in morality. Jefferson's criticisms of Judaism amount at least in part to a criticism of what we would think of as the Kantian view concerning the irrelevance of consequences to moral evaluation in morality. Jefferson's criticisms of Plato can be viewed as including a similar element. Jefferson had read the *Republic* and disliked it very much—and, at least on the surface, the radical political recommendations of the *Republic* dispense with every prudential maxim of politics.¹⁰⁷ Jefferson thought that the "science of morals" was one area in which the moderns had progressed significantly beyond the ancients. Because, as discussed earlier, Jefferson also tells us that the basics of morality are provided by Epicurus and Jesus, the progress in question must have taken place in our understanding of the means for implementing morals. Jefferson no doubt has in mind the political machinery set out in the Constitution, as well as the principles described by the Declaration of Independence. His belief that a carefully thought out "science" of morals is necessary, as well as carefully crafted institutions to embody these morals, commits him to the sorts of views about (1) the fallibility of knowledge of empirical states of affairs and of the "nature" of things, about (2) the accumulation of insights through the historical process of trial and error, and about

imperfection of both self and world as well as the difficulties of implementing morality in such a world: "Such is the malignity of religious antipathies that, altho' the laws will no longer permit them, with Calvin, to burn those who are not exactly of their Creed, they raise the Hue 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 Thacher, 26 January 1824 (*Extracts*, 415). 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 Middleton's writings, especially his letter from Rome, and to Waterland, as the basis of my own faith" (*Extracts*, 348). In *Thomas Jefferson and his Library* (Hamden, 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 clergymen but 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).

¹⁰⁷ On Judaism, see Jefferson's letter to William Short, 4 August 1820 (pp. 1435–8); letter to Benjamin Rush, 21 April 1803 (p. 1124). Jefferson links Calvin to Plato in his letter to John Davis, 18 January 1824 (*Extracts*, 413). In numerous letters Jefferson links Platonism, 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).

(3) the importance of prudence and moderation in the political and personal spheres mentioned earlier in connection with the *Federalist's* closing citation of Hume. And these views of knowledge, history, and the virtues are being rejected by Jefferson's antagonists here.¹⁰⁸

PRUDENCE AND SLAVERY

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 by 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 further Jeffersonian 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 content 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-

¹⁰⁸ 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).

ity"). The state is empowered to prevent people from physically or directly interfering with each other's rights. The state is not empowered to coerce morality (positive duties), for example, by forcing people to be benevolent; morality is a matter of choice. The distinction between one's external relations (physical or social) and one's person (or self), between the public and the private, is part of this distinction between duties.¹⁰⁹

Slavery clearly violates the natural rights of the enslaved, as Jefferson tells us repeatedly.¹¹⁰ Jefferson believes that when rights are not reciprocally recognized, might has replaced rights as the basis of justice. The oppressed then have a natural right to dissolve the political bonds that tie them to their masters, although, as Jefferson cautions in the Declaration of Independence, "Prudence indeed will dictate that governments long established should not be changed for light and transient causes."¹¹¹

¹⁰⁹ See Jefferson's letter to P. S. Du Pont de Nemours of 24 April 1816 (pp. 1386–7). In Query XVII of the *Notes* Jefferson says, "The legitimate powers of government extend to such acts only as are injurious to others" (p. 285). Jefferson goes on to make it clear that an opinion about religious matters, no matter how odious to others, does not qualify as an injury to them. For it does not interfere with their right to formulate their own opinions.

¹¹⁰ In the *Summary View* (1774) Jefferson says that the "infamous practice" of slavery deeply wounds "the rights of human nature" (p. 116). In his draft of the Declaration Jefferson wrote that the King "has waged cruel war against human nature itself, violating it's most sacred rights of life and liberty in the persons of a distant people who never offended him, captivating and carrying them into slavery in another hemisphere, or to incur miserable death in their transportation thither" (*Autobiography*, 22). In Query XVIII of the *Notes* we read: "The whole commerce between master and slave is a perpetual exercise of the most boisterous passions, the most unremitting despotism on the one part, and degrading submissions on the other. . . . The man must be a prodigy who can retain his manners and morals undepraved by such circumstances. And with what execration should the statesman be loaded, who permitting one half the citizens thus to trample on the rights of the other" (p. 288). In his sixth annual message to Congress Jefferson characterizes the slave trade as a "violation of human rights" (p. 528). In his letter to Edward Coles of 25 August 1814, Jefferson says that it is a "moral reproach" to the whites that the blacks have pleaded so long in vain (p. 1344). See the third of the "Answers and Observations for Dêmeunier's Article on the United States in the *Encyclopédie Methodique*, 1786," for further comments on the question.

¹¹¹ Cf. Query XVII of the *Notes* where we read of "religious slavery" (p. 285). With explicit reference to blacks, Jefferson writes in Query XIV of the *Notes*: "That disposition [in the slaves] to theft with which they have been branded, must be ascribed to their situation, and not to any depravity of the moral sense. The man, in whose favour no laws of property exist, probably feels himself less bound to respect those made in favour of others. When arguing for ourselves, we lay it down as a fundamental, that laws, to be just, must give a reciprocation of right: that, without this, they are mere arbitrary rules of conduct, founded in force, and not in conscience: and it is a problem which I give to the master to solve, whether the religious precepts against the violation of property were not framed for him as well as his slave? And whether the slave may not as justifiably take a little from one, who has taken all from him, as he may slay one who would slay him?" (p. 269).

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 obligation (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 tranquillity—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 ownership of slaves, the second concerning his views on and actions about the institution of slavery. Given what I have said in the preceding paragraphs, 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, acceptable in satisfying the "do everything possible" demand; and the Jeffersonian actor will take a variety of goods as contributing to his or her tranquillity and as demanding their due. It is the task of prudence and moral sense to determine what is due others. Nevertheless, whereas Jefferson might not think that simply living in a nation in which slaveholding exists constitutes the doing of injustice on the part of nonslaveholding 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

¹¹² Jefferson's synthesis would require an account of this demand for responsibility in terms of the agent's summum bonum (tranquillity) 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 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.¹¹³

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."¹¹⁴ 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"

¹¹³ See Jefferson's letter to N. Lewis, 29 July 1787 (in *Papers of Thomas Jefferson*, ed. Julian Boyd [Princeton, N.J.: Princeton University Press, 1950-], 21 vols.): "Nor would I willingly sell the slaves as long as there remains any prospect of paying my debts with their labour. In this I am governed solely by views to their happiness which will render it worth their while to use extraordinary cautions for some time to enable me to put them ultimately on an easier footing, which I will do the moment they have paid the debts due from the estate, two thirds of which have been contracted by purchasing them. I am therefore strengthened in the idea of renting out my whole estate" (11:640). And several lines further (p. 641): "I feel all the weight of the objection that we cannot guard the negroes perfectly against ill usage. But in a question between hiring and selling them (one of which is necessary) the hiring will be temporary only, and will end in their happiness; whereas if we sell them, they will be subject to equal ill usage, without a prospect of change. It is for their good therefore ultimately, and it appears to promise a relief to me within such a term as I would be willing to wait for." Consider the remark in the letter to Coles of 25 August 1814: "My opinion has ever been that, until more can be done for them, we should endeavor, with those whom fortune has thrown on our hands, to feed and clothe them well, protect them from all ill usage, require such reasonable labor only as is performed voluntarily by freemen, and be led by no repugnancies to abdicate them, and our duties to them" (p. 1346).

¹¹⁴ I recognize that the "Opinion" was not written with the use to which I shall put it in mind. My purpose in calling on that document is to try to construct as solid a position as Jefferson's various writings permit before trying to show how that position fails.

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.¹¹⁵ Conse-

¹¹⁵ In the "Opinion" Jefferson calls upon Pufendorf, among others. In book 3 of *De Jure Naturae et Gentium* (1688), trans. C. H. Oldfather and W. A. Oldfather (Oxford: Clarendon Press, 1934), chap. 2 ("All Men are Accounted as Naturally Equal"), Pufendorf argues, in a way that must remind us of Jefferson, that superiority of intelligence or capability does not confer the right to rule the less fortunate, nor differences of

quently, a situation in which some members of a society have been enslaved can be understood as the nonperformance by their masters of the just contract that is implied by the fundamental principles of right. This nonperformance of a just contract—the enslaving of others—would be permissible only if obeying the contract (liberating the slaves and treating them as one's political equals) was either impossible or dangerous (in a sense that threatened one's self-preservation directly). With this in mind, let us now turn first to Jefferson's ownership of slaves and then to his stance relative to the institution of slavery.

Jefferson's ownership of slaves. Jefferson appeared to think that emancipation of his slaves was dangerous for both parties, as well as impossible. In his letter to Jefferson of 31 July 1814, Edward Coles both implores Jefferson to speak out forcefully against slavery and mentions that as a result of his own opposition to slavery he intends to leave the state and free his slaves.¹¹⁶ Coles, in fact, did so; after many difficulties

property the right of resisting rule. Pufendorf 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). Pufendorf 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, Pufendorf's statement in vol. 2 of *De Officio Hominis et Civis Juxta Legem Naturalem*, trans. F. G. Moore (New York: Oxford University Press, 1927), chap. 3 ("On Natural Law"): "Thus then 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 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 light given to mankind declares that they are evident" (p. 19).

¹¹⁶ 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 E. B. Washburne (Chicago: Jansen, McClurg, and Co., 1882), 21–31. 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 rights of man. Even if Jefferson's words have no 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 Banneker's letter to Jefferson of 19 August 1791, in which Jefferson is again asked to speak out. Banneker contrasts the servitude of blacks with the desire of the whites to free themselves from British rule, and quotes the "self-

he not only freed his slaves in Illinois but also was instrumental in abolishing slavery from that state.¹¹⁷ 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 abdicate 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.¹¹⁸ 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. Banneker reproaches Jefferson for still owning slaves though believing in the truths of the Declaration.

¹¹⁷ For further details about Coles, see Miller, *Wolf by the Ears*, 205–8.

¹¹⁸ 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 manumission in cases in which their owners were in debt (the purpose of the laws being to prevent people from avoiding payment by shifting—to a relative who could be counted on returning the slaves, for example—their primary capital, slaves). See McColey, *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] remained sensitive to the connections between slaves and the land. A Virginia Statute of 1794, for example, prohibited the sale of slaves 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, 1619–1808* (Boston: Ginn and Co., 1901), 74 ff., 122 ff.; Luther P. Jackson, "Manumission in Certain Virginia Cities," *Journal of Negro History* 15 (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), 47–50.

arguing that emancipation would be stymied by (1) the continued prejudices of the whites, (2) bitter recollections by 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 with 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.¹¹⁹ 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.¹²⁰ 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. Practicality 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

¹¹⁹ See Jefferson's letter to E. Bancroft, 26 January 1788 (Boyd, *Papers of Thomas Jefferson*, 14: 492-4); and Thomas Paine, "African Slavery in America," in *Writings*, 1:4-9.

¹²⁰ Jefferson insisted from beginning to end that the emancipation of the slaves be accompanied by expatriation, that is, their removal either to Africa, the Caribbean, or some other place. This is one of his boundary criteria for prudential action here, which I discuss later. Jefferson's principle that all those born in a country are citizens of it applied only to whites ("A Bill Declaring who shall be deemed Citizens of this Commonwealth," p. 374), though the "natural right" of emigration belongs to "all men." On separating mothers from children, see his letter of 4 February 1824 to Jared Sparks: "I am aware that this subject involves some constitutional scruples. But a liberal construction, justified by the object, may go far, and an amendment of the constitution, the whole length necessary. The separation of infants from their mothers too, would produce some scruples of humanity. But this would be straining at a gnat, and swallowing a camel" (p. 1487). The expatriation requirement vastly complicated the task of solving the slavery problem; indeed, McColey concludes that it made general emancipation impossible (*Slavery*, 130).

about its presumed moral status before I consider the legitimacy of Jefferson's stance toward the institution of slavery.¹²¹

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).¹²² 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.¹²³ The “moral sense” is the attribute that qual-

¹²¹ 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, 25 August 1814 (p. 1345); letter to John Lynch of 21 January 1811 (p. 1241). In the letter to Monroe of 24 November 1801 (pp. 1096–9) Jefferson argues against resettling the blacks anywhere in North America lest a “blot or mixture” on the continent result. Presumably following this advice would entail forcible resettlement of freed blacks.

¹²² 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 Revolution: Principle and Practice in the New Republic* (Ithaca: Cornell University Press, 1987), chap. 4.

¹²³ 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 NEGROE 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.

ifies 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.¹²⁴ 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” 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-

¹²⁴ *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, one 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.

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 extirpating 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—Jame Hubbard—“severely flogged in the presence of his old companions” (in Jefferson’s words) for having made repeated efforts to win his freedom.¹²⁵ 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 nonmoral 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 tranquillity. The logic of Jefferson’s stance here points to the Epicurean summum bonum as its justification, as well it might, given that in Jefferson’s synthesis tranquillity 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 summum bonum cannot, for Jefferson, accommodate both Epicurean tranquillity and the enlarged circle of moral valuation entailed by moral sense.

¹²⁵ For the details of that episode, see William Cohen, “Thomas Jefferson and the Problem of Slavery,” *Journal of American History* 56 (1969): 516; and Jefferson’s letter to Reuben Perry (from which the words just quoted are taken) of 16 April 1812, in *Thomas Jefferson’s Farm Book*, ed. Edwin M. Betts (Charlottesville: University of Virginia Press, 1987), 34–5. Jefferson claims that Hubbard “committed a theft” 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 consign them to inevitable death from the small pox and putrid fever then raging in his camp.”

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.¹²⁶ These and other failed efforts rapidly convinced Jefferson that any public opposition to slavery was bound to be counterproductive,¹²⁷ hence his great efforts to keep the *Notes on the State of Virginia* from being published.¹²⁸ Jefferson feared not that the

¹²⁶ See Fredrika T. Schmidt and Barbara R. Wilhelm, “Early Pro-Slavery Petitions in Virginia,” *William and Mary Quarterly* 30 (1973): 133–46; and Miller, *Wolf by the Ears*, 36.

¹²⁷ Miller notes that by 1777 Jefferson had suffered enough rebuffs to his efforts to commit him to a course of “prudent and pragmatic action” (*Wolf by the Ears*, 19). See also Winthrop D. Jordan, *White over Black* (New York: W. W. Norton, 1977), 435; Jefferson “had good reason to think that antislavery pronouncements might solidify the institution.”

¹²⁸ 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 1785 (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, till I know whether their publication would do most harm or good. It is possible, that in my own country, these strictures might produce an irritation, which would indispose 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 in 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 try to improve the translation (see his letters to Madison of 8 February 1786 [p. 849]; 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 became the center of considerable controversy, concerning which see Jordan, *White over Black*,

"suspicions" expressed there about the inferiority of blacks would cause trouble but, rather, that the suggestions that blacks were equal to whites in the decisive sense, and so that slavery is immoral, would cause a backlash. In fact, Jefferson was bitterly attacked during the 1800 presidential election for his views on race.¹²⁹

After 1777, Jefferson said very little in public against the institution of slavery, and made no efforts to improve the wretched lot of many "free blacks," even though on occasion he might have made a decisive difference.¹³⁰ As he put the matter in a letter to James Heaton, written in the last year of his life (20 May 1826):

A good cause is often injured more by ill-timed efforts of its friends than by the arguments of its enemies. Persuasion, perseverance, and patience are the best advocates on questions depending on the will of others. The revolution in public opinion which this cause requires, is not to be expected in a day, or perhaps in an age; but time, which outlives all things, will outlive this evil also. My sentiments have been forty years before the public. Had I repeated them forty times, they would only have become the more stale and threadbare. (p. 1516)¹³¹

441. Miller remarks (*Wolf by the Ears*, 57) that Jefferson's "suspicion" that blacks are inferior was much milder than that of his fellow Virginians "who regarded the inferiority of blacks as an indubitable fact, and who believed that slavery itself was a 'natural', Heaven-ordained institution."

¹²⁹ I refer to the tract by William L. Smith, "The Pretensions of Thomas Jefferson to the Presidency Examined" (Philadelphia, 1796). For discussion of the pamphlet, see McColley, *Slavery*, 126–7. Miller notes that when Jefferson's correspondence with Benjamin Banneker was published (without Jefferson's consent), Jefferson discovered that any intellectual relationship with a black person could cause him difficulties among whites (*Wolf by the Ears*, 78).

¹³⁰ Miller notes that if Jefferson had spoken out in 1806, a bill outlawing slavery in the District of Columbia might have passed (*Wolf by the Ears*, 132). Miller too suggests that with respect to the spread of slavery in the Louisiana territories, Jefferson did not do everything possible to limit slavery (p. 143), and indeed that after 1819 Jefferson became an ardent exponent of the establishment of slavery in the Louisiana Purchase territories (p. 209).

¹³¹ Consider the sentences at the end of the "Answers to Dêmeunier's Queries," which Jefferson proposes should be included (without his name attached) in the *Encyclopédie*: Jefferson and Wythe were not present to offer the amendment concerning emancipation because "they saw that the moment of doing it with success was not yet arrived, and that an unsuccessful effort, as too often happens, would only rivet still closer the chains of bondage, and retard the moment of delivery to this oppressed description of men. What a stupendous, what an incomprehensible machine is man! who can endure toil, famine, stripes, imprisonment and death itself in vindication of his own liberty, and the next moment be deaf to all those motives whose power supported him thro' his trial, and inflict on his fellow men a bondage, one hour of which is fraught with more misery than ages of that which he rose in rebellion to oppose. 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).

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 precondition 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.¹³² 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

¹³² See McColley, *Slavery*, pp. 115–6, 131; and Miller, *Wolf by the Ears*, 278: "It was also legibly written in the Book of Fate that had Jefferson made himself conspicuous as a fervent, militant, and uncompromising abolitionist on the model of William Lloyd Garrison, or had he even gone so far as to suggest that whites and blacks ought to enjoy equal rights as citizens of the United States, he would not have succeeded in doing the things in which he took the greatest pride and by which he wished to be remembered by posterity. Nor would he have had the slightest chance of becoming president of the United States." Of course, after his second election to the Presidency this rationale would have lost its force.

have averted. This would appear to be an example of "prudential" reasoning.¹³³

Jefferson's position with respect to the institution of slavery, then, is conditioned by the expatriation requirement and by the requirement that the Union and its constitutional structures be preserved, and thus that the decision to emancipate be left to the states. His position is also conditioned by his perception that his own effectiveness in promoting a

¹³³ While discussing Jefferson's actions with respect to slavery, we should note that in the *Autobiography* Jefferson mentions the bill on the subject of slaves that was drawn up by the committee on revising Virginia's laws (p. 44). The bill did not contain a plan for a future and general emancipation, the intention being to introduce such a plan (in which "the freedom of all born after a certain day, and deportation at a proper age" was envisioned) in an amendment, but "it was found that the public mind would not yet bear the proposition, nor will it bear it even at this day" (p. 44). In his "Memorandum (Services to My Country)" Jefferson lists "the act prohibiting the importation of slaves" as one of his achievements (p. 702). See also his "Draft Constitution for Virginia" (June 1776): "No person hereafter coming into this country shall be held within the same in slavery under any pretext whatever" (p. 344). Jefferson's revised draft of 1783 (which he wrote when he thought that the 1776 Virginia Constitution was to be revised) included a plan for gradual emancipation. For another reference to that see part 3 of Jefferson's "Answers and Observations for Demeunier's Article," in which Jefferson says of his and Wythe's decision not to offer the amendment: "There were persons there who wanted neither the virtue to propose, nor talents to enforce the proposition had they seen that the disposition of the legislature was ripe for it." Wythe and Jefferson would feel "wounded, degraded, and discouraged" by the proposition that they were not present to act because they did not care about the issue (p. 592). Jefferson's draft of the Declaration contained a passage strongly condemning the slave trade and slavery, but the passage was dropped at the insistence of South Carolina and Georgia, with the implied approval of some of the northern states engaged in the slave trade (*Autobiography*, 18). Jefferson's "Report on Government for Western Territory" of 1784, which became the early draft of the Northwest Ordinance, provided that "after the year 1800 of the Christian aera, there shall be neither slavery nor involuntary servitude in any of the said states" (p. 377; the plan failed by one vote to pass Congress). Miller notes that almost all southerners, and all of Virginia's representatives, voted against the bill (*Wolf by the Ears*, 28-9). In his eighth annual message to Congress, Jefferson urged successfully that importation of slaves be outlawed by the earliest possible date permitted in the Constitution (1808), for these "violations of human rights which have been so long continued on the unoffending inhabitants of Africa, and which the morality, the reputation, and the best interest of our country, have long been eager to proscribe" (p. 528). However, Miller notes that because Jefferson stood by the doctrine of the freedom of the seas and did not let the British inspect ships showing the American flag, thousands of slaves were still brought to the United States after 1808 in violation of the ban and under the U.S. flag (*Wolf by the Ears*, 146). See *Wolf by the Ears*, 4-6, for Jefferson's early acts with respect to slavery (for example, in 1769 when elected to the Virginia House of Burgesses "one of his first [acts] was to attempt to make the manumission of slaves easier for owners"). Miller also tells us that Jefferson "had endorsed the Fugitive Slave Act of 1793 by which the federal government underwrote the system of involuntary servitude by committing itself to aiding in the return of fugitive slaves to their masters" (p. 229). Finally, Miller says (pp. 255-6) that Jefferson did nothing to educate his slaves and did not contribute to the Quaker effort to educate slaves, for Jefferson assumed that the blacks would be expatriated.

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.¹³⁴ 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.¹³⁵ The

¹³⁴ This principle would apply equally when whites are in the minority. It would mean that in South Africa, for example, native whites have, in principle, as much right to remain in the country as native blacks do, even though the forebears of one group may have inhabited the land long before the forebears of another group, or one group taken power by conquest from another group. None of this entails a right to any particular piece of property, of course.

¹³⁵ See Jefferson's letter to Joseph C. Cabell of 2 February 1816: "No, my friend, the way to have good and safe government, is not to trust it all to one, but to divide it among the many, distributing to every one exactly the functions he is competent to. Let the national government be entrusted with the defence of the nation, and its foreign and federal relations; the State governments with the civil rights, laws, police, and administration of what concerns the State generally. . . . It is by dividing and subdividing these republics from the great national one down through all its subordinations . . . that all

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.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.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.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).

¹³⁶ 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 burthen 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 usurpatory actions (p. 1449). In *Wolf by the Fars* 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 uniting the South; as the one institution 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.

¹³⁷ 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 will throw away, against an abstract principle more likely to be effected by union than by scission, they would pause before they would perpetrate this act of suicide on themselves, and of treason against the hopes of the world" (p. 1435).

¹³⁸ 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 *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.¹³⁹ 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.¹⁴⁰

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.¹⁴¹ In a Jeffersonian scheme, was Gabriel prudent in leading this rebellion? Are there any conditions under which it is prudent to act "idealistically," 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

¹³⁹ For the optimistic view, see Query XVIII of the *Notes* (p. 289); the letter to Richard Price of 7 August 1785 (Boyd, ed., *Papers of Thomas Jefferson*, 8:356–7); and the letter to Roger C. Weightman of 24 June 1826. For the pessimistic view, see the letter to Holmes of 22 April 1820. The letter to Coles of 25 August 1814 contains both optimism and pessimism.

¹⁴⁰ A point made by Davis, *Slavery in the Age of the Revolution*, 176.

¹⁴¹ These consequences are not far from the historical truth. McColley notes that among the other negative results of Gabriel's rebellion (negative for the blacks) "the conspiracy, which had been a fruit of slavery itself, became the justification for further tightening the hold of slavery on Virginia and choking off the small, but promising, progress of gradual, voluntary emancipation" (*Slavery*, 111).

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.¹⁴² Jefferson could retain his tranquillity 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 unpersuasive—if one adopts the standpoint of the "Opinions" as the touchstone. That document is a moral-sense document,

¹⁴² Douglass 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 (*Fame 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 manners, style of behavior, and standards 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.¹⁴³ 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

¹⁴³ For a good sample of the philosophical discussion, see Phillip Bricker's "Prudence," *Journal of Philosophy* 77 (1980): 381-401; J. D. Mabbot, "Prudence," *Proceedings of the Aristotelian Society*, Suppl. vol. 36 (1962): 51-64; and the reply in the same volume by H. J. N. Horsburgh, 65-76.

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 summum 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—tranquillity cannot be the highest good.¹⁴⁴ Those actions render the agent vulnerable in ways that would surely sabotage tranquillity. Accommodation to the ruling power would have been more prudent. Or, again, if tranquillity 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 tranquillity, why did he engage in it in the sustained way that he did?¹⁴⁵ 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

¹⁴⁴ It could be responded that, at the time of the Revolution, Jefferson did not think that tranquillity was the summum bonum. That is, one could attempt to explain away the inconsistencies by reference to presumed changes of view on Jefferson's part. I am relying on the interpretive principle set out in note 25 above. I am using the assumption of consistency over time to extract the latent tensions in Jefferson's words and deeds. As pointed out in footnote 25 and elsewhere in this chapter, Jefferson held certain key views with some constancy throughout his adult life.

¹⁴⁵ Compare Jefferson's letter to Martha J. Randolph of 11 February 1800: "Politics are such a torment that I would advise every one I love not to mix with them." In Sarah N. Randolph, *The Domestic Life of Thomas Jefferson, Compiled from Family Letters and Reminiscences* (Charlottesville: University Press of Virginia, 1985), 262. See also the letters to John Randolph of 25 August 1775, to George Washington of 28 May 1781, and to Alexander Donald of 7 February 1788 (all in Peterson, 749, 777, and 920).

a philosopher, writer, and conveyor of knowledge. I refer of course to his epitaph, 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 education¹⁴⁶ and more broadly through his ideas about the mythology that provides the political creed and, as it were, civic education of all citizens.¹⁴⁷

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.¹⁴⁸ 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.¹⁴⁹ However much it is to be bent or straightened, that leg of Jefferson's triad will remain part of

¹⁴⁶ 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 republican nation. But would the "natural aristoi" educated along Jeffersonian lines find that contributing to the welfare of a liberal republic fits with the ends promoted by their liberal education?

¹⁴⁷ I refer to the problem signaled above: in Query XVII of the *Notes* Jefferson declares that "it does me no injury for my neighbour to say there are twenty gods, or no god" (p. 285). 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 pronoun 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.

¹⁴⁸ That Jefferson's position is an attempt at putting together a synthesis, indeed the synthesis of the elements in question, invites a MacIntyrean analysis, for Jefferson could be seen as trying (without much chance of success) to merge incompatible fragments of older traditions. (In *After Virtue* MacIntyre discusses Benjamin Franklin rather than Jefferson as critical to the development of the American Enlightenment.)

¹⁴⁹ As Charles Taylor asserts in *Sources of the Self: The Making of the Modern Identity* (Cambridge, Mass.: Harvard University Press, 1989), 395–6.

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.¹⁵⁰ 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.

¹⁵⁰ Consider one of Taylor's concluding statements that follows a reflection on "the appalling destruction wrought in history in the name of the faith": "That is why adopting a stripped-down secular outlook, without any religious dimension or radical hope in history, is not a way of *avoiding* the dilemma [religion vs. secular humanism], although it may be a good way to live with it. It doesn't avoid it, because this too involves its 'mutilation.' It involves stifling the response in us to some of the deepest and most powerful spiritual aspirations that humans have conceived. This, 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*, 520).

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

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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.¹ 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.

¹ For an admirable survey of postwar developments in academic philosophy, see Rex Martin and James W. Nickel, "Recent Work on the Concept of Rights," *American Philosophical Quarterly* 17 (July 1980): 165-80. The best recent survey from the standpoint of political theory is Jeremy Waldron's concluding essay in Waldron, ed., *Nonsense upon Stilts: Bentham, Burke and Marx on the Rights of Man* (London and New York: Methuen, 1987), chap. 6. This volume also includes a substantial bibliographical essay (pp. 222-30). Other important bibliographies of rights literature include Martin and Nickel, "Bibliography on the Nature and Foundations of Rights, 1947-1977," *Political Theory* 6 (1978): 395-413; Waldron, ed., *Theories of Rights* (Oxford: Oxford University Press, 1984), 202-5; Loren Lomasky, *Persons, Rights, and the Moral Community* (New York: Oxford University Press, 1987), 273-6; Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 1989), 271-91; and C. J. G. Sampford and D. J. Galligan, eds., *Law, Rights and the Welfare State* (London: Croom Helm, 1986), 200-7. In addition to the collections by Waldron and Sampford/Galligan just cited,¹ anthologies of essays on rights include D. D. Raphael, ed., *Political Theory and the Rights of Man* (London: Macmillan, 1967); David Lyons, ed., *Rights* (Belmont, CA: Wadsworth, 1979); A. I. Melden, ed., *Human Rights* (Belmont, Calif.: Wadsworth, 1978); Eugene Kamenka and Alice Erb-Soon Tay, eds., *Human Rights* (London: Duckworth, 1978); J. Roland Pennock and John W. Chapman, eds., *Human Rights* (New York and London: New York University Press, 1981); *Rights* (Minneapolis: University of Minnesota Press, 1981); William A. Schambra, ed., *How Does the Constitution Define Rights?* (Washington, D.C.: American Enterprise Institute, 1985); *The Morality of Rights* (Spring 1984).