

“Alter or Abolish”: The American Right of Revolution

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I hold it that a little rebellion now and then is a good thing, and as necessary in the political world as storms in the physical... it is a medicine necessary for the sound health of government.

- Thomas Jefferson, letter to James Madison

Perhaps the political genius of the American people, or the great good fortune that smiled upon the American republic, consisted precisely in this blindness, or, to put it another way, consisted in the extraordinary capacity to look upon yesterday with the eyes of centuries to come.

- Hannah Arendt, *On Revolution*

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## INTRODUCTION

In a 1959 magazine article, the well-known historian and social critic Arthur Schlesinger attempted a list of America’s ten greatest “contributions to civilization.” First on his list, before even “the principle of federalism,” was “the right to revolution.” According to Schlesinger, America’s “flaming pronouncement” in its Declaration of Independence — the announcement that “it is the Right of the People to alter or to abolish” a despotic or otherwise undesirable government — was the philosophical impetus for revolutions worldwide over the subsequent two centuries.<sup>1</sup> Schlesinger may have also noticed that the Declaration inspired legal protections for the right of revolution in roughly 20% of the world’s contemporary constitutions, as well as the United Nations’ Universal Declaration of Human Rights, and also formed the basis of correlated international legal rights in the modern world, especially the widely-acknowledged right of self-determination.<sup>2</sup>

In contrast to Schlesinger’s laudatory remarks, Thomas Jefferson’s assessment of the Declaration’s impact was more modest. In a letter composed long after independence, Jefferson claimed that the Declaration’s philosophy, including the right of revolution, was merely “an expression of the American mind” and had no claim to “originality of principle of sentiment.”<sup>3</sup> In some ways, Jefferson’s comments were fairer, too. The language of the philosophical preamble was hardly considered exceptional at the time; few co-signers even bothered to edit it.<sup>4</sup> It was

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<sup>1</sup> Arthur Schlesinger, Sr., “Our Ten Contributions to Civilization,” *The Atlantic*, March 1959. Schlesinger uses the phrase “right to revolution,” though the phrase “right of revolution” seems to be more common in the secondary literature, so I use the latter throughout this thesis.

<sup>2</sup> Tom Ginsburg, Daniel Lansberg-Rodriguez, and Mila Versteeg, “When to Overthrow Your Government: The Right to Resist in the World’s Constitutions,” *UCLA Law Review* 60, no. 5 (June 2013), 1217-1221. See also Han Liu, “The Pre-History of Self-Determination: Union and Disunion of States in Early Modern International Law,” *Arizona Journal of International and Comparative Law* 36, no. 1 (2019), 4.

<sup>3</sup> Thomas Jefferson, “To Henry Lee (Monticello, May 8, 1825),” in *Jefferson: Political Writings*, ed. Joyce Appleby and Terence Ball (Cambridge, UK: Cambridge University Press, 1999), 148.

<sup>4</sup> Stephen Lucas, “Justifying America: The Declaration of Independence as a Rhetorical Document,” in *American Rhetoric: Context and Criticism*, ed. Thomas Benson (Carbondale, IL: Southern Illinois University Press, 1989), 90.

also clearly derivative, echoing the logic of a variety of earlier thinkers, including British Whigs, Swiss international law theorists, and early Puritans. Still, the preamble brought the right of revolution to the fore of American political thought. As Thomas Paine would note, this “revolution” in the “principles” of government was perhaps more consequential than the material effects of independence.<sup>5</sup>

Curiously, in the 21st century, this political idea, once a thoroughly mainstream element of American political discourse, has found a new home with radicals on both ends of the political spectrum, all of whom still reference the Founders. On the right, the idea is frequently appropriated by ardent gun-rights advocates.<sup>6</sup> National Rifle Association president Wayne LaPierre told Congress at a 2018 hearing that gun ownership was constitutional because the Founders “wanted to make sure that these free people in this new country would never be subjugated again and have to live under tyranny.”<sup>7</sup> Simultaneously, on the left, a prominent Occupy Wall Street group, for example, sought legitimacy in the political philosophy of the Founding Fathers in its claims: “we recognize that our nation articulated a dream of political democracy in 1776 and established the right to rebel against tyranny.”<sup>8</sup> Anti-government informant and dissident Edward Snowden touted his 2013 leaks of classified documents as an expression of “the right of revolution” without using “weapons and warfare.”<sup>9</sup> Even self-proclaimed socialist Bernie Sanders campaigned in the 2016 and 2020 Democratic primaries

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<sup>5</sup> Thomas Paine, *Rights of man* (London: J.S. Jordan, 1792), 2:2.

<sup>6</sup> The “revolutionary” implications of the Second Amendment started to be taken up with frequency in the 1990s. See David Williams, “Civic Constitutionalism, the Second Amendment, and the Right of Revolution,” *Indiana Law Journal* 79, no. 2 (Spring 2004), 386-387.

<sup>7</sup> David Welna, “Some Gun Control Opponents Cite Fear Of Government Tyranny,” *NPR*, April 8, 2013. There is some evidence that rhetoric about a constitutional right to fight the government has become more mainstream since roughly 2010, but it is still mostly espoused by self-proclaimed radicals.

<sup>8</sup> As quoted in Ginsburg et. al., “When to Overthrow Your Government: The Right to Resist in the World's Constitutions,” 1192-1193.

<sup>9</sup> Katrina vanden Heuvel and Stephen Cohen, “Edward Snowden: A 'Nation' Interview,” *The Nation*, October 28, 2014.

with slogans about a “political revolution,” although he insisted that his revolution would be non-violent.<sup>10</sup>

But meanwhile, establishment Democratic Senator Chris Murphy, for example, complained in one 2016 speech that far-right Republicans were preserving a frivolous “right of revolution,” via the Second Amendment, just to show their dislike of Democrats.<sup>11</sup> This snide sentiment is widespread among major politicians and political commentators — mainstream figures are especially unimpressed by current vigilante “militias” who purport to fight against “tyranny” in the spirit of the American revolutionaries.<sup>12</sup> Most contemporary politicians simply see little practical necessity for a legal right of revolution. This has been a constant state of affairs for the right of revolution over the last several decades at least.<sup>13</sup> In the words of political theorist Harvey Mansfield, who, too, notes the relative disappearance of the concept from contemporary political rhetoric, “the right of revolution appears embarrassingly naive and rhetorical, an awkward enthusiasm of youth best wrapped in quotation marks and put away in an attic trunk.”<sup>14</sup>

Contemporary political theorists and philosophers, in large part, feel similarly. Yes, a handful of scholars have tried to formulate rules and guidelines for a legal right of revolution, especially within international law, sometimes even suggesting that a government cannot

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<sup>10</sup> Maxwell Tani, “Jake Tapper Presses Bernie Sanders After Congressional Shooting on Whether His ‘Revolution’ Rhetoric Encourages Violence,” *Business Insider*, June 19, 2017.

<sup>11</sup> Chris Murphy, “The Second Generation of Second Amendment Law & Policy,” *Law and Contemporary Problems* 80, no. 2 (2017), 235. Murphy continued to argue that the First Amendment was better suited to the Founders’ vision to “defend against tyranny.”

<sup>12</sup> For more on political responses to contemporary militia movements, see D.J. Mulloy, “‘Liberty or Death’: Violence and the Rhetoric of Revolution in the American Militia Movement,” *Canadian Review of American Studies* 38, no. 1 (2008), 122-130.

<sup>13</sup> Arthur Kaufmann, writing in 1985, remarks that “it is almost an everyday occurrence that squatters, environmental protectionists, antinukers, and other ‘alternatives’... refer to a right to resist when and if they confront governmental orders with coercion and violence.” See Kaufmann, “Small Scale Right to Resist,” *New England Law Review* 21, no. 3 (1985), 572.

<sup>14</sup> Harvey Mansfield, “The Right of Revolution,” *Daedalus* 105, no. 4 (Fall 1976), 151.

legitimately defend itself against a majoritarian revolution.<sup>15</sup> But the majority of contemporary theorists, including John Rawls, draw a clear line between civil disobedience, which might be acceptable, and revolution, which cannot be.<sup>16</sup> They correctly see a “contradiction in terms” in this so-called right, since a legal revolution would be “an unlawful change in the conditions of lawfulness,” rendering it “not enforceable at law... without [the government] necessarily abolishing itself.”<sup>17</sup> Indeed, why would the government want to grant the people the right to destroy the government? How could it reasonably protect this right without encouraging chaos? And, just as importantly, why would the people need this “right” to rise up violently against the government? At best, it appears to be an appeal to an unwritten higher law; at worst, a strange and useless paradox. Its possible insolvability, in the words of one pessimistic philosopher, is “a cause of philosophical embarrassment.”<sup>18</sup>

Many scholars go so far as to claim that not just “logic” but also “history” should preclude any consideration of a legal right of revolution in America.<sup>19</sup> Some argue that the

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<sup>15</sup> For a strong example of this argument, see Lisa Newton, “Dimensions of a Right of Revolution,” *Journal of Value Inquiry* 7, no. 1 (Spring 1973). See also Gerald Sumida, “The Right of Revolution: Implications for International Law and World Order,” in *Power and Law: American Dilemma in World Affairs*, ed. Charles Barker (Baltimore, MD: The Johns Hopkins Press, 1971); Ali Khan, “A Legal Theory of Revolutions,” *Boston University International Law Journal* 5, no. 1 (Spring 1987), 18-27.

<sup>16</sup> For more on Rawls’ right of revolution (of lack thereof), see Roberto Gangarella, “The Last Resort: The Right of Resistance in Situations of Legal Alienation” (working paper, Yale Law School SELA Papers, 2003), 2, 14-15. Most of the political theorists in this school of thought hold that other forms of resistance, such as constitutional amendment or protest, are the constitutionally-authorized counterparts to full-scale revolution, which inherently cannot be legal. See Paul Kahn, *The Reign of Law: Marbury v. Madison and the Construction of America* (New Haven, CT: Yale University Press, 1997), 59-64, 69-70; Wolfgang Schwarz, “The Right of Resistance,” *Ethics* 74, no. 2 (January 1964), 126-131.

<sup>17</sup> The quotations above are cited from scholars Guenter Lewy, R.R. Palmer, and Claude Ake, respectively. See Lewy, “Resistance to Tyranny: Treason, Right or Duty?,” *Western Political Quarterly* 13, no. 3 (September 1960), 588; Palmer, *The Age of the Democratic Revolution: A Political History of Europe and America, 1760-1800*, ed. David Armitage (Princeton, NJ: Princeton University Press, 2014), 149; Ake, “Political Obligation and Political Dissent,” *Canadian Journal of Political Science* 2, no. 2 (July 1969), 253.

<sup>18</sup> Costas Douzinas, “Philosophy and the Right to Resistance,” in *The Meanings of Rights: The Philosophy and Social Theory of Human Rights*, ed. Costas Douzinas and Conor Gearty (Cambridge, UK: Cambridge University Press, 2014), 86.

<sup>19</sup> Donald Beschle, “Reconsidering the Second Amendment: Constitutional Protection for a Right of Security,” *Hamline Law Review* 9, no. 1 (February 1986), 95.

American colonists got caught up in the “logic of rebellion,” as historian Bernard Bailyn famously puts it, but were involved in a revolution for which no logic was possible.<sup>20</sup> Alternatively, another school of thought, fathered by historian Charles Beard, dismisses the Founders’ philosophical contributions as insincere, arguing that their philosophy was retrofitted to justify a war that had already begun due to economic interests and class conflict.<sup>21</sup> Either way, no scholar, to my knowledge, has done a complete and thorough study of the right of revolution in American political thought — historian Thomas Pressly began one, but it was never completed.<sup>22</sup> This is an oversight. Despite its theoretical limits, the American Founders believed deeply in the possibility of a right of revolution, and they argued strenuously and genuinely for it. They were not alone in this ideological project; its formulation in the Declaration of Independence was far from fringe. Instead, it was, as historian Pauline Maier puts it, “purposefully unexceptional” as a piece of philosophy.<sup>23</sup> And even after the Founding, the right of revolution was a central theme of American political thought for its first near-century; it was justified during that period “by presidents as well as prophets, by politicians in power as well as by radicals out of it.”<sup>24</sup> Indeed, according to historian Merle Curti, every president from George Washington to Ulysses Grant publicly defended the right of revolution in speeches.<sup>25</sup> Furthermore, after the Civil War, it still found a place, albeit a smaller one, in American political

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<sup>20</sup> See chap. 3 of Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, MA: Harvard University Press, 1992).

<sup>21</sup> See Charles Beard, *An Economic Interpretation of the Constitution of the United States* (New York: Macmillan, 1921).

<sup>22</sup> Richard Kirkendall, “Thomas J. Pressly (1919-2012),” *Perspectives on History*, October 1, 2012.

<sup>23</sup> Pauline Maier, *American Scripture: Making the Declaration of Independence* (New York: Alfred Knopf, 1997), xvii.

<sup>24</sup> Staughton Lynd, *Intellectual Origins of American Radicalism* (New York: Pantheon Books, 1968), 4.

<sup>25</sup> Merle Curti, “Our Revolutionary Tradition,” *Social Frontier* 1, no. 3 (December 1934), 11-12. Strikingly, according to historian Thomas Pressly, not a single president from the Civil War until the present has done the same. See Thomas Pressly, “The concept of the ‘right of revolution’ in the United States in historical perspective: from the Puritans to the present,” speech, March 4, 1976, PDXScholar, accessed March 24, 2020, <https://pdxscholar.library.pdx.edu/orspeakers/93/>.



rhetoric. The right of revolution has an undeniably significant role in the history of American political thought.

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The legal right of revolution or resistance has been a ubiquitous presence in the long history of political thought. Indeed, many scholars argue that Chinese philosopher Mencius (in the 4th century BCE) was the first to formulate a version of the right of revolution mediated by a proto-natural law; others point to the sophists of 5th century BCE Rome, the sub-Saharan oral tradition of the same period, or even the Old Testament.<sup>26</sup> In the early modern period, it was of significant interest through the European religious wars, and, especially after the English Civil War of the 1640s, it became a common topic of English-language political pamphlets.<sup>27</sup> So it should be of no surprise that American ideas about the right of revolution were not wholly new. But overarchingly, I argue in this thesis that scholars immensely overstate the similarities between the American right of revolution and its predecessors.

Deciphering the philosophy of the Declaration of Independence, and by extension the philosophy of pre-revolutionary America, is an enduring problem for contemporary political theorists and historians alike. Over the past 100 years, a truly uncountable number of scholars have drawn a connection between John Locke and the Founding Fathers, especially in regards to rights-based language, including the right of revolution. Carl Becker's pioneering 1922 study made the case explicitly; "the lineage is direct: Jefferson copied Locke and Locke quoted

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<sup>26</sup> Joseph DiPiero, "The Common Law of Rebellion," *Georgetown Journal of International Law* 48, no. 2 (Winter 2017), 607; Heiner Bielefeldt, "The Right to Resist," in *International Handbook of Violence Research*, ed. Wilhelm Heitmeyer and John Hagan (Dordrecht, NL: Kluwer Academic Publishers, 2003), 1097.

<sup>27</sup> On the vast pamphlet literature on the right of resistance immediately after the English Civil War, see Perez Zagorin, *Provincial Rebellion*, vol. 2, *Rebels and Rulers, 1500-1660* (Cambridge, UK: Cambridge University Press, 1982), 148-156.

Hooker,” he wrote, referring to the 16th-century theologian Richard Hooker.<sup>28</sup> This view was unquestioned and continually re-espoused, with only moderately increasing nuance, through the 1950s, perhaps culminating in Louis Hartz’s influential claim that Locke “dominates American thought as no thinker anywhere dominates the political thought of a nation.”<sup>29</sup> And after an interlude, the last several decades of scholarship have enjoyed a revival of the “neo-Lockean” interpretation. Many contemporary scholars acknowledge the diversity of early American thought while still centering Locke — Joyce Appleby, for instance, combines the importance of Locke with the emergence of market economies, while John Patrick Diggins focuses on the “interrelated traditions” of Lockeanism and Calvinism.<sup>30</sup> Still, many scholars make the audacious claim that Declaration’s philosophical preamble “capsulizes in five sentences — 202 words — what it took John Locke thousands of words to explain in his *Second Treatise of Government*.”<sup>31</sup>

Beginning in the 1960s, a rival interpretation gained traction. The republican synthesis, pioneered by thinkers including Bailyn, Caroline Robbins, and J.G.A. Pocock, explored connections between the Founders and the republican, classical libertarian thinkers of the English Civil War (or, in Pocock’s case, all the way back to Machiavelli). They believed that Americans were not motivated by Lockean notions of sovereignty or rights, but rather by “public and private virtue, internal unity, social solidarity, and vigilance against the corruptions of

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<sup>28</sup> Carl Becker, *The Declaration of Independence: A Study in the History of Political Ideas* (New York: Vintage Books, 1958), 79. Many scholars consider Becker to be the “pillar” of the “liberal” interpretation of the American Revolution. See, for example, Allen Jayne, *Jefferson's Declaration of Independence: Origins, Philosophy, and Theology* (Lexington, KY: University of Kentucky Press, 2015), 2. Before Becker, many historians assumed that the Declaration of Independence was inspired by Jean-Jacques Rousseau because of its universalism. See Lynd, *Intellectual Origins of American Radicalism*, 18.

<sup>29</sup> Louis Hartz, *The Liberal Tradition in America: An Interpretation of American Political Thought Since the Revolution* (New York: Houghton Mifflin Harcourt, 1955), 140.

<sup>30</sup> Alan Gibson, *Interpreting the Founding: Guide to the Enduring Debates over the Origins and Foundations of the American Republic* (Lawrence, KS: University Press of Kansas, 2006), 16-17. For a concise chronology of the major interpretive movements of the Founding, see the first chapter of Gibson’s book.

<sup>31</sup> Lucas, “Justifying America: The Declaration of Independence as a Rhetorical Document,” 83. See also Kenneth Stern, “John Locke and the Declaration of Independence,” *Cleveland Marshall Law Review* 15 (1986), 188.

power.”<sup>32</sup> In this view, American resistance was not based on rights, but was instead justified as a response to degraded, corrupt, and unvirtuous leadership. It was a protest, as Bailyn writes, against 18th-century “political gangsters.”<sup>33</sup>

While both sides of the republican-liberal debate have large camps, if there were to be any source at all on the specific question of revolution and the dissolution of government, it would undoubtedly be Locke, the philosophical architect of the Glorious Revolution whose work, at least according to some historians, held even more prestige in America than in his own homeland.<sup>34</sup> Indeed, even some prominent analysts in the republican camp, notably historian Paul Rahe, acknowledge that Locke is responsible for the doctrine of popular resistance in the Colonies, while still asserting that republican notions of equality and individualism are otherwise the most important influence on the Founders.<sup>35</sup> Locke’s “theory of dissolution,” as espoused in his *Second Treatise*, is perhaps the most complete defense of popular sovereignty and the right of revolution before the Age of Revolutions. For this reason, the liberal interpretation is far more relevant to the specific right of revolution, and accordingly, I respond to it rather directly throughout much of this thesis.

Some candid revolutionaries, including signers Richard Henry Lee and John Adams, accused Jefferson of essentially plagiarizing Locke in the preamble of the Declaration.<sup>36</sup> Most eminent historians of the liberal interpretation agree. Ever since Becker’s side-by-side linguistic

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<sup>32</sup> Robert Shalhope, “Republicanism and Early American Historiography,” *The William and Mary Quarterly* 39, no. 2 (April 1982), 335.

<sup>33</sup> Bailyn, “The Central Themes of the American Revolution: An Interpretation,” in *Essays on the American Revolution*, ed. Stephen Kurtz and James Hutson (Chapel Hill, NC: The University of North Carolina Press, 1973), 13.

<sup>34</sup> Thomas Grey, “Origins of the Unwritten Constitution: Fundamental Law in American Revolutionary Thought,” *Stanford Law Review* 30, no. 5 (May 1978), 860.

<sup>35</sup> For this interpretation of Rahe’s argument, see Jerome Huyler, *Locke in America: The Moral Philosophy of the Founding* (Lawrence, KS: University Press of Kansas, 1995), 19-21.

<sup>36</sup> *Ibid.*, 2-3.

analysis of *The Second Treatise* and the Declaration of Independence, scholars have repeatedly commented on the utilization of Lockean phrases and language in early America. They treat textual similarities between the Declaration of Independence and the *Second Treatise* as evidence of Locke's total influence, while simultaneously arguing that textual differences are merely "deviations in phraseology, not in spirit or meaning."<sup>37</sup> They also say that English Whig writings (and their Glorious Revolution) served as a model from which the Americans did not substantially deviate, not just on the question of revolution, but also in epistemology, metaphysics, theology, and more. Admittedly, Americans often mangled Locke's ideas or used them in a "rough and ready" way to justify nearly any argument.<sup>38</sup> But scholars still overwhelmingly stress the citation of Locke's ideas, used faithfully or not, in American political writing. So while the view that Locke was Jefferson's sole inspiration has finally been somewhat rejected, I hold that historians still tend to overemphasize Locke's import in early America — or beyond, in the case of one commentator who claims that Locke's theory "became the *lingua franca* for the next four hundred years of rebels and revolutionaries."<sup>39</sup> Even the scholars who prioritize another intellectual source of the Declaration of Independence over Locke only stray as far as Locke's intellectual colleague, Algernon Sidney, or at furthest, the Scottish Enlightenment.<sup>40</sup>

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<sup>37</sup> Gibson, *Interpreting the Founding: Guide to the Enduring Debates over the Origins and Foundations of the American Republic*, 44. This argument is most salient in the debate about the relationship between Locke's "life, liberty, and property" and the Founders' "life, liberty, and the pursuit of happiness."

<sup>38</sup> Joshua Dienstag, "Between History and Nature: Social Contract Theory in Locke and the Founders," *The Journal of Politics* 58, no. 4 (November 1996), 988. Bailyn agrees that Locke was often "referred to in the most offhand way, as if he could be relied on to support anything the writers happen to be arguing." See Bailyn, *The Ideological Origins of the American Revolution*, 28.

<sup>39</sup> DiPiero, "The Common Law of Rebellion," 609.

<sup>40</sup> For an example of the argument that Sidney's right of revolution was more influential than that of Locke, Robert Ferguson, *The American Enlightenment, 1750-1820* (Cambridge, MA: Harvard University Press, 1994), 23. On the relationship between the Scottish Enlightenment and the Founders, see, generally, Garry Wills, *Inventing America: Jefferson's Declaration of Independence* (Garden City, NY: Doubleday & Company, 1978).

Alternatively, other scholars, especially those of constitutional law, notice the differences between Locke’s right of revolution and the American right of revolution but tend to believe that this right underwent a transformation after the Declaration of Independence, not before. They maintain, in Akhil Amar’s words, that the right of revolution was “domesticated and legalized” from “the Lockean core of the Declaration” into a “more expansive clause [in the Constitution] stressing the People’s power to institute new government as ‘to them’ — not anyone else, not a king, not the world.”<sup>41</sup> In other words, these legal scholars believe that the American Constitution changed notions of revolution and popular sovereignty, but colonial notions were identical to those of their English counterparts. Finally, others chalk up the differences between Locke and the American revolutionaries to a question of “practice” rather than “theory” — a difference of interpretation or implementation, not philosophy.<sup>42</sup> All of these arguments ignore the fundamental differences in the American right of revolution before 1776.

Still, a question arises: how, if Americans fully recycled Locke’s theory of dissolution, did they justify the events of 1776 — a political situation that likely would not have met Locke’s criteria for revolution? Some scholars say that beyond the right of revolution, there was a fundamental transformation in the nature of rights thinking in America generally. They note that colonial Americans had trouble defining rights and imply that the American right of revolution was distinct only because colonial Americans had a comparatively “elastic” or “flabby” notion of

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<sup>41</sup> Akhil Reed Amar, “The Consent of the Governed: Constitutional Amendment outside Article V,” *Columbia Law Review* 94, no. 2 (1994), 458, 463-464. See also Christian Fritz, *American Sovereigns: The People and America’s Constitutional Tradition Before the Civil War* (Cambridge, UK: Cambridge University Press, 2007), 24-25; Leslie Friedman Goldstein, “Popular Sovereignty, the Origins of Judicial Review, and the Revival of Unwritten Law,” *The Journal of Politics* 48, no. 1 (February 1986), 53. According to Goldstein, this change stems from a dramatic increase in the theoretical significance of “consent of the governed” between 1776 and 1787.

<sup>42</sup> For example, see Alpheus Mason, “America’s Political Heritage: Revolution and Free Government — A Bicentennial Tribute,” *Political Science Quarterly* 91, no. 2 (Summer 1976), 202.

rights.<sup>43</sup> Some even argue that the “expansive” conception of rights devised in the Colonies persists in America today.<sup>44</sup> Furthermore, a related (and quite popular) argument is that Americans simply exaggerated the severity of the situation in the Colonies to serve their own purposes. Since Americans hyperbolically argued that they were being incrementally enslaved by the British, they were able to justify a revolution, even in Lockean terms.

Of course, my claim is not that Locke — or, for that matter, a multitude of intellectual sources reaching back to antiquity — left no mark on the philosophy of the Founding. Locke was absolutely read in the Colonies by political leaders, not to mention the general public, with important effect.<sup>45</sup> Jefferson even hung Locke’s portrait on the wall of his Virginia home, Monticello.<sup>46</sup> But I agree with historian Daniel Boorstin that Americans adopted no single coherent philosophy from Europe, choosing instead to craft out of disparate sources a unique political philosophy in response to a singular political moment.<sup>47</sup> Against nearly all scholarship, I argue that the American right of revolution, as formulated both before and after the Declaration of Independence, is a substantial revision of Locke’s right of revolution, despite rhetorical similarities. Partially, this is because Locke and the Americans defined the word “revolution”

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<sup>43</sup> The adjectives used above come from historians Jack Rakove and Dan Edelstein, respectively. See Jack Rakove, *Original Meanings: Politics and Ideas in the Making of the Constitution* (New York: Vintage Books, 1997), 290; Dan Edelstein, *On the Spirit of Rights* (Chicago: University of Chicago Press, 2019), 143. John Phillip Reid, among others, has noticed that American thinkers, either deliberately or not, maintained a vague definition of rights. See John Phillip Reid, *The Authority of Rights*, vol. 1, *Constitutional History of the American Revolution* (Madison, WI: The University of Wisconsin Press, 1986), 10-11.

<sup>44</sup> James Hutson, “The Emergence of a Modern Concept of a Right in America: The Contribution of Michel Villey,” in *The Nature of Rights at the American Founding and Beyond*, ed. Barry Shain (Charlottesville, VA: University of Virginia Press, 2007), 54.

<sup>45</sup> Quantitative studies show that Locke was one of the most widely-read thinkers in colonial America, but, interestingly, his works of pure philosophy, especially *Essay Concerning Human Understanding*, were far more popular than his political works. See David Lundberg and Henry May, “The Enlightened Reader in America,” *American Quarterly* 28, no. 2 (Summer 1976), 267.

<sup>46</sup> David Post, “Jeffersonian Revisions of Locke: Education, Property-Rights, and Liberty,” *Journal of the History of Ideas* 47, no. 1 (Winter 1986), 148 (footnote #6).

<sup>47</sup> For a brief summary of Boorstin’s arguments in his books *The Lost World of Thomas Jefferson* and *The Genius of American Politics*, see Daniel Walker Howe, “European Sources of Political Ideas in Jeffersonian America,” *Reviews in American History* 10, no. 4 (December 1982), 28.

differently, but it is also because of theoretical differences in the limits of rights and resistance. My contention with the dominant historiography is twofold, and I briefly sketch it here before analyzing it with far more care in the following chapters.

First, the radicalism of Locke's right of revolution is vastly overstated in the dominant paradigm. Though it amounted to an expansion of the right compared to its predecessors, his formulation is still severely constrained by God, natural rights, property requirements, and majoritarian principles. It is only mild exaggeration to claim, as does Edward Rubin, that Locke does not provide "procedures for implementing" the right of revolution in "anything less than cataclysmic circumstances."<sup>48</sup> In fact, it is so limited that it arguably does not constitute a right; as Mansfield notes, "a *right* of revolution implies that one has the choice of exercising it or not."<sup>49</sup> Second, the radicalism of pre-Revolutionary philosophy, at least by the mid-1770s, is inexplicably understated by the majority of scholars. Those who argue that Jefferson copied Locke's theory of dissolution disregard American modifications of Lockean theology, social contract theory, and epistemology. They fail to notice that by 1776, American political leaders thought of Americans as a new people initiating a progressive separation from the mother country, not a group of British people engaging in a conservative restoration.

Throughout, I will centrally consider the following: when, if ever, can a citizen, or citizens, legally disobey, or even dismantle, the government? Though the answers will be mostly historical, this is a question of political philosophy and legal theory. Of course, notions of morality and legality often intersect, but this is not a matter of moral philosophy — the question at hand is about when the law, both natural and positive, permits disobedience, resistance, and

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<sup>48</sup> Edward Rubin, "Judicial Review and the Right to Resist," *Georgetown Law Journal* 97, no. 1 (November 2008), 83.

<sup>49</sup> Mansfield, "The Right of Revolution," 152.

ultimately revolution. This thesis mainly examines American answers to these abiding questions of political philosophy, but to do so, I first look to its predecessors. Thus, in the first chapter, using both a philosophical and historical lens, I will closely evaluate early modern theories of resistance, culminating in an extended analysis of Locke's theory of dissolution. Then, with this reading of Locke's right of revolution in mind, I will move in the second chapter to colonial America. There, I argue that Lockean ideas, which undoubtedly had massive import throughout the 1750s and 1760s in the Colonies, slowly but surely radicalized across a variety of sources. I trace this evolution through pamphlets, sermons, and popular opinion. Next, I resume my analysis of American thought in Chapter 3 at the First Continental Congress in 1774. After quickly tracing the final steps in this intellectual transformation taking place in colonial America, I closely analyze the text of the Declaration of Independence, the crown jewel of American revolutionary documents and, in the words of political theorist Margaret Canovan, "the culmination of traditional resistance theory" on both sides of the Atlantic.<sup>50</sup> This reading of the Declaration serves as the linchpin of my overall argument that the American right of revolution was considerably more substantial than any prior resistance theory. Finally, in Chapter 4, I put aside the careful, chronological arguments of the previous three chapters and approach the problem more theoretically. Specifically, I will consider the enduring question regarding the right of revolution in the 244 years since the Declaration of Independence: how, once the revolutionary period has concluded and a solid constitution has been enacted, can the right of revolution be maintained? Though I make no definitive argument about resistance theory throughout American history, I reflect on the various ways in which the right of revolution has faded in and out of American politics since 1787, from the Federalist Papers to the Civil War to

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<sup>50</sup> Margaret Canovan, *The People* (Cambridge, UK: Polity Press, 2005), 27.



the mid-20th century, emphasizing its endurance despite its lack of formal legal protection.

Overall, I hope to demonstrate that a distinctly American right of revolution has permeated

American political thought, both before and after independence.

## CHAPTER ONE

Depending on the source, English ideas of popular resistance, both active and passive, to a monarch have been dated all the way back to 12th-century English theologians, 11th-century neo-Roman thinkers, 9th-century Saxon jurists, or even the earliest Christians.<sup>1</sup> But most narratives of the evolution of Western resistance thought, all of which culminate in Locke, begin with John Calvin. These bookends are usually chosen for their philosophical similarities, as well as the Calvinism in Locke's family background.<sup>2</sup> But the evolution in thought along this 150-year-long timeline is generally described as a drastic one — a transformation starting at Calvin's theological duty to resist and arriving at Locke's moral right to resist. Locke is positioned as the first modern theorist of resistance, and for this reason, many theorists place Locke closer to the American revolutionaries than to his predecessors, including relative contemporaries Thomas Hobbes and Hugo Grotius.<sup>3</sup> In this first chapter, I want to attack the oft-exaggerated similarities between Locke and the American revolutionaries from the Lockean perspective.

Early modern resistance theory, and all of the associated debates about absolutism, sovereignty, and subjectship, have been extensively studied; philosopher George Sabine deems the metamorphosis described above the “most significant chapter” in the history of political thought.<sup>4</sup> I have little to add to the pre-Locke historical debate and offer no significant re-

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<sup>1</sup> For more on resistance doctrine in the 9th century, see Fritz Kern, *Kingship and Law in the Middle Ages* (Oxford, UK: Basil Blackwell, 1939), 123. On interpretations of Justinian law with implications for resistance from the 11th century, see Mark Rigstad, “Rebellion, Right of,” in *The Encyclopedia of Political Thought*, ed. Michael Gibbons (John Wiley & Sons, 2015), 3. On resistance theology in the 12th century, particular that of John of Salisbury, see Aleksander Marsavelski, “The Crime of Terrorism and the Right of Revolution in International Law,” *Connecticut Journal of International Law* 28, no. 2 (Spring 2013), 267.

<sup>2</sup> James Stoner, Jr., “Was Leo Strauss Wrong about John Locke?,” *The Review of Politics* 66, no. 4 (Fall 2004), 553. See also Herbert Foster, “International Calvinism through Locke and the Revolution of 1688,” *The American Historical Review* 32, no. 3 (April 1927); Ralph Perry, *Puritanism and Democracy* (New York: The Vanguard Press, 1944), 197.

<sup>3</sup> For an example of this line of argumentation, see Michael Zuckert, *Natural Rights and the New Republicanism* (Princeton, NJ: Princeton University Press, 1994).

<sup>4</sup> George Sabine, *A History of Political Theory* (New York: Henry Holt and Company, 1972), 372.

interpretation of resistance theory before the Glorious Revolution. However, I contest the dominant characterization of Locke's differences from such predecessors. Political theorist Quentin Skinner nicely summarizes the orthodox position held by other contemporary historians of political thought with a list of three defining characteristics of Locke's theory of revolution which supposedly distinguish it from "earlier and less radical strands of revolutionary thought." The first is the aforementioned transition from a duty to a right. The other two are a) that Locke's right of revolution rests permanently and immutably with the body of the people and b) that the right is wielded by each individual citizen, and thus the entire body politic, rather than certain representative officers.<sup>5</sup> The sum of these parts apparently renders Locke's theory supremely "original" and "unconventional," what political theorist James Tully refers to as "the first to conceive rebellions as political contests involving ordinary people seizing political power and reforming government."<sup>6</sup>

I, like Skinner, oppose this position. However, we do so for very different reasons. Skinner maintains that Locke's modern justification for revolution is modern because it is "secular in its premises and populist in its vindication of government by, as well as for, the people."<sup>7</sup> He merely demonstrates convincingly that a right of revolution resembling Locke's was in circulation generations before him. I agree that the differences between Locke's predecessors and Locke are overplayed, but in this chapter, I demonstrate that Skinner, among many others, overstates the "modern" or "radically populist" nature of Locke's conservative, restrictive right of revolution.

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<sup>5</sup> Quentin Skinner, "The Origins of the Calvinist Theory of Revolution," in *After the Reformation: Essays in Honor of J.H. Hexter*, ed. Barbara Malament (Manchester, UK: Manchester University Press, 1980), 310-311.

<sup>6</sup> James Tully, *An Approach to Political Philosophy: Locke in Contexts* (Cambridge, UK: Cambridge University Press, 1993), 42-43.

<sup>7</sup> Skinner, "The Origins of the Calvinist Theory of Revolution," 309-310. See also, generally, chap. 9 of Skinner, *The Age of Reformation*, vol. 2, *The Foundations of Modern Political Thought* (Cambridge, UK: Cambridge University Press, 1978).

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A brief pre-history of the early modern right of revolution, or the right of withdrawal of consent, ought to begin at the origins of consent: the Magna Carta. Many, especially those who ascribe to a school of thought known as the “Whig conception of history,” believe that the Magna Carta, written in 1215, began the slow, centuries-long emergence of individual liberties, including the right of resistance, in England.<sup>8</sup> And after all, “Magna Carta! Magna Carta!” is what the protestors at Boston Harbor chanted during the Boston Tea Party in 1773.<sup>9</sup> In practice, the Magna Carta codified early limitations on the monarch intended to prevent excessive taxes and arbitrary detention of barons. It even formulated a proto-right of resistance by encouraging barons to cause chaos — “distrain upon and assail us in every way possible” — to obtain “redress” when a king violated its articles.<sup>10</sup> But in a broader sense, it was an early insinuation of the end of divine right absolutism. No longer was the idea that kings had free reign over the kingdom universally accepted. And, logically, if monarchs had limitations, they could also be restrained by lesser power or even be replaced. In this way, the subsequent five centuries of English political thought, which were always concerned with the absolute or non-absolute rights of a sovereign king, also continually considered a corollary question about resistance to such sovereigns. Perhaps unsurprisingly, the Magna Carta was a particularly revered document by Locke and the 17th-century Whigs.<sup>11</sup>

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<sup>8</sup> For more on the Whig conception of history, see Charles Fairbanks, “Revolution Reconsidered,” *Journal of Democracy* 18, no. 1 (January 2007), 50.

<sup>9</sup> Ivan Jankovic, *The American Counter-Revolution in Favor of Liberty* (London: Palgrave Macmillan, 2019), 57. Some scholars even claim that the Magna Carta had a direct effect on the movement for American independence. According to Elliot Richardson, for instance, “once Magna Carta was signed, the American War of Independence became inevitable, an event incubating in a time capsule whose activation was still 761 years away.” See Elliot Richardson, “The Revolution That Began in 1215: Forces Behind the War of Independence,” *The Round Table* 66, no. 263 (July 1976), 226.

<sup>10</sup> “English translation of Magna Carta,” British Library, para. 61.

<sup>11</sup> Grey, “Origins of the Unwritten Constitution: Fundamental Law in American Revolutionary Thought,” 852. Scholars have noted that Locke’s work returned English thought to “perfect harmony” with the principles of the

In the century following the Magna Carta, theorists including Thomas Aquinas and William of Ockham, the latter of whom has been called the first Whig, proposed that kings had no earthly obligations but were restrained by celestial or divine notions of morality and law.<sup>12</sup> Quickly, even kings themselves were acknowledging the theoretical validity of an emerging resistance doctrine. Pre-Renaissance kings, in the process of reinforcing their own absolute sovereignty, especially confirmed that if they were heretics, they deserved to be deposed.<sup>13</sup> Such kings also recognized the supremacy of the ancient Constitution as a check on their absolutism.<sup>14</sup> But until the beginning of the 16th century, all of these proto-resistance ideas were outweighed by a general consensus that individuals could not resist a sovereign, even a tyrannical one, or if they did, they should expect consequences.<sup>15</sup> Historians recognize that such kings, even if theoretically limited by God, practiced what must be understood as absolutist rule.<sup>16</sup>

As the paradigmatic narrative goes, this all changed with the thought of Martin Luther, John Calvin, and, shortly after, British Calvinist followers, including the Marian exiles and (perhaps ironically) a group of Catholic exiles.<sup>17</sup> Luther was probably the first major Protestant to espouse a real resistance doctrine; he was defending disobedience to tyrants as early as 1523,

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Magna Carta. See Cecilia Kenyon, "The Declaration of Independence," in *Fundamental Testaments of the American Revolution* (Washington, DC: Library of Congress, 1973), 29. See also chap. 6 of Ralph Turner, *Magna Carta: Through the Ages* (London: Routledge, 2014).

<sup>12</sup> For more on Aquinas' resistance theory based on celestial morality, see DiPiero, "The Common Law of Rebellion," 608. On William of Ockham's thought, see Rubin, "Judicial Review and the Right to Resist," 76.

<sup>13</sup> Kern, *Kingship and Law in the Middle Ages*, 84-99.

<sup>14</sup> Grey, "Origins of the Unwritten Constitution: Fundamental Law in American Revolutionary Thought," 851.

<sup>15</sup> Francis Oakley, "Christian Obedience and Authority, 1520-1550," in *The Cambridge History of Political Thought, 1450-1700*, ed. J.H. Burns and Mark Goldie (Cambridge, UK: Cambridge University Press, 1991), 187. See also Zuckert, *Natural Rights and the New Republicanism*, 32-34.

<sup>16</sup> J.P. Sommerville, "Absolutism and Royalism," in *The Cambridge History of Political Thought, 1450-1700*, ed. J.H. Burns and Mark Goldie (Cambridge, UK: Cambridge University Press, 1991), 348-349, 354.

<sup>17</sup> David VanDrunen, "The Use of Natural Law in Early Calvinist Resistance Theory," *Journal of Law and Religion* 21, no. 1 (2005/2006), 143; J.H.M. Salmon, "Catholic Resistance Theory, Ultramontaniam, and the Royalist Response, 1580-1620," in *The Cambridge History of Political Thought, 1450-1700*, ed. J.H. Burns and Mark Goldie (Cambridge, UK: Cambridge University Press, 1991), 219, 241.

and, after a period of hesitancy, he became outspoken about resistance by the end of the 1530s.<sup>18</sup> But Luther's doctrine of resistance focused mostly on passive resistance, because it was God's job, not the people's, to punish a tyrant for his ungodliness.<sup>19</sup> Calvin, too, said little about active resistance, though the scholarly claim that he was wholly uncompromising on the authority of the sovereign is absurd.<sup>20</sup> In his 1536 *Institutes of the Christian Religion*, he timidly remarked that obedience to a king ought "never lead us away from obedience to him," referring to God.<sup>21</sup> From this position, he could make the claim that when a king is acting against God's word, citizens have a duty to prioritize God and to disobey that king. Calvin's language on this topic became more colorful over time — citizens should "spit on the very heads" of princes that wield power contrary to God — but he was never able to form a resistance theory beyond this basic duty of devotion.<sup>22</sup> In subsequent Protestant thought, this concept would be described as a "double contract" in which both king and people had primary contractual obligations to God but, similarly to the Biblical covenant, promised to one another only fidelity and obedience to God.<sup>23</sup>

While Calvin hoped magistrates, not individuals, would "restrain the willfulness of kings," historians note that Calvin imagined that these magistrates, or "ephors," were a

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<sup>18</sup> Martin Luther, "Temporal Authority: To What Extent It Should Be Obeyed," in *Luther: Selected Political Writings*, ed. J.M. Porter (Eugene, OR: Wipf and Stock Publishers, 2003), 62. On Luther's move towards resistance in the 1730s, which was partially due to political inevitabilities, see Cynthia Shoenberger, "Luther and the Justifiability of Resistance to Legitimate Authority," *Journal of the History of Ideas* 40, no. 1 (Spring 1979), 7-19.

<sup>19</sup> Glenn Moots and Valerie Morkevicius, "Just Revolution: Protestant Precedents for Resistance and Rebellion," in *Justifying Revolution: Law, Virtue, and Violence in the American War of Independence*, ed. Glenn Moots and Philip Hamilton (Norman, OK: University of Oklahoma Press, 2018), 36-37.

<sup>20</sup> Skinner describes this line of argument and attributes it to Marc-Edouard Chenevière. See Skinner, *The Age of Reformation*, 192.

<sup>21</sup> John Calvin, *Institutes of the Christian Religion*, trans. Ford Battles (Grand Rapids, MI: William B. Eerdmans Publishing Company, 1975), 225.

<sup>22</sup> Calvin, commentary on Daniel 6:22, as quoted in John McNeill, "John Calvin on Civil Government," *Journal of Presbyterian History* 42, no. 2 (June 1964), 86.

<sup>23</sup> Daniel Lee, *Popular Sovereignty in Early Modern Constitutional Thought* (Oxford, UK: Oxford University Press, 2016), 124. See also Gerson de Moraes and Daniel Menezes, "Philosophical and Theological Aspects in the Thought of Johannes Althusius," in *Why Religion? Towards a Critical Philosophy of Law, Peace and God*, ed. Dawid Bunikowski and Alberto Puppo (Cham, CH: Springer, 2020), 75-76. This formulation is likely best seen in the influential Huguenot tract *Vindiciae contra tyrannos*. On the comparative developments of Lutheran and Calvinist rights to revolution, see Skinner, *The Age of Reformation*, 194.

representative body, appointed by the people, not God.<sup>24</sup> Already, a process of secularization in resistance thought was beginning. But Calvin's is still an exceedingly weak right of resistance; historians also notice that he provides zero explanation for how these magistrates might wield this power in practice.<sup>25</sup> Fundamentally, Calvin's doctrine fashions a duty, not a right, of resistance because of Protestant assumptions about the "discontinuity" between man and God. Because only faith, not reason, could bridge the people and the divine, humans had no rational way to judge the king's actions.<sup>26</sup> Only faith, and the duty that comes with infinite fidelity to God, could reveal when there was a need to resist. For this reason, such actions are binary — either good or bad, acceptable or unacceptable. Protestant resistance theory, in simple terms, is an ethics of "duty par excellence."<sup>27</sup> In contrast, Locke, as well as thinkers as early as the "monarchomachs" and Huguenots of the mid-16th century, crafted what Skinner calls a "fully *political* theory of revolution" which used sectarian language to replace religious duties with natural rights.<sup>28</sup> Partially, this was because the nature of rights themselves changed. Rights, which were once binding and objective, and thus essentially identical to duties, became "subjective rights" in the early 17th century, allowing for a doctrine of non-obligatory rights.<sup>29</sup>

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<sup>24</sup> Calvin, *Institutes of the Christian Religion*, 225. In contrast, for discussion of the representative quality of Luther's magistrates, see Skinner, *The Age of Reformation*, 232.

<sup>25</sup> Matt McCulloch, "Johannes Althusius' *Politica*: The Culmination of Calvin's Right of Resistance," *The European Legacy* 11, no. 5 (2006), 490.

<sup>26</sup> Knud Haakonssen, *Natural Law and Moral Philosophy: From Grotius to the Scottish Enlightenment* (Cambridge, UK: Cambridge University Press, 1996), 25.

<sup>27</sup> Haakonssen, "From Natural Law to the Rights of Man: A European Perspective on American Debates," in *A Culture of Rights: The Bill of Rights in Philosophy, Politics and Law, 1791 and 1991*, ed. Michael Lacey and Knud Haakonssen (Cambridge, UK: Cambridge University Press, 1992), 23.

<sup>28</sup> Skinner, *The Age of Reformation*, 338-339. See also Geneviève Nootens, *Popular Sovereignty in the West: Politics, Contention, and Ideas* (New York: Routledge, 2013), 22-25. Part of the reason that sectarian rhetoric replaced religious language in resistance writings was to encourage its adoption by Catholics, not just Protestants. See VanDrunen, "The Use of Natural Law in Early Calvinist Resistance Theory," 149.

<sup>29</sup> Hutson, "The Emergence of a Modern Concept of a Right in America: The Contribution of Michel Villey," 28-32, 47-48. For more on the application of subjective rights to resistance doctrine, see J.G.A. Pocock, "Reconstructing the Traditions: Quentin Skinner's Historians' History of Political Theory," *Canadian Journal of Political and Social Theory* 3, no. 3 (Fall 1979), 110.

But it was also because Locke returned the right of revolution to the people, not just a council of magistrates.

In historical context, Locke's new ideas were no doubt radical, even by Whig standards. True, the conventional right of revolution finally became "respectable political doctrine" at the beginning of the 17th century, before the English Civil War.<sup>30</sup> But after the execution of Charles I, perhaps because of remorse or heavy backlash, resistance doctrine was categorically repudiated by political thinkers.<sup>31</sup> Absolutism made a strong comeback, not only in England but across Europe.<sup>32</sup> The English relearned the importance of "order" above all, and throughout the 1660s, the Crown burned the books on resistance which had once, albeit briefly, held sway over the intellectual community.<sup>33</sup> So Locke's return to resistance theory was a deviation from his immediate contemporaries, but it, as Skinner shows, was a combination of various "modern" components of resistance theory which emerged in a rather uneven fashion over the preceding two centuries.

Locke's text, Skinner concludes, was a seminal piece of "radical Calvinist politics."<sup>34</sup> If, by this, he means that Locke was the carrier of once-radical Calvinist thought into the 17th century, I concur. But he seemingly implies that Locke "radicalizes" Calvin's thought into a recognizably modern right of revolution. With this, I am in less agreement. Of course, this is not

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<sup>30</sup> Raymond Hayes, "Revolution as a Constitutional Right," *Temple Law Quarterly* 13, no. 1 (November 1938), 20. See also chap. 4 of David Ball, *The Historical Origins of Judicial Review, 1536-1803* (Lewiston, NY: The Edwin Mellen Press, 2005).

<sup>31</sup> Zuckert, *Natural Rights and the New Republicanism*, 99-100; John Graham, *A Constitutional History of Secession* (Gretna, LA: Pelican Publishing Company, 2002), 44-45. See also Howard Nenner, "Loyalty and the Law: The Meaning of Trust and the Right of Resistance in Seventeenth-Century England," *Journal of British Studies* 48, no. 4 (October 2009), 869-870.

<sup>32</sup> Sommerville, "Absolutism and Royalism," 347-348.

<sup>33</sup> Robert von Friedeburg, "Self-Defense in Statutory and Natural Law: The Reception of German Political Thought in Britain," in *Natural Law and Civil Sovereignty: Moral Right and State Authority in Early Modern Political Thought*, ed. Ian Hunter and David Saunders (New York: Palgrave Macmillan, 2002), 180; Lois Schwoerer, "The Right to Resist: Whig Resistance Theory, 1688 to 1694," in *Political Discourse in Early Modern Britain*, ed. Nicholas Phillipson and Quentin Skinner (Cambridge, UK: Cambridge University Press, 1993), 235, 238.

<sup>34</sup> Pocock, "Reconstructing the Traditions: Quentin Skinner's Historians' History of Political Theory," 109.



to say that Locke made no innovations. I acknowledge, for instance, that he updated Hobbes' conception of human nature to allow for "religiously guaranteed" individual autonomy, even in the face of coercive earthly authority.<sup>35</sup> Locke was the first theorist, too, to argue that dissolution of the government returns power to the body politic, rather than some sort of natural but representative body, as his radical contemporaries George Lawson and James Tyrrell, among others, proposed.<sup>36</sup> Finally, perhaps most broadly and importantly, Locke turned the right of *resistance* into a real right of *revolution* (though he never uses precisely that term); multiple contemporary scholars note the difference in both quality and proportion of these linked concepts.<sup>37</sup> But Locke's theory of revolution is nowhere close to the truly radical, secularized version of the right of revolution which can be found in the late 18th century. I merely argue that while Locke was certainly the first to combine many of these elements of the early modern resistance tradition into a cogent, comprehensive theory, his synthesis was not as daring as is often assumed and certainly not as radical as the ideas that came out of America a century later.

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Early in his career, Locke promoted, as was common post-English Civil War, a theory of unlimited obedience, at least of the "outward man," to the sovereign.<sup>38</sup> But by the mid-1670s, likely because of religious persecution and Charles II's inclination towards absolutism, he was

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<sup>35</sup> John Dunn, "The Politics of Locke in England and America in the Eighteenth Century," in *Political Obligation in its Historical Context: Essays in Political Theory* (Cambridge, UK: Cambridge University Press, 1980), 61-62.

<sup>36</sup> James Tully, "Locke," in *The Cambridge History of Political Thought, 1450-1700*, ed. J.H. Burns and Mark Goldie (Cambridge, UK: Cambridge University Press, 1991), 630, 639. In contrast, Tyrrell believed that upon the dissolution of government, power returned to "great Councils" made up of representatives, which were "as ancient as the kingly government itself." See James Tyrrell, *Bibliotheca Politica*, as quoted in Julian Franklin, *John Locke and the Theory of Sovereignty* (Cambridge, UK: Cambridge University Press, 1978), 110.

<sup>37</sup> See, for example, Kaufmann, "Small Scale Right to Resist"; Wolfgang Schwarz, "The Right of Resistance," 126-127. For the argument that Locke's right of revolution is actually only a right of resistance, see Ross Corbett, *The Lockean Commonwealth* (Albany, NY: State University of New York Press, 2009), 95.

<sup>38</sup> John Locke, *Two Tracts on Government*, ed. Philip Abrams (Cambridge, UK: Cambridge University Press, 1967), 150. See also John Marshall, *John Locke: Resistance, Religion and Responsibility* (Cambridge, UK: Cambridge University Press, 1994), 209, 212-213.

already noticing the shortcomings of his position; he still held that God “forbids disturbance or dissolution of governments,” but he simultaneously retracted his idea that the mere threat of divine punishment would sufficiently constrain rulers.<sup>39</sup> By the end of the 1670s, when scholars now believe Locke drafted most of his *Two Treatises*, he already firmly believed in a genuine right of revolution.<sup>40</sup> And a decade later, Locke published the *Two Treatises* and included an introduction to explain that it was intended to justify the Glorious Revolution, as if that were not evident from the text.<sup>41</sup> For this reason, numerous prominent 20th-century theorists consider the most central focus of the wide-ranging *Second Treatise* to be not the justification of any particular form of government, but rather what scholars call “the justice of resistance to oppression” or “the right of the people to resist their rulers,” regardless of regime type.<sup>42</sup>

Locke would retain, of course, a belief in the importance of order and allegiance, so perhaps the primary question of the *Second Treatise* was the following conundrum: how can individuals adequately protect their rights and liberties in the face of oppression without causing mass disorder or, worse, a civil war? In the first chapters, Locke begins to hint at an answer. He claims “force without right” can be justifiably met with oppositional force. He also distinguishes between the “state of war,” which is full of “violence and mutual destruction,” and the “state of nature,” where individuals would return after a government was overthrown, which is a state of

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<sup>39</sup> Locke in his journal, 1676, as quoted in Dunn, *The Political Thought of John Locke: An Historical Account of the Argument of the ‘Two Treatises of Government’* (Cambridge, UK: Cambridge University Press, 1982), 49; Tully, *An Approach to Political Philosophy: Locke in Contexts*, 37.

<sup>40</sup> Mostly because of Peter Laslett’s research, most scholars now think that Locke drafted the *Second Treatise* between 1679 and 1683. For a more complete discussion of the various efforts to date the work, see J.R. Milton, “Dating Locke’s ‘Second Treatise,’” *History of Political Thought* 16, no. 3 (Fall 1995).

<sup>41</sup> Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge, UK: Cambridge University Press, 1988), 137-138. See also Peter Laslett, “The English Revolution and Locke’s ‘Two Treatises of Government,’” *The Cambridge Historical Journal* 12, no. 1 (1956), 42-43.

<sup>42</sup> These quotations come from James Tully and John Plamenatz, respectively. See Tully, “Locke,” 642; Plamenatz, *Man and Society* (London: Longman, 1963), 1:209.

“peace, good will, mutual assistance, and preservation.”<sup>43</sup> These rhetorical moves, which are deviations from Hobbes, brilliantly position Locke to assert a right of active resistance that does not violate the norms of civil society. Indeed, in my view, Locke innovated the framing of the right of revolution most substantially by “taming” the violent medieval right of resistance to render it consistent with the early modern model of a pacifist society.<sup>44</sup> But it is not until the final two chapters of his *Second Treatise* that Locke provides an elaborated account of this resistance doctrine.

There, Locke lists six situations to which resistance would be a justifiable response. The first five all pertain to a violation of the ancient Constitution — for instance, if the monarch rules arbitrarily or interferes with the functioning of the legislature. But if resistance is only permitted in these conventional scenarios, he notes, the “evil” will be “past cure,” and the people will, in effect, already be enslaved. His final proposed rationale is usually where scholars see a radical bent to Locke: “there is, therefore, secondly, another way whereby Governments are dissolved, and that is; when the Legislative, or the prince, either of them act contrary to their Trust.”<sup>45</sup> Essentially, Locke says that individuals may anticipate tyranny and respond preemptively. Particularly novel is his focus on the potential of legislative tyranny — most political theorists of his moment, especially after the English Civil War, focused only on legitimizing resistance to royal tyranny.<sup>46</sup> The theory of legislative tyranny also clearly connects Locke to the Americans, who primarily revolted against the Parliament.

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<sup>43</sup> Locke, *Two Treatises of Government*, 280.

<sup>44</sup> Deborah Baumgold, *Contract Theory in Historical Context Essays on Grotius, Hobbes, and Locke* (Leiden, NL: Brill, 2010), 29, 35, 41-43.

<sup>45</sup> Locke, *Two Treatises of Government*, 408-412.

<sup>46</sup> Schwoerer, “Locke, Lockean Ideas, and the Glorious Revolution,” *Journal of the History of Ideas* 51, no. 4 (October/November 1990), 542.

Locke offers an initial summary of his overarching theory of legislative resistance at the beginning of the *Second Treatise*'s 13th chapter:

The Legislative being only a Fiduciary Power to act for certain ends, there remains still in the People a Supream Power to remove or alter the Legislative, when they find the Legislative act contrary to the trust reposed in them... thus the Community perpetually retains a Supream Power of saving themselves from the attempts and designs of any Body, even of their Legislators, whenever they shall be so foolish, or so wicked, as to lay and carry on designs against the Liberties and Properties of the Subject... and to rid themselves of those who invade this Fundamental, Sacred, and unalterable Law of Self-Preservation.<sup>47</sup>

At first glance, this statement suggests a right of revolution that is modern indeed, and quite close to the American right of revolution. It references the ultimate and perpetual power of the people, even suggesting that the people are the ultimate sovereign, and it proposes that legislators have a duty not only to God, but also to the rights and liberties of the people. However, this statement provides an incomplete picture. A closer look shows that Locke's theory has plenty of duty-like attributes. Even Knud Haakonssen's moniker, "duty-cum-right" of revolution, is generous.<sup>48</sup>

First of all, if the phrase "Supream Power" can be assumed to be synonymous with "sovereign," Locke entered a debate that had been raging among British political thinkers for fifty years prior to his publication: in a mixed constitutional monarchy, in which both the legislature and the king wield power, where does sovereignty ultimately lie?<sup>49</sup> In other words, who has the prerogative? This was a possible paradox. If the legislative had ultimate authority, then the king's power was essentially null, and vice versa. The apparent insolvability of this

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<sup>47</sup> Locke, *Two Treatises of Government*, 366-367.

<sup>48</sup> Haakonssen, *Natural Law and Moral Philosophy: From Grotius to the Scottish Enlightenment*, 58.

<sup>49</sup> Tully, "Locke," 636. Most commentators think that Locke's "Supream Power" is essentially a discussion of sovereignty, though there are some who think that Locke purposely avoids ever using the word "sovereign" to imply a different meaning. For a brief discussion of this debate, see Roland Marden, "'Who Shall Be Judge?': John Locke's Two Treatises of Government and the Problem of Sovereignty," *Contributions to the History of Concepts* 2, no. 1 (March 2006), 61.

problem was perhaps royalist Robert Filmer's strongest argument against the mixed constitution.<sup>50</sup> For much of the 17th century, the solution commonly espoused by lawyers and legal theorists was that sovereignty was a meaningless concept in the English context.<sup>51</sup> Specifically, the other Whig philosophical architects of the Glorious Revolution, such as Tyrrell and William Atwood, preferred the idea of "constitutional sovereignty."<sup>52</sup> But Locke's solution was clever; the answer to the "old question," he decided, was that neither king nor Parliament, but rather the people, as a whole, reserve "ultimate determination" for themselves.<sup>53</sup> While not entirely novel, this was an uncommon position; even Skinner, in a different piece, notes that popular sovereignty only emerged in the 17th century to respond to absolutism.<sup>54</sup> The implications of this conception of popular sovereignty on the right of revolution are clear even in the *Second Treatise's* form; as political theorist Douglas Casson writes, "it is no accident that Locke first introduces his theory of the right of revolution in his section on prerogative."<sup>55</sup> Contemporary theorists sometimes even define popular sovereignty as nothing more than a denial of the idea that revolt can never be justified.<sup>56</sup>

Locke's popular sovereignty is often imagined today as a two-step social contract: first, equal members of natural society "agree to constitute a new artificial community" for the mutual protection of their security and rights, and second, this new community arranges "specialist

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<sup>50</sup> Franklin, *John Locke and the Theory of Sovereignty*, 94.

<sup>51</sup> Lee, *Popular Sovereignty in Early Modern Constitutional Thought*, 289.

<sup>52</sup> Lee Ward, *The Politics of Liberty in England and Revolutionary America* (Cambridge, UK: Cambridge University Press, 2004), 14.

<sup>53</sup> Locke, *Two Treatises of Government*, 379-380.

<sup>54</sup> Skinner, "A Genealogy of the Modern State," *Proceedings of the British Academy* 162 (2009), 332. The theorists of the century prior who did assert popular sovereignty always did so with a "vibrant anti-royalist agenda." See Lee, *Popular Sovereignty in Early Modern Constitutional Thought*, 126. Edmund Morgan says that this concept specifically emerged in the 1640s to justify the Civil War. See Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America* (New York: W.W. Norton & Company, 1988), 49-50.

<sup>55</sup> Douglas Casson, "Emergency Judgment: Carl Schmitt, John Locke, and the Paradox of Prerogative," *Politics & Policy* 36, no. 6 (December 2008), 960.

<sup>56</sup> Christopher Morris, "The Very Idea of Popular Sovereignty: 'We the People' Reconsidered," *Social Philosophy and Policy* 17, no. 1 (Winter 2000), 16.

agencies” which legislate, execute laws, and perform other public functions on their behalf.<sup>57</sup> The idea of a “social contract” has enhanced the right of revolution since the Middle Ages.<sup>58</sup> This, quite simply, is because the social contract implies that political obligation runs both directions between sovereign and people. And Locke’s concept of this mutual obligation is certainly more radical than that of his two most notable predecessors, Hobbes and Grotius. Hobbes posited that men may not breach the contract unless he feels the “terror of present death,” that is, in order to preserve his own life; Grotius summarily dismissed “mutual subjection” of king and people on the grounds that it would cause “disorder.”<sup>59</sup> So perhaps it should be no surprise that most prominent Locke scholars, not to mention Locke’s contemporaries, draw an essential connection between his novel contractarian ideas and his resistance doctrine.<sup>60</sup> Essentially, scholars, notably Michael Zuckert, claim that Locke, like the Americans later on, modernized the right of revolution by squaring it with a broadened version of the social contract that allowed for the true exercise of popular sovereignty.<sup>61</sup>

However, as historian Peter Laslett notes, Locke uses the word “contract” less than ten times in the *Second Treatise*, and he almost never uses it to describe the relationship between people and government.<sup>62</sup> Instead, by describing the relationship between government and

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<sup>57</sup> Jeremy Waldron, “John Locke: Social Contract versus Political Anthropology,” *The Review of Politics* 51, no. 1 (Winter 1989), 4-5.

<sup>58</sup> Luis Kutner, “Due Process of Rebellion,” *Valparaiso University Law Review* 7, no. 1 (Fall 1972), 4. See also Michael Lessnoff, *Social Contract* (London: Macmillan, 1986), 12-16.

<sup>59</sup> Thomas Hobbes, *Leviathan*, ed. A.P. Martinich (Peterborough, CA: Broadview Press, 2002), 224; Hugo Grotius, *The Rights of War and Peace, in Three Books* (Clark, NJ: The Lawbook Exchange, 2004), 72.

<sup>60</sup> These scholars include Laslett, Tully, Franklin, and others. For a brief review of the secondary literature drawing this connection, see John Scott, “The Sovereignless State and Locke’s Language of Obligation,” *American Political Science Review* 94, no. 3 (September 2000), 548.

<sup>61</sup> Zuckert, *Natural Rights and the New Republicanism*, 109-110, 123. For other examples of this argument, see Robert Grady, II, “Obligation, Consent, and Locke’s Right to Revolution: ‘Who Is to Judge?’” *Canadian Journal of Political Science* 9, no. 2 (July 1976), 277-278; Marsavelski, “The Crime of Terrorism and the Right of Revolution in International Law,” 269-270.

<sup>62</sup> Laslett, introduction to *Two Treatises of Government*, by John Locke (Cambridge, UK: Cambridge University Press, 1988), 113.

people as a “trust,” Locke insinuates that the legislative must hold the public good as its ultimate aim but does not have to respond directly to any day-to-day exercise of popular sovereignty. The hidden difference between these two concepts is extremely underappreciated. A contract “binds parties to specific performances”; a trust only sets vague, indefinite goals for the king and requires that he be afforded ample discretion to execute.<sup>63</sup> The obligations of a contract are parallel and mutual; in a trust, they are not. Accordingly, Locke imagines the relationship between government and people like the relationship between father and child, a relationship which he also often calls a “trust.”<sup>64</sup> The trust provides far less practical power to the people than a true contract. As Laslett writes, “if a contract is to be set up, or understood, it is necessary that the parties to it should each get something out of it... this is what Locke was most anxious to avoid.”<sup>65</sup> Rather than granting exercisable power over the Parliament, Locke leaves the people with mere “residual power to cashier their governors and remodel their government.”<sup>66</sup>

In an effort to negate this textual reality, some scholars merely claim that in the late 17th century, thinkers used a variety of terms like “contract,” “trust,” “compact,” and even “promise” carelessly and imprecisely.<sup>67</sup> But the distinction, to my mind, has important consequences for the right of revolution. Specifically, it renders Zuckert’s view of Locke’s resistance theory unlikely to me for two distinct reasons. The first is historical. Quite simply, trust-based politics were not a novelty to English thought. Sometimes, they were embedded in radical resistance doctrines; 16th-century monarchomachs referred to the king as a “trustee,” and John Milton’s radical

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<sup>63</sup> A. John Simmons, *On the Edge of Anarchy: Locke, Consent, and the Limits of Society* (Princeton, NJ: Princeton University Press, 1993), 71.

<sup>64</sup> Locke, *Two Treatises of Government*, 307.

<sup>65</sup> Laslett, introduction to *Two Treatises of Government*, 114.

<sup>66</sup> *Ibid.*, 115.

<sup>67</sup> For a discussion of the various terms that were used to describe the political contract, see Martyn Thompson, “Significant Silences in Locke’s *Two Treatises of Government*: Constitutional History, Contract and Law,” *The Historical Journal* 31, no. 2 (June 1988), 278-280.

*Tenure of Kings and Magistrates* proposed that both the king and the magistrates only had power “transferr’d and committed to them in trust from the People.”<sup>68</sup> But just as often, the concept did not connote theories of resistance. It evoked a much more old-fashioned notion of kingship that was far less threatened by the possibility of resistance; since the 11th century, citizens had been told that the monarch’s power derived from a “grant,” and some even posited that the grant was revocable in limited situations.<sup>69</sup> Moreover, trust-based contracts had long been a “double-edged tool” that could be used to justify absolutism, because the trust is inherently so broad.<sup>70</sup> Indeed, absolutist 17th-century kings like Charles I recognized that they were “conditionate and fiduciary” trustees of the people, though they denied that such a trust permitted popular resistance.<sup>71</sup> And Locke described the relationship between people and government as a “trust” throughout his career, all the way from his anti-revolutionary beginnings through the Glorious Revolution.<sup>72</sup>

Arguably more important, though, is a theoretical reason. Viewing Locke’s theory as a true social contract overstates the mutualism of Locke’s scheme. Read in conjunction with his doctrine of tacit consent, Locke’s version of popular sovereignty invites an awfully limited right of revolution, especially compared to that of the Americans. The people hold ultimate authority to disband the government, but they have nothing beyond this emergency power. Their power is latent — they are, to borrow historian Richard Tuck’s phrase, nothing more than a “sleeping

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<sup>68</sup> Lee, *Popular Sovereignty in Early Modern Constitutional Thought*, 126; John Milton, *The Tenure of Kings and Magistrates*, ed. William Allison (New York: Henry Holt and Company, 1911), 12.

<sup>69</sup> Franklin, “Constitutionalism in the Sixteenth Century,” in *Political Theory & Social Change*, ed. David Spitz (New York: Atherton Press, 1967), 118.

<sup>70</sup> Sommerville, “From Suarez to Filmer: A Reappraisal,” *The Historical Journal* 25, no. 3 (September 1982), 533.

<sup>71</sup> These words come from the papers of Charles I, as quoted in Olga Valbuena, *Subjects to the King’s Divorce: Equivocation, Infidelity, and Resistance in Early Modern England* (Bloomington, IN: Indiana University Press, 2003), 160.

<sup>72</sup> Dunn, *Locke: A Very Short Introduction* (Oxford, UK: Oxford University Press, 2003), 58.



sovereign.”<sup>73</sup> During periods of regular affairs, the people’s ability to endorse their political preferences, including their view of a preferable regime, extends no further than judging whether the sovereign’s wrongdoings warrant an appeal to arms or not. If they choose not to partake in revolutionary dissent, as Martin Seliger notes, they are assumed to be consenting.<sup>74</sup> Conversely, according to Locke, if the government acts contrary to the trust and the people choose to initiate revolution, the government is dissolved and the people temporarily return to a state of nature.<sup>75</sup> In other words, as theorist A. John Simmons explains, individuals only possess an executive right in the pre-political and the post-political state, not within a properly functioning state.<sup>76</sup> Then, even if the people do revolt, they will need to create a new government shortly after, thereby handing back true sovereignty to a new trustee. In sum, if the people exercise the right of revolution, they return to a place in which they have no political rights at all.

Furthermore, for Locke, the goal or end of government, properly, is simply the preservation of property. Locke sometimes even suggests that the only way the legislature can violate the trust is by “invading [the people’s] property.”<sup>77</sup> The right to property is the source of all other rights, including the revolutionary right of self-preservation, and it, alongside the right to safety, is arguably Locke’s only inalienable or human right.<sup>78</sup> Furthermore, even though Parliament theoretically represented all countrymen, regardless of class, those who do not own

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<sup>73</sup> This phrase comes from the title of Richard Tuck’s book on early modern sovereignty. See Tuck, *The Sleeping Sovereign: The Invention of Modern Democracy* (Cambridge, UK: Cambridge University Press, 2016).

<sup>74</sup> Martin Seliger, “Locke’s Theory of Revolutionary Action,” *The Western Political Quarterly* 16, no. 3 (September 1963), 553-554.

<sup>75</sup> Locke, *Two Treatises of Government*, 395, 415.

<sup>76</sup> Simmons, *The Lockean Theory of Rights* (Princeton, NJ: Princeton University Press, 1994), 128-129.

<sup>77</sup> Locke, *Two Treatises of Government*, 398-401, 410-411.

<sup>78</sup> Jayne, *Jefferson’s Declaration of Independence: Origins, Philosophy, and Theology*, 120; Blandine Kriegel, “The Rule of the State and Natural Law,” in *Natural Law and Civil Sovereignty: Moral Right and State Authority in Early Modern Political Thought*, ed. Ian Hunter and David Saunders (New York: Palgrave Macmillan, 2002), 19.

property arguably have no need for, and thus possess no right of, revolution.<sup>79</sup> For these reasons, even though it is sometimes claimed that the introduction of property rights allows Locke's theory to "slip the leash" of resistance duties and render it a broader right, Locke's revolution is actually only constrained by the requirement that it must be on behalf of improved property conditions.<sup>80</sup> Gone are the political justifications of revolution based on other violations of natural rights. In one contemporary theorist's clever words, Locke's theory is "an insurance policy for the social order."<sup>81</sup>

Finally, related to this question of trust is the question of abdication, a term which, in the 17th century, connoted the "disinheriting" or "forsaking" of any kind of privileges.<sup>82</sup> Locke's basic statements of revolution suggest that the people reserve the right, at least in some circumstances, to violently remove the king from power. Perhaps in order to make his work more amenable to Tories and Jacobites, though, Locke was unwilling to actually claim that, in a tyrannical situation, the king has been deposed or that the people have taken power. Instead, if the trust is broken, the king or legislature, by becoming a "usurping tyrant," removes himself or themselves from power: "he degrades himself, and is but a single private Person without Power, and without Will, that has any Right to Obedience."<sup>83</sup> In this way, it has been remarked that the Glorious Revolution actually ought to be termed the "Glorious Abdication."<sup>84</sup> And because of the binary nature of such abdication, Locke's theory of abdication further evokes the idea of a

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<sup>79</sup> Marshall, *John Locke: Resistance, Religion and Responsibility*, 216, 266-267; C.B. MacPherson, *The Political Theory of Possessive Individualism: Hobbes to Locke* (Oxford, UK: Clarendon Press, 1964), 224-225.

<sup>80</sup> For an example of this argument, see Ward, *The Politics of Liberty in England and Revolutionary America*, 255-256.

<sup>81</sup> Douzinas, "Philosophy and the Right to Resistance," 88-89. See also Carole Pateman, *The Problem of Political Obligation* (Berkeley, CA: University of California Press, 1985), 76-77.

<sup>82</sup> Thomas Slaughter, "'Abdicate' and 'Contract' in the Glorious Revolution," *The Historical Journal* 24, no. 2 (June 1981), 326.

<sup>83</sup> Locke, *Two Treatises of Government*, 368.

<sup>84</sup> Zuckert, *Natural Rights and the New Republicanism*, 7.

public duty, not an optional right. It pays homage to earlier, relatively conservative theorists; Locke positions himself in agreement with his predecessor William Barclay, “that great assertor of the power and sacredness of kings,” because Barclay admits that a king may be removed if “he does something that makes him cease to be a king,” and a violation of the trust does precisely that.<sup>85</sup> The government forsakes its power, whether the people want to forge a new one or not.

For these reasons, Locke’s utilization of the trust and abdication model is, in my view, evidence of his hesitant relationship to the right of revolution. Locke believed that the duty to keep promises — to maintain trust — was a facet of both civil and natural law, and it would be rarely broken.<sup>86</sup> Moreover, it could only be broken on behalf of one natural right — the right of property. This combination of principles creates a serious predicament for the right of revolution. It limits the right of revolution greatly, because rather than allowing citizens to revolt whenever the government acts contrary to popular desire, as would necessarily be allowed in a regime truly based on popular sovereignty, citizens may only revolt when the government has forgotten its vague ends. The people have given blanket consent to most actions and, thus, rarely have recourse. And when the king or legislature acts so contrary to the people’s interest that revolution is a tool at the people’s disposal, the king and legislature have already abdicated themselves from power, or even “made abdication of the government entirely.”<sup>87</sup> Thus, the government has already returned to the state of nature, an event which precludes the possibility of further political action altogether. Few scholars criticize the “neutralizing” and circular quality of this

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<sup>85</sup> Locke, *Two Treatises of Government*, 419, 423.

<sup>86</sup> Dunn, “The Concept of ‘Trust’ in the Politics of John Locke,” in *Philosophy in History: Essays in the Historiography of Philosophy*, ed. Richard Rorty, J.B. Schneewind, and Quentin Skinner (Cambridge, UK: Cambridge University Press, 1984), 289.

<sup>87</sup> This formulation was used by revolutionary politicians such as Robert Howard, as quoted in John Miller, “The Glorious Revolution: ‘Contract’ and ‘Abdication’ Reconsidered,” *The Historical Journal* 25, no. 3 (September 1982), 546.

logic, but, in sum, once the people are allowed to overthrow the government, they, in effect, must, even though it has already been done for them.<sup>88</sup>

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Still, trust might sometimes be violated, and if the question of abdication can be forgotten, the essential question about who can judge a potential violation of the trust remains. In Chapter 19, Locke poses the question rhetorically, and gives it a famous answer: “the People shall be Judge.”<sup>89</sup> Indeed, he claims that individuals can make private determinations about resistance and look only to their own “conscience” for justification.<sup>90</sup> At first glance, this is an extremely radical position, both because it seemingly rejects the ultimate authority of God and provides license for individuals to judge the sovereign at will. On this front, many scholars take Locke at his word.<sup>91</sup> But upon closer examination, Locke does not actually endow individuals, or even a small group of individuals, with the right of revolution, as the Americans would, but rather only extends this right to the body politic as a whole. Revolution, he says, can never be justified by “Oppression of here and there an unfortunate Man” — only when the “Inconvenience is so great, that the Majority feel it, and are weary of it” can the government be dissolved.<sup>92</sup> Simply, Locke imagines “the people” as a corporate power.<sup>93</sup> In writing that the people may judge, he merely means to say that every individual has equal power to trigger revolution, not that individuals, or even a small group, could revolt on their own. Majority

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<sup>88</sup> One scholar who does is historian of political thought Raffaele Laudini. See Laudini, *Disobedience in Western Political Thought: A Genealogy* (Cambridge, UK: Cambridge University Press, 2013), 51-53.

<sup>89</sup> Locke, *Two Treatises of Government*, 427.

<sup>90</sup> *Ibid.*, 282.

<sup>91</sup> This position is widespread, but typical examples can be seen in Tully, *An Approach to Political Philosophy: Locke in Contexts* (Cambridge, UK: Cambridge University Press, 1993), 41, 56; Corbett, *The Lockean Commonwealth*, 97-99; Michael Walzer, “The Obligation to Disobey,” in *Political Theory & Social Change*, ed. David Spitz (New York: Atherton Press, 1967), 185.

<sup>92</sup> Locke, *Two Treatises of Government*, 380, 418.

<sup>93</sup> The Levellers of the English Civil War defined “the people” as the mass of English-born men, so Locke’s use of the term to mean “the majority” is a redefinition. See Canovan, *The People*, 24.

decisions from a corporate body, for him, solve the problem of controlling revolution perfectly. In effect, despite his lack of clarity on this logical assumption, Locke's right of revolution seems to be a majoritarian right.<sup>94</sup>

If the right of revolution can only be triggered by the majority, "it makes nonsense," protests philosopher Carole Pateman, "of the role of natural law and the right of the people to resist a government that sets itself at war with its subjects."<sup>95</sup> She is absolutely right about the limited bounds that majoritarianism places on the theory. But this, for better or worse, is the reality of Locke's claims. The people come together as "one Body" when they emerge from the state of nature, at which point one man's appeal for revolution against the majority becomes foolish, at best, or seditious, at worst.<sup>96</sup> Partially, this has a practical explanation. Resistance, in Locke's eyes, cannot be passive. It is inherently an act of war, so it needs popular support for pragmatic reasons. However, philosophically, revolution on behalf of an oppressed minority is also unfavorable; Locke thinks that such a revolution would merely embody revenge against the government, not restoration of civil society or a just politics.<sup>97</sup> He has faith that the majority of men are practical, reasonable, and just (though scholars note that he is not clear about the source of this faith), so a revolution without their support is likely to be none of those things.<sup>98</sup> Just as the people, as a majority, can check the legislature, an inherent minority, the majority of the

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<sup>94</sup> Carole Pateman explains that "at times Locke seems to suggest that a single individual has the right to resist arbitrary and unjust treatment from his government, but he usually refers to the right of the majority to do so." See Pateman, *The Problem of Political Obligation*, 76. For the argument that Locke's right of revolution is majoritarian, see, for example, J.D. Mabbott, *John Locke* (London: Macmillan, 1973), 169; Grady, "Obligation, Consent, and Locke's Right to Revolution: 'Who Is to Judge?,'" 286.

<sup>95</sup> Pateman, *The Problem of Political Obligation*, 71.

<sup>96</sup> Locke, *Two Treatises of Government*, 365, 404. See also Grady, "Obligation, Consent, and Locke's Right to Revolution: 'Who Is to Judge?,'" 288-290.

<sup>97</sup> Dunn, *Locke: A Very Short Introduction*, 61.

<sup>98</sup> Willmoore Kendall, *John Locke and the Doctrine of Majority-Rule* (Urbana, IL: University of Illinois Press, 1965), 134-135. Scholars including Kendall and Hanna Pitkin comment on the weakness of Locke's unsupported faith in the majority. For more on this question, see Jacqueline Stevens, "The Reasonableness of John Locke's Majority: Property Rights, Consent, and Resistance in the Second Treatise," *Political Theory* 24, no. 3 (August 1996), 447-448.

people can check the remainder.<sup>99</sup> The problem of minority rights that Pateman introduces can only be solved if the majority agrees to revolt on behalf of the minority whose rights are being abridged.

If most men are just and rational, will they really do so? Historically speaking, this is possible. Locke was justifying the actions of the Dissenters, a group which only made up about 10% of the population, and he also supported various religious minorities in their struggles for toleration.<sup>100</sup> Several commentators claim that Locke also extended theoretical support to revolutions on behalf of an oppressed minority, too.<sup>101</sup> However, there is also reason to find this idea dubious. Locke makes very clear that the majority will only revolt on behalf of the minority if the majority is persuaded that its own “Estates, Liberties, and Lives are in danger.”<sup>102</sup> He also thinks that majorities are often blind to the injustices suffered by minorities.<sup>103</sup> So a majority will not, and cannot, initiate revolution purely on behalf of natural rights if it will not benefit directly. This is desirable, according to Locke; it, among other things, ensures that his right of revolution would not devolve into anarchy. The concept of a “tyranny of the majority” apparently never occurred to him, or else he assumed that the plight of oppressed individuals or minorities was their own problem.<sup>104</sup> For this reason, historian of political thought Julian Franklin is correct in

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<sup>99</sup> Waldron, *God, Locke, and Equality: Christian Foundations in Locke's Political Thought* (Cambridge, UK: Cambridge University Press, 2002), 131.

<sup>100</sup> Tully, “Locke,” 624, 627, 646. In contrast, John Dunn claims that “Locke does not consider the possibility of the oppression of a minority by a majority” because he is actually considering politically “the exploitation of a huge majority by a small minority.” See Dunn, “The Politics of Locke in England and America in the Eighteenth Century,” 44.

<sup>101</sup> For the argument that Locke believes theoretically in majority resistance on behalf of the oppressed minority, see Tully, “Locke,” 627; Laslett, introduction to *Two Treatises of Government*, 110. For a summary of the opposing position, see Chris Surprenant, “Minority Oppression and Justified Revolution,” *Journal of Social Philosophy* 41, no. 4 (Winter 2010), 442-445.

<sup>102</sup> Locke, *Two Treatises of Government*, 404, 405. See also Seliger, “Locke's Theory of Revolutionary Action,” 559.

<sup>103</sup> Corbett, *The Lockean Commonwealth*, 96.

<sup>104</sup> Schworer, “Locke, Lockean Ideas, and the Glorious Revolution,” 542; Simmons, *On the Edge of Anarchy: Locke, Consent, and the Limits of Society*, 173, 175. For more on the idea that Locke considered tyranny of the majority but simply did not care, see Edward Andrew, *Shylock's Rights: A Grammar of Lockian Claims* (Toronto:

writing that Locke's discussion of revolution is more like "a mere prediction of how a people is likely to behave" than a normative theory.<sup>105</sup> It grants almost no rights to those who would not have the might and self-interest to revolt either way.

Even if the minority has little way to revolt, commentators focus on Locke's "modern" and "secular" epistemology for revolution, at least for the discerning majority. Many point out that Locke writes "every man is Judge for himself" when it comes to revolution.<sup>106</sup> He seems especially to promote the strength of men's intuitions about oncoming tyranny with a metaphor about a slave ship — if the slave was convinced that the ship was headed to the slave market in Algiers, he would continually try to save himself, even if the wind or weather took the ship off the course and threw its destination into question.<sup>107</sup> But Locke refers to revolution as an "appeal to heaven" for a reason. Though the potential revolutionary ought not to let such exculpatory evidence like "wind" and "weather" discourage him from revolting, he still is limited by God in the judgments he can make.<sup>108</sup> Locke assumes that society is a collection of Christian believers who look to God for moral guidance and use His laws as a constraint on their own behavior.<sup>109</sup> They are allowed some individualized interpretation, but they ultimately rely on the "voice of God," the ignoring of which is a great sin, because all people are God's property.<sup>110</sup> Moreover, Locke holds that men will not initiate an unjust revolution in part because God harshly punishes

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University of Toronto Press, 1988), 112. Some scholars hold that abdication allows individuals to disobey, albeit non-violently, thereby providing an "escape route" from tyranny of the majority. See, for example, Stern, "John Locke and the Declaration of Independence," 187.

<sup>105</sup> Franklin, *John Locke and the Theory of Sovereignty*, 96.

<sup>106</sup> Locke, *Two Treatises of Government*, 427.

<sup>107</sup> *Ibid.*, 405.

<sup>108</sup> Nathan Tarcov, "Locke's 'Second Treatise' and 'The Best Fence against Rebellion,'" *The Review of Politics* 43, no. 2 (April 1981), 216.

<sup>109</sup> Pateman, *The Problem of Political Obligation*, 60, 63.

<sup>110</sup> Locke in the *First Treatise*, as quoted in Matthew Stewart, *Nature's God: The Heretical Origins of the American Republic* (New York: W.W. Norton & Company, 2014), 348. See also Dunn, "The Politics of Locke in England and America in the Eighteenth Century," 60; David Gauthier, "Why Ought One Obey God? Reflections on Hobbes and Locke," *Canadian Journal of Philosophy* 7, no. 3 (September 1977), 430-432.

those who do.<sup>111</sup> If God punishes people for making the wrong judgment on this binary question, he logically must condone the right choice: justified revolution. Therefore, God retains an underappreciated role in Locke's right of revolution. This role, for reasons that are reminiscent of Luther and Calvin, renders Locke's theory more similar to the concept of religious duty than might be immediately apparent.

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Famously, Locke called revolution the "best fence against rebellion."<sup>112</sup> But at the time of his writing, in the minds of most English political thinkers, the terms "revolution" and "rebellion" did not signal just legal and illegal, or good and bad, respectively. At this point, the definition of revolution had only recently gained a political meaning; it was more commonly associated, even by Locke in his works of natural philosophy, with astronomy.<sup>113</sup> Essential to this meaning was its connotation of circular movement. It did not just mean change, but rather movement back to an original starting place. Indeed, for Locke, a political "revolution" was a completed cycle, post-restoration, not just the destruction of a despotic government, but also its re-establishment in a purer form.<sup>114</sup> It was an inherently conservative term that could only apply to a rare renewal of a past political order in light of recent tyranny. Even "revolutions," in the plural, was too drastic — it connoted suddenness and needless violence.<sup>115</sup> In contrast, rebellion, revolt, and other terms of the sort had both negative and dangerously progressive connotations. They were understood as attempted deviations from the ancient Constitution that ought to be

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<sup>111</sup> Locke, *Two Treatises of Government*, 282. See also Tully, *An Approach to Political Philosophy: Locke in Contexts*, 45.

<sup>112</sup> Locke, *Two Treatises of Government*, 282, 415.

<sup>113</sup> Vernon Snow, "The Concept of Revolution in Seventeenth-Century England," *The Historical Journal* 5, no. 2 (1962), 167, 172-173.

<sup>114</sup> *Ibid.*, 174. See also Ulrich Niggemann, "Some Remarks on the Origins of the Term 'Glorious Revolution,'" *The Seventeenth Century* 27, no. 4 (Winter 2012), 477.

<sup>115</sup> Ilan Rachum, "From 'American Independence' to the 'American Revolution,'" *Journal of American Studies* 27, no. 1 (April 1993), 75.



summarily put down — Locke describes a rebellion as an earthquake, hardly a reassuring analogy. For Whigs, even “reform,” a mild term today, lost its positive connotations in the 17th century.<sup>116</sup> Predictably, the Glorious Revolution was deemed a “restoration” or “revolution” by its supporters but called the “Great Rebellion” by its opponents.<sup>117</sup>

This distinction leads me to one final argument in support of the thesis that Locke’s right of revolution is more conservative and limited than it seems. Simply put, Locke unapologetically imagined that justifiable revolution itself was inherently conservative. Contemporary interpreters often analyze Locke with a contemporary, or even post-1789, definition of revolution in mind. But 17th century political thought was uniformly afraid of anarchy and obsessed with the eternal validity of the ancient Constitution. Not even the most radical thinkers would support a form of revolution, even one with popular support, that progressed beyond it.<sup>118</sup> And as Pocock notes, the ancient Constitution was mostly considered to be a good litmus test for revolution precisely because of its supposed age and, therefore, its stability and conservatism.<sup>119</sup>

Furthermore, the *Second Treatise* imagines that all people were naturally predisposed to be conservative and anti-revolutionary. Yes, he believes that revolutions, regardless of their philosophical justification or lack thereof, are an inevitable feature of early modern political life when people face “a burden that sits heavy upon them.”<sup>120</sup> But he assures the reader that revolutions will be rare because people would always wait until they truly have no other option:

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<sup>116</sup> Walzer, *The Revolution of the Saints: A Study in the Origins of Radical Politics* (Cambridge, MA: Harvard University Press, 1965), 11.

<sup>117</sup> Harold Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, MA: Harvard University Press, 1983), 18.

<sup>118</sup> Corinne Weston, “England: Ancient Constitution and Common Law,” in *The Cambridge History of Political Thought, 1450–1700*, ed. J.H. Burns and Mark Goldie (Cambridge, UK: Cambridge University Press, 1991), 375. See also Schworer, “Locke, Lockean Ideas, and the Glorious Revolution,” 410-411.

<sup>119</sup> Pocock, *The Ancient Constitution and the Feudal Law* (Cambridge, UK: Cambridge University Press, 1987), 233.

<sup>120</sup> Locke, *Two Treatises of Government*, 415.

“People are not so easily got out of their old Forms, as some are apt to suggest. They are hardly to be prevailed with to amend the acknowledged Faults in the Frame they have been accustomed to.”<sup>121</sup> Furthermore, potential revolutionaries will not want to take up violent resistance in which they are “sure to perish” or because of which they may be committing the “greatest Crime” of which “a Man is capable.”<sup>122</sup> And even when they do take the enormous step of initiating revolution, they usually bring politics right back “to our old Legislative of Kings, Lords and Commons.”<sup>123</sup> The right of revolution, Locke holds, is good precisely because of the stability it affords. It is a last-resort, emergency, conservative restoration of the ancient Constitution on behalf of the propertied — a fence against the very worst, as theorist Nathan Tarcov explains, not a path to a better politics.<sup>124</sup> In this way, Locke’s right of revolution, contrary to that of the Americans, seems more effective in dissuading, or at least heavily regulating, the natural occurrence of revolution than in encouraging it.

To conclude, it is for all of these reasons that positioning Locke diametrically opposite Calvin on the question of revolution is a mistake. I say this not because I do not believe Locke to be radical in his time or compared to his predecessors — I have nothing to add to that active scholarly debate. I acknowledge that Locke’s text was considered anticlerical in its moment, and I find it likely, as some historians believe, that he intentionally downplayed his radicalism in order to generate wider acceptance and readership.<sup>125</sup> However, I maintain, as do several

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<sup>121</sup> *Ibid.*, 414.

<sup>122</sup> *Ibid.*, 404, 418.

<sup>123</sup> *Ibid.*, 414.

<sup>124</sup> Tarcov, “Locke’s ‘Second Treatise’ and ‘The Best Fence against Rebellion,’” 217. Similarly, David Kopel argues that Locke’s right of revolution was mostly a tool to “deter government abuse, and thus make revolution unnecessary, in many cases.” See Kopel, “The Scottish and English Religious Roots of the American Right to Arms: Buchanan, Rutherford, Locke, Sidney, and the Duty to Overthrow Tyranny,” *Bridges* 12, no. 3/4 (Fall 2005), 301.

<sup>125</sup> Richard Ashcraft, among others, has shown convincingly that Locke’s text was received as a radical, even anticlerical text after its publication. See Ashcraft, “Locke, Revolution Principles, and the Formation of Whig Ideology,” *The Historical Journal* 26, no. 4 (December 1983), 773-786. An opposite camp of scholars claim that Ashcraft “overstates Locke’s social and political radicalism,” focusing instead on his passion for the ancient

scholars, that the search for a modern right of revolution in Locke only leads to confusion. The right of revolution by which he unequivocally stands is an extremely limited one. And as will be shown in the following two chapters, Locke's right of revolution is best seen as a moderate step along a path to a much more popular, radical, and secular resistance doctrine that would emerge a century later in the New World. Indeed, for now, this point is perhaps made most strongly with the claim that Locke would have deemed the American Revolution a rebellion, not a revolution.

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constitution. See, for example, David Wootton, "John Locke and Richard Ashcraft's Revolutionary Politics," *Political Studies* 40, no. 1 (March 1992). For more on this debate generally, see chap. 6 of J.C.D. Clark, *Revolution and Rebellion: State and Society in England in the Seventeenth and Eighteenth Centuries* (Cambridge, UK: Cambridge University Press, 1986).

## CHAPTER TWO

In the winter of 1750, almost exactly 100 years after the execution of Charles I, a 29-year-old minister named Jonathan Mayhew delivered a sermon at Old West Church in Boston that Bailyn later deemed “the most famous sermon preached in pre-Revolutionary America.”<sup>1</sup> Mayhew’s timing was no accident. Titled “Discourse Concerning Unlimited Submission,” it argued in favor of the Whig political philosophy that led to Charles I’s demise. Mayhew claimed that resistance to a despotic monarch was not at odds with the Christian duty to obey, since a sovereign who did not respect natural rights was more akin to a “pirate” or “highwayman” than a “minister of God.”<sup>2</sup> He was defending a natural right of revolution, albeit a limited one, that had obvious implications in the Colonies. While most church-goers were already familiar with the Protestant right of resistance, the sermon was shocking for American readers because no other New England preacher had explicitly defended the execution of Charles I since John Cotton in 1651.<sup>3</sup>

In the same book, Bailyn mocked Mayhew’s sermon as a “cliché of Whig political theory.”<sup>4</sup> Indeed, Mayhew’s justifications for resistance were hardly radical — he was instantly accused by contemporaries of plagiarizing the political thought of Benjamin Hoadly, and his political ideas were nearly identical to those espoused by Locke.<sup>5</sup> Mayhew held the orthodox view that a legitimate government was consensual and protected natural rights. From this basis,

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<sup>1</sup> Bernard Bailyn, *1750-1765*, vol. 1, *Pamphlets of the American Revolution, 1750-1776* (Cambridge, MA: Harvard University Press, 1965), 204.

<sup>2</sup> Jonathan Mayhew, *A discourse concerning unlimited submission and non-resistance to the higher powers* (Boston: D. Fowle, 1750), 24.

<sup>3</sup> Steven Dworetz, *The Unvarnished Doctrine: Locke, Liberalism, and the American Revolution* (Durham, NC: Duke University Press, 1990), 182; Patrick Mullins, *Father of Liberty: Jonathan Mayhew and the Principles of the American Revolution* (Lawrence, KS: University of Kansas Press, 2017), 45.

<sup>4</sup> Bailyn, *1750-1765*, vol. 1, *Pamphlets of the American Revolution, 1750-1776*, 206.

<sup>5</sup> Chris Beneke, “The Critical Turn: Jonathan Mayhew, the British Empire, and the Idea of Resistance in Mid-Eighteenth-Century Boston,” *Massachusetts Historical Review* 10 (2008), 25.

Mayhew made a simple argument about a contract between people and sovereign: “the only reason of the institution of civil government... is the common safety and utility. If therefore, in any case, the common safety and utility would not be promoted by submission to government, but the contrary, there is no ground or motive for obedience and submission, but, for the contrary.”<sup>6</sup> This argument — that citizens had a duty to obey lawful rulers and a correlate duty to disobey unlawful rulers — was, as described in the previous chapter, ubiquitous in earlier British Whig thought.<sup>7</sup> Furthermore, Mayhew, like Locke, was also unwilling to encourage rebellion, refusing to even “meddle with the thorny question” of when “it may be justifiable for private men... to take the administration of government in some respects into their own hands.”<sup>8</sup> He envisioned revolution as an absolute last resort, and posited that theoretical alternatives to absolutism were only possible because most men, in practice, were “submissive and passive and tame under government as they ought to be.”<sup>9</sup>

In the Colonies, Mayhew’s sermon was considered radical for its re-reading of Romans 13, a passage often interpreted by politically-minded theologians, not for its political sentiments, especially since other New England ministers, such as Elisha Williams and Charles Chauncey, made similar political arguments about obedience in the 1740s.<sup>10</sup> But even Mayhew’s exegesis of

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<sup>6</sup> Mayhew, *A discourse concerning unlimited submission and non-resistance to the higher powers*, 38.

<sup>7</sup> For more on Whig justifications for rebellion and their influence on Mayhew, see Maier, *From Resistance to Revolution: Colonial Radicals and the Development of American Opposition to Britain, 1765-1776* (New York: Alfred Knopf, 1972), 31-33. Gordon Wood agrees that Mayhew’s political ideas were mainstream; he claims that by 1750, the idea of obedience as “absolute and unconditional was hardly defensible in a liberty-loving Whig-dominated world.” See Wood, *The Radicalism of the American Revolution* (New York: Alfred Knopf, 1991), 156.

<sup>8</sup> Mayhew, *The snare broken* (Boston: Edes & Gill, 1766), 42.

<sup>9</sup> Mayhew, *A discourse concerning unlimited submission and non-resistance to the higher powers*, 39.

<sup>10</sup> William Reddinger, “The American Revolution, Romans 13, and the Anglo Tradition of Reformed Protestant Resistance Theory,” *American Political Thought* 5, no. 3 (Summer 2016), 371-372. For a historiography of the various arguments related to Mayhew’s radicalism (or lack thereof), see the introduction to John Oakes, *Conservative Revolutionaries: Transformation and Tradition in the Religious and Political Thought of Charles Chauncey and Jonathan Mayhew* (Eugene, OR: Wipf and Stock Publishers, 2016). On interpretations of Romans 13 to both promote or discourage revolution, see Dworetz, *The Unvarnished Doctrine: Locke, Liberalism, and the American Revolution*, 155-156.

Romans 13 was remarkably similar to Locke's exegesis of the same passage in his *A Paraphrase and Notes on the Epistles of St. Paul*. Perhaps unsurprisingly, Mayhew is known to have closely studied Locke's work, even directly citing him in a related sermon.<sup>11</sup> Nevertheless, Mayhew's publication was received with considerable intrigue. Colonists read the work widely and also consumed lively debates on its merits in Boston's newspapers for months afterwards.<sup>12</sup> Many historians mark it as the landmark moment when discourse on revolution began in Colonial America.<sup>13</sup>

The Framers themselves imagined their work as a recapitulation of Mayhew's ideas. John Adams, for instance, later claimed that the famous sermon of January 30, 1750 was the "catechism" of the American Revolution.<sup>14</sup> Perhaps this is why many of the historians who notice the similarities between the resistance theories of Locke and Mayhew also claim that Jefferson, in the Declaration of Independence, copied Locke's thought. But how could Mayhew's philosophy — which only permitted rebellion in the gravest circumstances and strongly discouraged it otherwise — have supported a violent revolution that most historians consider materially frivolous, or at least, in the words of historian Gordon Wood, "out of all proportion to the stimuli?"<sup>15</sup> Indeed, Mayhew's later speeches in the 1760s advocated, quite

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<sup>11</sup> Alex Tuckness, "Discourses of Resistance in the American Revolution," *Journal of the History of Ideas* 64, no. 4 (October 2003), 554. According to historian Patrick Mullins, Mayhew likely also reviewed Algernon Sidney, John Milton, and Benjamin Hoadly in preparation for the sermon. See Mullins, *Father of Liberty: Jonathan Mayhew and the Principles of the American Revolution*, 52.

<sup>12</sup> Beneke, "The Critical Turn: Jonathan Mayhew, the British Empire, and the Idea of Resistance in Mid-Eighteenth-Century Boston," 44.

<sup>13</sup> Notable scholars who emphasize Mayhew's place in revolutionary political theory include Clinton Rossiter and Bernard Bailyn. For a brief historiography of "Discourse Concerning Unlimited Submission," see *ibid.*, 23-25.

<sup>14</sup> As quoted in Reddinger, "The American Revolution, Romans 13, and the Anglo Tradition of Reformed Protestant Resistance Theory," 369. See also John Adams, "To H. Niles (Quincy, 13 February, 1818)," in *The Works of John Adams*, ed. Charles Francis Adams (Boston: Little and Brown, 1856), 10:287. In the letter, Adams listed Mayhew first in a chronology of American thinkers whose philosophies contributed to "the real American Revolution." For more on Mayhew's reception as a "transcendent genius" by the pioneers of revolution, see also Ferguson, *The American Enlightenment, 1750-1820*, 8.

<sup>15</sup> Wood, "Rhetoric and Reality in the American Revolution," *The William and Mary Quarterly* 23, no. 1 (January 1966), 5.

conservatively, “humble petitioning” rather than full-scale revolution, even in spite of the mounting tension with the Crown.<sup>16</sup> From this perspective, it is clear that the right of revolution had to have substantially changed over the subsequent 25 years in order to have justified the American Revolution. This chapter will attempt to demonstrate the first major steps away from traditional Lockean resistance theory towards a political theory unique to the Americans up until the landmark First Continental Congress in 1774. It will carefully, and roughly chronologically, demonstrate that the various essential elements of American revolutionary doctrine slowly unfolded over a series of texts in the late 1760s and early 1770s.

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The conventional, perhaps clichéd, narrative of Colonial American resistance is that colonial taxes, notably those established by the Sugar Act of 1764 and Stamp Act of 1765, catalyzed the movement for independence. Certainly, the events of the mid-1760s instigated much popular resentment. But at least initially, the major change in the current of resistance discourse was the messenger, not the message; lawyers replaced ministers as the “intellectual elite” in America, but the discourse remained quite conservative.<sup>17</sup> At the intellectual fore was prominent Boston lawyer James Otis, Jr.

In 1761, Otis was hired by a group of Boston merchants who sought relief from colonial writs of assistance, which granted the powers of search warrants to the Crown. His oral argument, at least according to John Adams, who summarized it many years later in a letter, did

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<sup>16</sup> See, for example, Mayhew’s “Snare Broken” sermon in 1766. For discussion of its relative conservatism, see Howard Lubert, “Jonathan Mayhew: Conservative Revolutionary,” *History of Political Thought* 32, no. 4 (Winter 2011), 590.

<sup>17</sup> Ferguson, *The American Enlightenment, 1750-1820*, 95. Religious publications outnumbered all other forms of intellectual writings before 1765, but not afterwards. See Ferguson, *The American Enlightenment, 1750-1820*, 44. The intellectual and social status of lawyers rose in the decade prior to Revolution likely because of their allegiance to the Patriot cause. See Richard Dixon, “Thomas Jefferson: A Lawyer’s Path to a Legal Philosophy,” in *Thomas Jefferson and Philosophy: Essays on the Philosophical Cast of Jefferson’s Writings*, ed. M. Andrew Holowchak (Lanham, MD: Lexington Books, 2014), 18.

not just contest the constitutionality of the writs of assistance, but also defended the rights of the colonists to resist such infringements of their liberty. Natural rights, which included the right to property, could not be abridged, even if “laws, pacts, contracts, covenants, or stipulations” made them technically illegal, he claimed.<sup>18</sup> Thus, consent could, and in fact should, have been withdrawn in cases where such rights were at risk. Deviating from Mayhew, Otis argued that laws should be altered to bring common law into agreement with the rules of natural law.<sup>19</sup> This argument became popular; there is considerable evidence that it was reused in similar court cases about writs of assistance all over the Colonies.<sup>20</sup>

Otis’s natural rights-based argument was further refined in his “The Rights of the British Colonies Asserted and Proved,” the pamphlet which cemented his fame in the Colonies upon its publication in 1764. Still, it was not nearly as revolutionary as some readers believed. Much of its argument had no insinuations of resistance at all, but rather made the case for colonial representation in Parliament; accordingly, the response pamphlet from London only concerned taxation and representation.<sup>21</sup> Moreover, in the section about resistance, Otis justified his position with a quotation from Locke: “the legislative being only a fiduciary power, to act for certain ends, there remains still, ‘in the people, a supreme power to remove, or alter, the legislative when they find the legislative act contrary to the trust reposed in them.’”<sup>22</sup> Otis’ list of

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<sup>18</sup> John Adams, “To William Tudor (Quincy, 1 June, 1818),” in *The Works of John Adams*, ed. Charles Francis Adams (Boston: Little and Brown, 1856), 10:316.

<sup>19</sup> As historian Mark Somos explains, Otis’s prioritization of the laws of nature is a “vital intellectual move for American resistance” because it introduced the idea that precedent could be ignored in favor of the “principle of progress” towards a more perfect common law. See Somos, *American States of Nature: The Origins of Independence, 1761-1775* (Oxford: Oxford University Press, 2019), 67.

<sup>20</sup> See Joseph Frese, “James Otis and Writs of Assistance,” *The New England Quarterly* 30, no. 4 (December 1957), 503-508.

<sup>21</sup> Conservative Thomas Whately wrote the response pamphlet, which claimed that Otis’ complaints about consent were moot because Americans were represented “virtually” in Parliament. See Morgan, *The Birth of the Republic, 1763-89* (Chicago: University of Chicago Press, 1992), 19-20.

<sup>22</sup> James Otis, “The Rights of the British Colonies Asserted and Proved,” 1764, in *Collected Political Writings of James Otis*, ed. Richard Samuelson (Indianapolis: Liberty Fund, 2015), 135.



natural rights were nearly identical to Locke's, too; he instructed the reader to refer to "Locke on government" at the end of his list.<sup>23</sup> And, lastly, Otis believed that resistance could be justified only in the face of a tyrant — in his words, "forceably resisting the parliament and the King's laws is high treason."<sup>24</sup> Perhaps out of fear of censorship (or else because, as John Adams suggested, Otis was bribed into silence), it seems that every time Otis "sensed the radical implications of what he was saying," he would step back into the familiar ground of established political philosophy.<sup>25</sup>

These similarities have prompted some historians of political thought to cite Otis as the catalyst for Locke's increase in popularity in the Colonies.<sup>26</sup> Certainly, Otis made constant favorable allusions to Locke. But by this time, Lockean thought was taken for granted in the Colonies; his *Two Treatises of Government* had become, as political theorist John Dunn explains, an "uncontentious" and "unexciting," though canonical, work.<sup>27</sup> In my view, Otis' work is actually noteworthy because in its nuances, it strays slightly from Locke, making his ideas more amenable to colonial resistance. First of all, Otis was somewhat skeptical of Locke's "tacit consent." He found it unrealistic to expect that anyone who did not want to consent to government would exit the society — "the few hermits and misanthropes that have ever existed" proved that living outside of society was unnatural.<sup>28</sup> Thus, if leaving society could not be

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<sup>23</sup> Otis, "The Rights of the British Colonies Asserted and Proved," 147.

<sup>24</sup> *Ibid.*, 149.

<sup>25</sup> James Ferguson, "Reason in Madness: The Political Thought of James Otis," *The William and Mary Quarterly* 36, no. 2 (April 1979), 198. For more on John Adams' accusations that Otis "was corrupted and bought off" when he retracted some radical ideas, see Ellen Elizabeth Brennan, "James Otis: Recreant and Patriot," *The New England Quarterly* 12, no. 4 (December 1939), 711-714.

<sup>26</sup> Tuckness, "Discourses of Resistance in the American Revolution," 552.

<sup>27</sup> Dunn, "The Politics of Locke in England and America in the Eighteenth Century," 73. Cecelia Kenyon partially contests this claim: "in the half century before the Declaration of Independence, the American people retained the old concept of a corporate public good as the end of government, and their acceptance of the Lockean ideology did not completely displace that older ideal." See Kenyon, "The Declaration of Independence," 30-33.

<sup>28</sup> Otis, "The Rights of the British Colonies Asserted and Proved," 126. Otis, a relative progressive, also disagreed with Locke's conception of the "subject" and his views on race. See T.H. Breen, "Subjecthood and Citizenship: The

considered a suitable way to withdraw consent, Otis' version of popular sovereignty needed an alternate provision for the public. This manifested itself in legal measures to check the power of Parliament; Otis believed primarily in American judicial supervision of the Parliament.<sup>29</sup> Moreover, Otis popularized a belief in natural law and natural rights. Admittedly, he only deployed natural rights to legitimize the existence of rights that were already held as constitutional rights. And his Lockean natural rights, like those of other thinkers of the 1760s, were formulated in "broad generalities" and had no "practical" application on their own.<sup>30</sup> But a shift of ideas from a "European state of nature" to an "American revolutionary state of nature" was beginning.<sup>31</sup> Otis, unlike Locke, thought that natural rights could sometimes override positive law, even if a majority of the citizens consented to Parliament's actions.<sup>32</sup> The implications for colonists, who were a distinct minority under the rule of Parliament and the Crown, were clear.

Ultimately, Otis believed that remonstrance of Parliament's disrespect for colonial natural rights was acceptable, but rebellion was not. As he dismissively wrote in his pamphlet "A Vindication of the British Colonies" a year later, only "rebels, fools, or madmen" would ignore the authority of Parliament and argue for colonial independence.<sup>33</sup> Later on, too, he would continue to dismiss Locke's work as inapplicable to the patriot cause.<sup>34</sup> But Otis laid the

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Context of James Otis's Radical Critique of John Locke," *The New England Quarterly* 71, no. 3 (September 1998), 383-395.

<sup>29</sup> Lubert, "Thomas Hutchinson and James Otis on Sovereignty, Obedience, and Rebellion," in *History of American Political Thought*, ed. Bryan-Paul Frost and Jeffrey Sikkenga (Lanham, MD: Lexington Books, 2003), 47.

<sup>30</sup> Reid, "The Authority of Rights at the American Founding," in *The Nature of Rights at the American Founding and Beyond*, ed. Barry Shain (Charlottesville, VA: University of Virginia Press, 2007), 94, 95.

<sup>31</sup> These are the phrases of Mark Somos, though Somos still overstates the Locke's and Otis' similarities. See Somos, *American States of Nature: The Origins of Independence, 1761-1775*, 52.

<sup>32</sup> For further explanation of this contrast, see Ward, "James Otis and the Americanization of John Locke," *American Political Thought* 4, no. 2 (Spring 2015), 186.

<sup>33</sup> Otis, "A Vindication of the British Colonies," in *Collected Political Writings of James Otis*, ed. Richard Samuelson (Indianapolis: Liberty Fund, 2015), 195.

<sup>34</sup> Daniel Rodgers, *Contested Truths: Keywords in American Politics Since Independence* (New York: Basic Books, 1987), 52-53.

groundwork for future claims that individual natural rights could justify revolution, even if the laws that were violating natural rights were consensually approved by the majority.

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Though the Stamp Act was materially relatively insignificant, it opened what one historian calls “invisible fissures in constitutional understanding” between the British and the Americans.<sup>35</sup> As Wood notes, Americans had long been consuming the same literature, philosophy, and law books as other Englishmen, so until the crisis began, they did not realize that their interpretations of the “English heritage” had diverged.<sup>36</sup> Americans thought that the British constitution, which afforded equal rights to all subjects of the Crown, would protect them against unequal or predatory laws. But British political philosophers claimed that if Americans accepted the rights of common law, they had to accept parliamentary sovereignty, too. Some British writers of the 1760s even reached back to a “discovered colonies” doctrine and claimed that Parliament had a legitimate “supervisory” role over the empire, including, of course, America.<sup>37</sup> In response, Americans, who had been interested in enumerating their rights since the proto-Bills of Rights in many 17<sup>th</sup>-century Colonies, became what one historian calls “the most rights-obsessed people in the world.”<sup>38</sup> Colonists wanted a clear definition of exactly what their civil rights were. Otis was at the front of this movement; he, alongside others, encouraged careful

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<sup>35</sup> Brendan McConville, *The King's Three Faces* (Chapel Hill, NC: The University of North Carolina Press, 2012), 251.

<sup>36</sup> Wood, “The American Revolution,” in *The Cambridge History of Eighteenth-Century Political Thought*, ed. Mark Goldie and Robert Wokler (Cambridge, UK: Cambridge University Press, 2006), 604.

<sup>37</sup> The “discovery doctrine” was re-espoused by British polemicists in the 1760s, but its origins can be found in Edward Coke and other 17th-century jurists. See James Kettner, *The Development of American Citizenship, 1608-1870* (Chapel Hill, NC: The University of North Carolina Press, 1978), 134-137.

<sup>38</sup> C. Bradley Thompson, *America's Revolutionary Mind* (New York: Encounter Books, 2019), 159.

and precise usage of the term.<sup>39</sup> The rights obsession also logically coincided with a growing interest in a novel idea: written constitutions.<sup>40</sup>

Rights demands in official documents of the mid-1760s were conservative and limited to well-accepted political theory. Stephen Hopkins, then-governor of Rhode Island, for example, pleaded in an influential early pamphlet for the Crown to acknowledge colonial rights, but explained that “there is not anything new or extraordinary in these rights” — they were simply deserved because “the colonies from all countries, at all times, have enjoyed equal freedom with the mother state.”<sup>41</sup> Colonial legislatures, which published a series of official “Colonial Resolves” in 1765, were especially eager to join the call for certain, specified rights. The first was published by Virginia House of Burgesses. It was considered radical enough that the conservative *Virginia Gazette* refused to publish it, though it made a very limited argument on behalf of three well-accepted civil rights.<sup>42</sup> With no mention of natural rights, it simply asked for the rights that “have at any Time been held, enjoyed, and possessed, by the people of Great Britain,” which were the basic constitutional rights of equality, taxation via representation, and consensual government.<sup>43</sup> Other states mostly echoed these traditional, Whiggish conceptions of consent and rights. Even the most radical of the Resolves, published by Massachusetts, made

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<sup>39</sup> Hutson, “The Emergence of a Modern Concept of a Right in America: The Contribution of Michel Villey,” 54. According to Wood, this attitude extended past rights into a general theory of law: “American were firmly committed to the modern notion of statute law based on legislative enactment.” See Wood, *The Creation of the American Republic, 1776-1787* (Chapel Hill, NC: The University of North Carolina Press, 1969), 295.

<sup>40</sup> Horst Dippel, “The Changing Idea of Popular Sovereignty in Early American Constitutionalism: Breaking Away from European Patterns,” *Journal of the Early Republic* 16, no. 1 (Spring 1996), 24. See also Grey, “Origins of the Unwritten Constitution: Fundamental Law in American Revolutionary Thought,” 864.

<sup>41</sup> Stephen Hopkins, *The rights of colonies examined* (Providence, RI: William Goddard, 1765), 5.

<sup>42</sup> Barry Shain, “Colonial Resolves Opposing the Stamp Act, June-December 1765,” in *The Declaration of Independence in Historical Context* (New Haven, CT: Yale University Press, 2014), 62.

<sup>43</sup> Virginia Resolves as Printed in the Journal of the House of Burgesses, June 1765,” in *The Declaration of Independence in Historical Context*, ed. Barry Shain (New Haven, CT: Yale University Press, 2014), 66-67. Because of confusion about which sections of the Resolves had been approved by the Virginia General Assembly, some unofficial, comparatively radical versions of the Virginia Resolves were published. See Shain, “Colonial Resolves Opposing the Stamp Act, June-December 1765,” 62.

only brief mention of the natural “essential rights” that they held “in common with all Men” before citing constitutional sources of their rights including the Magna Carta, the British Constitution, and “the Principles of their British Ancestors.”<sup>44</sup>

However, the more radical pamphleteers, beginning with Richard Bland and his 1766 pamphlet “An Inquiry into the Rights of the British Colonies,” forwarded a more radical political theory of consent, popular sovereignty, and natural rights with continually heightening revolutionary implications. Though historians hold mixed views on its popular impact, Bland certainly introduced, at least to the intellectual community, a new resistance-related natural right: the natural right of emigration.<sup>45</sup> Bland succinctly declared that “when Subjects are deprived of their civil Rights, or are dissatisfied with the Place they hold in the Community, they have a natural Right to quit the Society of which they are Members, and to retire into another Country.”<sup>46</sup> This right did not exist in English positive law of the 18th century.<sup>47</sup>

Bland cited Locke, among other European thinkers, to defend his ideas, but, just like Otis, his political theory was more open to revolution than Locke’s. In part because of the linguistic similarities, scholars again overstate their similarities rather than their differences.<sup>48</sup> Primarily, Bland’s natural right of emigration could be exercised at any time. Locke, on the other hand, only believed this right could be exercised when a child came of age and decided whether

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<sup>44</sup> “Massachusetts Resolves, October 29, 1765,” in *The Declaration of Independence in Historical Context*, ed. Barry Shain (New Haven, CT: Yale University Press, 2014), 76, 77.

<sup>45</sup> Citing its numerous reprintings on both sides of the Atlantic, Clinton Rossiter claims that Bland’s pamphlet “won a wide and thoughtful audience.” See Rossiter, “Richard Bland: The Whig in America,” *The William and Mary Quarterly* 10, no. 1 (January 1953), 51-52. In contrast, Daniel Rodgers claims that the work went “largely unread and unprinted.” See Rodgers, *Contested Truths: Keywords in American Politics Since Independence*, 53.

<sup>46</sup> Richard Bland, *An inquiry into the rights of the British colonies* (Williamsburg, VA: Alexander Purdie & Co., 1766), 14.

<sup>47</sup> Reid, *The Authority of Rights*, 119-120.

<sup>48</sup> For example, Rossiter claims that part of Bland’s philosophical “creed” was the “eternal validity” of Locke’s theory, while Mark Hulliung claims that Bland’s belief in the natural right of emigration is evidence of his, and indeed Americans’, “indebtedness to Locke.” See Rossiter, *Seedtime of the Republic: The Origin of the American Tradition of Political Liberty* (New York: Harcourt Brace, 1953), 267; Hulliung, *The Social Contract in America: From the Revolution to the Present Age* (Lawrence, KS: University Press of Kansas, 2007), 40.

or not he wished to be a subject of the state. Once a subject had consented, this consent could not be withdrawn at-will; he was bound to perpetual subjection. In this way, Locke's theory did little for subjects who are faced with "coercive authority."<sup>49</sup>

Bland sometimes made revolutionary insinuations himself; he maintained that arbitrary acts of Parliament "may be opposed" in a pamphlet two years prior, and even claimed in "An Inquiry into the Rights of the British Colonies" that the colonists had a "natural Right to defend their Liberties by open Force."<sup>50</sup> Still, despite these bold proclamations, he came near to sanctioning a right of resistance to Parliament, but, like Otis, ultimately did not arrive at a truly radical stance.<sup>51</sup> Instead, he used his natural right of emigration to make the claim that Americans deserved equal civil rights, including representation, with all subjects of the Crown, because civil rights could not be forfeited by a natural migration to colonial America. This was especially true, he argued, since the British Constitution, which he deeply admired, gave no "directions" on the proper relationship between England and America. Americans were settlers who were exercising their natural right of emigration "by their own voluntary Act," and they deserved the rights and privileges of Englishmen.<sup>52</sup> Nevertheless, Bland's version of the natural right to emigration can, and did, offer the beginnings of a new, mild conception of the right of revolution. Indeed, his right to emigration was incorporated into the later revolutionary doctrine of many of the Founders, including Jefferson and John Adams.<sup>53</sup>

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<sup>49</sup> See paras. 118-122 of the *Second Treatise*. Locke, *Two Treatises of Government*, 346-349. See also William Livingston, "Emigration as a Theoretical Doctrine during the American Revolution," *Journal of Politics* 19, no. 4 (November 1957), 592-593.

<sup>50</sup> Bland, *The colonel dismounted: or The rector vindicated* (Williamsburg, VA: Joseph Royle, 1764), 22; Bland, *An inquiry into the rights of the British colonies*, 26.

<sup>51</sup> Craig Yirush, "The Idea of Rights in the Imperial Crisis," in *Natural Rights Individualism and Progressivism in American Political Philosophy*, ed. Ellen Frankel Paul, Fred Miller, and Jeffrey Paul (Cambridge, UK: Cambridge University Press, 2012), 90.

<sup>52</sup> Bland, *An inquiry into the rights of the British colonies*, 13, 19.

<sup>53</sup> Kettner, *The Development of American Citizenship, 1608-1870*, 152.

One aspect of Locke's philosophy which Bland, unlike Otis, did retain was the idea of tacit consent. Of course, Bland maintained that Americans were free to leave the British Empire, but the logical corollary of this argument was that as long as Americans elected to remain British, they had tacitly consented to obey all laws of Parliament.<sup>54</sup> But this somewhat anti-revolutionary, binding rhetoric, which stood in the way of a colonial withdrawal of consent, was eventually surpassed by American thinkers, too. In pre-Revolutionary America, consent eventually became a continual process, something that could be given or taken at any time. At first, Americans were only withdrawing consent "partially" — that is, in hopes of an alteration to government — but finally, the "total" withdrawal of consent constituted complete revolution.<sup>55</sup>

The final transition away from tacit consent began with the work of Pennsylvanian John Dickinson. And in contrast to Bland's work, there is no doubt about the popular or intellectual reach of Dickinson's anonymously-published series of letters; his *Letters from a farmer in Pennsylvania* was the single-most popular pamphlet of the 1760s, and the series was reprinted in nearly every single colonial newspaper for a year.<sup>56</sup> Like Bland, Dickinson was initially more reluctant to invoke revolutionary language. Back in 1764, when the Pennsylvania Assembly was considering a censure of the colonial government, Dickinson took the ultra-conservative position, arguing that Pennsylvania ought not to resist since it still enjoyed more liberties than most of the Empire.<sup>57</sup> However, by 1765, he was more mixed in his opinion; he thought that even if resistance was unjustified, compliance with the Stamp Act would delegitimize the colonists'

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<sup>54</sup> This logical implication of Bland's argument is noted by historian Craig Yirush. See Yirush, *Settlers, Liberty, and Empire: The Roots of American Political Theory* (Cambridge, UK: Cambridge University Press, 2011), 230.

<sup>55</sup> Brief discussion of the differences between "partial" and "total" withdrawal of consent can be found in Mortimer Adler and William Gorman, *The American Testament* (New York: Praeger Publishers, 1975), 48-49.

<sup>56</sup> Wood, *The American Revolution: A History* (New York: Modern Library, 2002), 32; Grey, "Origins of the Unwritten Constitution: Fundamental Law in American Revolutionary Thought," 882; Ferguson, *The American Enlightenment, 1750-1820*, 97; Rossiter, "Richard Bland: The Whig in America," 52.

<sup>57</sup> David Jacobson, "John Dickinson's Fight Against Royal Government, 1764," *The William and Mary Quarterly* 19, no. 1 (January 1962), 71-74.

philosophical appeals, set a “detestable precedent,” and “rivet perpetual Chains” on the Colonies.<sup>58</sup> Finally, when he penned *Letters from a farmer in Pennsylvania* in 1767 in response to the Townshend Acts, he widened this argument to Parliament in general. Using Bland’s appeals for equal rights as his foundation, Dickinson concluded that Parliament should be “courageously and constantly opposed” when it acted outside of its “due limits” both to protect the Colonies and the rights of the Crown.<sup>59</sup> This was an ambitious idea. In the mid-1760s, protests and mobs against the Stamp Act were usually justified as resistance to “illegal exercises of power” by the individual tax collectors, not attacks on English rule itself.<sup>60</sup> The difference was subtle but powerful. Of course, Dickinson thought resistance ought to be constitutional and moderate; he especially liked the idea of petitions.<sup>61</sup> But he laid the groundwork for justifiable disobedience to Parliament itself.

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Bland’s natural right of emigration also lent itself to the idea that Americans were “a distinct people” from the British.<sup>62</sup> And Bland was not the only politician to make this claim in the mid-1760s. A particularly American consciousness was developing, even in popular sources; after 1764, colonists began to refer to themselves in the newspapers as “Americans,” rather than “Englishmen.”<sup>63</sup> Perhaps even more strikingly, newspapers also started to distinguish between “His Majesty’s subjects” and “Americans.”<sup>64</sup> This was a component of separationist thought

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<sup>58</sup> John Dickinson, “Address on Stamp Act,” in *The Writings of John Dickinson*, ed. Paul Leicester Ford (Bedford, MA: Applewood Press, 2009), 202. As Thomas Grey notes, Dickinson’s argument implies that non-compliance is “virtually required,” not just justified, if the colonists’ claims of illegality were to be taken seriously. See Grey, “Origins of the Unwritten Constitution: Fundamental Law in American Revolutionary Thought,” 879.

<sup>59</sup> Dickinson, *Letters from a farmer in Pennsylvania* (Boston: Mein and Fleeming, 1768), 142.

<sup>60</sup> Grey, “Origins of the Unwritten Constitution: Fundamental Law in American Revolutionary Thought,” 876.

<sup>61</sup> Dickinson, *Letters from a farmer in Pennsylvania*, 34.

<sup>62</sup> Bland, *An inquiry into the rights of the British colonies*, 12.

<sup>63</sup> Ferguson, *The American Enlightenment, 1750-1820*, 90.

<sup>64</sup> Richard Merritt, “The Emergence of American Nationalism: A Quantitative Approach,” *American Quarterly* 17, nos. 2, Part 2 (Summer 1965), 333.



which did not align with Locke. After all, the only reason that Lockean dissolution theory squared with Mayhew and New England Puritan resistance thought was because both were based on the idea of a consensual social contract between king and subjects. A trans-Atlantic social contract had little logic, though, if Americans were a distinct people.

Primarily, colonists imagined themselves as united because of their shared heritage as a liberty-loving people.<sup>65</sup> Despite their 17th-century legacy as a rough-and-tumble territory, the Colonies became significantly more culturally British in the first half of the 18th century, especially in New England. This was due in large part to a sense of imperial patriotism, as the British helped colonists win wars against their foreign neighbors, with whom they certainly felt no kinship, despite their geographical proximity.<sup>66</sup> As the Crown began imposing taxes that Americans thought were antithetical to the British Constitution, they retained their identity by transposing it into the idea that they were, as Wood puts it, “more English than the English.”<sup>67</sup> They assumed themselves to be a providentially-favored group on the Whig mission to create a nation based on Enlightenment values and liberty.<sup>68</sup> To this end, throughout the 1760s, Patriots felt a great connection to the radical opposition movement in London, as it was assumed to be the center of uncorrupted English political life.<sup>69</sup> They believed, to borrow Bland’s phrase, that a

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<sup>65</sup> Bailyn, *The Ideological Origins of the American Revolution*, 66.

<sup>66</sup> John Murrin, “A Roof without Walls: The Dilemma of American National Identity,” in *Beyond Confederation: Origins of the Constitution and American National Identity*, ed. Richard Beeman, Stephen Botein, and Edward Carter (Chapel Hill, NC: The University of North Carolina Press, 1987), 336-338. This was particularly true because British Americans, who were mostly Protestant, were geographically surrounded by French Catholics, who they considered enemies of sorts. See Paul Varg, “The Advent of Nationalism, 1758-1776,” *American Quarterly* 16, nos. 2, Part 1 (Summer 1964), 170-171.

<sup>67</sup> Wood, *The Radicalism of the American Revolution*, 146.

<sup>68</sup> Rogers Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (New Haven, CT: Yale University Press, 1997), 74-75.

<sup>69</sup> Murrin, “A Roof without Walls: The Dilemma of American National Identity,” 340.

political “gangrene had taken too deep hold to be eradicated” in England, but that the ancient Constitution could still thrive in the New World.<sup>70</sup>

Simultaneously, an intrinsically and distinctively American identity was also coming into focus. Since the 17th century, the Colonies had known themselves to be a land of religious and political dissenters.<sup>71</sup> As the Revolution approached, this idealized identity would crystallize into one that centered on, among other values, greater economic and social equality than European countries, strong Protestantism, religious tolerance, and a passion for public affairs and the common good. The imagined “American man” became a symbol cut from this identity; he was, as Revolutionary writer John de Crèvecoeur imagined, “industrious,” “egalitarian,” and “independent.”<sup>72</sup> He was also capable of defending himself — Americans disliked their inferior status within the British Army and wanted to prove their own military prowess.<sup>73</sup> And his “ancestors” were no longer British, but rather were Americans who toiled to settle a new land and self-govern.<sup>74</sup> Furthermore, the American identity was based on its territory. As early as 1767, Benjamin Franklin, for instance, believed that America would “shake off any shackles that may be imposed on her” and “become a great country” because it was “an immense territory... with all advantages of climate, soil, great navigable rivers, and lakes.”<sup>75</sup> America’s undeveloped territory was thought to be especially suitable for a liberal new country precisely because of its

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<sup>70</sup> Bland, *An inquiry into the rights of the British colonies*, 12.

<sup>71</sup> Robert Friedlander, “Autonomy and the Thirteen Colonies: Was the American Revolution Really Necessary?,” *Duquesne Law Review* 18, no. 3 (Spring 1980), 509-510.

<sup>72</sup> As quoted in Rogers Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History*, 77, 85. Puritan mythology extending back into the 17th century imagined the settlers as a particularly daring and courageous people. See Stephen Browne, “Jefferson’s First Declaration of Independence: A Summary View of the Rights of British America Revisited,” *Quarterly Journal of Speech* 89, no. 3 (August 2003), 241.

<sup>73</sup> Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America*, 161-163.

<sup>74</sup> Adler and Gorman, *The American Testament*, 27-28.

<sup>75</sup> Benjamin Franklin, in a 1767 letter to Lord Kames, as quoted in Leon Dion, “Natural Law and Manifest Destiny in the Era of the American Revolution,” *The Canadian Journal of Economics and Political Science* 23, no. 2 (May 1957), 244.

wildness — it was like a state of nature, a suitable home for natural rights.<sup>76</sup> This idea manifested itself on the edges of the Colonies. Between 1763 and 1777, for instance, multiple states made claims for now-Vermont, but it was governed by no one. Americans imagined that this state of nature-esque frontier might continue moving westward but would always exist.<sup>77</sup>

Even if, as some scholars argue, this newfound identity had nothing to do with Americans' desire for independence, American political leaders were aware that nurturing an American identity was an essential component of the move towards independence, especially to engender revolutionary attitudes among common people.<sup>78</sup> The seemingly contradictory combination of English and non-English attributes was the perfect identity for a seemingly contradictory rebellion — Americans rebelling from the English and justifying their rebellion with quintessentially English values. Indeed, patriotic, secessionist impulses were considered natural to English identity, as those attributes had prompted Englishmen to rebel and “remove” themselves from society throughout the century prior.<sup>79</sup> Americans, at least according to leaders, began to feel that they were a chosen people, maybe even the only people, capable of defending treasured natural rights and the ancient Constitution that they held dear.

Americans also needed to be “a people” for a philosophical reason — in order for leaders to assert popular sovereignty, they needed to be able to speak on behalf of a consolidated whole. If the British and Americans were one joint “people,” revolution based on the people's desire for

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<sup>76</sup> Yirush, “The Idea of Rights in the Imperial Crisis,” 101.

<sup>77</sup> Thompson, *America's Revolutionary Mind*, 157-158.

<sup>78</sup> Morgan, especially, diminishes the role of American identity on revolutionary impulses. See Morgan, *The Birth of the Republic, 1763-89*, 101. Historian Philip Gleason, among others, notes the importance of “nurturing an American identity” to the Revolution. See Philip Gleason, “American Identity and Americanization,” in *Concepts of Ethnicity*, ed. William Petersen, Michael Novak, and Philip Gleason (Cambridge, MA: Harvard University Press, 1982), 58-59.

<sup>79</sup> Liah Greenfeld, *Nationalism* (Cambridge, MA: Harvard University Press, 1992), 412-413. According to Greenfeld, “idealistic loyalty” to British values was “by its very nature a stimulus for disaffection and revolt, for the more intense the commitment to the ideals, the more sensitive, the more intolerant, one became to the imperfections in their realizations.”

a new government would be logically incoherent. But in the 18th century, the concept was redefined to mean not just the body politic but a distinct people — a “nation.” Conceiving of a separate people was, therefore, both possible and necessary. Still, Americans also needed to adapt the British notion of the people, which was always “reserved” and “deferential,” into a new sort of “demanding” and “taking” people.<sup>80</sup> The original form of popular sovereignty had a clear connection to resistance since the English Civil War, when British revolutionaries “invented” the concept to justify their decapitation of the Crown.<sup>81</sup> But in America, popular sovereignty meant both that the power ultimately resided with the people and that the people had knowable, distinct goals for its government based on its distinct characteristics and desires. Canovan nicely states the difference between Locke’s version of the concept and the radical American version: the American “conception of popular sovereignty goes far beyond an emergency resource or a mere check on royal rule. [The] sovereign people are continuously present in the country and expect to be able to control their own affairs.”<sup>82</sup> In the eyes of many historians, including Wood, this revision of popular sovereignty “marked one of the most creative moments in the history of political thought.”<sup>83</sup>

Americans were already well-accustomed to the routines of mob resistance, and they, like the English, generally believed that popular struggle was a natural and cyclical phenomenon.<sup>84</sup>

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<sup>80</sup> Jason Frank, *Constituent Moments: Enacting the People in Postrevolutionary America* (Durham, NC: Duke University Press, 2010), 15.

<sup>81</sup> Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America*, 161-163. According to Quentin Skinner, Oliver Cromwell’s popular sovereignty-based justifications for revolution in the 1640s were actually derived from Catholic theologians and jurists from the 16th century. See Skinner, *The Age of Reformation*, 345-348.

<sup>82</sup> Canovan, *The People*, 25-26. See also Nootens, *Popular Sovereignty in the West: Politics, Contention, and Ideas*, 60-62; chaps. 10 and 11 of Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America*.

<sup>83</sup> Wood, *The American Revolution: A History*, 159. Elsewhere, Wood says that American popular sovereignty was especially significant because it made the American principle of federalism intelligible. See Wood, *The Creation of the American Republic, 1776-1787*, 599-600.

<sup>84</sup> Maier, *From Resistance to Revolution: Colonial Radicals and the Development of American Opposition to Britain, 1765-1776*, 3. See also James Morone, *The Democratic Wish: Popular Participation and the Limits of American Government* (New Haven, CT: Yale University Press, 1998), 54.

This form of legal resistance was already sharply defined by the mid-1760s. Even during the first Colonial riots, political thinkers were discerning about which sorts of rebellious behavior were legal and which were not; a 1765 riot at the office of Stamp Act official Andrew Oliver was condoned and deemed legal by politicians including Samuel and John Adams, while another mob at Governor Thomas Hutchinson's house was denounced as "mindless" and illegal.<sup>85</sup> But through the mid-1760s, active resistance was eschewed in favor of petitions and nonimportation pacts. Dickinson's words on popular sovereignty brought the right of revolution back to the general public. His thought was immediately applied, quite widely, by popular movements as a tool to justify extra-legal resistance, ultimately prompting the emergence of quasi-shadow governments throughout the Colonies.

Specifically, Dickinson inspired a revival of the Sons of Liberty, whose anger was re-stoked by the Townshend Acts, and his version of popular sovereignty gave ordinary patriots license to disobey and create extra-legal bodies.<sup>86</sup> In the late 1760s, the Southern frontier was already a hotspot for extra-legal behavior. A group of "regulators" in South Carolina initiated the colonial practice of defying British authorities by violently and unlawfully taking up arms and, on behalf of the people, enforcing their own laws.<sup>87</sup> Meanwhile, in North Carolina, regulators violently opposed British tax and court officials. In both states, the regulator groups arose out of the sentiment that royal courts and officials were too far away, corrupt, and simply

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<sup>85</sup> Jankovic, *The American Counter-Revolution in Favor of Liberty*, 58-60. See also Maier, *From Resistance to Revolution: Colonial Radicals and the Development of American Opposition to Britain, 1765-1776*, 53-58, 62-63.

<sup>86</sup> Maier, *From Resistance to Revolution: Colonial Radicals and the Development of American Opposition to Britain, 1765-1776*, 115-116.

<sup>87</sup> Richard Brown, *Strain of Violence: Historical Studies of American Violence and Vigilantism* (Oxford, UK: Oxford University Press, 1975), 72-73. See also Reid, "In a Defensive Rage: The Uses of the Mob, the Justification in Law, and the Coming of the American Revolution," *New York University Law Review* 49, no. 6 (December 1974), 1089.

unrepresentative of their desires or needs.<sup>88</sup> Though they had not yet violently or extra-legally opposed the British to such an extent themselves, Northerners were impressed and inspired.<sup>89</sup> Based on the theoretical right of redress, the right of private, or localized, resistance to the Townshend Acts was quickly taken for granted and was exerted on an ordinary, day-to-day basis. An uncountable number of improvisational, extra-legal, and local political groups, clubs, and committees quickly emerged. All supposed that they were directly empowering the people, and because of the people's supposed unity, claims made in the name of the people by various pre-Revolutionary Congresses, conventions, and groups were almost always uncontested by other patriots.<sup>90</sup> Inspired by pamphlets and newspaper articles by political elites, citizens spent lots of time quasi-legally coercing officials into resigning, vandalizing British official buildings, dodging taxes, and actively resisting in a variety of other practical ways.<sup>91</sup> They also published endless declarations, statements, and other local documents. By the 1770s, though the united Colonies had not yet declared independence, colonists were effectively running an alternate legal system in some regards. They had taken over some of the essential functions of government, including criminal justice, the regulation of trade and merchants, the issuance of licenses, and price-setting.<sup>92</sup> They were prematurely acting out sovereignty in America and, in the process, displaying a popular belief in a right of revolution.

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<sup>88</sup> William Hart, "The Unsettled Periphery: The Backcountry on the Eve of the American Revolution," in *The Oxford Handbook of the American Revolution*, ed. Edward Gray and Jane Kamensky (Oxford, UK: Oxford University Press, 2013), 40; Eric Hinderaker and Peter Mancall, *At the Edge of Empire: The Backcountry in British North America* (Baltimore, MD: The Johns Hopkins University Press, 2003), 139.

<sup>89</sup> Maier, *From Resistance to Revolution: Colonial Radicals and the Development of American Opposition to Britain, 1765-1776*, 196.

<sup>90</sup> Frank, *Constituent Moments: Enacting the People in Postrevolutionary America*, 17, 19, 25.

<sup>91</sup> Barbara Clark Smith, *The Freedoms We Lost* (New York: The New Press, 2010), 86-88.

<sup>92</sup> Morone, *The Democratic Wish: Popular Participation and the Limits of American Government*, 55. As David Conroy explains, in the 1770s, "organized resistance no longer existed apart from the political community, but became conterminous with it." See Conroy, "Development of a Revolutionary Organization, 1765-1775," in *A Companion to the American Revolution*, ed. Jack Greene and J.R. Pole (Malden, MA: Blackwell Publishers, 2000), 220.

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It still took a few more years for all of the elements of a true right of revolution to fall into place. Bland and Dickinson were bona fide Whigs, but Bland was, at best, “a warm but conservative friend to liberty,” and Dickinson was probably even more conservative still.<sup>93</sup> They were exemplary members of a trans-Atlantic ideological group, the “moderate Whigs,” who valued liberty and other Whig principles, but cared equally about republican values such as order, moderation, and limited ambition.<sup>94</sup> They believed, in Dickinson’s words, that “the cause of liberty is a cause of too much dignity, to be sullied by turbulence and tumult. It ought to be maintained in a manner suitable to her nature.”<sup>95</sup> This was fairly typical of the period. Of course, there were a handful of political figures with radical positions in the 1760s. For instance, Patrick Henry, the famed author of the phrase “give me liberty, or give me death!” treasonously called for the assassination of the king in 1765, and William Hicks, writing alongside Dickinson, argued ahead of his time that Parliament had no right to legislate the Colonies, even when it acted in good faith.<sup>96</sup> But most political elites had complete faith that the disagreements with Parliament would pass in time.

As the 1760s turned into the 1770s, though, American political theory surpassed this conservatism, moving towards a more active doctrine of resistance. Importantly, in the new decade, revolutionary political ideas were also migrating from polemical pamphlets to official, signed documents written on behalf of various committees and assemblies. The Boston Massacre of March 1770 widely spurred revolutionary anger, at least in Massachusetts. The day after this

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<sup>93</sup> Rossiter, “Richard Bland: The Whig in America,” 50.

<sup>94</sup> On Moderate Whig values, especially Dickinson’s, see Henry May, *The Enlightenment in America* (Oxford, UK: Oxford University Press, 1976), 89-91.

<sup>95</sup> Dickinson, *Letters from a farmer in Pennsylvania*, 29-30.

<sup>96</sup> Thomas Kidd, *Patrick Henry: First Among Patriots* (New York: Basic Books, 2011), 51; William Hicks, *The nature and extent of Parliamentary power considered* (New York: John Holt, 1768). See also Yirush, *Settlers, Liberty, and Empire: The Roots of American Political Theory*, 237-238.

massacre, the town of Abington, Massachusetts, for instance, adopted a set of Resolves which boldly claimed that the political realm had been “reduced to a state of nature” in which Parliamentary authority was null and “opposing force with force” was necessary.<sup>97</sup> Other towns wrote equally bold responses.<sup>98</sup> By 1772, Boston itself had formed a Committee of Correspondence; its first pamphlet, colloquially known as the “Boston Pamphlet” and penned by Samuel Adams, asserted every man’s natural right “to remain in a State of Nature as long as they please” or “to leave the Society they belong to, and enter into another.”<sup>99</sup> According to historian John Phillip Reid, it was the first (and perhaps only) prominent piece of political literature before the Declaration to make no mention of constitutional rights alongside the invocation of natural rights.<sup>100</sup>

After the repeal of Parliamentary duties, open conflict with Britain temporarily paused for a few years. This was not, however, because Americans were entirely pleased with the outcome; according to Samuel Adams, they were merely waiting in “sullen silence” for the conflict to continue.<sup>101</sup> In the interim, Adams encouraged his readers, prominent patriots ought to “keep the attention of his fellow citizens awake to their grievances.”<sup>102</sup> Thus, even while revolutionary action was limited, political writers kept up a steady flow of by-then predictable resistance pamphlets and articles. None of these writers, at least publicly, were ready to advocate full independence, but privately, many, notably Samuel Adams, anticipated that American

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<sup>97</sup> Abington Resolves, as quoted in Somos, *American States of Nature: The Origins of Independence, 1761-1775*, 218.

<sup>98</sup> Richard Frothingham, *History of the Siege of Boston* (Boston: Little, Brown, and Company, 1873), 85.

<sup>99</sup> *The votes and proceedings of the freeholders and other inhabitants of the town of Boston* (Boston: Edes and Gill, 1772), 2.

<sup>100</sup> Reid, “The Authority of Rights at the American Founding,” 97.

<sup>101</sup> Samuel Adams, in a 1771 letter to James Warren, as quoted in Maier, *From Resistance to Revolution: Colonial Radicals and the Development of American Opposition to Britain, 1765-1776*, 220.

<sup>102</sup> Samuel Adams, “Article Signed 'Vindex,' Boston Gazette, January 21, 1771,” in *The Writings of Samuel Adams, 1770-1773*, ed. Harry Cushing (New York: G.P. Putnam's Sons, 1906), 2:150.



rhetoric was headed that direction.<sup>103</sup> The Coercive Acts of 1774, otherwise aptly known as the Intolerable Acts, provided that opportunity.

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By this point, the English political theorist William Blackstone's theory of government was the widely-accepted status quo — its truth seemed incontrovertible to colonists and Englishmen alike.<sup>104</sup> Indeed, though Locke was still very prominent, Blackstone was cited more often in colonial literature by the time of independence.<sup>105</sup> But Blackstone's philosophy was certainly at odds with Bland's right of emigration and Dickinson's challenge to Parliamentary sovereignty — he believed that Parliament's sovereignty over the Colonies, not to mention subjects back in England, was absolute. Furthermore, while there is a scholarly disagreement about whether or not Blackstone fully rejected Locke's right of revolution, Blackstone maintained, at the very least, that the Constitution could not “make provision for so desperate an event” as revolution, thereby relegating the right of revolution off to the realm of inapplicable philosophy.<sup>106</sup> Many Americans, including John Adams, in contrast, found Blackstone's idea that “revolution principles” were theoretically true but “not applicable to particular cases” patently absurd.<sup>107</sup> Undermining Blackstone's stronghold on political philosophy in the British Empire became essential to the radical patriot cause. Unsurprisingly, the Coercive Acts prompted a new,

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<sup>103</sup> See Neil York, “The First Continental Congress and the Problem of American Rights,” *The Pennsylvania Magazine of History and Biography* 122, no. 4 (October 1998), 355, 356.

<sup>104</sup> John Jeziarski, “Parliament or People: James Wilson and Blackstone on the Nature and Location of Sovereignty,” *Journal of the History of Ideas* 32, no. 1 (Spring 1971), 96.

<sup>105</sup> Donald Lutz, “The Relative Influence of European Writers on Late Eighteenth-Century American Political Thought,” *The American Political Science Review* 78, no. 1 (March 1984), 193.

<sup>106</sup> William Blackstone, *Commentaries on the Laws of England* (Oxford, UK: Clarendon Press, 1765), 1:157. For the position that Blackstone rejected a practical right of revolution, see Maier, *From Resistance to Revolution: Colonial Radicals and the Development of American Opposition to Britain*, 46-47. For a historiography of Blackstone as a moderate defender of revolution, see Lubert, “Sovereignty and Liberty in William Blackstone's 'Commentaries on the Laws of England,’” *The Review of Politics* 72, no. 2 (Spring 2010), 273.

<sup>107</sup> John Adams, “Novanglus, Addressed to the Inhabitants of the Colony of Massachusetts Bay, No. I,” in *The Works of John Adams*, ed. Charles Francis Adams (Boston: Little and Brown, 1851), 4:15.

furious wave of pamphlet writing, much of which took on Blackstone directly. Of course, Dickinson had already popularized a partial rejection of Parliamentary sovereignty.<sup>108</sup> But Dickinson's argument, as Jefferson later wrote in his autobiography, was only a "half-way house" on the road to a repudiation of Parliament.<sup>109</sup> Dickinson's student and legal mentee, radical Philadelphia jurist James Wilson, boldly advanced Dickinson's position the rest of the way.

Wilson admitted that Parliamentary sovereignty had a "tendency to promote the ultimate end of all government," which was happiness, but said that this was only a measure of its practicality, not its logical justifiability.<sup>110</sup> Therefore, since Parliament was no longer promoting happiness in the Colonies, it had no justifiable claim to legislate on the colonists' behalf. From this position, Wilson implied that since Americans were not conquered people, they needed to be able to legislate for themselves, or even form their own country. Rather than making the traditional historical remarks about the Glorious Revolution, he cited a variety of examples from Empire-wide jurisprudence, including cases relating to Ireland and Jamaica. All of his examples added up to prove that Parliament had no authority over the Colonies, and even "a thousand judicial determinations" in Parliament's favor on this issue "would never induce one man of sense to subscribe his assent to them."<sup>111</sup> This version of popular sovereignty was sufficiently absolute to be characterized as Rousseauian, rather than Lockean.<sup>112</sup> On its surface, this was

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<sup>108</sup> Yirush, *Settlers, Liberty, and Empire: The Roots of American Political Theory*, 247.

<sup>109</sup> Jefferson, *Autobiography of Thomas Jefferson, 1743-1790* (New York: G.P. Putnam's Sons, 1914), 14. This was because Dickinson believed that Parliament could tax "for the purposes of regulation, but not of raising revenue."

<sup>110</sup> James Wilson, "Considerations on the Nature and Extent of the Legislative Authority of the British Parliament," in *Collected Works of James Wilson*, ed. Kermit Hall and Mark David Hall (Indianapolis, IN: Liberty Fund, 2007), 1:4.

<sup>111</sup> *Ibid.*, 1:23.

<sup>112</sup> For more on the connection between Rousseau's and Wilson's conceptions of popular sovereignty, including textual similarities, see Wills, "James Wilson's New Meaning for Sovereignty," in *Conceptual Change and the Constitution*, ed. Terence Ball and J.G.A. Pocock (Lawrence, KS: University of Kansas Press, 1988).

simply a consent-based argument about lack of representation. But Wilson’s argument also revealed an expansive view of inalienable, natural rights, the most fundamental of which was the right to pursue happiness; for him, “happiness of the society is the *first* law of every government.”<sup>113</sup> Here he was citing Swiss natural rights theorist Jean-Jacques Burlamaqui, not Locke — Locke held that property rights were the fundamental rights on which all others were based.<sup>114</sup> Numerous scholars note that Wilson, despite occasional, conventional references to “the great and penetrating mind of Locke,” is surprisingly un-Lockean in general.<sup>115</sup>

That same August, Jefferson joined Wilson in the political limelight with the publication of his *A Summary View of the Rights of British America*. Alongside Wilson’s pamphlet and John Adams’ “Novanglus” essays, this tract was the first full expression of the “advanced” or “radical” patriot position.<sup>116</sup> Jefferson echoed Wilson’s attack on Parliamentary sovereignty — he was impressed by Wilson’s work and copied much of it into his commonplace book.<sup>117</sup> But more innovatively, *Summary View* mainly challenged a key aspect of Blackstone’s thought: his contention that men born English could not revoke their Englishness.<sup>118</sup> To do this, Jefferson reincorporated the right of emigration into the calculus, albeit with some revisions. In fact, he positioned emigration at the top of a hierarchy of natural rights for colonists, since it was the very basis of the entire colonial project. When the settlers originally landed in America,

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<sup>113</sup> Wilson, “Considerations on the Nature and Extent of the Legislative Authority of the British Parliament,” 1:5.

<sup>114</sup> C. Bradley Thompson, “On Declaring the Laws and Rights of Nature,” in *Natural Rights Individualism and Progressivism in American Political Philosophy*, ed. Ellen Frankel Paul, Fred Miller, and Jeffrey Paul (Cambridge, UK: Cambridge University Press, 2012), 107.

<sup>115</sup> For a brief summary of the debate on Wilson’s intellectual influences, see James Zink, “The Language of Liberty and Law: James Wilson on America’s Written Constitution,” *American Political Science Review* 103, no. 3 (August 2009), 443, 445.

<sup>116</sup> William Hedges, “Telling off the King: Jefferson’s ‘Summary View’ as American Fantasy,” *Early American Literature* 22, no. 2 (Fall 1987), 166.

<sup>117</sup> Daniel Robinson, “Do the People of the United States Form a Nation? James Wilson’s Theory of Rights,” *International Journal of Constitutional Law* 8, no. 2 (April 2010), 290.

<sup>118</sup> See book I, chap. 10 of Blackstone, *Commentaries on the Laws of England*.

according to Jefferson, they were allowed to fend for themselves. Just because they received military assistance during the 1750s and 1760s did not mean they had to forfeit their right to self-government.<sup>119</sup> In fact, continuing with the homages to history, he proposed that just as Saxons had emigrated to Britain and created a government from scratch, Americans had the option to govern themselves with “laws and regulations as to them shall seem most likely to promote public happiness.”<sup>120</sup> Strikingly, the Saxon narrative that Jefferson used to deny any legal relationship between Britain and the Colonies was the same narrative that Otis had invoked ten years before to argue merely for equal civil rights. The fact that Jefferson focused on Parliament’s suspension of the New York legislature and the Coercive Acts, rather than just the oppressive taxes, was only further evidence of his interest in colonial self-determination.<sup>121</sup> Finally, Jefferson listed, at length, a “rapid and bold succession of injuries” that justified this sort of governmental separation.<sup>122</sup>

Historians of political thought tend to emphasize the Lockean quality of Jefferson’s argument, mostly because of the latter’s reliance on notions of consent and natural rights. But if Jefferson’s ideas are derivative of Locke, they constitute an extremely radicalized version. Indeed, scholars note that *Summary View* was a more “emphatic statement of colonial autonomy” than even Wilson or John Adams was willing to make.<sup>123</sup> In fact, *Summary View* was considered so radical that Jefferson had difficulty finding a printer willing to publish it.<sup>124</sup> First of all,

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<sup>119</sup> For more on this historical argument, see Browne, “Jefferson's First Declaration of Independence: A Summary View of the Rights of British America Revisited,” 244.

<sup>120</sup> Jefferson, “A Summary View of the Rights of British America,” in *Jefferson: Political Writings*, ed. Joyce Appleby and Terence Ball (Cambridge, UK: Cambridge University Press, 1999), 65. According to William Hedges, the history that Jefferson retells in *Summary View* is “extravagantly rewritten or mythologized” for effect. See Hedges, “Telling off the King: Jefferson's 'Summary View' as American Fantasy,” 170.

<sup>121</sup> Ward, *The Politics of Liberty in England and Revolutionary America*, 362.

<sup>122</sup> Jefferson, “A Summary View of the Rights of British America,” 69.

<sup>123</sup> Ward, *The Politics of Liberty in England and Revolutionary America*, 355-356.

<sup>124</sup> Dixon, “Thomas Jefferson: A Lawyer's Path to a Legal Philosophy,” 23.

Jefferson attacked not only Parliament, as others had done, but also the legitimacy of the Crown itself. This was a new development in American thought, which had long respected and even venerated the King's sovereignty, even as it opposed Parliament. Jefferson also expanded the bounds of revolutionary justifications beyond Locke's property-based justifications to the more general natural right of happiness; the pamphlet gives a preview of Jefferson's rejection of the Lockean natural right to property in the Declaration of Independence.<sup>125</sup> Finally, Jefferson assumed, unlike Locke, that all men had the moral intuition to sense tyranny, and he encouraged the King to open his heart to such moral understanding.<sup>126</sup> In sum, based on his argument about the free will of early settlers, Jefferson logically implied that America, as philosopher Hannah Arendt notes, "must have been the breeding grounds of revolutionaries from the beginning."<sup>127</sup> *Summary View* pushed America even closer to the brink of separation.

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In sum, this new doctrine had rendered earlier colonial American philosophy, at least as espoused by figures like Mayhew, obsolete. Only reinforcing this point, ministers in the 1770s retained distinctly Lockean lines of argumentation — Michael Zuckert counts at least 27 notable examples — more reminiscent of Mayhew and the 1750s than the thought of Jefferson or Wilson.<sup>128</sup> Some influential preachers denied that Christians could enter a violent state of nature even if their rights were curtailed, and the preachers who did allow for revolution did so conservatively, sticking closely to the Lockean idea that, as Boston minister John Allen preached

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<sup>125</sup> Richard Matthews, *The Radical Politics of Thomas Jefferson* (Lawrence, KS: University Press of Kansas, 1984), 24-25. Matthews notices that in *Summary View*, Jefferson only defends a civil right to property, not a natural right.

<sup>126</sup> Jefferson, "A Summary View of the Rights of British America," 79. See also Jayne, *Jefferson's Declaration of Independence: Origins, Philosophy, and Theology*, 72-75.

<sup>127</sup> Hannah Arendt, *On Revolution* (New York: The Viking Press, 1963), 123.

<sup>128</sup> Zuckert, *The Natural Rights Republic: Studies in the Foundation of the American Political Tradition* (Notre Dame, IN: University of Notre Dame Press, 1996), 151. See also Moots and Morkevicius, "Just Revolution: Protestant Precedents for Resistance and Rebellion," 51.

in 1773, the “King’s ministry and Parliament must be rebels, to God and mankind,” so any disobedience was justified “by the laws of the land.”<sup>129</sup> But the radical lawyers and politicians, including Jefferson, had innovated far beyond this old-fashioned rhetoric.

The cumulative radical natural rights rhetoric of Jefferson, Wilson, and Adams (who mostly restated the ideas of the former two) was undeniably positioned by 1774 to justify revolution and independence. Delegates arrived at the First Continental Congress with these ideas in mind; Jefferson’s *Summary View* actually served as an instructional guide for the Virginia delegation to the Congress.<sup>130</sup> The only philosophical question left to answer was whether it was natural rights, especially the natural rights to self-defense and emigration, or constitutional rights that took precedence over the other. In the months before, state assemblies issued various instructions to their delegates, and many encouraged the Congress, which would coordinate resistance Colonies-wide for the first time ever, to “ascertain” the specifics of American rights, while also hopefully maintaining union with England.<sup>131</sup>

The question they needed to answer might be rephrased as one of inalienability. Beginning with an inalienable but apolitical right of religious conscience, both French Huguenots and English Levellers wielded inalienable rights in a revolutionary context.<sup>132</sup> But, in American philosophy, were all natural rights merely to be an independent source of proper civil

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<sup>129</sup> John Allen, *An oration, upon the beauties of liberty* (Boston: D. Kneeland and N. Davis, 1773), ix. Nathaniel Whitaker, for example, was a prominent religious leader who advocated against revolution in his published sermon *A confutation of two tracts*. Mark Somos thoroughly describes religious arguments for revolution but fails to note their relative conservatism compared to the radical political thinkers of the same years. See Somos, *American States of Nature: The Origins of Independence, 1761-1775*, 251-254.

<sup>130</sup> Ward, *The Politics of Liberty in England and Revolutionary America*, 351; Yirush, *Settlers, Liberty, and Empire: The Roots of American Political Theory*, 248.

<sup>131</sup> Maier, *From Resistance to Revolution: Colonial Radicals and the Development of American Opposition to Britain*, xviii; Peter de Bolla, *The Architecture of Concepts: The Historical Formation of Human Rights* (New York: Fordham University Press, 2013), 155, 183, quoting the language of Pennsylvania’s instructions. See also York, “The First Continental Congress and the Problem of American Rights,” 357.

<sup>132</sup> Shain and Rogers Smith, introduction to *The Nature of Rights at the American Founding and Beyond*, ed. Barry Shain (Charlottesville, VA: University of Virginia Press, 2007), 2; Dan Edelstein, *On the Spirit of Rights* (Chicago: University of Chicago Press, 2019), 2.

rights, or were any truly inalienable, even if revolution would be the only way to protect them? If so, which? This was a live question. Well into the 1770s, the phrase “inalienable rights” was still novel in America, and considered overly abstract by some.<sup>133</sup> Admittedly, the term appeared early in the conflict; perhaps its first widely-read use was found in Daniel Dulany’s 1765 pamphlet, which defended his standard social contract theory on the basis of “the unalienable rights of the subject.”<sup>134</sup> But Dulany provided no further explanation. In general, if inalienable meant “free from government restraint,” pre-Revolutionary thinkers could only really agree on an inalienable right of religious freedom.<sup>135</sup> The other specifics warranted debate. The outcome of this dispute would shape the rest of the conflict.

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<sup>133</sup> Rodgers, “Rights Consciousness in American History,” in *The Nature of Rights at the American Founding and Beyond*, ed. Barry Shain (Charlottesville, VA: University of Virginia Press, 2007), 261.

<sup>134</sup> Daniel Dulany, *Considerations on the propriety of imposing taxes in the British colonies, for the purpose of raising a revenue, by act of Parliament* (New York: John Holt, 1765), 30. Dan Edelstein claims that this is the first well-known statement of “inalienable rights” in the Colonies. See Edelstein, *On the Spirit of Rights*, 35 (footnote #76).

<sup>135</sup> Philip Hamburger, “Equality and Diversity: The Eighteenth-Century Debate about Equal Protection and Equal Civil Rights,” *Supreme Court Review* 285 (1992), 310-313.

### CHAPTER THREE

All of the major figures in attendance at the First Continental Congress in September 1774 in Philadelphia's Carpenters' Hall were determined to stand up the Coercive Acts. That series of heavy-handed measures united radical and more moderate patriots across the Colonies in opposition to Britain. It was a foregone conclusion that the delegates would adopt a non-importation, non-exportation, nonconsumption agreement in response.<sup>1</sup> At the same time, nearly all remained eager to promptly patch up their relationship with Britain. And yet, the Congress did quickly raise the interesting and controversial question: "whether," as John Adams would later remember, "we should recur to the Law of Nature" on top of the generic constitutional arguments in appealing for rights.<sup>2</sup>

As theorist Peter de Bolla puts it, the First Continental Congress was a highly secret, "black-box" environment, a sort of "experimental laboratory for generating conceptual forms."<sup>3</sup> Historians note the frequency of the delegates' visits to the city library, reading Locke, Jean-Jacques Burlamaqui, Emmerich de Vattel, and other important natural rights thinkers in order to construct their position.<sup>4</sup> On the Congress' second day, a 22-member committee was appointed to elucidate colonists' rights and propose the best method for bolstering such rights.<sup>5</sup> A couple of days after that, after much heated debate but without much resolution, a further sub-committee

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<sup>1</sup> Morgan, *The Birth of the Republic, 1763-89*, 62; Michael McDonnell, "The Struggle Within: Colonial Politics on the Eve of Independence," in *The Oxford Handbook of the American Revolution*, ed. Edward Gray and Jane Kamensky (Oxford, UK: Oxford University Press, 2013), 106. See also Caroline Robbins, "Rights and Grievances at Carpenters' Hall, September 5-October 26, 1774," *Pennsylvania History* 43, no. 2 (April 1976), 104.

<sup>2</sup> Introduction to John Adams, "Notes of Debates, September 8, 1774," in *The Declaration of Independence in Historical Context: American State Papers, Petitions, Proclamations, and Letters of the Delegates to the First National Congresses*, ed. Barry Shain (New Haven, CT: Yale University Press, 2014), 220.

<sup>3</sup> de Bolla, *The Architecture of Concepts: The Historical Formation of Human Rights*, 146.

<sup>4</sup> Stern, "John Locke and the Declaration of Independence," 192.

<sup>5</sup> Merrill Jensen, *The Founding of a Nation: A History of the American Revolution, 1763-1776* (Oxford, UK: Oxford University Press, 1968), 492.



was appointed.<sup>6</sup> The committee's work became so exciting that even delegates not appointed to it were involved in tense, after-hours discussions about what it would recommend, often, much to the chagrin of the conservatives, at City Tavern.<sup>7</sup> One side of the debate was led by John Adams, his cousin Samuel, and Richard Henry Lee, the other by figures including Joseph Galloway and James Duane. Both sides recognized that assigning priority to natural rights was risky, especially because it would have clear separatist innuendos, embolden overzealous American radicals, and, if misapplied, maybe even be "destructive of all liberty."<sup>8</sup> But the bolder John Adams thought that the other side's "nibbling and quibbling" prevented the delegates from making any real progress. The conservative Galloway, in turn, thought that the radical camp was proposing "wild," "chimerical," and "untenable" philosophical principles.<sup>9</sup> This was the Congress' defining ideological split.

It took weeks to reach an answer to this philosophical question, and when the Congress finally did, the tangible results were mixed. The committee on rights released a report that endorsed a position closer to that of Adams, but after further debate, much to his dismay, the conservatives imposed themselves, and it was decided that little should be said in the final declaration issued by Congress of natural rights.<sup>10</sup> So the Declaration and Resolves of the First

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<sup>6</sup> Robbins, "Rights and Grievances at Carpenters' Hall, September 5-October 26, 1774," 102.

<sup>7</sup> York, "The First Continental Congress and the Problem of American Rights," 370; Robbins, "Rights and Grievances at Carpenters' Hall, September 5-October 26, 1774," 101.

<sup>8</sup> Shain, "Rights Natural and Civil in the Declaration of Independence," in *The Nature of Rights at the American Founding and Beyond* (Charlottesville, VA: University of Virginia Press, 2007), 137; anonymous pamphlet entitled "The late occurrences in North America, and policy of Great Britain considered," as quoted in Reid, "The Irrelevance of the Declaration," in *Law in the American Revolution and the Revolution in the Law: A Collection of Review Essays on American Legal History*, ed. Hendrik Hartog (New York: New York University Press, 1981), 59.

<sup>9</sup> John Adams, "Diary," in *The Works of John Adams*, ed. Charles Francis Adams (Boston: Little and Brown, 1865), 2:401; Joseph Galloway, *A candid examination of the mutual claims of Great-Britain, and the Colonies* (New York: James Rivington, 1775), 2. See also Palmer, *The Age of the Democratic Revolution: A Political History of Europe and America*, 136.

<sup>10</sup> Rakove, *The Beginnings of National Politics: An Interpretive History of the Continental Congress* (New York: Alfred Knopf, 1979), 54; Jerrilyn Marston, *King and Congress: The Transfer of Political Legitimacy, 1774-1776* (Princeton, NJ: Princeton University Press, 1987), 96.

Continental Congress espoused a rather equivocal position, especially compared to the pamphlets of that summer. It held, tepidly, that rights came from both the “immutable laws of nature” and “the principles of the English constitution.”<sup>11</sup> But it is almost as if the conservative arm of the Congress, in all its effort to avoid making an extreme statement, failed to notice that the very act of calling a popular American representative body constituted an unrestrained step in colonial resistance. Participants were quick to compare the Congress to the English extra-legal conventions of 1660 and 1688; they imagined that they were partaking in a tradition of challenging despotic rule.<sup>12</sup> But this Congress in America was not even sanctioned by Parliament. Only natural rights could authorize such an unconstitutional move towards democratic self-government. Essentially, no matter what sort of statement it released or how much it pretended that its trade agreements were voluntary, the First Continental Congress could not deny the inherently radical nature of an elected, representative body that intentionally gathered popular sentiment at provincial conventions and then quasi-legislated and created enforcement structures for the Colonies.<sup>13</sup> It had, in effect, but without saying so, exercised powers that Jack Rakove deems “equivalent to those wielded by nation-states.”<sup>14</sup>

Historians have a habit of periodizing the resistance doctrine of colonial America in regard to when it became politically popular and realizable, not just theoretical. Answers to this

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<sup>11</sup> “First Continental Congress, Bill of Rights and List of Grievances, October 18-26, 1774,” in *The Declaration of Independence in Historical Context: American State Papers, Petitions, Proclamations, and Letters of the Delegates to the First National Congresses*, ed. Barry Shain (New Haven, CT: Yale University Press, 2014), 212.

<sup>12</sup> Marston, *King and Congress: The Transfer of Political Legitimacy, 1774-1776*, 81.

<sup>13</sup> This observation is also made by Jack Rakove. See Rakove, *The Beginnings of National Politics: An Interpretive History of the Continental Congress*, 27. On the “voluntariness” (or lack thereof) of the trade associations, see Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America*, 262. On the provincial conventions which gathered in the summer of 1774 in at least seven different colonies, see Richard Ryerson, “*The Revolution is Now Begun*”: *The Radical Committees of Philadelphia, 1765-1776* (Philadelphia, PA: University of Pennsylvania Press, 1978), 53. For more on the judicial procedures of colonial committees and Congress, see James Bell, *A War of Religion: Dissenters, Anglicans and the American Revolution* (London: Palgrave Macmillan, 2008), 123.

<sup>14</sup> Rakove, “Ideas, Ideology, and the Anomalous Problem of Revolutionary Causation,” *The New England Quarterly* 91, no. 1 (March 2018), 52.

rather arbitrary question, unsurprisingly, vary; some scholars say that revolutionary principles became more than just abstract Whig theory, at least for the strongest patriots, as early as the beginning of the 1770s, while others place the fault line as late as May 1776.<sup>15</sup> One commonly proposed landmark, with which I concur, is 1774, specifically the First Continental Congress.<sup>16</sup> However, I also argue that the decision to move towards natural rights, which began that September and steadily progressed over the subsequent two years, constituted a final, decisive intellectual blow to the import of Locke's resistance theory in the Colonies.

The first part of this claim is not particularly controversial. Plenty of historians of political thought, reaching all the way back to Carl Becker, have noticed that in the final year or two before Independence, American political leaders finally started to eschew civil rights in their writings in favor of stressing "inalienable" natural rights.<sup>17</sup> But my contention regarding Locke is far more unusual. After all, Locke's theory of dissolution was also ostensibly based on natural rights. But the adjustments over the previous decade to both natural rights theory in general and the natural right of revolution in particular, as demonstrated in the previous chapter, positioned the Founders to surpass Locke's resistance theory as soon as they committed to natural rights.

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<sup>15</sup> On the "proto-revolutionary overtones" of the early 1770s, see Maier, *From Resistance to Revolution: Colonial Radicals and the Development of American Opposition to Britain*, 211, 215-216, 221. For more on the changes in the right of revolution in May 1776, see Charles McIlwain, *The American Revolution: A Constitutional Interpretation* (New York: Macmillan, 1924), 7.

<sup>16</sup> For the argument that the right of revolution went from "ultimate right" to "immediate weapon," albeit with much hesitancy, around 1774, see Thad Tate, "The Social Contract in America, 1774-1787: Revolutionary Theory as a Conservative Instrument," *The William and Mary Quarterly* 22, no. 3 (July 1965), 377.

<sup>17</sup> See Becker, *The Declaration of Independence: A Study in the History of Political Ideas*. Michael Zuckert has labeled Becker's argument — that Americans began with appeals to positive rights and "radicalized their position over time, ending up with the appeal to natural rights (including the right of revolution) by the time of the Declaration of Independence" — as the "Succession Thesis." See Zuckert, "Natural Rights in the American Revolution: The American Amalgam," in *Human Rights and Revolutions*, ed. Jeffrey Wasserstrom, Lynn Hunt, and Marilyn Young (Lanham, MD: Rowman & Littlefield Publishers, 2000), 69. Contemporary political scientists who have come to this conclusion include Shain, Thomas Grey, and Suzanna Sherry, the last of whom posits that this evolution in thought actually continued through 1787. See Shain and Smith, introduction to *The Nature of Rights at the American Founding and Beyond*, ed. Barry Shain, 3; Grey, "Origins of the Unwritten Constitution: Fundamental Law in American Revolutionary Thought," 889-891; Sherry, "The Founders' Unwritten Constitution," *The University of Chicago Law Review* 54, no. 4 (August 1987), 1130-1131.

And furthermore, natural rights theory in America continued to be modified, especially through secularization and the addition of new rights, between 1774 and 1776. Thus, despite claims to the contrary from most scholars in the liberal tradition, I propose that the Declaration of Independence rejects many of the aspects of Locke’s theory analyzed in Chapter 1. In this third chapter, I briefly track the final changes in American resistance culture and theory before providing an extended, close analysis of Jefferson’s Declaration in its intellectual context.

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By the time the delegates reconvened in the spring of 1775 for the Second Continental Congress, blood had already been shed at the battles of Lexington and Concord, and popular sentiment for war was at an all-time high.<sup>18</sup> Some American leaders were moving in that direction, but most delegates were still unwilling to call for anything so radical. Instead, in addition to a last-gasp appeal to the Crown entitled the Olive Branch Petition, the new Congress released “A Declaration of the Causes and Necessity of Taking Up Arms,” likely authored by Jefferson himself.<sup>19</sup> This declaration, as Barry Shain explains, “sits midway” between the First Continental Congress’ Declaration and the Declaration of Independence — by defending “resistance by force,” that is, a militarized response to the enforcement of specific taxes, it justified more than just trade restrictions but less than a full separation.<sup>20</sup> However, arguably more influential was a subtle rhetorical and theoretical distinction implied by the document;

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<sup>18</sup> Robert Middlekauff, *The Glorious Cause: The American Revolution, 1763-1789* (Oxford, UK: Oxford University Press, 2005), 284.

<sup>19</sup> For more on the historical questions surrounding the authorship of the document, see Julian Boyd, “The Disputed Authorship of the Declaration on the Causes and Necessity of Taking up Arms, 1775,” *The Pennsylvania Magazine of History and Biography* 74, no. 1 (January 1950).

<sup>20</sup> Shain, “Congress Plans for War, July 1775,” in *The Declaration of Independence in Historical Context: American State Papers, Petitions, Proclamations, and Letters of the Delegates to the First National Congresses* (New Haven, CT: Yale University Press, 2014), 275; Jefferson, “Declaration of the Causes and Necessity of Taking Up Arms,” in *Jefferson: Political Writings*, ed. Joyce Appleby and Terence Ball (Cambridge, UK: Cambridge University Press, 1999), 86.

Jefferson eschewed the language of rights, both constitutional and natural, entirely, bringing resistance theory into an international framework. He spoke instead of a “just” cause for self-defense, paying homage to *jus ad bellum*, the international theory of just war championed long before by Grotius and more recently by Vattel.<sup>21</sup> In other words, he implicitly positioned America as an independent nation, not a subservient territory of the British Crown.

In many ways, Jefferson’s distinction dovetailed with the preceding debate about natural rights. Americans needed to decide whether the conflict was an international war for national independence, and thus a war for which justification could not be found in civil law, or if it was simply a civil war within the British Empire. Jefferson’s statement suggests that Americans were quickly moving towards the former. So does the fact that American citations of Locke, which peaked in the early 1770s, were largely replaced by direct citations of international law thinkers around 1775.<sup>22</sup> However, it is also undeniable that American thinkers feared declaring independence. Through 1775, the only time that they dared use the words “independence” or “independency” was when they wanted to disavow the idea.<sup>23</sup> Loyalists would consistently consider the Revolution a civil war, while radical patriots would look to justifications from notions, albeit dated ones, of international law, so it is perhaps obvious which conception prevailed in the end. But this was clearly still quite contested before 1776.<sup>24</sup> Americans were not yet ready to execute on their notional natural right of revolution.

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<sup>21</sup> Jefferson, “Declaration of the Causes and Necessity of Taking Up Arms,” 86. See also Eric Patterson and Nathan Gill, “The Declaration of the United Colonies: America’s First Just War Statement,” *Journal of Military Ethics* 14, no. 1 (January 2015), 19-25.

<sup>22</sup> Tuckness, “Discourses of Resistance in the American Revolution,” 550; Pocock, “Political Thought in the English-Speaking Atlantic: (i), the Imperial Crisis,” in *The Varieties of British Political Thought, 1500-1800* (Cambridge, UK: Cambridge University Press, 1996), 263.

<sup>23</sup> Benjamin Irvin, “Independence Before and During the Revolution,” in *The Oxford Handbook of the American Revolution*, ed. Edward Gray and Jane Kamensky (Oxford, UK: Oxford University Press, 2013), 140.

<sup>24</sup> de Bolla, *The Architecture of Concepts: The Historical Formation of Human Rights*, 189; Shain, “Rights Natural and Civil in the Declaration of Independence,” 139. See also Grey, “Origins of the Unwritten Constitution: Fundamental Law in American Revolutionary Thought,” 890.

Thomas Paine, among others, found this phenomenon confusing. Americans' "attachment to Britain was obstinate," he wrote. "They disliked the ministry, but they esteemed the nation."<sup>25</sup> But Paine, a self-described "farmer of thoughts," lit American resistance theory on fire in the winter of 1776 with his *Common Sense*, a pamphlet that, proportional to the size of the colonial population, was the greatest best-seller in American history.<sup>26</sup> Paine's work was undeniably radical, but not because of the resistance theory it espoused. In fact, some of Paine's contemporaries, not to mention current historians, accused him of cribbing Locke directly.<sup>27</sup> Instead, it was radical primarily because of the way it, in the words of Pocock, "breathed an extraordinary hatred of English governing institutions."<sup>28</sup> "Europe, and not England," was America's "parent country," according to Paine, and England's ancient constitution was only "noble for the dark and slavish times in which it was erected."<sup>29</sup> With its rejection of the English constitution, a text universally revered on the other side of the Atlantic, a distinct American political identity was brought into sharper contrast. Furthermore, along with colorful insults to King George — he is referred to as "a worm" and "a brute," among other things, in *Common Sense* — Paine decried the English constitutional system as unnatural.<sup>30</sup> He encouraged Americans to create a consensual democracy that better upheld the laws of nature, implying that

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<sup>25</sup> Paine, writing in 1775, as quoted in Jack Fruchtman, Jr., "Paine and Jefferson in the Age of Revolutions," in *Paine and Jefferson in the Age of Revolutions*, ed. Simon Newman and Peter Onuf (Charlottesville, VA: University of Virginia Press, 2013), 55.

<sup>26</sup> Harvey Kaye, *Thomas Paine and the Promise of America* (New York: Farrar, Straus and Giroux, 2005), 40, 43. By the end of the Revolution, Paine's volume is estimated to have sold roughly half a million copies.

<sup>27</sup> Richard Ellis, "Radical Lockeanism in American Political Culture," *The Western Political Quarterly* 45, no. 4 (December 1992), 828. Some contemporary scholars even note the similarities between Paine and Locke on the right of revolution in particular. See, for example, Richard Eaves, "The Seventeenth Century English Constitutional Struggle and Its Philosophical Impact on the American Colonies," *Journal of Thought* 10, no. 3 (July 1975), 212.

<sup>28</sup> Pocock, *Virtue, Commerce, and History: Essays on Political Thought and History, Chiefly in the Eighteenth Century* (Cambridge, UK: Cambridge University Press, 1985), 276.

<sup>29</sup> Paine, "Common Sense," in *Thomas Paine: Collected Writings*, ed. Eric Foner (New York: The Library of America, 1995), 9, 23.

<sup>30</sup> *Ibid.*, 12, 34. See also Bailyn, "Common Sense," in *Fundamental Testaments of the American Revolution* (Washington, DC: Library of Congress, 1973), 15-16.

natural rights were ample justification for a true separation, regardless of the monarch's despotism or lack thereof. Paine's perspective was quickly incorporated into the American resistance canon. Thus, in the winter and spring of 1776, constitutional rights were once and for all positioned below natural rights in the hierarchy of American political thought, and self-government for self-government's sake became a legitimate premise. The practical political effects were strong, too. Only when *Common Sense* entered widespread circulation that spring, as Jefferson notes, did citizens become acquainted with the term "independence," especially in the more conservative South.<sup>31</sup> Still, a month after its release, only a slight majority of the Continental Congress supported independence.<sup>32</sup>

Long before the premise of separation had become a serious possibility, though, American politicians had begun to broker inter-colony politics with the tenets of self-determination in mind. In the late pre-Revolutionary period, and continuing through the 1780s, rural colonists applied burgeoning American resistance theory to make rather un-Lockean claims for local self-government. For instance, one group of "liberty mad" settlers near present-day Pittsburgh, then claimed by both Virginia and Pennsylvania, began petitioning Congress in 1775 and 1776 to allow them to create a new state, Westsylvania, mainly on the grounds that self-government was impossible with legislation coming from Philadelphia, nearly 500 miles away.<sup>33</sup> These settlers, along with settlers in other remote areas, notably Watauga in present-day Tennessee, transformed the spirit of the well-known Paxton Boys back in 1763 — local autonomy for the purposes of self-defense — into a legal secessionist argument that could be

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<sup>31</sup> Rachum, "From 'American Independence' to the 'American Revolution,'" 174; Maier, *From Resistance to Revolution: Colonial Radicals and the Development of American Opposition to Britain*, 235.

<sup>32</sup> David Ammerman, "The Crisis of Independence," in *A Companion to the American Revolution*, ed. Jack Greene and J.R. Pole (Malden, MA: Blackwell Publishers, 2000), 206-207.

<sup>33</sup> Fritz, *American Sovereigns: The People and America's Constitutional Tradition Before the Civil War*, 64-65. For more on the dispute between Virginia and Pennsylvania over the area which led to the determinist movement, see Alan Gutches, "Pittsburgh, Virginia?," *Western Pennsylvania History* 97, no. 2 (Summer 2014).

transposed to the dispute between the Colonies and England.<sup>34</sup> Meanwhile, to the north and east, the radical patriot Ethan Allen was leading the residents of Vermont, who had long denied that any colonial government had jurisdiction over them, toward their own self-government. Citing “revolutionary principles,” Allen told Congress in 1775 that Vermonters, the self-proclaimed oldest self-governing community in the Colonies, were a distinct people from the residents of New York, so they deserved, like the Colonies as a whole, a local government.<sup>35</sup> Two years later Congress acceded, and Vermont ratified a state constitution that reserved the people’s right “by common consent” to “change it” at will in the first sentence.<sup>36</sup> All of these movements employed the radical American conception of popular sovereignty — “the idiom of the day,” in historian David Bodenhamer’s words — alongside radical resistance theory and wielded this combination of principles in a new push for self-government for its own sake.<sup>37</sup> New territories did not claim to be tyrannized by established Colonies, certainly not in any way that would rise to the Lockean threshold for the dissolution of government. They simply believed that their notion of popular sovereignty justified an invocation of the right of resistance and the formation of new governments.

The Congressional debates on the Vermont question were the birthplace of a new phrase: “constituent power.”<sup>38</sup> Constituent power was doctrinally positioned in opposition to delegate

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<sup>34</sup> William Pencak, introduction to *Pennsylvania's Revolution* (University Park, PA: The Pennsylvania State University Press, 2010), 2-3.

<sup>35</sup> Fritz, *American Sovereigns: The People and America's Constitutional Tradition Before the Civil War*, 60-63.

<sup>36</sup> “Constitution of Vermont — 1777,” in *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America*, ed. Francis Thorpe (Washington, DC: Government Printing Office, 1909), 6:3737. All state constitutions cited hereafter are found in Thorpe’s volumes. See also Goldstein, “Popular Sovereignty, the Origins of Judicial Review, and the Revival of Unwritten Law,” 58.

<sup>37</sup> David Bodenhamer, “Rulers and Ruled: Popular Sovereignty and American Constitutionalism,” review of *American Sovereigns: The People and America's Constitutional Tradition Before the Civil War*, *Reviews in American History* 37, no. 4 (December 2009), 539.

<sup>38</sup> Willi Paul Adams, *The First American Constitutions: Republican Ideology and the Making of the State Constitutions in the Revolutionary Era* (Lanham, MD: Rowman & Littlefield Publishers, 2001), 63. Adams claims that Americans invented both the concept and its name, while Joel Cólón-Rios notices the phrase in some early 18th-



power — constituents had the ultimate right to change or revoke the constitution, while elected representatives had the contractual power to legislate in keeping with the constitution. Absent this distinction, those scholars who argue that pre-Revolutionary legislative bodies were akin to Calvinist “inferior magistrates” in terms of resistance capabilities might have a stronger point.<sup>39</sup> But American political leaders in 1776 believed that the written constitution fell solely to the people. Consequently, with little authorization, local and state groups issued “declarations” of independence throughout the spring of 1776 — Maier counts more than 90 of these documents.<sup>40</sup> Most of these documents officially terminated the Crown’s rule within its limited territory, and five, drafted as intentional replacements to colonial charters, were the first state constitutions.<sup>41</sup>

These state constitutions written before the Declaration were unabashedly extra-legal; only two of the five were even written by a formal state convention.<sup>42</sup> And especially radical in many were the direct defenses of the right of revolution and the correlated right of self-determination. For example, the Virginia Declaration of Rights, published in June and attached to the Virginia Constitution (which also happened to be drafted by Jefferson), promised an “indefeasible right to reform, alter, or abolish” the government.<sup>43</sup> Later that summer, the resistance language would only become braver; Delaware’s Declaration of Rights claimed that

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century literature from London. See Cólón-Rios, *Weak Constitutionalism: Democratic Legitimacy and the Question of Constituent Power* (New York: Routledge, 2012), 97 (footnote #50).

<sup>39</sup> For an example of this argument, see Sarah Smith and Mark Hall, “Whose Rebellion? Reformed Resistance Theory in America — Part II,” *Unio Cum Christo* 4, no. 1 (April 2018), 181.

<sup>40</sup> See chap. 2 of Maier, *American Scripture: Making the Declaration of Independence*, esp. 48.

<sup>41</sup> For more on the idea that the early state constitutions were written as intentional replacements of the written colonial charters, see William Morey, “The First State Constitutions,” *The Annals of the American Academy of Political and Social Science* 4 (September 1893), 31.

<sup>42</sup> D.M. Graham, “Early State Constitutions,” *Constitutional Review* 9, no. 4 (October 1925), 223. The five state constitutions written before the Declaration were those of New Hampshire, New Jersey, Rhode Island, South Carolina, and Virginia. See also Graham, *A Constitutional History of Secession*, 89-90.

<sup>43</sup> “The Constitution of Virginia — 1776,” in *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America*, 7:3813. Jefferson spent much of June working on a third draft of Virginia’s constitution before beginning to write the Declaration of Independence. See Maier, *American Scripture: Making the Declaration of Independence*, 47-48.

any government, even the federal government, and not just a tyrannical one, could be abolished for the common good, while Maryland's constitution dismissed "the doctrine of non-resistance" as "slavish" and "absurd."<sup>44</sup> Furthermore, beyond these explicit clauses, every single early state constitution assumed that the people inherently legitimized and controlled the government, thereby logically granting a continuous and at-will right of review or revision to the people. As theorist Christian Fritz writes, "in the hands of American constitution-makers, the right of revolution broke loose from its traditional moorings of resistance to oppression and yielded different meanings" based on new constitutional principles of sovereignty.<sup>45</sup>

So, by the time Jefferson was appointed to draft the Declaration of Independence on June 11, the seedlings of a radical and uniquely American resistance theory had been implanted in a variety of state documents — Wood describes the creation of these documents as an "arena for testing," on a smaller scale, resistance ideas.<sup>46</sup> Less directly, Jefferson also had at his disposal the range of theories expressed in a variety of pamphlets dating back a decade or so, as discussed in the second chapter. In my view, Jefferson agglomerated elements from these myriad sources and forged them into a universalist and truly novel definition of the right of revolution. This new right of revolution was more secular, populist, and progressive than that of Locke, and it expanded the scope of possible rationales for resistance.

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<sup>44</sup> "Constitution of Delaware — 1776, in *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America*, 1:562-568; "Constitution of Maryland — 1777," in *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America*, 3:1687. For more analysis of the various sorts of resistance language in early state constitutions, see John Kang, "Appeal to Heaven: On the Religious Origins of the Constitutional Right of Revolution," *William & Mary Bill of Rights Journal* 18, no. 2 (December 2009), 282-286.

<sup>45</sup> Fritz, "Recovering the Lost Worlds of America's Written Constitutions," *Albany Law Journal* 68, no. 2 (2005), 272-274. See also Fritz, *American Sovereigns: The People and America's Constitutional Tradition Before the Civil War*, 60-63; Ward, *The Politics of Liberty in England and Revolutionary America*, 401-402.

<sup>46</sup> Wood, "Foreword: State Constitution-Making in the American Revolution," *Rutgers Law Journal* 24, no. 4 (Summer 1993), 912.

Following in the footsteps of Becker, numerous contemporary scholars, including Zuckert and Garrett Sheldon, have matched the rhetorical phrases in the *Second Treatise* and the Declaration, sometimes even demonstrating the results with a rather unnuanced chart.<sup>47</sup> The uncovered textual similarities have heavily contributed to the formation of a dominant paradigm which assumes that Jefferson's resistance theory is Lockean through-and-through. Some even admit Paine's un-Lockean nature, but still claim that Jefferson stepped backwards, returning American resistance theory to the pure Whig language of Locke.<sup>48</sup> These linguistic observations are, of course, neither unfactual nor minor. American politicians and non-politicians alike certainly did appropriate Locke's language of resistance. Jefferson and other thinkers copied seminal Lockean phrases like "long train of abuses" and "alter and abolish [government]," among others, in both the Declaration and a variety of other colonial documents. Americans even wrote the slogan "appeal to heaven," a clear homage to Locke, on many of their navy schooners at the outset of war.<sup>49</sup> But Zuckert and his followers overlook the idea that the Declaration might be "verbally" akin to the *Second Treatise* because Locke provided "a clear efficient vocabulary" for Whig ideas, while still not espousing "a teaching on resistance or revolution [less] detailed than, but identical to," that of Locke.<sup>50</sup> Before carefully examining the text, especially the

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<sup>47</sup> For contemporary versions of Becker's method, see Zuckert, *Natural Rights and the New Republicanism*, 18, 323 (footnote #47); chap. 3 of Garrett Sheldon, *The Political Philosophy of Thomas Jefferson* (Baltimore, MD: The Johns Hopkins University Press, 1991), esp. 46-48. For a brief and disparaging historiography of scholars who associate Locke with Jefferson merely because of the "close fit" of their respective rhetoric, see Shain, "Rights Natural and Civil in the Declaration of Independence," 121.

<sup>48</sup> Hulliung, *The Social Contract in America: From the Revolution to the Present Age*, 145-146.

<sup>49</sup> Patricia Bonomi, *Under the Cope of Heaven: Religion, Society, and Politics in Colonial America* (Oxford, UK: Oxford University Press, 2003), 215.

<sup>50</sup> Zuckert, *Natural Rights and the New Republicanism*, 18; Lutz, "The Declaration of Independence as Part of an American National Compact," *Publius* 19, no. 1 (Winter 1989), 45. More specifically, Zuckert claims American political values were "Locke plus the constitution, or the constitution Lockeanized," but he is insistent that Locke was far from rejected. See Zuckert, "Natural Rights and Imperial Constitutionalism: The American Revolution and the Development of the American Amalgam," *Social Philosophy and Policy* 22, no. 1 (January 2005), 47.

introduction and preamble, in light of its intellectual context and in comparison to the *Second Treatise*, I reproduce the essential pieces of the Declaration on the right of revolution in full:

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation...

Governments are instituted among Men, deriving their just powers from the consent of the governed... whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness...

When a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.<sup>51</sup>

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To begin, the Declaration effectively brings together two concepts, one individual and the other collective, that do not naturally mesh, and are indeed sometimes thought to be in tension with one another — popular sovereignty and the social contract.<sup>52</sup> Both concepts had evolved over the previous decade away from their articulation in the *Second Treatise*. Specifically, Jefferson took a broadened conception of popular sovereignty that imagined the Americans as a distinct people, as has already been shown, and merged it with a notional social contract based in constituent power. The result was a right of revolution that truly resided in the people's continuous power, or what legal theorist Larry Kramer calls “an expansive image of popular constitutionalism.”<sup>53</sup>

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<sup>51</sup> All passages quoted from the Declaration of Independence, both here and hereafter, are from “Declaration of Independence: A Transcription,” America's Founding Documents, National Archives.

<sup>52</sup> Jack Balkin and Sanford Levinson, “To Alter or Abolish,” *Southern California Law Review* 89, no. 3 (March 2016), 405-406.

<sup>53</sup> Larry Kramer, *The People Themselves: Popular Constitutionalism and Judicial Review* (Oxford, UK: Oxford University Press, 2004), 53.

Though Jefferson included some discussion of a distinct American people in a rough draft of the Declaration, the Continental Congress edited it out, along with many of his other most spirited lines.<sup>54</sup> So the Declaration features of none of the fiery, nationalistic language that can be found in *Common Sense*. Accordingly, when Mansfield notes that the Declaration's right of revolution primarily derives from notions of necessity and consent, not self-determination or nationhood, he is correctly noticing that the Declaration says nothing about a "superior or chosen people" and makes no claims about a common racial, religious, or linguistic ancestry that would bind the Americans.<sup>55</sup> However, Mansfield overlooks the document's subtle but distinct proto-nationalist sensibility. As some contemporary political theorists note, nationalism can be understood as simply the application of 18th-century notions of popular sovereignty to a national body.<sup>56</sup> With that definition in mind, the Declaration affirms an American nationality without providing distinct characteristics simply by virtue of its claim that Americans desire to be "one people," a nation. Jefferson, indeed, believed that the Americans' success in communally asserting independence was ample proof of their legitimate unity and nationhood.<sup>57</sup> Accordingly, the Declaration claims that the only thing the Americans and the British, who are labeled "a distant people," have in common by 1776 is "consanguinity," and this common ancestry clearly matters little. Ultimately, even if the Declaration does not discuss American nationality at great

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<sup>54</sup> Amar, "The Consent of the Governed: Constitutional Amendment outside Article V," 463. See also Wills, *Inventing America: Jefferson's Declaration of Independence*, 89-90.

<sup>55</sup> Mansfield, "The Right of Revolution," 152; Mansfield, "Thomas Jefferson," in *American Political Thought: The Philosophic Dimension of American Statesmanship*, ed. Morton Frisch and Richard Stevens (New York: Routledge, 2017), 50.

<sup>56</sup> These scholars include Hans Kohn and Hugh Seton-Watson. For more on this argument, see Bernard Yack, "Popular Sovereignty and Nationalism," *Political Theory* 29, no. 4 (August 2001), 517.

<sup>57</sup> Edward Dumbauld, *The Declaration of Independence and What It Means Today* (Norman, OK: University of Oklahoma Press, 1950), 50. Scholars especially notice the relevance of the phrase "one people" in asserting American nationalism in the Declaration. See Thomas West, "The Political Theory of the Declaration of Independence," in *The American Founding and the Social Compact*, ed. Ronald Pestritto and Thomas West (Lanham, MD: Lexington Books, 2003), 121; Carlton Lawson, "The Declaration of Independence: A 225th Anniversary Re-Interpretation," *Washington Law Review* 76, no. 3 (July 2001), 745.

length, the difference between it and the *Second Treatise* is best summed up by Canovan: Jefferson, unlike the Whigs of the Glorious Revolution, “asserted the right not only of the people to rule but of a specific people to rule themselves.”<sup>58</sup> The possibilities for this sort of revolution are evidently much wider; as some theorists have noted, once the Americans declared independence, every subsequent “nationalist assertion” or “secessionist party” finally had an example to cite.<sup>59</sup>

Of course, Americans, not least Jefferson, subsumed into their key texts “highly generalized notions” of social contract theory from Locke, Sidney, and the other Whigs.<sup>60</sup> But contemporary scholars, such as one theorist who claims that Locke’s social contract was the single “cornerstone” of American resistance theory, are presenting a common oversimplification in their argument that the Declaration’s ideas about consent and social contract are quintessentially Lockean.<sup>61</sup> In my reading, Jefferson subtly sharpens the social contract in the Declaration by shedding the weak political trust of Locke’s theory. Scholars likely overlook this deviation because Jefferson, among many other early American thinkers, used trust-like language on other occasions.<sup>62</sup> And admittedly, if political trust is defined vaguely just as the idea that the government is responsible for promoting the ends of the whole society, not particular individuals, it can be found in both Locke and the Declaration.<sup>63</sup> But the essential facet of Locke’s trust for resistance theory is that popular action is banned unless the trust has been

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<sup>58</sup> Canovan, *The People*, 30.

<sup>59</sup> Balkin and Levinson, “To Alter or Abolish,” 400-401.

<sup>60</sup> Georgia Carey, “Natural Rights, Equality, and the Declaration of Independence,” *Ave Maria Law Review* 3, no. 1 (Spring 2005), 47-48.

<sup>61</sup> Marsavelski, “The Crime of Terrorism and the Right of Revolution in International Law,” 270. For other examples of this argument, see, for instance, Simmons, “Free Choice, and Democratic Government,” *Georgia Law Review* 18, no. 4 (Summer 1984), 791; Sheldon, “The Declaration of Independence: Origins and Impact,” in *The Declaration of Independence: Origins and Impact*, ed. Scott Gerber (Washington, DC: CQ Press, 2002), 26-27.

<sup>62</sup> Dienstag, “Between History and Nature: Social Contract Theory in Locke and the Founders,” 1001-1002.

<sup>63</sup> For example, see Donald Doernberg, “‘We the People’: John Locke, Collective Constitutional Rights, and Standing to Challenge Government Action,” *California Law Review* 73, no. 1 (January 1985), 96-97.

grievously damaged. In contrast, consent, a word used in both the Declaration and many of the early state constitutions, meant something in America that was much more directly responsive to the people's desires than a wide-ranging trust.<sup>64</sup>

Unlike the British, who were often anti-contractual in the 18th century, colonial Americans were “obsessed” with contract-based language based on formal consent.<sup>65</sup> Jefferson assumed the existence of a legible and precise trans-Atlantic contract. Attached to this social contract was constituent power, which, without ever sending them back into a state of nature, gave citizens a protected method of political recourse, either via partial means, including amendment, or by invoking the right to peacefully replace the constitution wholesale.<sup>66</sup> This American social contract was not enshrined in an unwritten constitution. Instead, Americans were glad to be able to observe the specific terms of the contract through various charters, and later constitutions, and they used these carefully delimited written social contracts to hold the government accountable.<sup>67</sup> Even though the right of revolution was based on natural, not constitutional rights, Americans never thought that the separation would take them back to the state of nature. Instead, they believed in devising, in the words of historian Thad Tate, “formal acts of popular consent” that could be wielded by the people when the existing contract was at risk.<sup>68</sup> Accordingly, the Congress is held as an agent of the people in the Declaration — it is

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<sup>64</sup> Lutz, “The Theory of Consent in the Early State Constitutions,” *Publius* 9, no. 2 (Spring 1979), 14.

<sup>65</sup> Alan Ryan, “The British, the Americans, and Rights,” in *A Culture of Rights: The Bill of Rights in Philosophy, Politics and Law, 1791 and 1991*, ed. Michael Lacey and Knud Haakonssen (Cambridge, UK: Cambridge University Press, 1992), 380-381. For more on the difference between Locke's and Jefferson's social contract specifically, see Andrew Reck, “The Declaration of Independence as an 'Expression of the American Mind,’” *Revue Internationale de Philosophie* 31, no. 121/122 (1977), 407.

<sup>66</sup> On the development of the right to amendment in early constitutions, see Adams, *The First American Constitutions: Republican Ideology and the Making of the State Constitutions in the Revolutionary Era*, 136-142.

<sup>67</sup> Hamburger, “Natural Rights, Natural Law, and American Constitutions,” *The Yale Law Journal* 102, no. 4 (January 1993), 938-940. This is a contested position; for the opposite point of view (that Americans believed in an unwritten, fundamental constitution), see Sherry, “The Founders' Unwritten Constitution.”

<sup>68</sup> Tate, “The Social Contract in America, 1774-1787: Revolutionary Theory as a Conservative Instrument,” 381.

written “in the Name, and by the Authority of the good People of these Colonies” — to preclude any challenges to its authority within this framework.

Furthermore, while it may well be true that, as political theorist Deborah Baumgold claims, “the edifice of [Lockean] contract theory provided a philosophically well-elaborated way of arriving at good reasons for removing (or not removing) ‘a bad king with a good title,’” Americans were actually concerned with both king and Parliament.<sup>69</sup> The Declaration specifically cites the “inestimable,” and potentially inalienable, “right of representation,” and it consistently uses the word consent in reference to the legislature.<sup>70</sup> This version of consent was not tacit; Jefferson did not subscribe to the idea of “virtual representation” or “delegates,” essential parts of orthodox English consent theory. He believed that representatives ought to respond directly to the represented people. For the same reasons that he believed in frequent elections, Jefferson conceived of a powerful, direct social contract between people and legislature that legitimized the right of revolution far before a hypothetical trust was dissolved.<sup>71</sup> This distinction from Locke is perhaps best shown by the fact that a lack of representation does not seem to be a sufficiently oppressive cause for revolution in Locke’s theory. So even if the American belief in representation was derived directly from Locke, as some scholars argue, denying the Parliament’s jurisdiction required principles that the *Second Treatise* simply was not suited to provide.<sup>72</sup>

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<sup>69</sup> Baumgold, “Hobbes's and Locke's Contract Theories: Political not Metaphysical,” *Critical Review of International Social and Political Philosophy* 8, no. 3 (September 2005), 302.

<sup>70</sup> West, “The Political Theory of the Declaration of Independence,” 123.

<sup>71</sup> Anthony Birch, *Representation* (London: Macmillan, 1972), 40-42. Americans were particularly adamant that legislatures could not be representative without elections. As Cecilia Kenyon writes, by 1776, Americans “questioned the British effort to separate representation from the process of election and accountability.” See Kenyon, “The Declaration of Independence,” 34.

<sup>72</sup> On the use of Lockean language to defend the theory of representation throughout the colonial period, see Dworetz, *The Unvarnished Doctrine: Locke, Liberalism, and the American Revolution*, 80-87.



Furthermore, the Declaration of Independence also expands the set of justifications for resistance. Locke, as previously discussed, only allowed for revolution in defense of one's life or property. Famously, though, the Declaration makes no reference to property. Instead, it lists "the pursuit of happiness" as one of its three primary justifications for revolution. There is an active and endless scholarly debate concerning the radicalism (or lack thereof) of this phrase. One large camp of scholars thinks that Jefferson intentionally refers to happiness, rather than property, in order to indicate a grander, broader vision of rights. Conversely, another group views the use of the term happiness as merely an eloquent restatement of Locke's ideas on property.<sup>73</sup> The latter group often chalks up the rhetorical difference to Jefferson's nerves about justifying slavery, though this only explains the removal of property, not the addition of happiness.<sup>74</sup> It is beyond the scope of this thesis to substantially contribute to this debate. Regardless of whether happiness includes property within its definition or not, though, the fact that Jefferson spoke so explicitly about resistance on behalf of property in *A Summary View* — Americans, he argued there, deserved self-government because "their own blood was spilt in acquiring lands for their settlement" — yet did not mention property in the Declaration seems to strongly suggest, at the very least, that the terms were not interchangeable.<sup>75</sup> And this is not to mention the fact that 13 years later, Jefferson advised the Marquis de Lafayette to leave out property from the French Bill of Rights, admitting that property was a right but insisting that it was not as essential as life, the

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<sup>73</sup> For examples of the former argument, see Matthews, *The Radical Politics of Thomas Jefferson*, 27-28; West, *The Political Theory of the American Founding: Natural Rights, Public Policy, and the Moral Conditions of Freedom* (Cambridge, UK: Cambridge University Press, 2017), 30-31. For examples of the latter argument, see Scott Gerber, "Whatever Happened to the Declaration of Independence? A Commentary on the Republican Revisionism in the Political Thought of the American Revolution," *Polity* 26, no. 2 (Winter 1993), 215-216; Stern, "John Locke and the Declaration of Independence," 189. For a comprehensive historiography of this debate, see Carli Conklin, "The Origins of the Pursuit of Happiness," *Washington University Jurisprudence Review* 7, no. 2 (2015), 197-200.

<sup>74</sup> Conklin, "The Origins of the Pursuit of Happiness," 198.

<sup>75</sup> Jefferson, "A Summary View of the Rights of British America," 65. See also Matthews, *The Radical Politics of Thomas Jefferson*, 24-25.

pursuit of happiness, and resistance to oppression.<sup>76</sup> So even if, as Andrew Reck argues, property is protected by the Declaration because “it is difficult to maintain that [the Framers] could have imagined a man happy who did enjoy the right to property,” it is, to my mind, equally difficult to maintain that these terms are completely synonymous.<sup>77</sup> The fact that property and happiness are both listed as separate rights in multiple early state constitutions is only further evidence for this assumption.<sup>78</sup>

In 1776, happiness, at least in the Founders’ minds, had a rather vague meaning. It meant something like “personal independence,” that is, the ability to live free from the intrusions of government in one’s personal life, or, even more vaguely, simply whatever made life desirable.<sup>79</sup> Many scholars correctly note that its individualistic nature is deeply Lockean. Assuming Jefferson meant something like “pursuit of pleasure,” though, it is important to note that Locke simply believed it to be an inextricable component of human nature or a “causal consequence,” not an expressly political right.<sup>80</sup> After all, Locke developed this idea extensively but exclusively in a non-political context; in his 1689 *An Essay Concerning Human Understanding*, he stated that “the highest perfection of human nature lies in a careful and constant pursuit of true and solid happiness,” but he did not substantially return to the idea in the *Two Treatises* of the same year, the text in which he got to resistance theory, not to mention the right to property.<sup>81</sup> Most

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<sup>76</sup> Lucas, “Justifying America: The Declaration of Independence as a Rhetorical Document,” 86.

<sup>77</sup> Reck, “The Enlightenment in American Law I: The Declaration of Independence,” *The Review of Metaphysics* 44, no. 3 (March 1991), 561.

<sup>78</sup> For more on the language of happiness in early state constitutions, see Adams, *The First American Constitutions: Republican Ideology and the Making of the State Constitutions in the Revolutionary Era*, 191-192.

<sup>79</sup> Jan Lewis, “Happiness,” in *A Companion to the American Revolution*, ed. Jack Greene and J.R. Pole (Malden, MA: Blackwell Publishers, 2000), 658; Ursula Von Eckardt, *The Pursuit of Happiness in the Democratic Creed: An Analysis of Political Ethics* (New York: Praeger Publishers, 1959), 100.

<sup>80</sup> Darrin McMahon, *Happiness: A History* (New York: Atlantic Monthly Press, 2006), 319. See also Morton White, *The Philosophy of the American Revolution* (Oxford, UK: Oxford University Press, 1978), 230-231.

<sup>81</sup> Locke, *An Essay Concerning Human Understanding* (London: T. Tegg and Son, 1836), 171. For more on Locke’s view of happiness, see Huyler, *Locke in America: The Moral Philosophy of the Founding*, 87-90; Zuckert, *The Natural Rights Republic: Studies in the Foundation of the American Political Tradition*, 83-84.

importantly, property was considered to be material in the 18th century, while happiness could include immaterial goals. For this reason, only its pursuit, not its possession, could be guaranteed.<sup>82</sup> This squares with Jefferson's notes for the Declaration's rough draft, which indicate that the term happiness is best coupled with "glory" or "grandeur."<sup>83</sup>

Finally, the comparatively secular Jefferson believed that all distinctions between classes were unnatural, so an uneven distribution of property happened only after the formation of a social contract.<sup>84</sup> Perhaps this explains why Jefferson often held property as a civil right, not a natural right.<sup>85</sup> Replacing property with the pursuit of happiness, then, had a broadening effect on the right of revolution. Historians have suggested that happiness might have meant, in addition to property, the pursuit of family life, or, more practically, the legal ability to migrate or trade internationally.<sup>86</sup> Regardless of its precise definition, happiness was "more amenable," as historian Cecelia Kenyon writes, "to subjective interpretation" than the other rights listed in the Declaration, including life, liberty, or, indeed, property.<sup>87</sup> Furthermore, by guaranteeing its pursuit, not just its possession, Jefferson opened the door to the right of revolution for all citizens, not just the materially privileged, as Locke had. Even those who did not yet possess some element of happiness, material or otherwise, could revolt in order to protect their right to pursue it in the future. In sum, most likely, for Jefferson, "happiness is not opposed to property,"

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<sup>82</sup> Adler and Gorman, *The American Testament*, 40-41.

<sup>83</sup> Robert Ginsberg, "Suppose That Jefferson's Rough Draft of the Declaration of Independence Is a Work of Political Philosophy..." *The Eighteenth Century* 25, no. 1 (Winter 1984), 35. Ginsberg describes a "worksheet," used by Jefferson to test out phrases, on which Jefferson repeatedly reworked clauses about "glory" and "happiness."

<sup>84</sup> Alan Freeman and Elizabeth Mensch, "Property," in *A Companion to the American Revolution*, ed. Jack Greene and J.R. Pole (Malden, MA: Blackwell Publishers, 2000), 640; Post, "Jeffersonian Revisions of Locke: Education, Property-Rights, and Liberty," 149-152.

<sup>85</sup> Reck, "The Enlightenment in American Law I: The Declaration of Independence," 561.

<sup>86</sup> Conklin, "The Origins of the Pursuit of Happiness," 198-199; Ginsberg, "Suppose That Jefferson's Rough Draft of the Declaration of Independence Is a Work of Political Philosophy..." 34.

<sup>87</sup> Kenyon, "The Declaration of Independence," 37.

according to historian Robert Darnton, “but is an extension of it.”<sup>88</sup> In that case, the natural right to pursue happiness opens the door to new, individualized justifications for revolution which Locke could not have condoned.

It is important to note that the political right to the pursuit of happiness was a underratedly novel idea in 1776. Certainly, the “pursuit of happiness” was not a new phrase; historian David Wootton counts at least 135 thinkers who used the phrase before Jefferson, ranging from the canonical — Locke and David Hume, among others — to obscure English thinkers of the 17th and 18th centuries.<sup>89</sup> But most used it in a very different capacity.

Burlamaqui, to whom many scholars especially look for the origins of this phrase because of his belief in an “obligation” to pursue happiness, conceived of this pursuit merely as a fundamental fact of nature, not a natural or civil right.<sup>90</sup> So it seems probable that Jefferson provides one of the first notable examples of the pursuit of happiness being applied to rights doctrine, indeed to the right of revolution — it appears nowhere as either a constitutional or natural right between 1764 and 1776 in America either, save for George Mason’s Virginia Declaration of Rights, published less than a month before.<sup>91</sup>

Other natural rights were implicitly formulated in the Declaration, too; it holds that life, liberty, and the pursuit of happiness are just three rights “among” an otherwise indefinite set. The Framers provide no definitive account of such rights in either the Declaration or, later, the

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<sup>88</sup> Robert Darnton, “The Pursuit of Happiness,” *Wilson Quarterly* 19, no. 4 (Fall 1995), 48.

<sup>89</sup> Wootton, *Power, Pleasure, and Profit: Insatiable Appetites from Machiavelli to Madison* (Cambridge, MA: Harvard University Press, 2018), 219-220. Wootton’s work admits to be an expansion of Herbert Ganter’s canonical 1936 study, which identified five key figures that used the phrase before Jefferson: Locke, Peter Paxton, William Wollaston, Samuel Johnson, and Oliver Goldsmith.

<sup>90</sup> *Ibid.*, 221. For the argument that Jefferson got the “obligation” to pursue happiness from Burlamaqui, see, for instance, White, *The Philosophy of the American Revolution*, 230.

<sup>91</sup> Thompson, *America’s Revolutionary Mind*, 208.

Constitution, because they thought a comprehensive list would be impossible.<sup>92</sup> Whatever they were, though, they logically all provided justifications for revolution; by deriving rights from “the constitution of the intellectual and moral world,” as John Adams wrote, rather than the English constitution, such rights become inalienable — or “unalienable,” in the language of the Declaration — even if revolution was needed to defend them.<sup>93</sup> Besides the three listed, probably the only other natural right that was universally considered inalienable before the Revolution was the right of religious conscience.<sup>94</sup> But the endless rights discourse of the era makes it likely that Jefferson also imagined, or was at least aware of, others. A variety of natural, inalienable rights were widely posited by thinkers throughout the Revolutionary period; these included the right to representation, the right to be governed under the rule of law, the right to emigrate, the right to trial by jury, and most radically, the right of corporate self-determination or self-governance.<sup>95</sup> The last of this list was also considered the most fundamental, because it was thought to flow directly from liberty.<sup>96</sup> Which of these rights was implied by the Declaration was likely left ambiguous intentionally, but the violation of some or all of these rights ostensibly legitimized revolution, at least according to the Declaration.

Again, this doctrine appears to come from Locke at first glance, because Locke describes a similar set of God-given natural rights: self-defense, liberty, and property. Many contemporary

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<sup>92</sup> R.H. Helmholz, “The Law of Nature and the Early History of Unenumerated Rights in the United States,” *University of Pennsylvania Journal of Constitutional Law* 9, no. 1 (October 2006), 408 (footnote #67).

<sup>93</sup> John Adams, “Dissertation on the Canon and Feudal Law,” in *The Works of John Adams*, ed. Charles Francis Adams (Boston: Little and Brown, 1851), 3:463. For more on the possible reasons why “unalienable” was substituted for “inalienable,” see Wills, *Inventing America: Jefferson's Declaration of Independence*, 370-371.

<sup>94</sup> Shain, *The Myth of American Individualism: The Protestant Origins of American Political Thought* (Princeton, NJ: Princeton University Press, 1994), 242-243.

<sup>95</sup> Rogers Smith, “The Politics of Rights Talk, Then and Now,” in *The Nature of Rights at the American Founding and Beyond*, ed. Barry Shain (Charlottesville, VA: University of Virginia Press, 2007), 308; Alice Baldwin, *The New England Clergy and the American Revolution* (New York: Frederick Ungar Publishing, 1965), 82; Shain, *The Myth of American Individualism: The Protestant Origins of American Political Thought*, 256-257.

<sup>96</sup> Leonard Sorenson, “Strauss, Anastaplo, and Crosskey on ‘One Hard Nut to Crack’: The Declaration of Independence,” *Perspectives on Political Science* 36, no. 4 (Fall 2007), 222.

scholars make this surface-level connection, despite the fact that such natural rights in the *Second Treatise* seem to require protection in positive law, too.<sup>97</sup> But this connection is dubious. Locke never used the word “inalienable” in his entire oeuvre. Some scholars even argue that Locke’s nerves about anarchy and his theory of workmanship preclude the idea that rights, save for the right to resist, are inalienable, rather than just natural, in the *Second Treatise*.<sup>98</sup> Perhaps nothing is truly inalienable for Locke. Indeed, as Shain points out, rights that can only be protected by the majority, as Locke’s theory holds, are inherently alienable.<sup>99</sup> And even if self-defense, liberty, and property really were inalienable in Locke, his list of rights which justify revolution is noticeably shorter than the Americans’. Regardless, the nature of rights in America opens up possibilities for the right of revolution that are unimaginable for Locke.

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Jefferson’s replacement of property with happiness also indicates that ultimately, the Declaration is a secular text. Specifically, happiness gives the Declaration an earthly, hedonistic tint that has more in common with the French Revolution than the Glorious Revolution.<sup>100</sup> This effect is likely due to the inherently individualistic nature of happiness. As political theorist Danielle Allen remarks, the link between happiness and a true right, not duty, of revolution rests in the individualized judgment that the protection of happiness necessitates: “none can judge

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<sup>97</sup> See, for example, Diarmuid O’Scannlain, “The Natural Law in the American Tradition,” *Fordham Law Review* 79, no. 4 (March 2011), 1516; Doernberg, “‘We the People’: John Locke, Collective Constitutional Rights, and Standing to Challenge Government Action,” 67. For more on the connection between natural rights and positive law, see Oscar Handlin and Lilian Handlin, “Who Read John Locke? Words and Acts in the American Revolution,” *The American Scholar* 58, no. 4 (Fall 1989), 555.

<sup>98</sup> Simmons, “Inalienable Rights and Locke’s Treatises,” *Philosophy & Public Affairs* 12, no. 3 (Summer 1983), 175-176; Scott, “The Sovereignless State and Locke’s Language of Obligation,” 551.

<sup>99</sup> Shain, *The Myth of American Individualism: The Protestant Origins of American Political Thought*, 250.

<sup>100</sup> Isaac Kramnick, “Ideological Background,” in *A Companion to the American Revolution*, ed. Jack Greene and J.R. Pole (Malden, MA: Blackwell Publishers, 2000), 92. C. Bradley Thompson makes the same observation about a similarity with the rhetoric of the French Revolution in reference to Paine’s *Common Sense*. See Thompson, *America’s Revolutionary Mind*, 312.

better than I whether I am happy... as judges of our own happiness, we are equals.”<sup>101</sup> If revolution could be justified on such grounds, it reserves more autonomy for individuals and reduces the role of God in revolutionary judgment. Fundamentally, in my view, the Declaration is “hostile to revealed religion,” as Mansfield puts it, in a way that Locke’s work, not to mention most American precedents, simply is not.<sup>102</sup>

Of course, the American Revolution, or, in King George’s words, the “Presbyterian rebellion,” was undeniably theologically inspired for the average patriot.<sup>103</sup> Most Americans held very Protestant values.<sup>104</sup> This was well-suited to resistance theory; Americans were indeed the kind of Protestants that, in the words of Edmund Burke, were “most adverse to all implicit submission of mind and opinion.”<sup>105</sup> So Jefferson capitalized on the religiosity of colonial America to build support for the coming revolution. He organized, for instance, a day of prayer and fasting in Virginia in response to the Coercive Acts, and he compared the American cause in writing to the Israelite exodus.<sup>106</sup> But the Declaration, which makes only one brief reference to “Nature’s God,” a deistic conception of God popularized in America by the ultra-scientific Franklin, is mostly devoid of religion.<sup>107</sup> This is an auspicious absence, especially in contrast to

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<sup>101</sup> Danielle Allen, *Our Declaration: A Reading of the Declaration of Independence in Defense of Equality* (New York: W.W. Norton & Company, 2014), 184.

<sup>102</sup> Mansfield, “Thomas Jefferson,” 54. For more on Locke’s simultaneous belief in reason and revelation, see David Snyder, “Faith and Reason in Locke’s Essay,” *Journal of the History of Ideas* 47, no. 2 (Spring 1986). Jefferson’s view on revelation was heterodox, even compared to most American thinkers. See Jayne, *Jefferson’s Declaration of Independence: Origins, Philosophy, and Theology*, 9-11.

<sup>103</sup> As quoted in Kopel, “The Scottish and English Religious Roots of the American Right to Arms: Buchanan, Rutherford, Locke, Sidney, and the Duty to Overthrow Tyranny,” 299.

<sup>104</sup> Shain, “Revolutionary-Era Americans: Were They Enlightened or Protestant? Does It Matter?,” afterword to *The Founders on God and Government*, ed. Daniel Dreisbach, Mark Hall, and Jeffrey Morrison (Lanham, MD: Rowman & Littlefield Publishers, 2004), 274.

<sup>105</sup> Edmund Burke speaking before Parliament in 1775, as quoted in Robert Ferguson, *Reading the Early Republic* (Cambridge, MA: Harvard University Press, 2009), 61. Elsewhere, Burke referred to New England Protestantism as simply “a refinement of the principle of resistance.” See Dworetz, *The Unvarnished Doctrine: Locke, Liberalism, and the American Revolution*, 158.

<sup>106</sup> Thomas Buckley, “The Religious Rhetoric of Thomas Jefferson,” afterword to *The Founders on God and Government*, ed. Daniel Dreisbach, Mark Hall, and Jeffrey Morrison (Lanham, MD: Rowman & Littlefield Publishers, 2004), 57, 59.

<sup>107</sup> Stewart, *Nature’s God: The Heretical Origins of the American Republic*, 138, 183.

Jefferson's Declaration of the Causes and Necessity of Taking Up Arms, which was written with "divine favour" and explicitly intended as an appeal to both "God and the world."<sup>108</sup> It makes the case, implicitly, that revolution can be, and should be, an entirely human act.

Jefferson, like Paine, was as religiously radical as was possible in the late 18th century; in one letter, he claimed to be "a sect by myself, as far as I know."<sup>109</sup> Late in his life, he even rewrote the Bible devoid of its supernatural events and miracles.<sup>110</sup> So while Jefferson's natural rights came ultimately from a sort of natural God, if not a quasi-secular "creator," and their inalienability was due to their divine nature, he did not think God had any role in protecting or enforcing them.<sup>111</sup> They were, quite simply, "self-evident" and self-realized.<sup>112</sup> Unlike Locke, Jefferson saw no need to include God as a check on the unpredictable actions of men, as he believed in a sort of earthly conscience. "Our maker has given us all, this faithful internal Monitor," he wrote. He supposed that such a monitor would help men be prudent and regulate their revolutionary impulses.<sup>113</sup> In this way, conscience might be better analogized to the "inner light" of Quakerism than any true divine source.<sup>114</sup> Fundamentally, only prudence, not God, limits the American right of revolution as espoused in the Declaration.

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<sup>108</sup> Jefferson, "Declaration of the Causes and Necessity of Taking Up Arms," 86.

<sup>109</sup> Jefferson, in an 1819 letter to Ezra Stiles Ely, as quoted in Kody Cooper and Justin Dyer, "Thomas Jefferson, Nature's God, and the Theological Foundations of Natural-Rights Republicanism," *Politics and Religion* 10, no. 3 (September 2017), 666. See also Wood, "The Radicalism of Thomas Jefferson and Thomas Paine Considered," in *Paine and Jefferson in the Age of Revolutions*, ed. Simon Newman and Peter Onuf (Charlottesville, VA: University of Virginia Press, 2013), 21-22.

<sup>110</sup> Owen Anderson, *The Declaration of Independence and God: Self-Evident Truths in American Law* (Cambridge, UK: Cambridge University Press, 2015), 40.

<sup>111</sup> Sheldon, "The Philosophical Trinity of Jefferson's Political Theory," in *Thomas Jefferson and Philosophy: Essays on the Philosophical Cast of Jefferson's Writings*, ed. M. Andrew Holowchak (Lanham, MD: Lexington Books, 2014), 12.

<sup>112</sup> For more on the scholarly debate about whether the "self-evident truths" doctrine can possibly be squared with Locke or not, see Zuckert, "Self-Evident Truth and the Declaration of Independence," *The Review of Politics* 49, no. 3 (Summer 1987).

<sup>113</sup> Jefferson, in a 1783 letter to Martha Jefferson, as quoted in Charles Sanford, *The Religious Life of Thomas Jefferson* (Charlottesville, VA: University of Virginia Press, 1984), 46.

<sup>114</sup> On the potential connection between Quakerism and the American resistance theory, see chap. 4 of Lynd, *Intellectual Origins of American Radicalism*.



The conventional early modern English declaration always positioned the revolutionaries in a subservient position to both God and the state, but this would clearly not work for America. Thus, the Declaration's rhetorical form, a deviation from earlier revolutionary declarations, including the 1688 Declaration of Rights, is further evidence of its secularity. Scholars often note the scientific style of the Declaration's opening lines, associating it with the work of Isaac Newton or William Duncan, the author of a scientific treatise highly respected by Jefferson.<sup>115</sup> This was especially true of the preamble, the site of its exposition of resistance theory. And the preamble was also its only component that had no parallel or precedent in English history; "deposition apologias," which listed the reasons for the king's removal, had been issued all seven prior times that an English monarch had been deposed between 1327 and 1688, and the Declaration of Independence roughly resembled all of these apologias, minus the preamble.<sup>116</sup> In this novel, philosophical section, a confident, measured, rational theory is presented, and Jefferson's utilization of typical Enlightenment rhetorical devices, especially sorites, makes clear that the document is by and for reasonable men, not God.<sup>117</sup> Finally, earlier declarations, like petitions and proclamations, were usually addressed to the Crown and God. But Jefferson demonstrated the radicalism of the Declaration by speculatively addressing the people, rather than the Crown or even Parliament. As political theorist Jason Frank astutely notices, the

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<sup>115</sup> Wills, *Inventing America: Jefferson's Declaration of Independence*, 93; Wilbur Howell, "The Declaration of Independence and Eighteenth-Century Logic," *The William and Mary Quarterly* 18, no. 4 (October 1961), 470-483.

<sup>116</sup> Lucas, "The Rhetorical Ancestry of the Declaration of Independence," *Rhetoric & Public Affairs* 1, no. 2 (Summer 1998), 152, 159-160. The other important difference, not mentioned by Stephen Lucas, is that English apologias were issued by an authorized Parliament, not an extra-legal or revolutionary body. For more on the history of English deposition apologias, see J.W. McKenna, "The Myth of Parliamentary Sovereignty in Late-Medieval England," *The English Historical Review* 94, no. 372 (July 1979).

<sup>117</sup> Reck, "The Enlightenment in American Law I: The Declaration of Independence," 557. On the tempered prose of the Declaration, see Zuckert, "Thomas Jefferson on Nature and Natural Rights," in *The Framers and Fundamental Rights*, ed. Robert Licht (Washington, DC: The AEI Press, 1991), 139

“underauthorization” of the Declaration “oddly grants it a higher authorization,” since it makes claims “that can only be retrospectively vindicated.”<sup>118</sup>

The radical form of the Declaration is fitting for a document which had an unprecedented intent, both in its secularism and its intended audience. Clearly, Locke’s right of revolution must be executed within a single state — it is a process of creating a new government to rule over a static society. In stark contrast, as Pocock notes, the Declaration was “performed” in the discourse of *jus gentium*, the law of nations, rather than civil law.<sup>119</sup> This was evident, Pocock continues in another article, even in the Colonies’ chosen new name; the United States was a rather heavy-handed way of establishing statehood to the international community.<sup>120</sup> Accordingly, the Declaration was addressed to “a candid world” of reasonable men, especially potential allies and trade partners like the Spanish and the French, not God or the Crown.<sup>121</sup> This was simply a scenario that Locke did not consider, as Locke’s international examples of the right of revolution, all of which considered a conquered and enslaved nation, were hardly similar to the American case. The Declaration was a state-making document that reflected principles of international law and natural rights, not a Lockean dissolution of government founded on Protestant, even Calvinist, resistance values.<sup>122</sup>

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<sup>118</sup> Frank, *Constituent Moments: Enacting the People in Postrevolutionary America*, 10. Frank argues that *Common Sense* is the first American pamphlet to employ this strategy.

<sup>119</sup> Pocock, “Political Thought in the English-Speaking Atlantic: (i), the Imperial Crisis,” 281.

<sup>120</sup> Pocock, “States, Republics, and Empires: The American Founding in Early Modern Perspective,” *Social Science Quarterly* 68, no. 4 (December 1987), 707.

<sup>121</sup> Lucas, “Justifying America: The Declaration of Independence as a Rhetorical Document,” 79; George Anastaplo, “The Declaration of Independence,” *Saint Louis University Law Journal* 9, no. 3 (Spring 1965), 390.

<sup>122</sup> David Armitage, *The Declaration of Independence: A Global History* (Cambridge, MA: Harvard University Press, 2007), 17. See also Peter Onuf, “A Declaration of Independence for Diplomatic Historians,” *Diplomatic History* 22, no. 1 (January 1998).

Just as in Chapter 1, my final point is the most general but probably also the most important. Simply put, the Declaration of Independence justifies a progressive separation into two states, not a conservative reunification. This seems painfully obvious, but this difference entirely changes the potential rationales for revolution. To be fair, this argument is dependent on perspective. One could argue, as does historian R.R. Palmer, that the American Revolution was a conservative movement, because Americans wanted to return to the real levels of self-government which they enjoyed throughout most of their colonial history; only 5% of laws passed in colonial local assemblies were vetoed by England in the 17th century.<sup>123</sup> But Americans did not in 1776 really imagine themselves as particularly oppressed or attached to an old way of life.<sup>124</sup> They wanted, in the end, to forcibly create a new political order. They “utterly rejected,” as Lee Ward writes, the “legal fiction” of voluntary abdication from Locke and the Glorious Revolution.<sup>125</sup> Yes, the Declaration uses the word “abdication” once to describe the consequences of King George III’s behavior, but Americans were very comfortable with the idea that the people could unseat the Parliament, either with or without force and either with or without the “help” of God.<sup>126</sup> The Declaration simply asserts their right to do so, that is, to create something novel. It imagines, unlike Locke, that a new political order, rather than a return to any existing constitution, will be superior to the tyrannical status quo. It is, above all, an argument for

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<sup>123</sup> Palmer, *The Age of the Democratic Revolution: A Political History of Europe and America, 1760-1800*, 143. The colonial assemblies gained most of their power in the 1720s. See Alan Tully, “The Political Development of the Colonies After the Glorious Revolution,” in *A Companion to the American Revolution*, ed. Jack Greene and J.R. Pole (Malden, MA: Blackwell Publishers, 2000), 30-31. Other historians, including Merrill Jensen, argue that the American Revolution was a conservative movement because it was a response to rich, powerful elites who were consolidating power. For a brief historiography of this idea, see Rakove, *The Beginnings of National Politics: An Interpretive History of the Continental Congress*, xiv-xv.

<sup>124</sup> See Wood, *The Radicalism of the American Revolution*, 4.

<sup>125</sup> Ward, *The Politics of Liberty in England and Revolutionary America*, 401-402. See also Zuckert, *Natural Rights and the New Republicanism*, 6.

<sup>126</sup> George Anastaplo notes that “abdication” can only be in reference to a king, not Parliament. See Anastaplo, “The Declaration of Independence,” 393, 401.

the legal dismemberment of the old state. Accordingly, Americans themselves sometimes referred to their movement as a substitution, not a revolution.<sup>127</sup> Some scholars even refer to the American Revolution as a secessionist movement or argue that the Americans “picked up a century later where Locke left off” by transforming Locke’s theory into a theory of secession.<sup>128</sup> Indeed, Jefferson used the word “secession” many years later to describe the American separation that happened in 1776.<sup>129</sup> Of course, the idea that Locke’s resistance theory could have supported secession, let alone rebellion, is highly dubious.<sup>130</sup>

Similarly, Jefferson and his colleagues were much more willing than Locke to act on revolutionary principles, rather than just weaponize them as a threat. As theorist Jean Yarbrough writes, “Jefferson stands ready to invoke this natural right... at the first sign of danger. Jealousy and resistance are the watchwords of his social compact.”<sup>131</sup> He was also less afraid of anarchy than Locke or, for that matter, Mayhew; Jefferson thought that public virtue, at least for a time, would remain during a revolutionary period even without an official government.<sup>132</sup> As illustrated by the example of the Native Americans, the state of nature, for him, was not

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<sup>127</sup> Williams, “The Constitutional Right to Conservative Revolution,” *Harvard Civil Rights-Civil Liberties Law Review* 32, no. 2 (Summer 1997), 428.

<sup>128</sup> For the argument that Americans turned Locke’s theory into a “separationist” principle, see Steven Yates, “When Is Political Divorce Justified?,” in *Secession, State, and Liberty*, ed. David Gordon (New York: Routledge, 2017), 48-51. For examples of the argument that the American Revolution is actually more aptly termed a secession, see Mark Hagopian, *The Phenomenon of Revolution* (New York: Dodd, Mead & Company, 1974), 34; Christopher Wellman, “A Defense of Secession and Political Self-Determination,” *Philosophy & Public Affairs* 24, no. 2 (Spring 1995), 165.

<sup>129</sup> Donald Livingston, “The Secession Tradition in America,” in *Secession, State, and Liberty*, ed. David Gordon (New York: Routledge, 2017), 2.

<sup>130</sup> Certainly, most scholars view secession as fundamentally separate from Locke’s doctrine, though other early modern thinkers, including Grotius and Hobbes, considered something akin to secession, albeit without using that term. See Harry Beran, “A Liberal Theory of Secession,” *Political Studies* 32, no. 1 (March 1984), 22. However, there are a handful of theorists who try to stretch Locke’s theory of dissolution into a secessionist doctrine. See Ward, “Thomas Hobbes and John Locke on a Liberal Right of Secession,” *Political Research Quarterly* 70, no. 4 (December 2017), 880-886; Margaret Moore, “The Self-Determination Principle and the Ethics of Secession,” introduction to *National Self-Determination and Secession* (Oxford, UK: Oxford University Press, 2003), 5.

<sup>131</sup> Jean Yarbrough, “Thomas Jefferson and the Social Compact,” in *The American Founding and the Social Compact*, ed. Ronald Pestritto and Thomas West (Lanham, MD: Lexington Books, 2003), 149.

<sup>132</sup> *Ibid.*, 151.

necessarily pre-social, just pre-political.<sup>133</sup> And he believed that Americans were particularly well-suited to engage responsibly in actions that Locke would term rebellion; in contrast to Europeans, who Jefferson thought were “habituated from their infancy to passive submission of body and mind,” Americans had a distinct revolutionary sense — they were “the voice of justice,” in the words of the Declaration.<sup>134</sup> Detractors of these principles thought, as Locke likely would have, that Jefferson’s principles dangerously encouraged the people to “run into anarchy.”<sup>135</sup> But even at the risk of encouraging constant rebellion, Jefferson stuck to the idea that the legitimacy of revolutions comes purely from their natural justification, not their militaristic chances of success.<sup>136</sup>

To cap off this narrative, I ought to return to the question of duty and right. The Declaration does indicate, after all, that “throwing off” government can be both a “right” and a “duty.” This is not a duty of the sort that Calvin might describe, though. In essence, the Declaration presents a theory that provides for a true right of revolution, and then offers an example of the material conditions that might render the invocation of this right a duty — a duty to fellow citizens and to the laws of nature, though, not God.<sup>137</sup> And even then, it is not a true obligation; the Declaration merely says that oppression “impel[led]” them to revolt. As Danielle Allen notes, the word “impel” clearly indicated that the Founders were pushed towards revolution and that they, reluctantly, revolted for good reasons, but it also makes clear that they believed they had a choice to do so.<sup>138</sup> Indeed, as Paine later wrote pithily in reference to the

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<sup>133</sup> Zuckert, “Thomas Jefferson on Nature and Natural Rights,” 149.

<sup>134</sup> Jefferson, “To John Adams (Monticello, September 4, 1823),” in *The Works of Thomas Jefferson*, ed. Paul Leicester Ford (New York: G.P. Putnam’s Sons, 1905), 12:310.

<sup>135</sup> Alexander Hamilton, “Letter to John Jay (November 26, 1775),” in *The Political Writings of Alexander Hamilton, 1769–1789*, ed. Carson Holloway and Bradford Wilson (Cambridge, UK: Cambridge University Press, 2017), 101.

<sup>136</sup> Gangarella, “The Last Resort: The Right of Resistance in Situations of Legal Alienation,” 13.

<sup>137</sup> Adler and Gorman, *The American Testament*, 21.

<sup>138</sup> Allen, *Our Declaration: A Reading of the Declaration of Independence in Defense of Equality*, 115-116.

Revolution, “all was choice, and every man reasoned for himself.”<sup>139</sup> In sum, the Declaration posits that, while revolution must not be needlessly invoked, it can also be voluntarily invoked, with, of course, due prudence and caution, in circumstances that do not meet Locke’s requirements in terms of severity. The right of revolution is truly a *right* (in the voluntary sense of the word) only in the American tradition.

This brings me back, in conclusion, to the *Second Treatise*. If the Declaration and the *Second Treatise* really espouse such different political theories, why, then, did the Americans reuse Locke’s language so extensively? Admittedly, the comparison between the *Second Treatise* and the Declaration of Independence is not an entirely fair one; Jefferson had political, strategic incentives to construct a radical right of revolution, while the *Second Treatise* was mostly just an intellectual exercise — a “sport,” as historian Daniel Rodgers’ writes.<sup>140</sup> Still, the differences in meaning are not only due to differing intent. In my view, Americans cited Locke extensively for the same reason that they intentionally called themselves Whigs and often insisted that they were acting in the spirit of the Glorious Revolution: to steep themselves in a venerated tradition and, above all, to downplay their radicalism.<sup>141</sup> In reality, examination of the commonplace books of both leaders and regular patriots shows that Locke was understood poorly, if at all.<sup>142</sup> The fact that both Loyalists and radicals cited Locke with equal frequency and fervor only further proves this point.<sup>143</sup> Jefferson mangled Locke’s theory so much that despite its surface-level homages to Locke, American resistance theory ultimately became incomprehensible to British thinkers and politicians, the true Lockean.

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<sup>139</sup> Paine, *Letter addressed to the abbe Raynal on the affairs of North-America* (Boston: Edes & Sons, 1782), 18.

<sup>140</sup> Rodgers, *Contested Truths: Keywords in American Politics Since Independence*, 52.

<sup>141</sup> Zuckert, *Natural Rights and the New Republicanism*, 5. On American homages to the “revolution principles” of the Glorious Revolution, see Kathleen Wilson, “Inventing Revolution: 1688 and Eighteenth-Century Popular Politics,” *Journal of British Studies* 28, no. 4 (October 1989), 383.

<sup>142</sup> Handlin and Handlin, “Who Read John Locke? Words and Acts in the American Revolution,” 549.

<sup>143</sup> Edelstein, *On the Spirit of Rights*, 166.

As Arendt writes, the American Revolution “was played in [its] initial stages by men who were firmly convinced they would do no more than restore the old order of things... they pleaded in all sincerity that they wanted to revolve back to old times.” But “the men who started ‘the restoration’ were the same men who began and finished the Revolution,” an entirely different type of political activity.<sup>144</sup> Arendt says that this evolution was somewhat of an accident, and in terms of political attitudes about England, she is probably right. But, as I have hopefully demonstrated, the corresponding philosophical shifts were far from unintentional. American resistance theory was slowly and deliberately built over at least 15 years, because neither Locke’s theory nor, as some just war theorists have shown, the dominant principles of international law fit the Founders’ deeply-held beliefs and needs.<sup>145</sup> Jefferson’s Declaration of Independence marks a final stage of sorts in this intellectual revolution, but, as I examine in the final chapter, the application of these culminating principles after 1776 was far from static.

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<sup>144</sup> Arendt, *On Revolution*, 44.

<sup>145</sup> For more on the application of just war theory to the American Revolution, see John Keown, “America’s War for Independence: Just or Unjust?,” *Journal of Catholic Social Thought* 6, no. 2 (Summer 2009), 304.

## CHAPTER FOUR

In her classic study *On Revolution*, Arendt makes a provocative observation about a possible paradox inherent to revolutions: “the spirit of revolution contains two elements which to us seem irreconcilable and even contradictory... the concern with stability and the spirit of the new.”<sup>1</sup> In other words, the long-term goal of revolutionaries, namely to create a stable, durable, and superior new form of government, is at direct odds with the chaotic, popular, and unconstitutional act of revolting. Arendt is certainly not alone in this pessimism; a whole group of theorists holds that “constitutionalizing revolution” is both completely impossible and utterly pointless.<sup>2</sup> Perhaps led by Sheldon Wolin and, separately, postmodernist “agonists,” such theorists think that this problem is irreconcilable and not just American, but universal.<sup>3</sup> Quite simply, as Wolin puts it, the end of a revolution necessarily marks the beginning of “the attenuation” of the people’s power.<sup>4</sup> The collective people, who take an active role during times of revolution, logically become a passive body during times of constitutional stability, thus “digging their own graves,” in legal theorist Ulrich Preuss’ words.<sup>5</sup> This view is present beyond high theory, too; as one 1920s Indiana high school textbook reads: “the right of revolution does not exist in America. One of the many meanings of democracy is that it is a form of government in which the right of revolution has been lost.”<sup>6</sup>

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<sup>1</sup> Arendt, *On Revolution*, 225.

<sup>2</sup> For an example of the idea that constitutionalizing revolution is useless for both revolutionaries and the government, see Cass Sunstein, “Constitutionalism and Secession,” *The University of Chicago Law Review* 58, no. 2 (Spring 1991), 666.

<sup>3</sup> On the postmodernist view of this problem, see James Wiley, “Sheldon Wolin on Theory and the Political,” *Polity* 38, no. 2 (April 2006), 226.

<sup>4</sup> Sheldon Wolin, “Norm and Form: The Constitutionalizing of Democracy,” in *Fugitive Democracy*, ed. Nicholas Xenos (Princeton, NJ: Princeton University Press, 2016), 77. For Wolin’s views on the “attenuation of popular participation” after the American Revolution in particular, see Wolin, “Constitutional Order, Revolutionary Violence, and Modern Power: An Essay of Juxtapositions,” in *Fugitive Democracy*, 434.

<sup>5</sup> Ulrich Preuss, “Constitutional Powermaking for the New Polity: Some Deliberations on the Relations between Constituent Power and the Constitution,” *Cardozo Law Review* 14, nos. 3-4 (January 1993), 641.

<sup>6</sup> As quoted in Rodgers, “Rights Consciousness in American History,” 271.



If American political leaders shared such a view 200 years prior to its formulation in Arendt's work, they certainly did not show it at first. After independence, they rhetorically maintained the primacy of the people as what James Madison would call the "the only legitimate fountain of power," that is, they continued to busy themselves with the task of constitution-writing but developed the model of the constituent convention, merging the rule of law with popular sovereignty.<sup>7</sup> By institutionalizing a popular process for ratification, the people would remain, in James Wilson's words, "superior to our constitutions" as a "supreme, absolute, and uncontrollable" power which could change such constitutions "whenever and however they please."<sup>8</sup> A majority of the state constitutions written between 1776 and 1787 echoed the Declaration's resistance rhetoric, too, usually still by copying the "alter or abolish" phrase to further codify and perpetuate constituent power.<sup>9</sup>

Interestingly, though, neither the Articles of Confederation in 1781 nor the Constitution in 1787 included any Declaration-esque language about the people's right to "alter or abolish."<sup>10</sup> The reasons for this might be perfectly benign. Some scholars have suggested that the political leanings of the delegates at the Constitutional Convention were simply less radical than at the Second Continental Congress; others note that the principles of popular sovereignty in the Constitution may have obliquely implied the right of revolution.<sup>11</sup> But it seems to me, as well as

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<sup>7</sup> James Madison, "The Federalist, #49," in *The Federalist Papers*, ed. Lawrence Goldman (Oxford, UK: Oxford University Press, 2008), 250. See also Jordan Paust, "Human Right to Participate in Armed Revolution and Related Forms of Social Violence: Testing the Limits of Permissibility," *Emory Law Journal* 32, no. 2 (Spring 1983), 551-552.

<sup>8</sup> James Wilson, "Remarks of James Wilson in the Pennsylvania Convention to Ratify the Constitution of the United States, 1787," in *Collected Works of James Wilson*, ed. Kermit Hall and Mark David Hall (Indianapolis, IN: Liberty Fund, 2007), 1:191.

<sup>9</sup> According to Leslie Friedman Goldstein, indications of the right of revolution can be found in eight of the 14 state constitutions written before the Constitution. See Goldstein, "Popular Sovereignty, the Origins of Judicial Review, and the Revival of Unwritten Law," 58.

<sup>10</sup> Marjorie Kornhauser, "Legitimacy and the Right of Revolution: The Role of Tax Protests and Anti-Tax Rhetoric in America," *Buffalo Law Review* 50, no. 3 (Fall 2002), 842.

<sup>11</sup> Hayes, "Revolution as a Constitutional Right," 20.

many historians of political thought, that the delegates intentionally left “revolutionary principles” out of the Constitution, probably because they were nervous about the potential effects of revolutionary language on the unity of the fledgling country. Shays’ Rebellion in 1786, among other tumultuous events, alarmed both citizens and leaders and led many to believe that the right of revolution was a risky principle for the country’s future. Even former radicals like Richard Henry Lee and Samuel Adams worried that America would be ruined by the “horrors of anarchy” if rampant belief in the right of revolution was not quelled.<sup>12</sup> As Maier writes, “peace and permanence emerged from decades of fundamental change” because of widespread desire to consolidate the successes of the Revolution.<sup>13</sup>

The result was a Constitution which was intended to be, in the words of one historian, an “invisible fence” against rebellion.<sup>14</sup> Most of the Framers did not deny the philosophical verity of the right of revolution, but they sought to temper its practice. Alexander Hamilton, for instance, held theoretically in one *Federalist Paper* that revolution was “an original right of self-defense” and “paramount to all positive government,” but denied the right of separation in another, claiming that the states, as parties to compact, could never be granted “the right to revoke that compact.”<sup>15</sup> Similarly, Madison insisted that the right of revolution was the backbone of the American project but worried that even an amendment clause might be too destabilizing.<sup>16</sup> Thus,

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<sup>12</sup> Richard Henry Lee, “To George Washington from Henry Lee, Jr., 8 September 1786,” Founders Online; Susan Tiefenbrun, “Civil Disobedience and the U.S. Constitution,” *Southwestern University Law Review* 32, no. 4 (2003), 679.

<sup>13</sup> Maier, “Popular Uprisings and Civil Authority in Eighteenth-Century America,” *The William and Mary Quarterly* 27, no. 1 (January 1970), 35.

<sup>14</sup> Jeremy Engels, “The Trouble with ‘Public Bodies’: On the Anti-Democratic Rhetoric of The Federalist,” *Rhetoric and Public Affairs* 18, no. 3 (Fall 2015), 506.

<sup>15</sup> Hamilton, “The Federalist, #28,” in *The Federalist Papers*, ed. Lawrence Goldman (Oxford, UK: Oxford University Press, 2008), 136; Hamilton, “The Federalist, #22,” in *The Federalist Papers*, ed. Lawrence Goldman (Oxford, UK: Oxford University Press, 2008), 113. For more on Hamilton’s attitudes on the right of revolution and the Constitution, see James Read, *Power Versus Liberty: Madison, Hamilton, Wilson, and Jefferson* (Charlottesville, VA: University of Virginia Press, 2000), 75-76, 85-86.

<sup>16</sup> Harris Mirkin, “Rebellion, Revolution, and the Constitution: Thomas Jefferson’s Theory of Civil Disobedience,” *American Studies* 13, no. 2 (Fall 1972), 61.

the right of revolution was proceduralized, constrained, and certainly weakened, given the small number of people with the franchise. The designers of the new government created the process to permit “revolution by amendment,” and they purposefully made amendments difficult to pass in order to make them akin to serious revolutions, not just expressions of passing whim.<sup>17</sup> Judicial review, devised in 1782 and then cemented in American jurisprudence in *Marbury v. Madison*, clearly had the same intent.<sup>18</sup> Madison’s proposal in *Federalist Paper* #41 perhaps best sums up this attitude: “a system of government meant for duration ought to contemplate these revolutions and be able to accommodate itself to them.”<sup>19</sup> In other words, while revolution was inevitable and not always undesirable, the Constitution needed to account for revolutionary change without allowing it to abolish the Constitution entirely.

For Arendt, this is the inevitable but great failing of the American Founding. In her scathing assessment of the American Constitution, Arendt writes: “it was the Constitution itself, the greatest achievement of the American people, which eventually cheated them of their proudest possession,” referring to their conception of popular sovereignty and their revolutionary impulse.<sup>20</sup> But not all theorists are this pessimistic. Since *On Revolution*’s publication in 1963, and especially since the post-Cold War 1990s, the question of revolutionary constitutionalism has come back into vogue for political theorists.<sup>21</sup> The problem is still defined in rather-18th

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<sup>17</sup> James Iredell, at the North Carolina ratifying convention, as quoted in Mason, “America’s Political Heritage: Revolution and Free Government — A Bicentennial Tribute,” 211. For more on the philosophy of amendments, especially in the thought of Madison, see also Stephen Griffin, “Constituent Power and Constitutional Change in American Constitutionalism,” in *The Paradox of Constitutionalism: Constituent Power and Constitutional Form*, ed. Martin Loughlin and Neil Walker (Oxford, UK: Oxford University Press, 2007), 50.

<sup>18</sup> Ball, *The Historical Origins of Judicial Review, 1536-1803*, 305-306.

<sup>19</sup> Madison, “The Federalist, #41,” in *The Federalist Papers*, ed. Lawrence Goldman (Oxford, UK: Oxford University Press, 2008), 206. However, two essays written by “Publius” seem to concede that if orderly resistance did not work, armed resistance to the government might be justifiable in extreme circumstances. For a summary of these arguments, see Saul Cornell, “Mobs, Militias, and Magistrates: Popular Constitutionalism and the Whiskey Rebellion,” *Chicago-Kent Law Review* 81, no. 3 (2006), 889-890.

<sup>20</sup> Arendt, *On Revolution*, 242.

<sup>21</sup> James Muldoon, “Arendt’s Revolutionary Constitutionalism: Between Constituent Power and Constitutional Form,” *Constellations* 23, no. 4 (December 2016), 596.

century-esque terms: how can the people's constituent power, that is, their capacity to create new constitutions or "alter or abolish" an existing regime, be preserved within the framework of a constitutional democracy? Notwithstanding those who agree with Wolin about irreconcilability, I see two general groups of thought, which require but brief delineation for the purposes of this chapter.

One set of legal and political theorists believe that, in spite of the Constitution's ultimate supremacy, a concordance between the right of revolution and stable politics can be found. Many imagine "constitutional moments" or "constituent moments," rare events of "higher lawmaking" which are, in Bruce Ackerman's words, "successful exercises of revolutionary reform." In such moments, the Constitution itself is not changed, but the people flex their constituent power to transform institutions and revise the "fundamental values that are usually taken as the constitutional baseline."<sup>22</sup> Ackerman only sees three such moments in American history — the ratification of the Constitution, the passing of the 13th and 14th amendments, and the establishment of the New Deal — but some reviewers of his work add other examples, or even hold, as Wood does, that such moments are infinite, since "the changes have been ongoing, incremental, and often indeliberate."<sup>23</sup> In essence, this camp sees a series of mini-American Revolutions demanded by the people throughout American history and argues that such moments have kept the right of revolution alive.

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<sup>22</sup> Bruce Ackerman, *We the People* (Cambridge, MA: Harvard University Press, 1991), 1:19, 1:59. On "constituent moments," see Frank, *Constituent Moments: Enacting the People in Postrevolutionary America*, esp. 8-9.

<sup>23</sup> Wood, "The Founders Rule!," *The New Republic*, November 7, 2005. Furthermore, Michael Klarman, for example, proposes that the Jacksonian states' rights movement and the 1960s civil rights movement fit Ackerman's criteria, while Walter Burnham claims that the "Reagan Revolution" could constitute a fourth "constitutional moment." See Klarman, "Constitutional Fact/Constitutional Fiction: A Critique of Bruce Ackerman's Theory of Constitutional Moments," review of *We the People: Foundations*, *Stanford Law Review* 44, no. 3 (February 1992), 769; Burnham, "Constitutional Moments and Punctuated Equilibria: A Political Scientist Confronts Bruce Ackerman's 'We the People,'" *The Yale Law Journal* 108, no. 8 (June 1999), 2273-2277.

In contrast, another group of scholars thinks that the right of revolution is codified: the Founders intentionally “wrote a constitution that elaborated a series of intermediate, quasi-revolutionary steps that would become operational before the ‘right of revolution’ could be utilized,” while implicitly acknowledging that a violent right of revolution “re-emerges” when these peaceful alternatives do not succeed.<sup>24</sup> Akhil Amar, for instance, holds that constitutional amendment clauses do not preempt the “people themselves, acting apart from ordinary government, from exercising their legal right to alter or abolish government.”<sup>25</sup> Similarly, numerous scholars view the doctrine of judicial review as a “domestication” of the right of revolution, a method by which the people can defend themselves against arbitrary or despotic government.<sup>26</sup> Some simply see protections for constituent power in the Bill of Rights, especially in its Second, Ninth and Tenth amendments.<sup>27</sup>

It is beyond the scope of this thesis to substantively address the normative merits of these two positions, which is essentially a question of constitutional law, anyway. But historically, it seems to me that all three positions described above have been persuasive to different American thinkers at various moments of American history. In fact, in my view, Arendt’s paradox is either distinctly problematic or unusually easy to solve in the American context, depending on the side one takes. In defense of the latter, according to Jan Komarek, among others, the idea of a right of revolution, or more specifically the right to violate the constitution, “sounds odd” in Europe but not in America, since Americans perceive themselves to be their Constitution’s authors.<sup>28</sup> But the

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<sup>24</sup> Mirkin, “Judicial Review, Jury Review, and the Right of Revolution against Despotism,” *Polity* 6, no. 1 (Fall 1973), 39.

<sup>25</sup> Amar, “The Consent of the Governed: Constitutional Amendment outside Article V,” 459.

<sup>26</sup> Rubin, “Judicial Review and the Right to Resist,” esp. 87-91. See also Mirkin, “Judicial Review, Jury Review, and the Right of Revolution against Despotism.”

<sup>27</sup> William Partlett, “The American Tradition of Constituent Power,” *International Journal of Constitutional Law* 15, no. 4 (October 2017), 956.

<sup>28</sup> Jan Komarek, “Constitutional Revolutions and the Constituent Power: A Reply to Mark Tushnet,” *International Journal of Constitutional Law* 13, no. 4 (October 2015), 1055-1056.

flip side of this very coin is the argument that, as one delegate at the Philadelphia Convention forwarded, “tumultuous” revolutionary activity became “unnecessary” and “improper” once the Constitution, the first to be established by a truly popular, representative body, was ratified.<sup>29</sup>

Firstly, this is all strong evidence for my thesis that the American right of revolution, especially because of its voluntariness and broad justification, has a unique place in the massive history of early modern resistance doctrine. But more importantly, it is also cause for further exploration. A study of the American right of revolution seems rather incomplete without some consideration of the intersection between the right of revolution and the Constitution.

Accordingly, in this brief, concluding chapter, with a far less comprehensive lens than in previous chapters, I consider some ways that American thinkers from 1787 to the present tried to solve the problem posed by Arendt. In the course of doing so, I hope to demonstrate why studying what is an otherwise arcane question about Locke and the early Americans might matter to a more general audience.

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Arendt mostly blames the “failure” of the Revolution on her claim that American “interest in political thought and theory dried up almost immediately after the [Revolution] had been achieved.”<sup>30</sup> While I do not necessarily dispute her overall conclusion, I think this claim is a harsh overgeneralization. Even with Locke out of the picture — his citation rates continued to decline into the 1780s and never recovered — political thinkers wrestled endlessly with the right of revolution, and colonial attitudes about resistance held their own against emerging

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<sup>29</sup> Thomas Tudor Tucker, writing in 1784, as quoted in Wood, *The Creation of the American Republic, 1776-1787*, 343.

<sup>30</sup> Arendt, *On Revolution*, 219.

constitutional principles.<sup>31</sup> Yes, revolutionary sentiment became unpopular through the final years of the 18th century, and many American politicians attempted to downplay the radicalism and universalism of 1776.<sup>32</sup> Grassroots rebellions in Virginia and Pennsylvania, which were explicitly based on the philosophy of the Revolution, were put down summarily, and opposition to Paine, whose thought was increasingly viewed as a threat to law and order, grew.<sup>33</sup> For anti-revolutionaries, the right of revolution did indeed turn into a majoritarian principle, hard to distinguish from the regular procedures of democracy. But this was far from a uniform position; James Wilson wrote in 1791, for example, that the “revolution principle certainly is, and certainly should be taught as a principle of the constitution of the United States, and of every State in the Union,” leading some scholars to claim that he believed in the right of minority revolution, too.<sup>34</sup> And Jefferson, who was outspoken about his dislike for the final draft of the Constitution, accusing delegates of unnaturally suppressing the possibility of revolution with the document, continued to support the legitimacy of minority rebellions as a form of moral persuasion.<sup>35</sup> He wrote the Kentucky Resolutions in 1798 to threaten secession and was

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<sup>31</sup> Lutz, “The Relative Influence of European Writers on Late Eighteenth-Century American Political Thought,” 192-193. For more on Locke’s relevance in 19th century America (especially via his educational and moral theory), see Curti, “The Great Mr. Locke: America’s Philosopher, 1783-1861,” *The Huntington Library Bulletin* 11 (April 1937).

<sup>32</sup> Michael Kammen, *A Season of Youth: The American Revolution and the Historical Imagination* (Ithaca, NY: Cornell University Press, 1978), 36-41. See also Philip Detwiler, “The Changing Reputation of the Declaration of Independence: The First Fifty Years,” *The William and Mary Quarterly* 19, no. 4 (October 1962), 559-560; Douzinas, “The ‘Right to the Event’: The Legality and Morality of Revolution and Resistance,” *Metodo: International Studies in Phenomenology and Philosophy* 2, no. 1 (2014), 151-152.

<sup>33</sup> George Connor, “The Politics of Insurrection: A Comparative Analysis of the Shays’, Whiskey, and Fries’ Rebellions,” *The Social Science Journal* 29, no. 3 (1992), 273-274; Simon Newman, “Paine, Jefferson, and Revolutionary Radicalism in Early National America,” in *Paine and Jefferson in the Age of Revolutions*, ed. Simon Newman and Peter Onuf (Charlottesville, VA: University of Virginia Press, 2013), 72. See also Paul Thompson, “Is There Anything ‘Legal’ About Extralegal Action? The Debate Over Dorr’s Rebellion,” *New England Law Review* 36, no. 2 (Winter 2002), 393-395.

<sup>34</sup> James Wilson, “Lectures on Law, Chapter I,” in *Collected Works of James Wilson*, ed. Kermit Hall and Mark David Hall (Indianapolis, IN: Liberty Fund, 2007), 1:443. See also Paust, “Human Right to Participate in Armed Revolution and Related Forms of Social Violence: Testing the Limits of Permissibility,” 553 (footnote #24).

<sup>35</sup> Jefferson, “To William Stephens Smith (Paris, November 13, 1787),” in *The Works of Thomas Jefferson*, ed. Paul Leicester Ford (New York: G.P. Putnam’s Sons, 1904), 5:362. See also Matthews, *The Radical Politics of Thomas Jefferson*, 77.

unperturbed by movements like the Whiskey Rebellion.<sup>36</sup> Moreover, he even supported slave rebellions on the premise that slaves' "insurrectionary spirit" would "rise more formidable after every defeat" until slavery was finally abolished.<sup>37</sup> American political thinkers were, in short, conflicted about the amount of resistance that could be safely permitted in a stable republic.

The first few decades of the 19th century saw a renewal of interest in the Declaration's philosophy and, with it, many ambitious, mainstream statements of the right of revolution.<sup>38</sup> Politically, secession was a constant threat in the early republic, proposed in 1807 over the Embargo Act, in 1812 over the War, in 1815 at the Hartford Convention, and at a variety of other instances before, of course, the nullification crisis and the Civil War.<sup>39</sup> Most states rewrote their constitutions in the 1810s and 1820s because of popular desire, and many state constitutional framers, including James Monroe, insisted that "alter or abolish" were necessary and "practical provisions."<sup>40</sup> Meanwhile, new states on the frontier, including Ohio, Texas, and Arkansas, drafted new constitutions which featured explicit protections of the right of revolution.<sup>41</sup> Philosophically, Henri David Thoreau took up Jefferson's mantle as America's most prominent guardian of the right of revolution; he defended "the right to refuse allegiance to, and to resist, the government, when its tyranny or its inefficiency is great" and called out his contemporaries' hypocrisy for denying it.<sup>42</sup> Other notable abolitionists, including Charles Sumner and William

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<sup>36</sup> See Mirkin, "Rebellion, Revolution, and the Constitution: Thomas Jefferson's Theory of Civil Disobedience," 64-70.

<sup>37</sup> Jefferson, "To William A. Burwell (Washington, January 28, 1805)," in *Jefferson: Political Writings*, ed. Joyce Appleby and Terence Ball (Cambridge, UK: Cambridge University Press, 1999), 491.

<sup>38</sup> On the 19th-century reception of the Declaration, see Armitage, "The Declaration of Independence and International Law," *The William and Mary Quarterly* 59, no. 1 (January 2002), 40.

<sup>39</sup> See Thomas DiLorenzo, "Yankee Confederates: New England Secession Movements Prior to the War Between the States," in *Secession, State, and Liberty*, ed. David Gordon (New York: Routledge, 2017).

<sup>40</sup> James Henretta, "Foreword: Rethinking the State Constitutional Tradition," *Rutgers Law Journal* 22, no. 4 (Summer 1991), 827-829; Fritz, "Out from under the Shadow of the Federal Constitution: An Overlooked American Constitutionalism," *Rutgers Law Journal* 41, no. 4 (Summer 2010), 873-875.

<sup>41</sup> Douzinas, "The 'Right to the Event': The Legality and Morality of Revolution and Resistance," 152 (footnote #3).

<sup>42</sup> Henry David Thoreau, *On the Duty of Civil Disobedience* (London: The Simple Life Press, 1903), 11.



Lloyd Garrison, defended the right of revolution, too, often within the context of pleas for a Northern secession.<sup>43</sup>

But scholars highlight two revolutionary movements of the mid-19th century that would seriously test the strength of the right of revolution. First, Thomas Wilson Dorr led poor, disenfranchised Rhode Islanders in a test of constituent power, calling an extra-legal constitutional convention in 1841. By 1842, Rhode Island had two competing state constitutions, and though a constitutional compromise was found by 1843, one Rhode Islander appealed to his constituent power at the Supreme Court, arguing that the “alter or abolish” provision gave him the right to only obey the revolutionary constitution if he so wished.<sup>44</sup> Many Whig Northerners interpreted this as a real threat to the Union. Some, especially members of the fledgling Law and Order Party, “panicked,” in the words of historian Mark Hulliung, quickly repudiating the relevance of Jefferson’s revolutionary principles to their time.<sup>45</sup> The case, according to its two dominant interpreters, sent 18th-century ideas about peaceful revolution, already considered outdated, further into “disrepute” in the American courts.<sup>46</sup>

The true knock-out punch to the American right of revolution, at least as formulated by Jefferson, came two decades later. The Civil War — sometimes rhetorically referred to as the Second American Revolution — was justified by the South with an explicit repurposing of Jefferson’s right of revolution, and, disproving Jefferson’s predictions that a secession based on

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<sup>43</sup> Pressly, “The concept of the ‘right of revolution’ in the United States in historical perspective: from the Puritans to the present”; Livingston, “The Secession Tradition in America,” 11.

<sup>44</sup> Partlett, “The American Tradition of Constituent Power,” 972-975. See also Thompson, “Is There Anything ‘Legal’ About Extralegal Action? The Debate Over Dorr’s Rebellion.”

<sup>45</sup> Hulliung, *The Social Contract in America: From the Revolution to the Present Age*, 72-73; Fritz, *American Sovereigns: The People and America’s Constitutional Tradition Before the Civil War*, 268-269. See also Henretta, “Foreword: Rethinking the State Constitutional Tradition,” 828.

<sup>46</sup> For a review of these two arguments, see Fritz, “The American Constitutional Tradition Revisited: Preliminary Observations on State Constitution-Making in the Nineteenth-Century West,” *Rutgers Law Journal* 25, no. 4 (Summer 1994), 990-991.

the Declaration would be a minor affair, akin to “quarreling lovers,” it led to the bloodiest war in American history.<sup>47</sup> Overlooking the Declaration’s emphasis on equality, the Southern rebels fundamentally saw their movement as a continuation of a justified, noble tradition begun by the revolutionaries of 1776. They issued their own state declarations of independence from the Union, name-dropped figures like Patrick Henry and places like Bunker Hill in their speeches, and used Thomas Jefferson’s image on their postage stamps; the homages to the American Revolution were rather unsubtle.<sup>48</sup> As one Alabama newspaper queried along the same lines, “were not the men of 1776, who withdrew their allegiance from George III and set up for themselves... secessionists?”<sup>49</sup> Even Jefferson Davis, the Confederate president, made the connection to the Founders and the Revolution: “does it become the descendants of those who proclaimed this [right of revolution] as the great principle on which they took their place among the nations of the earth, now to proclaim, if that is a right, it is one which you can only get... by force overcoming force?”<sup>50</sup>

The moral connection was specious, but the logic was nearly impossible to refute. Northerners, not least Abraham Lincoln, were boxed into a philosophical corner. Throughout the 1840s and 1850s, Lincoln had publicly supported the right of revolution; he had supported the European Revolutions of 1848, as did most Americans, and had even invited Hungarian

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<sup>47</sup> Jefferson, in an 1820 letter to Richard Rush, as quoted in James Falkowski, “Secessionary Self-Determination: A Jeffersonian Perspective,” *Boston University International Law Journal* 9, no. 2 (Fall 1991), 216.

<sup>48</sup> Emory Thomas, “Jefferson Davis and the American Revolutionary Tradition,” *Journal of the Illinois State Historical Society* 70, no. 1 (February 1977), 4-5; Robert Durden, “The American Revolution as Seen by Southerners in 1861,” *Louisiana History: The Journal of the Louisiana Historical Association* 19, no. 1 (Winter 1978), 34-38. See also Kammen, *A Season of Youth: The American Revolution and the Historical Imagination*, 57-58.

<sup>49</sup> As quoted in James McPherson, *Abraham Lincoln and the Second American Revolution* (Oxford, UK: Oxford University Press, 1991), 25.

<sup>50</sup> Jefferson Davis, *The Rise and Fall of the Confederate Government* (New York: D. Appleton and Company, 1881), 1:618. See also Herman Belz, “Lincoln’s Construction of the Consent Principle and the Right of Revolution in the Secession Crisis,” in *Lincoln’s Legacy of Leadership*, ed. George Goethals and Gary McDowell (New York: Palgrave Macmillan, 2010), 43-44.

revolutionary leaders to celebrations in Springfield and Washington.<sup>51</sup> In one 1848 speech, using words quite reminiscent of the Founders, he declared that “any people anywhere, being inclined and having the power, have the right to rise up and shake off the existing government.”<sup>52</sup> He would seemingly restate this position in 13 years later in his First Inaugural Address: “whenever [a people] shall grow weary of the existing government, they can exercise their constitutional right of amending it, or their revolutionary right to dismember, or overthrow it.”<sup>53</sup> But the fate of the Union rested on his ability to draw a feasible distinction between the revolutionary impulses of Thomas Jefferson and Jefferson Davis.

In the end, Lincoln provided a tedious litany of arguments against the legitimacy of the Southern secession — some scholars count ten distinct arguments, while others count eight.<sup>54</sup> But the only real solution was to redefine the right of revolution entirely. Lincoln drew a distinction between revolution and secession — the former was (sometimes) legitimate, while the latter was incomprehensible — that the Founders probably would have found vacuous.<sup>55</sup> Then, even more contrary to Jefferson’s principles, Lincoln made a simple majoritarian argument: “the rule of a minority, as a permanent arrangement, is wholly inadmissible... rejecting the majoritarian principle [leads to] anarchy, or despotism in some form.”<sup>56</sup>

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<sup>51</sup> Pressly, “Bullets and Ballots: Lincoln and the ‘Right of Revolution,’” *The American Historical Review* 67, no. 3 (April 1962), 651-652. According to Merle Curti, the revolutions of 1848 were celebrated in most American cities as a victory for republican forms of government. See Curti, “The Impact of the Revolutions of 1848 on American Thought,” *Proceedings of the American Philosophical Society* 93, no. 3 (June 1949).

<sup>52</sup> Abraham Lincoln, “Speech in the U.S. House of Representatives on the War with Mexico,” in *Speeches and Writings, 1832-1858*, ed. Don Fehrenbacher, vol. 1, *Abraham Lincoln* (New York: Library of America, 1989), 167.

<sup>53</sup> Lincoln, “First Inaugural Address,” in *Speeches and Writings, 1859-1865*, ed. Don Fehrenbacher, vol. 2, *Abraham Lincoln* (New York: Library of America, 1989), 222.

<sup>54</sup> Christopher Wellman counts ten — “two against secession of any stripe, one against withdrawing from a republic, and seven directed specifically against the South’s claim to independence” — while Philip Abbott sees eight. See chap. 4 of Wellman, *A Theory of Secession* (Cambridge, UK: Cambridge University Press, 2005), Abbott, “The Lincoln Propositions and the Spirit of Secession,” in *Theories of Secession*, ed. Percy Lehning (London: Routledge, 1998), esp. 184.

<sup>55</sup> For more on Lincoln’s distinction, see David Zarefsky, “Philosophy and Rhetoric in Lincoln’s First Inaugural Address,” *Philosophy & Rhetoric* 45, no. 2 (2012), 171-172.

<sup>56</sup> Lincoln, “First Inaugural Address,” 220.

Fundamentally, this interpretation of the right of revolution resembles the *Second Treatise* more than the Declaration. In my view, Lincoln, intentionally and out of pure necessity, misread the revolutionary principles of the Declaration in prioritizing its principles of equality.

According to the simple, even clichéd, historical narrative of the Jeffersonian right of revolution, most Americans believed strongly in the right of revolution before the Civil War, but they learned a painful lesson about its dangers in the 1860s and, after it was wielded by the secessionists, never returned to it. Indeed, it is tempting to say that the right of revolution, even in its post-Constitution form, is, more or less, dead in America and has been for a century. But like most oversimplifications of the sort, this is probably only partially true. Yes, as legal theorist Harrop Freeman notes, the Civil War probably cemented Jefferson's place as the last canonical American thinker in favor of a legal right to *violent* revolution.<sup>57</sup> The American vigilante tradition, so widespread in the 19th-century West, lost much of its justification after the 1860s, too.<sup>58</sup> But a brief summary will show that the right of revolution, at least rhetorically, re-emerged in the century after the Civil War in a variety of surprising capacities which have rendered it continually relevant.

State courts and constitutional conventions continued to have a complex relationship with the legal right of revolution. After a Civil War-era hiatus, states returned to revolutionary language, as well as the natural right to the “the pursuit of happiness,” in state constitutions.<sup>59</sup> Colorado's first constitution in 1876, remarkably, provided the people's right to “alter and abolish their constitution,” not just their government, perhaps implying a legal, rather than moral,

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<sup>57</sup> Harrop Freeman, “The Right of Protest and Civil Disobedience,” *Indiana Law Journal* 41, no. 2 (Winter 1966), 239 (footnote #28).

<sup>58</sup> Fritz, “Popular Sovereignty, Vigilantism, and the Constitutional Right of Revolution,” *Pacific Historical Review* 63, no. 1 (February 1994), 66. See also chap. 6 of Brown, *Strain of Violence: Historical Studies of American Violence and Vigilantism*.

<sup>59</sup> For more on the return of “happiness” rhetoric to state constitutions in the late 19th century, see Howard Jones, *The Pursuit of Happiness* (Ithaca, NY: Cornell University Press, 1966), 24-27.

right of revolution; states copied such “alter and abolish” language throughout the late 19th century and as late as Oklahoma’s first constitution in 1912.<sup>60</sup> And though many contemporary legal scholars think that “alter and abolish” provisions were never intended to be enforceable, 19th-century state courts actually disagreed about their enforceability.<sup>61</sup> Pennsylvania’s Supreme Court, for instance, expressly ruled that its constitution legalized the popular right of revolution in 1874, though it justified this position with the argument that the people of the state could not get “dragged” into rebellion or secession against their wishes. Iowa’s Supreme Court, in contrast, ruled exactly the opposite nine years later.<sup>62</sup> Either way, their rhetorical placement was significant; despite the trauma of the Civil War, Reconstruction-era state governments, in Phillip Scott’s words, wanted to “declare in the strongest terms that the government they were framing would never impose its rule on an unwilling citizenry.”<sup>63</sup>

In the early 20th century, the right of revolution found a more prominent position in American political rhetoric under the auspices of Woodrow Wilson’s right of self-determination. Wilson, who later argued for the inclusion of the right of revolution in explicit terms in the Covenant of the League of Nations, campaigned in 1912 on behalf of the Declaration as a “practical document.”<sup>64</sup> As he would write in 1913, he believed that the “foundation” of

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<sup>60</sup> “Constitution of Colorado — 1876,” in *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America*, ed. Francis Thorpe (Washington, DC: Government Printing Office, 1909), 1:475; Fritz, *American Sovereigns: The People and America’s Constitutional Tradition Before the Civil War*, 3153 (footnote #49). On the rhetorical difference between altering and abolishing government and the state constitution, see Peter Suber, *The Paradox of Self-Amendment: A Study of Law, Logic, Omnipotence, and Change* (Bern, CH: Peter Lang Publishing, 1990), 126.

<sup>61</sup> For more on the intended enforceability of “alter and abolish” provisions, see Lutz, *Popular Consent and Popular Control: Whig Political Theory in the Early State Constitutions* (Baton Rouge, LA: Louisiana State University Press, 1980), 61-62; Fritz, “Recovering the Lost Worlds of America’s Written Constitutions,” 272.

<sup>62</sup> Partlett, “The American Tradition of Constituent Power,” 978-979; Kornhauser, “Legitimacy and the Right of Revolution: The Role of Tax Protests and Anti-Tax Rhetoric in America,” 858.

<sup>63</sup> Phillip Scott, “The Right of Revolution: The Development of the People’s Right to Reform Government,” *West Virginia Law Review* 90, no. 1 (Fall 1987), 293.

<sup>64</sup> Robert Johnson, “Article XI in the Debate on the United States’ Rejection of the League of Nations,” *The International History Review* 15, no. 3 (August 1993), 505, 519; Hulliung, *The Social Contract in America: From the Revolution to the Present Age*, 158.

American government was the people's "privilege to alter it at their pleasure, and alter it in any degree."<sup>65</sup> In a speech to Congress five years later on the same topic, he provocatively even insinuated that the South might have had a constitutionally-sound argument for secession.<sup>66</sup> And it was not just Wilson, a known Southern sympathizer, who refurbished the right of revolution with an international focus. Theodore Roosevelt, for instance, gave a well-known speech about "the right of the people to rule." Secretary of State Charles Evans Hughes publicly concurred in astonishingly direct terms a decade later; as he unambiguously stated in a 1923 speech, "we [the United States] recognize the right of revolution."<sup>67</sup>

In the 20th century, the United States Supreme Court also started having moments of flirtation with a legal right of revolution. Mostly, to be fair, it has rejected the legal relevance of a right of revolution within a system "that provides for peaceful and orderly change" and has punished those who attempted to justify their actions with the right of revolution.<sup>68</sup> As one influential Supreme Court decision in 1900 read, "any attempt to revise or adopt a new constitution in any other manner than the one provided in the existing instrument is almost invariably treated as extra-constitutional and revolutionary."<sup>69</sup> But in the process of disavowing violent revolution, both judges and prominent American politicians in the mid-20th century argued that Jefferson's right of revolution could apply to non-violent measures.<sup>70</sup> Justices William Douglas and Hugo Black, among others, officially reasserted in the 1960s the

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<sup>65</sup> Woodrow Wilson, *The New Freedom: A Call for the Emancipation of the Generous Energies of a People* (Garden City, NY: Doubleday, Page & Company, 1913), 243-244.

<sup>66</sup> See Balkin and Levinson, "To Alter or Abolish," 422-423.

<sup>67</sup> Charles Evans Hughes, 1923, as quoted in Marsavelski, "The Crime of Terrorism and the Right of Revolution in International Law," 271.

<sup>68</sup> *Dennis v. United States*, 341 U.S. 494 (1951). See also John Levin, "The Right to Bear Arms: The Development of the American Experience," *Chicago-Kent Law Review* 48, no. 2 (Fall/Winter 1971), 165-166; Sumida, "The Right of Revolution: Implications for International Law and World Order," 132.

<sup>69</sup> *Maxwell v. Dow*, 176 U.S. 581 (1900).

<sup>70</sup> For instance, Senator J. William Fulbright made such a claim at the Pacem in Terris convention in 1965. See Freeman, "The Right of Protest and Civil Disobedience," 239.

fundamental truth that the “right of revolution has been and is part of the fabric of our institutions” in their decisions.<sup>71</sup>

The right of revolution also resurfaced in radical groups’ rhetoric in the 20th century. In its first decades, socialists and communists, especially, looked to the revolutionary principles of the Founders. Notably, Eugene Debs claimed to be inspired by Patrick Henry and Paine.<sup>72</sup> But this strain of thought would culminate with the radicals of the 1960s, who, too, were taken with Paine’s work.<sup>73</sup> The right of revolution became rhetorically fashionable in the New Left movement; the first chapter of a popular 1969 paperback entitled *Revolutionary Quotations from the Thoughts of Uncle Sam*, for example, was a set of quotations on “the Right of Revolution.”<sup>74</sup> Students for a Democratic Society, among other prominent groups of the era, cited the Founders on revolution. African-American thinkers, too, whose tradition of defending the right of revolution stretched back to Frederick Douglass, invoked the right of revolution and constituent power in their attempts to be finally recognized as part of the American “people.”<sup>75</sup> Eldridge Cleaver and Malcolm X, among others, referenced a “higher law than the law of government” in defenses of revolutionary action and justified their philosophy with examples of American revolutionaries such as George Washington and Patrick Henry, who they admired.<sup>76</sup> Truman Nelson, another prominent Civil Rights figure, wrote a book simply entitled *The Right of*

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<sup>71</sup> *Scales v. United States*, 367 U.S. 203 (1961).

<sup>72</sup> Lynd, *Intellectual Origins of American Radicalism*, 6.

<sup>73</sup> John Koritansky, “Thomas Paine: The American Radical,” in *History of American Political Thought*, ed. Bryan-Paul Frost and Jeffrey Sikkenga (Lanham, MD: Lexington Books, 2003), 63.

<sup>74</sup> See *Revolutionary Quotations from the Thoughts of Uncle Sam* (Cicero, IL: Johnny Appleseed Patriotic Publications, 1969).

<sup>75</sup> For more on the invocation of the Declaration by abolitionists including Frederick Douglass and David Walker, see Armitage, *The Declaration of Independence: A Global History*, 97-100.

<sup>76</sup> Lynd, *Intellectual Origins of American Radicalism*, 7; Jill Gordon, “By Any Means Necessary: John Locke and Malcolm X on the Right to Revolution,” *Journal of Social Philosophy* 26, no. 1 (March 1995), 69; Pressly, “The concept of the ‘right of revolution’ in the United States in historical perspective: from the Puritans to the present.”

*Revolution*, in addition to several works of historical fiction on the topic.<sup>77</sup> The language of justified, even legal, revolution was back in grassroots circulation.

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This brings me, in conclusion, back to where I began: the present, or, at least, the last several decades. In recent memory, the political debates in which the right of revolution has been most discussed relate to militias and the Second Amendment. Since gaining a resurgence of attention roughly three decades ago, a handful of commentators on both the left and the right have repeatedly returned to the idea that the Second Amendment organizes and regulates militias which may take up arms against the government.<sup>78</sup> From this perspective, some argue that the Second Amendment explicitly defends the constitutional right of revolution, or at least a natural right of revolution supported by a “constitutional right to possess the means of revolution.”<sup>79</sup> Others look beyond the American Founders, citing Locke’s right of self-defense directly as the basis of the Second Amendment.<sup>80</sup> And critics of this argument engage with the right of revolution, too. Douglas Walker complains that “interpretations that stress the right of revolution... generally ignore the ways in which the Founders expected federalism to tame and regulate political violence.”<sup>81</sup> Wendy Brown, similarly, claims that the Founders’ right of

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<sup>77</sup> Truman Nelson, *The Right of Revolution* (Boston: Beacon Press, 1968). See also William Schafer, “Truman Nelson: Heeding the Voices of Revolution,” *The Minnesota Review* 7 (Fall 1976), 67.

<sup>78</sup> The Second Amendment regained attention from legal theorists after Sanford Levinson’s article in 1989. See Levinson, “The Embarrassing Second Amendment,” *The Yale Law Journal* 99, no. 3 (December 1989). David Williams is likely the other most serious theorist to make this claim on the left. See Williams, “Militia Movement and Second Amendment Revolution: Conjuring with the People,” *Cornell Law Review* 81, no. 4 (May 1996), 947-952; Williams, “Civic Republicanism and the Citizen Militia: The Terrifying Second Amendment,” *The Yale Law Journal* 101, no. 3 (December 1991), 582-584. For a conventional right-wing scholarly argument for the right of revolution in the Second Amendment, see Brent McIntosh, “The Revolutionary Second Amendment,” *Alabama Law Review* 51, no. 2 (Winter 2000). For an in-depth and critical review of this literature, see Wills, “To Keep and Bear Arms,” *The New York Review of Books*, September 21, 1995.

<sup>79</sup> Williams, “Civic Republicanism and the Citizen Militia: The Terrifying Second Amendment,” 583.

<sup>80</sup> Don Kates, Jr., “The Second Amendment and the Ideology of Self-Protection,” *Constitutional Commentary* 9, no. 1 (Winter 1992), 90, 93, 102-103.

<sup>81</sup> Douglas Walker, Jr., “Necessary to the Security of Free States: The Second Amendment as the Auxiliary Right of Federalism,” *American Journal of Legal History* 56, no. 4 (December 2016), 367.



revolution was associated with republican institutions and values that no longer exist, thus rendering it obsolete.<sup>82</sup> Clearly, interpretations of Jefferson's right of revolution shape this pressing debate.

Furthermore, the right of revolution is not just a far-right-wing slogan for modern-day militia men; it is also the intellectual basis of American civil disobedience. Indeed, Arendt, among others, sees civil disobedience as "primarily American in origin and substance" because of its roots in the Revolution.<sup>83</sup> And after a long period of unpopularity, civil disobedience has become a well-respected assertion of popular sovereignty since the social movements of the 1960s.<sup>84</sup> It is now considered "justified disobedience," probably because of its non-violent nature, but it fundamentally relies on a legitimate appeal to natural law at the expense of positive law, just like the right of revolution.<sup>85</sup> Disobedient entities, ranging from the anti-Vietnam War group Task Force on Violence in 1969 to Kentucky county clerk Kim Davis, who refused to sign a same-sex marriage license in 2013, have legitimized their actions in a comparison to the Founders' resistance to tyranny.<sup>86</sup>

These two examples by no means form an exhaustive list of the contemporary debates which relate to the right of revolution, but they support legal theorist Marjorie Kornhauser's accurate assessment of the current state of "revolution principles" in America: "the right to revolution survived the twentieth century and persists in the twenty-first, largely domesticated,

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<sup>82</sup> Wendy Brown, "Guns, Cowboys, Philadelphia Mayors, and Civic Republicanism: On Sanford Levinson's *The Embarrassing Second Amendment*," *The Yale Law Journal* 99, no. 3 (December 1989), 663, 665.

<sup>83</sup> Arendt, "Civil Disobedience," in *Crises of the Republic* (New York: Harcourt Brace Jovanovich, 1972), 83.

<sup>84</sup> In his 1985 book, Ronald Dworkin makes the observation that "we can say something now we could not have said three decades ago: that Americans accept that civil disobedience has a legitimate if informal place in the political culture of their community." See Dworkin, *A Matter of Principle* (Cambridge, MA: Harvard University Press, 1985), 105.

<sup>85</sup> Tiefenbrun, "Civil Disobedience and the U.S. Constitution," 691-693.

<sup>86</sup> Kornhauser, "Legitimacy and the Right of Revolution: The Role of Tax Protests and Anti-Tax Rhetoric in America," 861.

but not entirely tame.”<sup>87</sup> As she provocatively insinuates, the right of revolution is harder to find in this constitutional era, but it is not philosophically or politically irrelevant. Americans continue to invoke the right of revolution across the spectrum of political issues, from left to right, non-violent to violent, First Amendment to Second Amendment, and local to national. They have never truly forgotten the right of revolution, and it is hard to imagine them doing so. For this reason, Ackerman encourages 21st-century political theorists and historians to put the study of revolutionary constitutionalism “high on the agenda.”<sup>88</sup> The incomplete narrative I have presented is primarily intended as evidence of the value of such inquiry.

Of course, in the end, a fully Jeffersonian right of revolution is virtually impossible to defend in modern-day America. Beyond its violent and secessionist associations, it also relies on an old-fashioned notion of higher law — today, even a secular natural law, philosopher Costas Douzinas writes, “has all the cognitive and theoretical difficulties of the belief in God's law.”<sup>89</sup> But the contemporary debates listed above demonstrate the importance of reconstructing this lost strain of American thought. As long as the founding documents are relevant to contemporary politics, not to mention decisions in American courts, the right of revolution will have, at the very least, rhetorical import, if not legal relevance. As Paul Kahn puts it, “revolution may not be considered a serious political option at every moment, but revolution remains a permanent possibility in the [American] political imagination.”<sup>90</sup>

The lack of clear application for the contemporary American right of revolution, as well as the lack of definite criteria for its justification, is likely what has let it go neglected by

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<sup>87</sup> Ibid., 859.

<sup>88</sup> Ackerman, *The Future of Liberal Revolution* (New Haven, CT: Yale University Press, 1992), 47.

<sup>89</sup> Douzinas, *Philosophy and Resistance in the Crisis: Greece and the Future of Europe* (Cambridge, UK: Polity Press, 2013), 96.

<sup>90</sup> Kahn, *The Reign of Law: Marbury v. Madison and the Construction of America*, 67.

commentators for so long.<sup>91</sup> I hope to have begun correcting this. Of course, there is inherent value in clarifying the historical record and carefully comparing several seminal documents of the Western political tradition. More to the point, simply viewing the Founders' right of revolution as a regurgitation of Locke's theory of dissolution actively disempowers today's American political theory. Recognizing that the Americans, at least before the Constitution, valued a truly liberal, secular, voluntary right to "alter" or "abolish" government should permanently change one's interpretation of the American political tradition, as well as the way scholars recount the whole body of early modern resistance thought.

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<sup>91</sup> Marsavelski, "The Crime of Terrorism and the Right of Revolution in International Law," 246.

## BIBLIOGRAPHY

### Primary Sources

- Adams, John. "Diary." In *The Works of John Adams*, edited by Charles Francis Adams, 1-442. Vol. 2. Boston: Little and Brown, 1865.
- . "Dissertation on the Canon and Feudal Law." In *The Works of John Adams*, edited by Charles Francis Adams, 445-64. Vol. 3. Boston: Little and Brown, 1851.
- . "Notes of Debates, September 8, 1774." In *The Declaration of Independence in Historical Context: American State Papers, Petitions, Proclamations, and Letters of the Delegates to the First National Congresses*, edited by Barry Shain, 220-25. New Haven, CT: Yale University Press, 2014.
- . "Novanglus, Addressed to the Inhabitants of the Colony of Massachusetts Bay, No. I." In *The Works of John Adams*, edited by Charles Francis Adams, 11-18. Vol. 4. Boston: Little and Brown, 1851.
- . "To H. Niles (Quincy, 13 February, 1818)." In *The Works of John Adams*, edited by Charles Francis Adams, 282-89. Vol. 10. Boston: Little and Brown, 1856.
- . "To William Tudor (Quincy, 1 June, 1818)." In *The Works of John Adams*, edited by Charles Francis Adams, 314-17. Vol. 10. Boston: Little and Brown, 1856.
- Adams, Samuel. "Article Signed 'Vindex,' Boston Gazette, January 21, 1771." In *The Writings of Samuel Adams, 1770-1773*, edited by Harry Cushing, 142-53. Vol. 2. New York: G.P. Putnam's Sons, 1906.
- Allen, John. *An oration, upon the beauties of liberty*. Boston: D. Kneeland and N. Davis, 1773.
- Blackstone, William. *Commentaries on the Laws of England*. Vol. 1. Oxford, UK: Clarendon Press, 1765.
- Bland, Richard. *The colonel dismounted: or The rector vindicated*. Williamsburg, VA: Joseph Royle, 1764.
- . *An inquiry into the rights of the British colonies*. Williamsburg, VA: Alexander Purdie & Co., 1766.
- Calvin, John. *Institutes of the Christian Religion*. Translated by Ford Battles. Grand Rapids, MI: William B. Eerdmans Publishing Company, 1975.
- "Constitution of Colorado — 1876." In *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore*

*Forming the United States of America*, edited by Francis Thorpe, 474-512. Vol. 1. Washington, DC: Government Printing Office, 1909.

“Constitution of Delaware — 1776.” In *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America*, edited by Francis Thorpe, 562-68. Vol. 1. Washington, DC: Government Printing Office, 1909.

“Constitution of Maryland — 1777.” In *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America*, edited by Francis Thorpe, 1686-701. Vol. 3. Washington, DC: Government Printing Office, 1909.

“Constitution of Vermont — 1777.” In *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America*, edited by Francis Thorpe, 3737-49. Vol. 6. Washington, DC: Government Printing Office, 1909.

“The Constitution of Virginia — 1776.” In *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America*, edited by Francis Thorpe, 3812-19. Vol. 7. Washington, DC: Government Printing Office, 1909.

Davis, Jefferson. *The Rise and Fall of the Confederate Government*. Vol. 1. New York: D. Appleton and Company, 1881.

“Declaration of Independence: A Transcription.” America's Founding Documents, National Archives. Last modified November 19, 2019. Accessed April 19, 2020. <https://www.archives.gov/founding-docs/declaration-transcript>.

Dennis v. United States, 341 U.S. 494 (1951). Accessed April 25, 2020. <https://supreme.justia.com/cases/federal/us/341/494/>.

Dickinson, John. “Address on Stamp Act.” In *The Writings of John Dickinson*, edited by Paul Leicester Ford, 201-05. Bedford, MA: Applewood Press, 2009.

———. *Letters from a farmer in Pennsylvania*. Boston: Mein and Fleeming, 1768.

Dulany, Daniel. *Considerations on the propriety of imposing taxes in the British colonies, for the purpose of raising a revenue, by act of Parliament*. New York: John Holt, 1765.

“English translation of Magna Carta.” British Library. Last modified July 28, 2014. Accessed April 6, 2020. <https://www.bl.uk/magna-carta/articles/magna-carta-english-translation>.

“First Continental Congress, Bill of Rights and List of Grievances, October 18-26, 1774.” In *The Declaration of Independence in Historical Context: American State Papers, Petitions,*

*Proclamations, and Letters of the Delegates to the First National Congresses*, edited by Barry Shain, 211-14. New Haven, CT: Yale University Press, 2014.

Galloway, Joseph. *A candid examination of the mutual claims of Great-Britain, and the Colonies*. New York: James Rivington, 1775.

Grotius, Hugo. *The Rights of War and Peace, in Three Books*. Clark, NJ: The Lawbook Exchange, 2004.

Hamilton, Alexander. "The Federalist, #22." In *The Federalist Papers*, edited by Lawrence Goldman, 105-13. Oxford, UK: Oxford University Press, 2008.

———. "The Federalist, #28." In *The Federalist Papers*, edited by Lawrence Goldman, 134-39. Oxford, UK: Oxford University Press, 2008.

———. "Letter to John Jay (November 26, 1775)." In *The Political Writings of Alexander Hamilton, 1769–1789*, edited by Carson Holloway and Bradford Wilson, 101-02. Cambridge, UK: Cambridge University Press, 2017.

Hicks, William. *The nature and extent of Parliamentary power considered*. New York: John Holt, 1768.

Hobbes, Thomas. *Leviathan*. Edited by A.P. Martinich. Peterborough, CA: Broadview Press, 2002.

Hopkins, Stephen. *The rights of colonies examined*. Providence, RI: William Goddard, 1765.

Jefferson, Thomas. *Autobiography of Thomas Jefferson, 1743-1790*. New York: G.P. Putnam's Sons, 1914.

———. "Declaration of the Causes and Necessity of Taking Up Arms." In *Jefferson: Political Writings*, edited by Joyce Appleby and Terence Ball, 80-87. Cambridge, UK: Cambridge University Press, 1999.

———. "A Summary View of the Rights of British America." In *Jefferson: Political Writings*, edited by Joyce Appleby and Terence Ball, 64-80. Cambridge, UK: Cambridge University Press, 1999.

———. "To Henry Lee (Monticello, May 8, 1825)." In *Jefferson: Political Writings*, edited by Joyce Appleby and Terence Ball, 147-48. Cambridge, UK: Cambridge University Press, 1999.

———. "To James Madison (Paris, January 30, 1787)." In *Jefferson: Political Writings*, edited by Joyce Appleby and Terence Ball, 107-09. Cambridge, UK: Cambridge University Press, 1999.

———. “To John Adams (Monticello, September 4, 1823).” In *The Works of Thomas Jefferson*, edited by Paul Leicester Ford, 309-12. Vol. 12. New York: G.P. Putnam's Sons, 1905.

———. “To William A. Burwell (Washington, January 28, 1805).” In *Jefferson: Political Writings*, edited by Joyce Appleby and Terence Ball, 491. Cambridge, UK: Cambridge University Press, 1999.

———. “To William Stephens Smith (Paris, November 13, 1787).” In *The Works of Thomas Jefferson*, edited by Paul Leicester Ford, 360-63. Vol. 5. New York: G.P. Putnam's Sons, 1904.

Lee, Richard Henry. “To George Washington from Henry Lee, Jr., 8 September 1786.” Founders Online. Accessed April 25, 2020.  
<https://founders.archives.gov/documents/Washington/04-04-02-0229>.

Lincoln, Abraham. “First Inaugural Address.” In *Speeches and Writings, 1859-1865*, edited by Don Fehrenbacher, 215-24. Vol. 2 of *Abraham Lincoln*. New York: Library of America, 1989.

———. “Speech in the U.S. House of Representatives on the War with Mexico.” In *Speeches and Writings, 1832-1858*, edited by Don Fehrenbacher, 161-71. Vol. 1 of *Abraham Lincoln*. New York: Library of America, 1989.

Locke, John. *An Essay Concerning Human Understanding*. London: T. Tegg and Son, 1836.

———. *Two Tracts on Government*. Edited by Philip Abrams. Cambridge, UK: Cambridge University Press, 1967.

———. *Two Treatises of Government*. Edited by Peter Laslett. Cambridge, UK: Cambridge University Press, 1988.

Luther, Martin. “Temporal Authority: To What Extent It Should Be Obeyed.” In *Luther: Selected Political Writings*, edited by J.M. Porter, 51-69. Eugene, OR: Wipf and Stock Publishers, 2003.

Madison, James. “The Federalist, #41.” In *The Federalist Papers*, edited by Lawrence Goldman, 200-07. Oxford, UK: Oxford University Press, 2008.

———. “The Federalist, #49.” In *The Federalist Papers*, edited by Lawrence Goldman, 249-53. Oxford, UK: Oxford University Press, 2008.

“Massachusetts Resolves, October 29, 1765.” In *The Declaration of Independence in Historical Context*, edited by Barry Shain, 76-77. New Haven, CT: Yale University Press, 2014.

Maxwell v. Dow, 176 U.S. 581 (1900). Accessed April 25, 2020.  
<https://supreme.justia.com/cases/federal/us/176/581/>.

- Mayhew, Jonathan. *A discourse concerning unlimited submission and non-resistance to the higher powers*. Boston: D. Fowle, 1750.
- . *The snare broken*. Boston: Edes & Gill, 1766.
- Milton, John. *The Tenure of Kings and Magistrates*. Edited by William Allison. New York: Henry Holt and Company, 1911.
- Murphy, Chris. “The Second Generation of Second Amendment Law & Policy.” *Law and Contemporary Problems* 80, no. 2 (2017): 233-38.
- Nelson, Truman. *The Right of Revolution*. Boston: Beacon Press, 1968.
- Otis, James. “The Rights of the British Colonies Asserted and Proved.” 1764. In *Collected Political Writings of James Otis*, edited by Richard Samuelson, 119-82. Indianapolis: Liberty Fund, 2015.
- . “A Vindication of the British Colonies.” 1765. In *Collected Political Writings of James Otis*, edited by Richard Samuelson, 183-208. Indianapolis: Liberty Fund, 2015.
- Revolutionary Quotations from the Thoughts of Uncle Sam*. Cicero, IL: Johnny Appleseed Patriotic Publications, 1969.
- Paine, Thomas. “Common Sense.” In *Thomas Paine: Collected Writings*, edited by Eric Foner, 5-59. New York: The Library of America, 1995.
- . *Letter addressed to the abbe Raynal on the affairs of North-America*. Boston: Edes & Sons, 1782.
- . *Rights of man*. Vol. 2. London: J.S. Jordan, 1792.
- Scales v. United States, 367 U.S. 203 (1961). Accessed April 25, 2020. <https://supreme.justia.com/cases/federal/us/367/203/>.
- Thoreau, Henry David. *On the Duty of Civil Disobedience*. London: The Simple Life Press, 1903.
- “Virginia Resolves as Printed in the Journal of the House of Burgesses, June 1765.” In *The Declaration of Independence in Historical Context*, edited by Barry Shain, 66-67. New Haven, CT: Yale University Press, 2014.
- The votes and proceedings of the freeholders and other inhabitants of the town of Boston*. Boston: Edes and Gill, 1772.



- Wilson, James. "Considerations on the Nature and Extent of the Legislative Authority of the British Parliament." In *Collected Works of James Wilson*, edited by Kermit Hall and Mark David Hall, 2-30. Vol. 1. Indianapolis, IN: Liberty Fund, 2007.
- . "Lectures on Law, Chapter I." In *Collected Works of James Wilson*, edited by Kermit Hall and Mark David Hall, 431-63. Vol. 1. Indianapolis, IN: Liberty Fund, 2007.
- . "Remarks of James Wilson in the Pennsylvania Convention to Ratify the Constitution of the United States, 1787." In *Collected Works of James Wilson*, edited by Kermit Hall and Mark David Hall, 178-285. Vol. 1. Indianapolis, IN: Liberty Fund, 2007.
- Wilson, Woodrow. *The New Freedom: A Call for the Emancipation of the Generous Energies of a People*. Garden City, NY: Doubleday, Page & Company, 1913.

### Secondary Sources

- Abbott, Philip. "The Lincoln Propositions and the Spirit of Secession." In *Theories of Secession*, edited by Percy Lehning, 182-207. London: Routledge, 1998.
- Ackerman, Bruce. *The Future of Liberal Revolution*. New Haven, CT: Yale University Press, 1992.
- . *We the People*. Vol. 1. Cambridge, MA: Harvard University Press, 1991.
- Adams, Willi Paul. *The First American Constitutions: Republican Ideology and the Making of the State Constitutions in the Revolutionary Era*. Lanham, MD: Rowman & Littlefield Publishers, 2001.
- Adler, Mortimer, and William Gorman. *The American Testament*. New York: Praeger Publishers, 1975.
- Ake, Claude. "Political Obligation and Political Dissent." *Canadian Journal of Political Science* 2, no. 2 (July 1969): 245-55.
- Allen, Danielle. *Our Declaration: A Reading of the Declaration of Independence in Defense of Equality*. New York: W.W. Norton & Company, 2014.
- Amar, Akhil Reed. "The Consent of the Governed: Constitutional Amendment outside Article V." *Columbia Law Review* 94, no. 2 (1994): 457-508.
- Ammerman, David. "The Crisis of Independence." In *A Companion to the American Revolution*, edited by Jack Greene and J.R. Pole, 206-15. Malden, MA: Blackwell Publishers, 2000.
- Anastaplo, George. "The Declaration of Independence." *Saint Louis University Law Journal* 9, no. 3 (Spring 1965): 390-416.

- Anderson, Owen. *The Declaration of Independence and God: Self-Evident Truths in American Law*. Cambridge, UK: Cambridge University Press, 2015.
- Andrew, Edward. *Shylock's Rights: A Grammar of Lockian Claims*. Toronto: University of Toronto Press, 1988.
- Arendt, Hannah. "Civil Disobedience." In *Crises of the Republic*, 49-102. New York: Harcourt Brace Jovanovich, 1972.
- . *On Revolution*. New York: The Viking Press, 1963.
- Armitage, David. *The Declaration of Independence: A Global History*. Cambridge, MA: Harvard University Press, 2007.
- . "The Declaration of Independence and International Law." *The William and Mary Quarterly* 59, no. 1 (January 2002): 39-64.
- Ashcraft, Richard. "Locke, Revolution Principles, and the Formation of Whig Ideology." *The Historical Journal* 26, no. 4 (December 1983): 773-800.
- Bailyn, Bernard. "The Central Themes of the American Revolution: An Interpretation." In *Essays on the American Revolution*, edited by Stephen Kurtz and James Hutson, 3-31. Chapel Hill, NC: The University of North Carolina Press, 1973.
- . "Common Sense." In *Fundamental Testaments of the American Revolution*, 7-23. Washington, DC: Library of Congress, 1973.
- . *The Ideological Origins of the American Revolution*. Cambridge, MA: Harvard University Press, 1992.
- . *1750-1765*. Vol. 1 of *Pamphlets of the American Revolution, 1750-1776*. Cambridge, MA: Harvard University Press, 1965.
- Baldwin, Alice. *The New England Clergy and the American Revolution*. New York: Frederick Ungar Publishing, 1965.
- Balkin, Jack, and Sanford Levinson. "To Alter or Abolish." *Southern California Law Review* 89, no. 3 (March 2016): 399-426.
- Ball, David. *The Historical Origins of Judicial Review, 1536-1803*. Lewiston, NY: The Edwin Mellen Press, 2005.
- Baumgold, Deborah. *Contract Theory in Historical Context Essays on Grotius, Hobbes, and Locke*. Leiden, NL: Brill, 2010.

- . “Hobbes's and Locke's Contract Theories: Political not Metaphysical.” *Critical Review of International Social and Political Philosophy* 8, no. 3 (September 2005): 289-308.
- Beard, Charles. *An Economic Interpretation of the Constitution of the United States*. New York: Macmillan, 1921.
- Becker, Carl. *The Declaration of Independence: A Study in the History of Political Ideas*. New York: Vintage Books, 1958.
- Bell, James. *A War of Religion: Dissenters, Anglicans and the American Revolution*. London: Palgrave Macmillan, 2008.
- Belz, Herman. “Lincoln's Construction of the Consent Principle and the Right of Revolution in the Secession Crisis.” In *Lincoln's Legacy of Leadership*, edited by George Goethals and Gary McDowell, 29-56. New York: Palgrave Macmillan, 2010.
- Beneke, Chris. “The Critical Turn: Jonathan Mayhew, the British Empire, and the Idea of Resistance in Mid-Eighteenth-Century Boston.” *Massachusetts Historical Review* 10 (2008): 23-56.
- Beran, Harry. “A Liberal Theory of Secession.” *Political Studies* 32, no. 1 (March 1984): 21-31.
- Berman, Harold. *Law and Revolution: The Formation of the Western Legal Tradition*. Cambridge, MA: Harvard University Press, 1983.
- Beschle, Donald. “Reconsidering the Second Amendment: Constitutional Protection for a Right of Security.” *Hamline Law Review* 9, no. 1 (February 1986): 69-104.
- Bielefeldt, Heiner. “The Right to Resist.” In *International Handbook of Violence Research*, edited by Wilhelm Heitmeyer and John Hagan, 1097-1111. Dordrecht, NL: Kluwer Academic Publishers, 2003.
- Birch, Anthony. *Representation*. London: Macmillan, 1972.
- Bodenhamer, David. “Rulers and Ruled: Popular Sovereignty and American Constitutionalism.” Review of *American Sovereigns: The People and America's Constitutional Tradition Before the Civil War*. *Reviews in American History* 37, no. 4 (December 2009): 537-43.
- Bonomi, Patricia. *Under the Cope of Heaven: Religion, Society, and Politics in Colonial America*. Oxford, UK: Oxford University Press, 2003.
- Boyd, Julian. “The Disputed Authorship of the Declaration on the Causes and Necessity of Taking up Arms, 1775.” *The Pennsylvania Magazine of History and Biography* 74, no. 1 (January 1950): 51-73.

- Breen, T.H. "Subjecthood and Citizenship: The Context of James Otis's Radical Critique of John Locke." *The New England Quarterly* 71, no. 3 (September 1998): 378-403.
- Brennan, Ellen Elizabeth. "James Otis: Recreant and Patriot." *The New England Quarterly* 12, no. 4 (December 1939): 691-725.
- Brown, Richard. *Strain of Violence: Historical Studies of American Violence and Vigilantism*. Oxford, UK: Oxford University Press, 1975.
- Brown, Wendy. "Guns, Cowboys, Philadelphia Mayors, and Civic Republicanism: On Sanford Levinson's The Embarrassing Second Amendment." *The Yale Law Journal* 99, no. 3 (December 1989): 661-67.
- Browne, Stephen. "Jefferson's First Declaration of Independence: A Summary View of the Rights of British America Revisited." *Quarterly Journal of Speech* 89, no. 3 (August 2003): 235-52.
- Buckley, Thomas. "The Religious Rhetoric of Thomas Jefferson." Afterword to *The Founders on God and Government*, edited by Daniel Dreisbach, Mark Hall, and Jeffry Morrison, 53-82. Lanham, MD: Rowman & Littlefield Publishers, 2004.
- Burnham, Walter. "Constitutional Moments and Punctuated Equilibria: A Political Scientist Confronts Bruce Ackerman's 'We the People.'" *The Yale Law Journal* 108, no. 8 (June 1999): 2237-77.
- Canovan, Margaret. *The People*. Cambridge, UK: Polity Press, 2005.
- Carey, Georgia. "Natural Rights, Equality, and the Declaration of Independence." *Ave Maria Law Review* 3, no. 1 (Spring 2005): 45-68.
- Casson, Douglas. "Emergency Judgment: Carl Schmitt, John Locke, and the Paradox of Prerogative." *Politics & Policy* 36, no. 6 (December 2008): 944-71.
- Clark, J.C.D. *Revolution and Rebellion: State and Society in England in the Seventeenth and Eighteenth Centuries*. Cambridge, UK: Cambridge University Press, 1986.
- Cólon-Rios, Joel. *Weak Constitutionalism: Democratic Legitimacy and the Question of Constituent Power*. New York: Routledge, 2012.
- Conklin, Carli. "The Origins of the Pursuit of Happiness." *Washington University Jurisprudence Review* 7, no. 2 (2015): 195-262.
- Connor, George. "The Politics of Insurrection: A Comparative Analysis of the Shays', Whiskey, and Fries' Rebellions." *The Social Science Journal* 29, no. 3 (1992): 259-81.

- Conroy, David. "Development of a Revolutionary Organization, 1765-1775." In *A Companion to the American Revolution*, edited by Jack Greene and J.R. Pole, 216-21. Malden, MA: Blackwell Publishers, 2000.
- Cooper, Kody, and Justin Dyer. "Thomas Jefferson, Nature's God, and the Theological Foundations of Natural-Rights Republicanism." *Politics and Religion* 10, no. 3 (September 2017): 662-68.
- Corbett, Ross. *The Lockean Commonwealth*. Albany, NY: State University of New York Press, 2009.
- Cornell, Saul. "Mobs, Militias, and Magistrates: Popular Constitutionalism and the Whiskey Rebellion." *Chicago-Kent Law Review* 81, no. 3 (2006): 883-904.
- Curti, Merle. "The Great Mr. Locke: America's Philosopher, 1783-1861." *The Huntington Library Bulletin* 11 (April 1937): 107-51.
- . "The Impact of the Revolutions of 1848 on American Thought." *Proceedings of the American Philosophical Society* 93, no. 3 (June 1949): 209-15.
- . "Our Revolutionary Tradition." *Social Frontier* 1, no. 3 (December 1934): 10-13.
- Darnton, Robert. "The Pursuit of Happiness." *Wilson Quarterly* 19, no. 4 (Fall 1995): 42-52.
- de Bolla, Peter. *The Architecture of Concepts: The Historical Formation of Human Rights*. New York: Fordham University Press, 2013.
- de Moraes, Gerson, and Daniel Menezes. "Philosophical and Theological Aspects in the Thought of Johannes Althusius." In *Why Religion? Towards a Critical Philosophy of Law, Peace and God*, edited by Dawid Bunikowski and Alberto Puppo, 71-84. Cham, CH: Springer, 2020.
- Detwiler, Philip. "The Changing Reputation of the Declaration of Independence: The First Fifty Years." *The William and Mary Quarterly* 19, no. 4 (October 1962): 557-74.
- Dienstag, Joshua. "Between History and Nature: Social Contract Theory in Locke and the Founders." *The Journal of Politics* 58, no. 4 (November 1996): 985-1009.
- DiLorenzo, Thomas. "Yankee Confederates: New England Secession Movements Prior to the War Between the States." In *Secession, State, and Liberty*, edited by David Gordon, 135-53. New York: Routledge, 2017.
- Dion, Leon. "Natural Law and Manifest Destiny in the Era of the American Revolution." *The Canadian Journal of Economics and Political Science* 23, no. 2 (May 1957): 227-47.

- DiPiero, Joseph. "The Common Law of Rebellion." *Georgetown Journal of International Law* 48, no. 2 (Winter 2017): 605-33.
- Dippel, Horst. "The Changing Idea of Popular Sovereignty in Early American Constitutionalism: Breaking Away from European Patterns." *Journal of the Early Republic* 16, no. 1 (Spring 1996): 21-45.
- Dixon, Richard. "Thomas Jefferson: A Lawyer's Path to a Legal Philosophy." In *Thomas Jefferson and Philosophy: Essays on the Philosophical Cast of Jefferson's Writings*, edited by M. Andrew Holowchak, 15-39. Lanham, MD: Lexington Books, 2014.
- Doernberg, Donald. "'We the People': John Locke, Collective Constitutional Rights, and Standing to Challenge Government Action." *California Law Review* 73, no. 1 (January 1985): 52-118.
- Douzinas, Costas. *Philosophy and Resistance in the Crisis: Greece and the Future of Europe*. Cambridge, UK: Polity Press, 2013.
- . "Philosophy and the Right to Resistance." In *The Meanings of Rights: The Philosophy and Social Theory of Human Rights*, edited by Costas Douzinas and Conor Gearty, 85-105. Cambridge, UK: Cambridge University Press, 2014.
- . "The 'Right to the Event': The Legality and Morality of Revolution and Resistance." *Metodo: International Studies in Phenomenology and Philosophy* 2, no. 1 (2014): 151-67.
- Dumbauld, Edward. *The Declaration of Independence and What It Means Today*. Norman, OK: University of Oklahoma Press, 1950.
- Dunn, John. "The Concept of 'Trust' in the Politics of John Locke." In *Philosophy in History: Essays in the Historiography of Philosophy*, edited by Richard Rorty, J.B. Schneewind, and Quentin Skinner, 279-302. Cambridge, UK: Cambridge University Press, 1984.
- . *Locke: A Very Short Introduction*. Oxford, UK: Oxford University Press, 2003.
- . *The Political Thought of John Locke: An Historical Account of the Argument of the 'Two Treatises of Government'*. Cambridge, UK: Cambridge University Press, 1982.
- . "The Politics of Locke in England and America in the Eighteenth Century." In *Political Obligation in its Historical Context: Essays in Political Theory*, 53-77. Cambridge, UK: Cambridge University Press, 1980.
- Durden, Robert. "The American Revolution as Seen by Southerners in 1861." *Louisiana History: The Journal of the Louisiana Historical Association* 19, no. 1 (Winter 1978): 33-42.

- Dworetz, Steven. *The Unvarnished Doctrine: Locke, Liberalism, and the American Revolution*. Durham, NC: Duke University Press, 1990.
- Dworkin, Ronald. *A Matter of Principle*. Cambridge, MA: Harvard University Press, 1985.
- Eaves, Richard. "The Seventeenth Century English Constitutional Struggle and Its Philosophical Impact on the American Colonies." *Journal of Thought* 10, no. 3 (July 1975): 206-14.
- Edelstein, Dan. *On the Spirit of Rights*. Chicago: University of Chicago Press, 2019.
- Ellis, Richard. "Radical Lockeanism in American Political Culture." *The Western Political Quarterly* 45, no. 4 (December 1992): 825-49.
- Engels, Jeremy. "The Trouble with 'Public Bodies': On the Anti-Democratic Rhetoric of The Federalist." *Rhetoric and Public Affairs* 18, no. 3 (Fall 2015): 505-38.
- Fairbanks, Charles. "Revolution Reconsidered." *Journal of Democracy* 18, no. 1 (January 2007): 42-57.
- Falkowski, James. "Secessionary Self-Determination: A Jeffersonian Perspective." *Boston University International Law Journal* 9, no. 2 (Fall 1991): 209-42.
- Ferguson, James. "Reason in Madness: The Political Thought of James Otis." *The William and Mary Quarterly* 36, no. 2 (April 1979): 194-214.
- Ferguson, Robert. *The American Enlightenment, 1750-1820*. Cambridge, MA: Harvard University Press, 1994.
- . *Reading the Early Republic*. Cambridge, MA: Harvard University Press, 2009.
- Foster, Herbert. "International Calvinism through Locke and the Revolution of 1688." *The American Historical Review* 32, no. 3 (April 1927): 475-99.
- Frank, Jason. *Constituent Moments: Enacting the People in Postrevolutionary America*. Durham, NC: Duke University Press, 2010.
- Franklin, Julian. "Constitutionalism in the Sixteenth Century." In *Political Theory & Social Change*, edited by David Spitz, 117-32. New York: Atherton Press, 1967.
- . *John Locke and the Theory of Sovereignty*. Cambridge, UK: Cambridge University Press, 1978.
- Freeman, Alan, and Elizabeth Mensch. "Property." In *A Companion to the American Revolution*, edited by Jack Greene and J.R. Pole, 638-44. Malden, MA: Blackwell Publishers, 2000.

- Freeman, Harrop. "The Right of Protest and Civil Disobedience." *Indiana Law Journal* 41, no. 2 (Winter 1966): 228-54.
- Frese, Joseph. "James Otis and Writs of Assistance." *The New England Quarterly* 30, no. 4 (December 1957): 496-508.
- Friedlander, Robert. "Autonomy and the Thirteen Colonies: Was the American Revolution Really Necessary?" *Duquesne Law Review* 18, no. 3 (Spring 1980): 507-20.
- Fritz, Christian. "The American Constitutional Tradition Revisited: Preliminary Observations on State Constitution-Making in the Nineteenth-Century West." *Rutgers Law Journal* 25, no. 4 (Summer 1994): 945-98.
- . *American Sovereigns: The People and America's Constitutional Tradition Before the Civil War*. Cambridge, UK: Cambridge University Press, 2007.
- . "Out from under the Shadow of the Federal Constitution: An Overlooked American Constitutionalism." *Rutgers Law Journal* 41, no. 4 (Summer 2010): 851-80.
- . "Popular Sovereignty, Vigilantism, and the Constitutional Right of Revolution." *Pacific Historical Review* 63, no. 1 (February 1994): 39-66.
- . "Recovering the Lost Worlds of America's Written Constitutions." *Albany Law Journal* 68, no. 2 (2005): 261-93.
- Frothingham, Richard. *History of the Siege of Boston*. Boston: Little, Brown, and Company, 1873.
- Fruchtman, Jack, Jr. "Paine and Jefferson in the Age of Revolutions." In *Paine and Jefferson in the Age of Revolutions*, edited by Simon Newman and Peter Onuf, 49-70. Charlottesville, VA: University of Virginia Press, 2013.
- Gangarella, Roberto. "The Last Resort: The Right of Resistance in Situations of Legal Alienation." Working paper, Yale Law School SELA Papers, 2003. Accessed March 29, 2020.  
<https://pdfs.semanticscholar.org/b73e/0e64299e5a358907e9817482da70446199f1.pdf>.
- Gauthier, David. "Why Ought One Obey God? Reflections on Hobbes and Locke." *Canadian Journal of Philosophy* 7, no. 3 (September 1977): 425-46.
- Gerber, Scott. "Whatever Happened to the Declaration of Independence? A Commentary on the Republican Revisionism in the Political Thought of the American Revolution." *Polity* 26, no. 2 (Winter 1993): 207-31.
- Gibson, Alan. *Interpreting the Founding: Guide to the Enduring Debates over the Origins and Foundations of the American Republic*. Lawrence, KS: University Press of Kansas, 2006.



- Ginsberg, Robert. "Suppose That Jefferson's Rough Draft of the Declaration of Independence Is a Work of Political Philosophy..." *The Eighteenth Century* 25, no. 1 (Winter 1984): 25-43.
- Ginsburg, Tom, Daniel Lansberg-Rodriguez, and Mila Versteeg. "When to Overthrow Your Government: The Right to Resist in the World's Constitutions." *UCLA Law Review* 60, no. 5 (June 2013): 1184-261.
- Gleason, Philip. "American Identity and Americanization." In *Concepts of Ethnicity*, edited by William Petersen, Michael Novak, and Philip Gleason, 57-143. Cambridge, MA: Harvard University Press, 1982.
- Goldstein, Leslie Friedman. "Popular Sovereignty, the Origins of Judicial Review, and the Revival of Unwritten Law." *The Journal of Politics* 48, no. 1 (February 1986): 51-71.
- Gordon, Jill. "By Any Means Necessary: John Locke and Malcolm X on the Right to Revolution." *Journal of Social Philosophy* 26, no. 1 (March 1995): 53-85.
- Grady, Robert, II. "Obligation, Consent, and Locke's Right to Revolution: 'Who Is to Judge?'" *Canadian Journal of Political Science* 9, no. 2 (July 1976): 277-92.
- Graham, D.M. "Early State Constitutions." *Constitutional Review* 9, no. 4 (October 1925): 222-29.
- Graham, John. *A Constitutional History of Secession*. Gretna, LA: Pelican Publishing Company, 2002.
- Greenfeld, Liah. *Nationalism*. Cambridge, MA: Harvard University Press, 1992.
- Grey, Thomas. "Origins of the Unwritten Constitution: Fundamental Law in American Revolutionary Thought." *Stanford Law Review* 30, no. 5 (May 1978): 843-93.
- Griffin, Stephen. "Constituent Power and Constitutional Change in American Constitutionalism." In *The Paradox of Constitutionalism: Constituent Power and Constitutional Form*, edited by Martin Loughlin and Neil Walker, 49-66. Oxford, UK: Oxford University Press, 2007.
- Gutchess, Alan. "Pittsburgh, Virginia?" *Western Pennsylvania History* 97, no. 2 (Summer 2014): 6-7.
- Haakonssen, Knud. "From Natural Law to the Rights of Man: A European Perspective on American Debates." In *A Culture of Rights: The Bill of Rights in Philosophy, Politics and Law, 1791 and 1991*, edited by Michael Lacey and Knud Haakonssen, 19-61. Cambridge, UK: Cambridge University Press, 1992.
- . *Natural Law and Moral Philosophy: From Grotius to the Scottish Enlightenment*. Cambridge, UK: Cambridge University Press, 1996.

- Hagopian, Mark. *The Phenomenon of Revolution*. New York: Dodd, Mead & Company, 1974.
- Hamburger, Philip. "Equality and Diversity: The Eighteenth-Century Debate about Equal Protection and Equal Civil Rights," *Supreme Court Review* 285 (1992): 295-392.
- . "Natural Rights, Natural Law, and American Constitutions." *The Yale Law Journal* 102, no. 4 (January 1993): 907-60.
- Handlin, Oscar, and Lilian Handlin. "Who Read John Locke? Words and Acts in the American Revolution." *The American Scholar* 58, no. 4 (Fall 1989): 545-56.
- Hart, William. "The Unsettled Periphery: The Backcountry on the Eve of the American Revolution." In *The Oxford Handbook of the American Revolution*, edited by Edward Gray and Jane Kamensky, 30-46. Oxford, UK: Oxford University Press, 2013.
- Hartz, Louis. *The Liberal Tradition in America: An Interpretation of American Political Thought Since the Revolution*. New York: Houghton Mifflin Harcourt, 1955.
- Hayes, Raymond. "Revolution as a Constitutional Right." *Temple Law Quarterly* 13, no. 1 (November 1938): 18-29.
- Hedges, William. "Telling off the King: Jefferson's 'Summary View' as American Fantasy." *Early American Literature* 22, no. 2 (Fall 1987): 166-74.
- Helmholz, R.H. "The Law of Nature and the Early History of Unenumerated Rights in the United States." *University of Pennsylvania Journal of Constitutional Law* 9, no. 1 (October 2006): 401-21.
- Henretta, James. "Foreword: Rethinking the State Constitutional Tradition." *Rutgers Law Journal* 22, no. 4 (Summer 1991): 819-40.
- Hinderaker, Eric, and Peter Mancall. *At the Edge of Empire: The Backcountry in British North America*. Baltimore, MD: The Johns Hopkins University Press, 2003.
- Howe, Daniel Walker. "European Sources of Political Ideas in Jeffersonian America." *Reviews in American History* 10, no. 4 (December 1982): 28-44.
- Howell, Wilbur. "The Declaration of Independence and Eighteenth-Century Logic." *The William and Mary Quarterly* 18, no. 4 (October 1961): 463-84.
- Hullung, Mark. *The Social Contract in America: From the Revolution to the Present Age*. Lawrence, KS: University Press of Kansas, 2007.

- Hutson, James. "The Emergence of a Modern Concept of a Right in America: The Contribution of Michel Villey." In *The Nature of Rights at the American Founding and Beyond*, edited by Barry Shain, 25-63. Charlottesville, VA: University of Virginia Press, 2007.
- Huyler, Jerome. *Locke in America: The Moral Philosophy of the Founding*. Lawrence, KS: University Press of Kansas, 1995.
- Irvin, Benjamin. "Independence Before and During the Revolution." In *The Oxford Handbook of the American Revolution*, edited by Edward Gray and Jane Kamensky, 139-58. Oxford, UK: Oxford University Press, 2013.
- Jacobson, David. "John Dickinson's Fight Against Royal Government, 1764." *The William and Mary Quarterly* 19, no. 1 (January 1962): 64-85.
- Jankovic, Ivan. *The American Counter-Revolution in Favor of Liberty*. London: Palgrave Macmillan, 2019.
- Jayne, Allen. *Jefferson's Declaration of Independence: Origins, Philosophy, and Theology*. Lexington, KY: University of Kentucky Press, 2015.
- Jensen, Merrill. *The Founding of a Nation: A History of the American Revolution, 1763-1776*. Oxford, UK: Oxford University Press, 1968.
- Jeziarski, John. "Parliament or People: James Wilson and Blackstone on the Nature and Location of Sovereignty." *Journal of the History of Ideas* 32, no. 1 (Spring 1971): 95-106.
- Johnson, Robert. "Article XI in the Debate on the United States' Rejection of the League of Nations." *The International History Review* 15, no. 3 (August 1993): 502-24.
- Jones, Howard. *The Pursuit of Happiness*. Ithaca, NY: Cornell University Press, 1966.
- Kahn, Paul. *The Reign of Law: Marbury v. Madison and the Construction of America*. New Haven, CT: Yale University Press, 1997.
- Kammen, Michael. *A Season of Youth: The American Revolution and the Historical Imagination*. Ithaca, NY: Cornell University Press, 1978.
- Kang, John. "Appeal to Heaven: On the Religious Origins of the Constitutional Right of Revolution." *William & Mary Bill of Rights Journal* 18, no. 2 (December 2009): 281-326.
- Kates, Don, Jr. "The Second Amendment and the Ideology of Self-Protection." *Constitutional Commentary* 9, no. 1 (Winter 1992): 87-104.
- Kaufmann, Arthur. "Small Scale Right to Resist." *New England Law Review* 21, no. 3 (1985): 571-80.

- Kaye, Harvey. *Thomas Paine and the Promise of America*. New York: Farrar, Straus and Giroux, 2005.
- Kendall, Willmoore. *John Locke and the Doctrine of Majority-Rule*. Urbana, IL: University of Illinois Press, 1965.
- Kenyon, Cecilia. "The Declaration of Independence." In *Fundamental Testaments of the American Revolution*, 25-47. Washington, DC: Library of Congress, 1973.
- Keown, John. "America's War for Independence: Just or Unjust?" *Journal of Catholic Social Thought* 6, no. 2 (Summer 2009): 277-304.
- Kern, Fritz. *Kingship and Law in the Middle Ages*. Oxford, UK: Basil Blackwell, 1939.
- Kettner, James. *The Development of American Citizenship, 1608-1870*. Chapel Hill, NC: The University of North Carolina Press, 1978.
- Khan, Ali. "A Legal Theory of Revolutions." *Boston University International Law Journal* 5, no. 1 (Spring 1987): 1-28.
- Kidd, Thomas. *Patrick Henry: First Among Patriots*. New York: Basic Books, 2011.
- Kirkendall, Richard. "Thomas J. Pressly (1919-2012)." *Perspectives on History*, October 1, 2012. Accessed March 29, 2020. <https://www.historians.org/publications-and-directories/perspectives-on-history/october-2012/in-memoriam-thomas-j-pressly>.
- Klarman, Michael. "Constitutional Fact/Constitutional Fiction: A Critique of Bruce Ackerman's Theory of Constitutional Moments." Review of *We the People: Foundations*. *Stanford Law Review* 44, no. 3 (February 1992): 759-97.
- Komarek, Jan. "Constitutional Revolutions and the Constituent Power: A Reply to Mark Tushnet." *International Journal of Constitutional Law* 13, no. 4 (October 2015): 1054-58.
- Kopel, David. "The Scottish and English Religious Roots of the American Right to Arms: Buchanan, Rutherford, Locke, Sidney, and the Duty to Overthrow Tyranny." *Bridges* 12, no. 3/4 (Fall 2005): 291-312.
- Koritansky, John. "Thomas Paine: The American Radical." In *History of American Political Thought*, edited by Bryan-Paul Frost and Jeffrey Sikkenga, 63-79. Lanham, MD: Lexington Books, 2003.
- Kornhauser, Marjorie. "Legitimacy and the Right of Revolution: The Role of Tax Protests and Anti-Tax Rhetoric in America." *Buffalo Law Review* 50, no. 3 (Fall 2002): 819-930.

- Kramer, Larry. *The People Themselves: Popular Constitutionalism and Judicial Review*. Oxford, UK: Oxford University Press, 2004.
- Kramnick, Isaac. "Ideological Background." In *A Companion to the American Revolution*, edited by Jack Greene and J.R. Pole, 88-93. Malden, MA: Blackwell Publishers, 2000.
- Kriegel, Blandine. "The Rule of the State and Natural Law." In *Natural Law and Civil Sovereignty: Moral Right and State Authority in Early Modern Political Thought*, edited by Ian Hunter and David Saunders, 13-26. New York: Palgrave Macmillan, 2002.
- Kutner, Luis. "Due Process of Rebellion." *Valparaiso University Law Review* 7, no. 1 (Fall 1972): 1-86.
- Laslett, Peter. "The English Revolution and Locke's 'Two Treatises of Government.'" *The Cambridge Historical Journal* 12, no. 1 (1956): 40-55.
- . Introduction to *Two Treatises of Government*, by John Locke, 3-126. Cambridge, UK: Cambridge University Press, 1988.
- Laudini, Raffaele. *Disobedience in Western Political Thought: A Genealogy*. Cambridge, UK: Cambridge University Press, 2013.
- Lawson, Carlton. "The Declaration of Independence: A 225th Anniversary Re-Interpretation." *Washington Law Review* 76, no. 3 (July 2001): 701-92.
- Lee, Daniel. *Popular Sovereignty in Early Modern Constitutional Thought*. Oxford, UK: Oxford University Press, 2016.
- Lessnoff, Michael. *Social Contract*. London: Macmillan, 1986.
- Levin, John. "The Right to Bear Arms: The Development of the American Experience." *Chicago-Kent Law Review* 48, no. 2 (Fall/Winter 1971): 148-67.
- Levinson, Sanford. "The Embarrassing Second Amendment." *The Yale Law Journal* 99, no. 3 (December 1989): 637-60.
- Lewis, Jan. "Happiness." In *A Companion to the American Revolution*, edited by Jack Greene and J.R. Pole, 655-60. Malden, MA: Blackwell Publishers, 2000.
- Lewy, Guenter. "Resistance to Tyranny: Treason, Right or Duty?" *Western Political Quarterly* 13, no. 3 (September 1960): 581-96.
- Liu, Han. "The Pre-History of Self-Determination: Union and Disunion of States in Early Modern International Law." *Arizona Journal of International and Comparative Law* 36, no. 1 (2019): 1-44.

- Livingston, Donald. "The Secession Tradition in America." In *Secession, State, and Liberty*, edited by David Gordon, 1-33. New York: Routledge, 2017.
- Livingston, William. "Emigration as a Theoretical Doctrine during the American Revolution." *Journal of Politics* 19, no. 4 (November 1957): 591-615.
- Lubert, Howard. "Jonathan Mayhew: Conservative Revolutionary." *History of Political Thought* 32, no. 4 (Winter 2011): 589-616.
- . "Sovereignty and Liberty in William Blackstone's 'Commentaries on the Laws of England.'" *The Review of Politics* 72, no. 2 (Spring 2010): 271-97.
- . "Thomas Hutchinson and James Otis on Sovereignty, Obedience, and Rebellion." In *History of American Political Thought*, edited by Bryan-Paul Frost and Jeffrey Sikkenga, 44-62. Lanham, MD: Lexington Books, 2003.
- Lucas, Stephen. "Justifying America: The Declaration of Independence as a Rhetorical Document." In *American Rhetoric: Context and Criticism*, edited by Thomas Benson, 67-130. Carbondale, IL: Southern Illinois University Press, 1989.
- . "The Rhetorical Ancestry of the Declaration of Independence." *Rhetoric & Public Affairs* 1, no. 2 (Summer 1998): 143-84.
- Lundberg, David, and Henry May. "The Enlightened Reader in America." *American Quarterly* 28, no. 2 (Summer 1976): 262-93.
- Lutz, Donald. "The Declaration of Independence as Part of an American National Compact." *Publius* 19, no. 1 (Winter 1989): 41-58.
- . *Popular Consent and Popular Control: Whig Political Theory in the Early State Constitutions*. Baton Rouge, LA: Louisiana State University Press, 1980.
- . "The Relative Influence of European Writers on Late Eighteenth-Century American Political Thought." *The American Political Science Review* 78, no. 1 (March 1984): 189-97.
- . "The Theory of Consent in the Early State Constitutions." *Publius* 9, no. 2 (Spring 1979): 2-9.
- Lynd, Staughton. *Intellectual Origins of American Radicalism*. New York: Pantheon Books, 1968.
- Mabbott, J.D. *John Locke*. London: Macmillan, 1973.
- MacPherson, C.B. *The Political Theory of Possessive Individualism: Hobbes to Locke*. Oxford, UK: Clarendon Press, 1964.

- Maier, Pauline. *American Scripture: Making the Declaration of Independence*. New York: Alfred Knopf, 1997.
- . *From Resistance to Revolution: Colonial Radicals and the Development of American Opposition to Britain, 1765-1776*. New York: Alfred Knopf, 1972.
- . “Popular Uprisings and Civil Authority in Eighteenth-Century America.” *The William and Mary Quarterly* 27, no. 1 (January 1970): 3-35.
- Mansfield, Harvey. “The Right of Revolution.” *Daedalus* 105, no. 4 (Fall 1976): 151-62.
- . “Thomas Jefferson.” In *American Political Thought: The Philosophic Dimension of American Statesmanship*, edited by Morton Frisch and Richard Stevens, 49-76. New York: Routledge, 2017.
- Marden, Roland. “‘Who Shall Be Judge?': John Locke's Two Treatises of Government and the Problem of Sovereignty.” *Contributions to the History of Concepts* 2, no. 1 (March 2006): 59-81.
- Marsavelski, Aleksander. “The Crime of Terrorism and the Right of Revolution in International Law.” *Connecticut Journal of International Law* 28, no. 2 (Spring 2013): 243-96.
- Marshall, John. *John Locke: Resistance, Religion and Responsibility*. Cambridge, UK: Cambridge University Press, 1994.
- Marston, Jerrilyn. *King and Congress: The Transfer of Political Legitimacy, 1774-1776*. Princeton, NJ: Princeton University Press, 1987.
- Mason, Alpheus. “America's Political Heritage: Revolution and Free Government — A Bicentennial Tribute.” *Political Science Quarterly* 91, no. 2 (Summer 1976): 193-217.
- Matthews, Richard. *The Radical Politics of Thomas Jefferson*. Lawrence, KS: University Press of Kansas, 1984.
- May, Henry. *The Enlightenment in America*. Oxford, UK: Oxford University Press, 1976.
- McConville, Brendan. *The King's Three Faces*. Chapel Hill, NC: The University of North Carolina Press, 2012.
- McCulloch, Matt. “Johannes Althusius' Politica: The Culmination of Calvin's Right of Resistance.” *The European Legacy* 11, no. 5 (2006): 485-99.
- McDonnell, Michael. “The Struggle Within: Colonial Politics on the Eve of Independence.” In *The Oxford Handbook of the American Revolution*, edited by Edward Gray and Jane Kamensky, 103-20. Oxford, UK: Oxford University Press, 2013.

- McIlwain, Charles. *The American Revolution: A Constitutional Interpretation*. New York: Macmillan, 1924.
- McIntosh, Brent. "The Revolutionary Second Amendment." *Alabama Law Review* 51, no. 2 (Winter 2000): 673-714.
- McKenna, J.W. "The Myth of Parliamentary Sovereignty in Late-Medieval England." *The English Historical Review* 94, no. 372 (July 1979): 481-506.
- McMahon, Darrin. *Happiness: A History*. New York: Atlantic Monthly Press, 2006.
- McNeill, John. "John Calvin on Civil Government." *Journal of Presbyterian History* 42, no. 2 (June 1964): 71-91.
- McPherson, James. *Abraham Lincoln and the Second American Revolution*. Oxford, UK: Oxford University Press, 1991.
- Merritt, Richard. "The Emergence of American Nationalism: A Quantitative Approach." *American Quarterly* 17, nos. 2, Part 2 (Summer 1965): 319-35.
- Middlekauff, Robert. *The Glorious Cause: The American Revolution, 1763-1789*. Oxford, UK: Oxford University Press, 2005.
- Miller, John. "The Glorious Revolution: 'Contract' and 'Abdication' Reconsidered." *The Historical Journal* 25, no. 3 (September 1982): 541-55.
- Milton, J.R. "Dating Locke's 'Second Treatise.'" *History of Political Thought* 16, no. 3 (Fall 1995): 356-90.
- Mirkin, Harris. "Judicial Review, Jury Review, and the Right of Revolution against Despotism." *Polity* 6, no. 1 (Fall 1973): 36-70.
- . "Rebellion, Revolution, and the Constitution: Thomas Jefferson's Theory of Civil Disobedience." *American Studies* 13, no. 2 (Fall 1972): 61-74.
- Moore, Margaret. "The Self-Determination Principle and the Ethics of Secession." Introduction to *National Self-Determination and Secession*, 1-13. Oxford, UK: Oxford University Press, 2003.
- Moots, Glenn, and Valerie Morkevicius. "Just Revolution: Protestant Precedents for Resistance and Rebellion." In *Justifying Revolution: Law, Virtue, and Violence in the American War of Independence*, edited by Glenn Moots and Philip Hamilton, 35-63. Norman, OK: University of Oklahoma Press, 2018.



- Morey, William. "The First State Constitutions." *The Annals of the American Academy of Political and Social Science* 4 (September 1893): 1-32.
- Morgan, Edmund. *The Birth of the Republic, 1763-89*. Chicago: University of Chicago Press, 1992.
- . *Inventing the People: The Rise of Popular Sovereignty in England and America*. New York: W.W. Norton & Company, 1988.
- Morone, James. *The Democratic Wish: Popular Participation and the Limits of American Government*. New Haven, CT: Yale University Press, 1998.
- Morris, Christopher. "The Very Idea of Popular Sovereignty: 'We the People' Reconsidered." *Social Philosophy and Policy* 17, no. 1 (Winter 2000): 1-26.
- Muldoon, James. "Arendt's Revolutionary Constitutionalism: Between Constituent Power and Constitutional Form." *Constellations* 23, no. 4 (December 2016): 596-607.
- Mullins, Patrick. *Father of Liberty: Jonathan Mayhew and the Principles of the American Revolution*. Lawrence, KS: University of Kansas Press, 2017.
- Mulloy, D.J. "Liberty or Death': Violence and the Rhetoric of Revolution in the American Militia Movement." *Canadian Review of American Studies* 38, no. 1 (2008): 119-45.
- Murrin, John. "A Roof without Walls: The Dilemma of American National Identity." In *Beyond Confederation: Origins of the Constitution and American National Identity*, edited by Richard Beeman, Stephen Botein, and Edward Carter, 333-48. Chapel Hill, NC: The University of North Carolina Press, 1987.
- Nenner, Howard. "Loyalty and the Law: The Meaning of Trust and the Right of Resistance in Seventeenth-Century England." *Journal of British Studies* 48, no. 4 (October 2009): 859-70.
- Newman, Simon. "Paine, Jefferson, and Revolutionary Radicalism in Early National America." In *Paine and Jefferson in the Age of Revolutions*, edited by Simon Newman and Peter Onuf, 71-94. Charlottesville, VA: University of Virginia Press, 2013.
- Newton, Lisa. "Dimensions of a Right of Revolution." *Journal of Value Inquiry* 7, no. 1 (Spring 1973): 17-28.
- Niggemann, Ulrich. "Some Remarks on the Origins of the Term 'Glorious Revolution.'" *The Seventeenth Century* 27, no. 4 (Winter 2012): 477-87.
- Nootens, Geneviève. *Popular Sovereignty in the West: Politics, Contention, and Ideas*. New York: Routledge, 2013.

- Oakes, John. *Conservative Revolutionaries: Transformation and Tradition in the Religious and Political Thought of Charles Chauncy and Jonathan Mayhew*. Eugene, OR: Wipf and Stock Publishers, 2016.
- Oakley, Francis. "Christian Obedience and Authority, 1520-1550." In *The Cambridge History of Political Thought, 1450–1700*, edited by J.H. Burns and Mark Goldie, 157-92. Cambridge, UK: Cambridge University Press, 1991.
- Onuf, Peter. "A Declaration of Independence for Diplomatic Historians." *Diplomatic History* 22, no. 1 (January 1998): 71-83.
- O'Scannlain, Diarmuid. "The Natural Law in the American Tradition." *Fordham Law Review* 79, no. 4 (March 2011): 1513-28.
- Palmer, R.R. *The Age of the Democratic Revolution: A Political History of Europe and America, 1760-1800*. Edited by David Armitage. Princeton, NJ: Princeton University Press, 2014.
- Partlett, William. "The American Tradition of Constituent Power." *International Journal of Constitutional Law* 15, no. 4 (October 2017): 955-87.
- Pateman, Carole. *The Problem of Political Obligation*. Berkeley, CA: University of California Press, 1985.
- Patterson, Eric, and Nathan Gill. "The Declaration of the United Colonies: America's First Just War Statement." *Journal of Military Ethics* 14, no. 1 (January 2015): 7-34.
- Paust, Jordan. "Human Right to Participate in Armed Revolution and Related Forms of Social Violence: Testing the Limits of Permissibility." *Emory Law Journal* 32, no. 2 (Spring 1983): 545-82.
- Pencak, William. Introduction to *Pennsylvania's Revolution*, 1-6. University Park, PA: The Pennsylvania State University Press, 2010.
- Perry, Ralph. *Puritanism and Democracy*. New York: The Vanguard Press, 1944.
- Plamenatz, John. *Man and Society*. Vol. 1. London: Longman, 1963.
- Pocock, J.G.A. *The Ancient Constitution and the Feudal Law*. Cambridge, UK: Cambridge University Press, 1987.
- . "Political Thought in the English-Speaking Atlantic: (i), the Imperial Crisis." In *The Varieties of British Political Thought, 1500-1800*, 246-82. Cambridge, UK: Cambridge University Press, 1996.
- . "Reconstructing the Traditions: Quentin Skinner's Historians' History of Political Theory." *Canadian Journal of Political and Social Theory* 3, no. 3 (Fall 1979): 95-113.

- . “States, Republics, and Empires: The American Founding in Early Modern Perspective.” *Social Science Quarterly* 68, no. 4 (December 1987): 703-23.
- . *Virtue, Commerce, and History: Essays on Political Thought and History, Chiefly in the Eighteenth Century*. Cambridge, UK: Cambridge University Press, 1985.
- Post, David. “Jeffersonian Revisions of Locke: Education, Property-Rights, and Liberty.” *Journal of the History of Ideas* 47, no. 1 (Winter 1986): 147-57.
- Pressly, Thomas. “Bullets and Ballots: Lincoln and the 'Right of Revolution.'” *The American Historical Review* 67, no. 3 (April 1962): 647-62.
- . “The concept of the 'right of revolution' in the United States in historical perspective: from the Puritans to the present.” Speech, March 4, 1976. PDXScholar. Accessed March 24, 2020. <https://pdxscholar.library.pdx.edu/orspeakers/93/>.
- Preuss, Ulrich. “Constitutional Powermaking for the New Polity: Some Deliberations on the Relations between Constituent Power and the Constitution.” *Cardozo Law Review* 14, nos. 3-4 (January 1993): 639-60.
- Rachum, Ilan. “From 'American Independence' to the 'American Revolution.'” *Journal of American Studies* 27, no. 1 (April 1993): 73-81.
- Rakove, Jack. *The Beginnings of National Politics: An Interpretive History of the Continental Congress*. New York: Alfred Knopf, 1979.
- . “Ideas, Ideology, and the Anomalous Problem of Revolutionary Causation.” *The New England Quarterly* 91, no. 1 (March 2018): 36-56.
- . *Original Meanings: Politics and Ideas in the Making of the Constitution*. New York: Vintage Books, 1997.
- Read, James. *Power Versus Liberty: Madison, Hamilton, Wilson, and Jefferson*. Charlottesville, VA: University of Virginia Press, 2000.
- Reck, Andrew. “The Declaration of Independence as an 'Expression of the American Mind.'” *Revue Internationale de Philosophie* 31, no. 121/122 (1977): 401-37.
- . “The Enlightenment in American Law I: The Declaration of Independence.” *The Review of Metaphysics* 44, no. 3 (March 1991): 549-73.
- Reddinger, William. “The American Revolution, Romans 13, and the Anglo Tradition of Reformed Protestant Resistance Theory.” *American Political Thought* 5, no. 3 (Summer 2016): 359-90.

- Reid, John Phillip. *The Authority of Rights*. Vol. 1 of *Constitutional History of the American Revolution*. Madison, WI: The University of Wisconsin Press, 1986.
- . “The Authority of Rights at the American Founding.” In *The Nature of Rights at the American Founding and Beyond*, edited by Barry Shain, 67-115. Charlottesville, VA: University of Virginia Press, 2007.
- . “In a Defensive Rage: The Uses of the Mob, the Justification in Law, and the Coming of the American Revolution.” *New York University Law Review* 49, no. 6 (December 1974): 1043-91.
- . “The Irrelevance of the Declaration.” In *Law in the American Revolution and the Revolution in the Law: A Collection of Review Essays on American Legal History*, edited by Hendrik Hartog, 46-89. New York: New York University Press, 1981.
- Richardson, Elliot. “The Revolution That Began in 1215: Forces Behind the War of Independence.” *The Round Table* 66, no. 263 (July 1976): 225-31.
- Rigstad, Mark. “Rebellion, Right of.” In *The Encyclopedia of Political Thought*, edited by Michael Gibbons, 1-6. John Wiley & Sons, 2015. Last modified September 15, 2014. Accessed April 7, 2020. <https://doi.org/10.1002/9781118474396.wbept0868>.
- Robbins, Caroline. “Rights and Grievances at Carpenters' Hall, September 5-October 26, 1774.” *Pennsylvania History* 43, no. 2 (April 1976): 101-18.
- Robinson, Daniel. “Do the People of the United States Form a Nation? James Wilson's Theory of Rights.” *International Journal of Constitutional Law* 8, no. 2 (April 2010): 287-97.
- Rodgers, Daniel. *Contested Truths: Keywords in American Politics Since Independence*. New York: Basic Books, 1987.
- . “Rights Consciousness in American History.” In *The Nature of Rights at the American Founding and Beyond*, edited by Barry Shain, 258-79. Charlottesville, VA: University of Virginia Press, 2007.
- Rossiter, Clinton. “Richard Bland: The Whig in America.” *The William and Mary Quarterly* 10, no. 1 (January 1953): 33-79.
- . *Seedtime of the Republic: The Origin of the American Tradition of Political Liberty*. New York: Harcourt Brace, 1953.
- Rubin, Edward. “Judicial Review and the Right to Resist.” *Georgetown Law Journal* 97, no. 1 (November 2008): 61-118.

- Ryan, Alan. "The British, the Americans, and Rights." In *A Culture of Rights: The Bill of Rights in Philosophy, Politics and Law, 1791 and 1991*, edited by Michael Lacey and Knud Haakonssen, 366-439. Cambridge, UK: Cambridge University Press, 1992.
- Ryerson, Richard. "*The Revolution is Now Begun*": *The Radical Committees of Philadelphia, 1765-1776*. Philadelphia, PA: University of Pennsylvania Press, 1978.
- Sabine, George. *A History of Political Theory*. New York: Henry Holt and Company, 1972.
- Salmon, J.H.M. "Catholic Resistance Theory, Ultramontaniam, and the Royalist Response, 1580-1620." In *The Cambridge History of Political Thought, 1450-1700*, edited by J.H. Burns and Mark Goldie, 219-53. Cambridge, UK: Cambridge University Press, 1991.
- Sanford, Charles. *The Religious Life of Thomas Jefferson*. Charlottesville, VA: University of Virginia Press, 1984.
- Schafer, William. "Truman Nelson: Heeding the Voices of Revolution." *The Minnesota Review* 7 (Fall 1976): 66-82.
- Schlesinger, Arthur, Sr. "Our Ten Contributions to Civilization." *The Atlantic*, March 1959. Accessed January 22, 2020. <https://www.theatlantic.com/magazine/archive/1959/03/our-ten-contributions-to-civilization/305144/>.
- Schwarz, Wolfgang. "The Right of Resistance." *Ethics* 74, no. 2 (January 1964): 126-34.
- Schwoerer, Lois. "Locke, Lockean Ideas, and the Glorious Revolution." *Journal of the History of Ideas* 51, no. 4 (October/November 1990): 531-48.
- . "The Right to Resist: Whig Resistance Theory, 1688 to 1694." In *Political Discourse in Early Modern Britain*, edited by Nicholas Phillipson and Quentin Skinner, 232-52. Cambridge, UK: Cambridge University Press, 1993.
- Scott, John. "The Sovereignless State and Locke's Language of Obligation." *American Political Science Review* 94, no. 3 (September 2000): 547-61.
- Scott, Phillip. "The Right of Revolution: The Development of the People's Right to Reform Government." *West Virginia Law Review* 90, no. 1 (Fall 1987): 283-318.
- Seliger, Martin. "Locke's Theory of Revolutionary Action." *The Western Political Quarterly* 16, no. 3 (September 1963): 548-68.
- Shain, Barry. "Colonial Resolves Opposing the Stamp Act, June-December 1765." In *The Declaration of Independence in Historical Context*, 61-65. New Haven, CT: Yale University Press, 2014.

- . “Congress Plans for War, July 1775.” In *The Declaration of Independence in Historical Context: American State Papers, Petitions, Proclamations, and Letters of the Delegates to the First National Congresses*, 274-77. New Haven, CT: Yale University Press, 2014.
- . *The Myth of American Individualism: The Protestant Origins of American Political Thought*. Princeton, NJ: Princeton University Press, 1994.
- . “Revolutionary-Era Americans: Were They Enlightened or Protestant? Does It Matter?” Afterword to *The Founders on God and Government*, edited by Daniel Dreisbach, Mark Hall, and Jeffrey Morrison, 273-98. Lanham, MD: Rowman & Littlefield Publishers, 2004.
- . “Rights Natural and Civil in the Declaration of Independence.” In *The Nature of Rights at the American Founding and Beyond*, 116-62. Charlottesville, VA: University of Virginia Press, 2007.
- Shain, Barry, and Rogers Smith. Introduction to *The Nature of Rights at the American Founding and Beyond*, edited by Barry Shain, 1-12. Charlottesville, VA: University of Virginia Press, 2007.
- Shalhope, Robert. “Republicanism and Early American Historiography.” *The William and Mary Quarterly* 39, no. 2 (April 1982): 334-56.
- Sheldon, Garrett. “The Declaration of Independence: Origins and Impact.” In *The Declaration of Independence: Origins and Impact*, edited by Scott Gerber, 16-28. Washington, DC: CQ Press, 2002.
- . “The Philosophical Trinity of Jefferson's Political Theory.” In *Thomas Jefferson and Philosophy: Essays on the Philosophical Cast of Jefferson's Writings*, edited by M. Andrew Holowchak, 1-13. Lanham, MD: Lexington Books, 2014.
- . *The Political Philosophy of Thomas Jefferson*. Baltimore, MD: The Johns Hopkins University Press, 1991.
- Sherry, Suzanna. “The Founders' Unwritten Constitution.” *The University of Chicago Law Review* 54, no. 4 (August 1987): 1127-77.
- Shoenberger, Cynthia. “Luther and the Justifiability of Resistance to Legitimate Authority.” *Journal of the History of Ideas* 40, no. 1 (Spring 1979): 3-20.
- Simmons, A. John. “Free Choice, and Democratic Government.” *Georgia Law Review* 18, no. 4 (Summer 1984): 791-820.
- . “Inalienable Rights and Locke's Treatises.” *Philosophy & Public Affairs* 12, no. 3 (Summer 1983): 175-204.

- . *The Lockean Theory of Rights*. Princeton, NJ: Princeton University Press, 1994.
- . *On the Edge of Anarchy: Locke, Consent, and the Limits of Society*. Princeton, NJ: Princeton University Press, 1993.
- Skinner, Quentin. *The Age of Reformation*. Vol. 2 of *The Foundations of Modern Political Thought*. Cambridge, UK: Cambridge University Press, 1978.
- . “A Genealogy of the Modern State.” *Proceedings of the British Academy* 162 (2009): 325-70.
- . “The Origins of the Calvinist Theory of Revolution.” In *After the Reformation: Essays in Honor of J.H. Hexter*, edited by Barbara Malament, 309-30. Manchester, UK: Manchester University Press, 1980.
- Slaughter, Thomas. “‘Abdicate’ and ‘Contract’ in the Glorious Revolution.” *The Historical Journal* 24, no. 2 (June 1981): 323-37.
- Smith, Barbara Clark. *The Freedoms We Lost*. New York: The New Press, 2010.
- Smith, Rogers. *Civic Ideals: Conflicting Visions of Citizenship in U.S. History*. New Haven, CT: Yale University Press, 1997.
- . “The Politics of Rights Talk, Then and Now.” In *The Nature of Rights at the American Founding and Beyond*, edited by Barry Shain, 303-23. Charlottesville, VA: University of Virginia Press, 2007.
- Smith, Sarah, and Mark Hall. “Whose Rebellion? Reformed Resistance Theory in America — Part II.” *Unio Cum Christo* 4, no. 1 (April 2018): 171-88.
- Snow, Vernon. “The Concept of Revolution in Seventeenth-Century England.” *The Historical Journal* 5, no. 2 (1962): 167-74.
- Snyder, David. “Faith and Reason in Locke's Essay.” *Journal of the History of Ideas* 47, no. 2 (Spring 1986): 197-213.
- Sommerville, J.P. “Absolutism and Royalism.” In *The Cambridge History of Political Thought, 1450–1700*, edited by J.H. Burns and Mark Goldie, 345-73. Cambridge, UK: Cambridge University Press, 1991.
- . “From Suarez to Filmer: A Reappraisal.” *The Historical Journal* 25, no. 3 (September 1982): 525-40.
- Somos, Mark. *American States of Nature: The Origins of Independence, 1761-1775*. Oxford: Oxford University Press, 2019.

- Sorenson, Leonard. "Strauss, Anastaplo, and Crosskey on 'One Hard Nut to Crack': The Declaration of Independence." *Perspectives on Political Science* 36, no. 4 (Fall 2007): 222-28.
- Stern, Kenneth. "John Locke and the Declaration of Independence." *Cleveland Marshall Law Review* 15 (1986): 186-95.
- Stevens, Jacqueline. "The Reasonableness of John Locke's Majority: Property Rights, Consent, and Resistance in the Second Treatise." *Political Theory* 24, no. 3 (August 1996): 423-63.
- Stewart, Matthew. *Nature's God: The Heretical Origins of the American Republic*. New York: W.W. Norton & Company, 2014.
- Stoner, James, Jr. "Was Leo Strauss Wrong about John Locke?" *The Review of Politics* 66, no. 4 (Fall 2004): 553-63.
- Suber, Peter. *The Paradox of Self-Amendment: A Study of Law, Logic, Omnipotence, and Change*. Bern, CH: Peter Lang Publishing, 1990.
- Sumida, Gerald. "The Right of Revolution: Implications for International Law and World Order." In *Power and Law: American Dilemma in World Affairs*, edited by Charles Barker, 130-67. Baltimore, MD: The Johns Hopkins Press, 1971.
- Sunstein, Cass. "Constitutionalism and Secession." *The University of Chicago Law Review* 58, no. 2 (Spring 1991): 633-70.
- Surprenant, Chris. "Minority Oppression and Justified Revolution." *Journal of Social Philosophy* 41, no. 4 (Winter 2010): 442-53.
- Tani, Maxwell. "Jake Tapper Presses Bernie Sanders After Congressional Shooting on Whether His 'Revolution' Rhetoric Encourages Violence." *Business Insider*. Last modified June 19, 2017. Accessed March 29, 2020. <https://www.businessinsider.com/jake-tapper-bernie-sanders-revolution-rhetoric-encourages-violence-2017-6>.
- Tarcov, Nathan. "Locke's 'Second Treatise' and 'The Best Fence against Rebellion.'" *The Review of Politics* 43, no. 2 (April 1981): 198-217.
- Tate, Thad. "The Social Contract in America, 1774-1787: Revolutionary Theory as a Conservative Instrument." *The William and Mary Quarterly* 22, no. 3 (July 1965): 375-91.
- Thomas, Emory. "Jefferson Davis and the American Revolutionary Tradition." *Journal of the Illinois State Historical Society* 70, no. 1 (February 1977): 2-9.
- Thompson, C. Bradley. *America's Revolutionary Mind*. New York: Encounter Books, 2019.



- . “On Declaring the Laws and Rights of Nature.” In *Natural Rights Individualism and Progressivism in American Political Philosophy*, edited by Ellen Frankel Paul, Fred Miller, and Jeffrey Paul, 104-38. Cambridge, UK: Cambridge University Press, 2012.
- Thompson, Martyn. “Significant Silences in Locke's Two Treatises of Government: Constitutional History, Contract and Law.” *The Historical Journal* 31, no. 2 (June 1988): 275-94.
- Thompson, Paul. “Is There Anything 'Legal' About Extralegal Action? The Debate Over Dorr's Rebellion.” *New England Law Review* 36, no. 2 (Winter 2002): 385-432.
- Tiefenbrun, Susan. “Civil Disobedience and the U.S. Constitution.” *Southwestern University Law Review* 32, no. 4 (2003): 677-702.
- Tuck, Richard. *The Sleeping Sovereign: The Invention of Modern Democracy*. Cambridge, UK: Cambridge University Press, 2016.
- Tuckness, Alex. “Discourses of Resistance in the American Revolution.” *Journal of the History of Ideas* 64, no. 4 (October 2003): 547-63.
- Tully, Alan. “The Political Development of the Colonies After the Glorious Revolution.” In *A Companion to the American Revolution*, edited by Jack Greene and J.R. Pole, 29-38. Malden, MA: Blackwell Publishers, 2000.
- Tully, James. *An Approach to Political Philosophy: Locke in Contexts*. Cambridge, UK: Cambridge University Press, 1993.
- . “Locke.” In *The Cambridge History of Political Thought, 1450–1700*, edited by J.H. Burns and Mark Goldie, 616-52. Cambridge, UK: Cambridge University Press, 1991.
- Turner, Ralph. *Magna Carta: Through the Ages*. London: Routledge, 2014.
- Valbuena, Olga. *Subjects to the King's Divorce: Equivocation, Infidelity, and Resistance in Early Modern England*. Bloomington, IN: Indiana University Press, 2003.
- Vanden Heuvel, Katrina, and Stephen Cohen. “Edward Snowden: A 'Nation' Interview.” *The Nation*, October 28, 2014. Accessed March 19, 2020. <https://www.thenation.com/article/archive/snowden-exile-exclusive-interview/>.
- VanDrunen, David. “The Use of Natural Law in Early Calvinist Resistance Theory.” *Journal of Law and Religion* 21, no. 1 (2005/2006): 143-67.
- Varg, Paul. “The Advent of Nationalism, 1758-1776.” *American Quarterly* 16, nos. 2, Part 1 (Summer 1964): 169-81.

- Von Eckardt, Ursula. *The Pursuit of Happiness in the Democratic Creed: An Analysis of Political Ethics*. New York: Praeger Publishers, 1959.
- von Friedeburg, Robert. "Self-Defense in Statutory and Natural Law: The Reception of German Political Thought in Britain." In *Natural Law and Civil Sovereignty: Moral Right and State Authority in Early Modern Political Thought*, edited by Ian Hunter and David Saunders, 170-86. New York: Palgrave Macmillan, 2002.
- Waldron, Jeremy. *God, Locke, and Equality: Christian Foundations in Locke's Political Thought*. Cambridge, UK: Cambridge University Press, 2002.
- . "John Locke: Social Contract versus Political Anthropology." *The Review of Politics* 51, no. 1 (Winter 1989): 3-28.
- Walker, Douglas, Jr. "Necessary to the Security of Free States: The Second Amendment as the Auxiliary Right of Federalism." *American Journal of Legal History* 56, no. 4 (December 2016): 365-91.
- Walzer, Michael. "The Obligation to Disobey." In *Political Theory & Social Change*, edited by David Spitz, 185-202. New York: Atherton Press, 1967.
- . *The Revolution of the Saints: A Study in the Origins of Radical Politics*. Cambridge, MA: Harvard University Press, 1965.
- Ward, Lee. "James Otis and the Americanization of John Locke." *American Political Thought* 4, no. 2 (Spring 2015): 181-202.
- . *The Politics of Liberty in England and Revolutionary America*. Cambridge, UK: Cambridge University Press, 2004.
- . "Thomas Hobbes and John Locke on a Liberal Right of Secession." *Political Research Quarterly* 70, no. 4 (December 2017): 876-88.
- Wellman, Christopher. "A Defense of Secession and Political Self-Determination." *Philosophy & Public Affairs* 24, no. 2 (Spring 1995): 142-71.
- . *A Theory of Secession*. Cambridge, UK: Cambridge University Press, 2005.
- Welna, David. "Some Gun Control Opponents Cite Fear Of Government Tyranny." *NPR*. Last modified April 8, 2013. Accessed March 19, 2020. <https://www.npr.org/sections/itsallpolitics/2013/04/08/176350364/fears-of-government-tyranny-push-some-to-reject-gun-control>.
- West, Thomas. *The Political Theory of the American Founding: Natural Rights, Public Policy, and the Moral Conditions of Freedom*. Cambridge, UK: Cambridge University Press, 2017.

- . “The Political Theory of the Declaration of Independence.” In *The American Founding and the Social Compact*, edited by Ronald Pestritto and Thomas West, 95-145. Lanham, MD: Lexington Books, 2003.
- Weston, Corinne. “England: Ancient Constitution and Common Law.” In *The Cambridge History of Political Thought, 1450–1700*, edited by J.H. Burns and Mark Goldie, 374-411. Cambridge, UK: Cambridge University Press, 1991.
- White, Morton. *The Philosophy of the American Revolution*. Oxford, UK: Oxford University Press, 1978.
- Wiley, James. “Sheldon Wolin on Theory and the Political.” *Polity* 38, no. 2 (April 2006): 211-34.
- Williams, David. “Civic Constitutionalism, the Second Amendment, and the Right of Revolution.” *Indiana Law Journal* 79, no. 2 (Spring 2004): 379-92.
- . “Civic Republicanism and the Citizen Militia: The Terrifying Second Amendment.” *The Yale Law Journal* 101, no. 3 (December 1991): 551-615.
- . “The Constitutional Right to Conservative Revolution.” *Harvard Civil Rights-Civil Liberties Law Review* 32, no. 2 (Summer 1997): 413-48.
- . “Militia Movement and Second Amendment Revolution: Conjuring with the People.” *Cornell Law Review* 81, no. 4 (May 1996): 879-952.
- Wills, Garry. *Inventing America: Jefferson's Declaration of Independence*. Garden City, NY: Doubleday & Company, 1978.
- . “James Wilson's New Meaning for Sovereignty.” In *Conceptual Change and the Constitution*, edited by Terence Ball and J.G.A. Pocock, 99-106. Lawrence, KS: University of Kansas Press, 1988.
- . “To Keep and Bear Arms.” *The New York Review of Books*, September 21, 1995. Accessed April 22, 2020. <https://www.nybooks.com/articles/1995/09/21/to-keep-and-bear-arms/#fn-48>.
- Wilson, Kathleen. “Inventing Revolution: 1688 and Eighteenth-Century Popular Politics.” *Journal of British Studies* 28, no. 4 (October 1989): 349-86.
- Wolin, Sheldon. “Constitutional Order, Revolutionary Violence, and Modern Power: An Essay of Juxtapositions.” In *Fugitive Democracy*, edited by Nicholas Xenos, 421-37. Princeton, NJ: Princeton University Press, 2016.

- . “Norm and Form: The Constitutionalizing of Democracy.” In *Fugitive Democracy*, edited by Nicholas Xenos, 77-99. Princeton, NJ: Princeton University Press, 2016.
- Wood, Gordon. “The American Revolution.” In *The Cambridge History of Eighteenth-Century Political Thought*, edited by Mark Goldie and Robert Wokler, 601-25. Cambridge, UK: Cambridge University Press, 2006.
- . *The American Revolution: A History*. New York: Modern Library, 2002.
- . *The Creation of the American Republic, 1776-1787*. Chapel Hill, NC: The University of North Carolina Press, 1969.
- . “Foreword: State Constitution-Making in the American Revolution.” *Rutgers Law Journal* 24, no. 4 (Summer 1993): 911-26.
- . “The Founders Rule!” *The New Republic*, November 7, 2005. Accessed April 22, 2020. <https://newrepublic.com/article/65117/the-founders-rule>.
- . *The Radicalism of the American Revolution*. New York: Alfred Knopf, 1991.
- . “The Radicalism of Thomas Jefferson and Thomas Paine Considered.” In *Paine and Jefferson in the Age of Revolutions*, edited by Simon Newman and Peter Onuf, 13-25. Charlottesville, VA: University of Virginia Press, 2013.
- . “Rhetoric and Reality in the American Revolution.” *The William and Mary Quarterly* 23, no. 1 (January 1966): 3-32.
- Wootton, David. “John Locke and Richard Ashcraft's Revolutionary Politics.” *Political Studies* 40, no. 1 (March 1992): 79-98.
- . *Power, Pleasure, and Profit: Insatiable Appetites from Machiavelli to Madison*. Cambridge, MA: Harvard University Press, 2018.
- Yack, Bernard. “Popular Sovereignty and Nationalism.” *Political Theory* 29, no. 4 (August 2001): 517-36.
- Yarbrough, Jean. “Thomas Jefferson and the Social Compact.” In *The American Founding and the Social Compact*, edited by Ronald Pestritto and Thomas West, 147-61. Lanham, MD: Lexington Books, 2003.
- Yates, Steven. “When Is Political Divorce Justified?” In *Secession, State, and Liberty*, edited by David Gordon, 35-63. New York: Routledge, 2017.
- Yirush, Craig. “The Idea of Rights in the Imperial Crisis.” In *Natural Rights Individualism and Progressivism in American Political Philosophy*, edited by Ellen Frankel Paul, Fred Miller, and Jeffrey Paul, 82-103. Cambridge, UK: Cambridge University Press, 2012.

- . *Settlers, Liberty, and Empire: The Roots of American Political Theory*. Cambridge, UK: Cambridge University Press, 2011.
- York, Neil. “The First Continental Congress and the Problem of American Rights.” *The Pennsylvania Magazine of History and Biography* 122, no. 4 (October 1998): 353-83.
- Zagorin, Perez. *Provincial Rebellion*. Vol. 2 of *Rebels and Rulers, 1500-1660*. Cambridge, UK: Cambridge University Press, 1982.
- Zarefsky, David. “Philosophy and Rhetoric in Lincoln's First Inaugural Address.” *Philosophy & Rhetoric* 45, no. 2 (2012): 165-88.
- Zink, James. “The Language of Liberty and Law: James Wilson on America's Written Constitution.” *American Political Science Review* 103, no. 3 (August 2009): 442-55.
- Zuckert, Michael. “Natural Rights and Imperial Constitutionalism: The American Revolution and the Development of the American Amalgam.” *Social Philosophy and Policy* 22, no. 1 (January 2005): 27-55.
- . *Natural Rights and the New Republicanism*. Princeton, NJ: Princeton University Press, 1994.
- . “Natural Rights in the American Revolution: The American Amalgam.” In *Human Rights and Revolutions*, edited by Jeffrey Wasserstrom, Lynn Hunt, and Marilyn Young, 59-76. Lanham, MD: Rowman & Littlefield Publishers, 2000.
- . *The Natural Rights Republic: Studies in the Foundation of the American Political Tradition*. Notre Dame, IN: University of Notre Dame Press, 1996.
- . “Self-Evident Truth and the Declaration of Independence.” *The Review of Politics* 49, no. 3 (Summer 1987): 319-39.
- . “Thomas Jefferson on Nature and Natural Rights.” In *The Framers and Fundamental Rights*, edited by Robert Licht, 137-66. Washington, DC: The AEI Press, 1991.