4

How the Declaration Disagrees with John Locke

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When Americans in 1789 heard of France's new revolution, many assumed it was a logical successor to their own. Both revolutions seemed to be born from the same new Enlightenment-era consciousness of the universal and natural rights of man. The Declaration of the Rights of Man and of the Citizen even contained many echoes of their own Declaration of Independence. But within a few years, they were wondering, as many generations have since wondered, how the world's second natural rights revolution could have gone so poorly after the first had produced such impressive results.

We can find three very different and characteristic answers to that question in the writings of three of that period's greatest political actors. If we begin with a quick look at those three different views of the relation between the French and American Revolutions, we can better see what remains at stake today as we inquire into the meaning of the American Declaration's natural rights teaching.

Edmund Burke drew a sharper distinction between the American and French Revolutions than perhaps any other thinker of the period. He consistently supported the Americans' demands against Britain, defended their decision to declare independence, believed Britain was on the wrong side of the Revolutionary War, and insisted that he would rather have America as an independent ally than subjugate it by force.[1] This is not to say that he defended the text of our actual Declaration. The "declaration of independency" that he defends appears to be the one-line declaration of July 2—not the more memorable one of July 4, which Burke never mentioned in public.

We can infer what Burke must have thought about the Declaration's natural rights language from what he did say, in 1774–75, as the colonists increasingly justified their resistance to Great Britain by appealing to abstract principles of political right. Burke treated these appeals with benevolent condescension. He said that most citizens would never be interested in such abstract political principles unless they were provoked by some concrete grievance. In this case, that grievance was Parliament's novel and imprudent attempts to tax the Americans. So as soon as Parliament repealed all American taxes, the Americans' seeming concern for abstract principles, "born of our unhappy contest, will die along with it."[2] At the same time, Burke honored the principles that the Americans were actually acting on—because he thought they were traditional British constitutional principles, not metaphysical abstractions about the rights of man.[3]

When it came to the French, however, Burke seemed convinced that they really were acting on those metaphysical abstractions. Hence he wrote his longest book, *Reflections on the Revolution in France*, as a radical attack on not just the French Revolution but the deeper principles animating it. He even managed to predict (almost a decade before he or any Englishman knew the name of Napoléon) that, by acting on those principles, France would soon bring itself under a military dictatorship.[4]

Burke particularly objected to any attempt to confuse these newfangled, abstract, natural rights principles with the traditional British constitutional principles of the Glorious Revolution of 1688. Nearly the first quarter of his book was devoted to rebutting his countryman Richard Price, who had just published a pamphlet identifying the French revolutionary natural rights theory with the principles of their own Glorious Revolution.[5] And although Burke was too tactful to say it, Price was following there the interpretation of the Glorious Revolution originally given by John Locke. Locke had boldly asserted, in the 1689 preface to his *Two Treatises of Government*, that his own abstract natural rights theory would provide the true justification for William III's recently successful revolution. According to Burke, then, the main difference between the

American and French revolutionaries was this: Although angry Americans may sometimes have been driven to use Lockean language, only the French really acted on Lockean principles.

John Adams, a co-drafter of the Declaration, was obviously much more comfortable with its natural rights language than Burke was. Adams did not consider such language to be an attack on the traditional British constitution because he never saw any problem interpreting the British constitution in light of Lockean natural rights.[6] In fact, when Price sent Adams a personal copy of the very same pamphlet that would provoke Burke into writing the *Reflections*, Adams responded with enthusiastic praise:

> I love the zeal and the spirit which dictated this discourse, and admire the general sentiments of it. From the year 1760 to this hour, the whole scope of my life has been to support such principles and propagate such sentiments.[7]

Adams was actually concerned that the French Revolution was *insufficiently* Lockean.[8] But even more, he was deeply worried that the French, after beginning their revolution on sound Lockean natural rights principles, would fail to design a constitution that could defend those principles in practice.[9] "Locke taught them principles of liberty. But I doubt whether they have not yet to learn the principles of government."[10] In Adams's view, even Locke himself had once fallen victim to the same problem as the revolutionary French. Speaking about a real-life law code that he believed Locke to have written, Adams called it a striking example of how

> a philosopher . . . may defend the principles of liberty and the rights of mankind with great abilities and success; and, after all, when called upon to produce a plan of legislation, he may astonish the world with a signal absurdity.[11]

But, Adams promised, we could avoid such absurdities in the future. The Americans had shown the world that if a justified Lockean revolution

was followed up with a well-designed constitution, it could better maintain its Lockean principles and avoid falling victim to the same corruptions that it sought to overthrow.[12] Adams's whole *Discourses on Davila* (1790) amounted to a lengthy insistence that revolutionary France's destiny was therefore now in its own hands. If France would be wise enough to form a bicameral legislature with a monarchic veto, then none of Burke's dire predictions need come true.[13] Adams thought that Napoléon's later ascendancy vindicated precisely his own criticism of French constitutional design—not any criticism of French revolutionary principles.[14]

Adams's basic view of the French Revolution—sound principles but imprudently managed—has become much more popular among Americans in the subsequent centuries, and particularly among conservatives. But for Thomas Jefferson, even this much criticism of the French Revolution was far too much. In August 1789, he wrote from France, "I will agree to be stoned as a false prophet if all does not end well in this country."[15] A month later, he famously wrote to James Madison that it was the Americans who needed to follow the French in putting their own natural rights principles more fully into practice. Under Lockean natural law, the dead cannot bind the living; hence, Jefferson tried to insist, Americans had to learn from the French and automatically abolish all their laws and public debts and constitutions every 19 years or so.[16] More than three years later, in early 1793—during the run-up to Louis XVI's execution, which Jefferson probably knew to be unjustified—Jefferson defended all the proceedings of the Jacobins, for he "considered that sect as the same with the Republican patriots" of America.[17]

> The liberty of the whole earth was depending on the issue of the contest [in France], and was ever such a prize won with so little innocent blood? My own affections have been deeply wounded by some of the martyrs to this cause, but rather than it should have failed, I would have seen half the earth desolated. Were there but an Adam & an Eve left in every country, and left free, it would be better than as it now is.[18]

Jefferson, therefore, considered any attack on the French Revolution to be an attack on the American Revolution as well. He could only see Adams's initial reservations about the French Revolution as a sign of political "apostacy" and "heresy" in his old friend. And to prevent Adams's *Discourses on Davila* from spreading that heresy, Jefferson decided to arrange the American publication of Thomas Paine's *Rights of Man*—that is, Paine's frontal attack on Burke's *Reflections on the Revolution in France*.[19] There is "no better proof" of the Americans' attachment to the "principles of republicanism" and of the American Revolution, wrote Jefferson, than that Americans "love [Paine's *Rights of Man*] and read it with delight."[20] To my knowledge, the only criticism Jefferson ever expressed of the French revolutionaries was that they were insufficiently devoted to the principle that the will of the majority stands for the will of the whole—which Jefferson, following Locke, called a "fundamental law of nature."[21]

Today, a version of Jefferson's exuberant revolutionism may still be lurking quietly in the background of much American foreign policy thinking on both the left and right.[22] But few would publicly defend his claim that the French Revolution's excesses were fully justified by American natural rights principles. At least among American conservatives of the past century, the main option seems to have been Adams or Burke.

In this chapter, I try to chart a middle course between those two very different conservative takes on the Declaration of Independence. I thus hope to bring to light aspects of the Declaration to which neither Adams's nor Burke's interpretation can do justice. For with all due deference to these great 18th-century defenders of American independence, it seems to me that both of them fail to appreciate the novelty of the American view of natural rights expressed in the Declaration of Independence. Burke goes too far by suggesting that the Americans meant *nothing* by their natural rights doctrines except that they wished not to be taxed without their consent. But Adams, too, is sloppy in equating the principles of his own American Revolution with those of Locke and the French Revolution. Adams and his fellow Americans had seen something that neither Burke nor Locke saw before them, even if Adams himself did not notice how novel it was.

To see what both Burke and Adams are missing about our Declaration, it is helpful to compare its text with Locke's *Second Treatise on Government*—particularly on the topics of natural rights, the common good, and constitutionalism. Carelessness about what Locke actually taught on these topics is pardonable in those who, like Adams, have a country to run. But for the rest of us, it is worth our time to get this comparison right. A careful look at the differences between Locke and our Declaration can help us to recognize the aspects of our own founding's distinctiveness that both Adams and Burke seem to have underappreciated. In particular, it can help us see why it is no accident that our founders managed (as Adams rightly noted) to design their state and federal constitutions so much better than the French revolutionaries. I will argue that it was the founders' distinctive, non-Lockean conception of natural rights that allowed them to do so.

Lockean Constitutionalism

The Declaration is often called a Lockean document. It obviously contains many echoes of Locke's *Second Treatise*. Yet most Americans who have heard of Locke today—and probably even at the time of the founding—have been misled by these similarities. They are unaware of how radically Locke opposed certain basic political principles that Americans since 1776 have consistently taken for granted. I will therefore begin by summarizing a few of Locke's explicit and (to Americans) surprising statements about how any legitimate government must work.

For Locke, there can be only one legislative power in any political community.[23] Locke consistently calls this the legislative "power," not the legislative "branch" as Americans prefer. For a branch is only one limb of a tree: The term implies, to this day, some degree of equality among the different and coordinate branches. Locke denies that there can be any such equality. If he had used a tree metaphor, Locke would have called the legislative power the trunk and all other governmental powers the branches and twigs.

Locke believed that the entire executive power must be entirely "derived from," and "visibly subordinate and accountable to," the legislative power. That is, the legislative has to create, appoint, delegate, hire, and fire, "at pleasure," *every single executive official*. This includes the "supream Executive Power" (i.e., chief executive) as well as the entire judiciary. (The term "executive" for Locke encompasses the judiciary.)[24] Hence when laws get executed and justice gets dispensed in courts, it is the "Legislative or Supream" power that is really taking these actions through the executive and judicial deputies to whom it gives power.[25] Those officials remain the legislative's agents, completely responsible to the legislative and only to the legislative. The same is true of "any Domestick Subordinate Power," such as provincial assemblies. These have "no manner of Authority any of them, beyond what is, by positive Grant, and Commission, delegated to them, and are all of them accountable to some other Power in the Commonwealth," namely the national legislative or one of its other deputies.[26]

Locke's legislative has, to be sure, no power to change the commonwealth's constitution. But that is because the constitution for Locke means only "the Constitution of the Legislative." It means the makeup of the legislative power, including the manner of its selection and (potentially) of its convening.[27] A Lockean constitution can say nothing about the executive and judicial branches: These must exist at the pleasure of the legislative. Nor could a Lockean constitution enumerate either the people's rights against the legislative or the limits of legislative power. Only the legislative can "decide the Rights of the Subject" and fix the "due Bounds" within which rulers must be kept.[28]

Thus for Locke, so long as a government lasts, its legislative power "must needs" be perfectly "Supream" over the whole commonwealth.[29] It is indeed as supreme as the Hobbesian sovereign, who likewise holds in his hand all executive and judicial offices as well as all subordinate legislative bodies.[30] The crucial difference from Thomas Hobbes is of course that the Lockean legislative may be fired at any time by the ultimately sovereign people, who are the only rightful judge as to whether the legislative has overstepped its inherent limits.[31] But Locke's understanding of

the legislative's rights "in all Cases, whilst the Government subsists" (i.e., prior to a revolution) is still more Hobbesian than anything that almost any Patriot in 1776 could have accepted.[32]

Locke's legislative power is designed to be precisely that supreme, unchecked, ultimate political authority that the Patriots had gotten sick of hearing about from Parliament's defenders during the imperial crisis.[33] Hobbes, Locke, and many other European thinkers had insisted that such a supreme power must exist *somewhere* in any functioning government. Massachusetts Royal Governor Thomas Hutchinson even claimed that "no sensible Writer upon Government has before denied" that such a power must exist within any government.[34] Yet the rebellious Americans did deny that such a power should exist within any American government.

Hence, when Patriot pamphleteers quoted Locke during the run-up to 1776, they loved to quote his lists of the inherent limits to legislative power (including the famous no-taxation-without-representation rule). For Locke had said that the people may enforce these limits on government through their right of revolution. But the same pamphleteers consistently ignored the surrounding chapters, in which Locke explains how government is then supposed to work *after* the revolution. Had any American in 1776 commented on those chapters (and I have yet to find one who did), he would have found that they presented a familiar British view of parliamentary supremacy. In fact, he would have thought it sounded very much like the view that he and his countrymen were fighting the Revolution *against*.

The only contemporary pamphleteer whom I have found quoting any of the above-cited passages from Locke is the anti-American British bureaucrat William Knox. Knox, of course, uses those Lockean passages to defend Lockean parliamentary supremacy, which he applies against the authority of the colonial legislatures.[35] Meanwhile, the only American revolutionary who may have been sympathetic to these views of Locke's seems to be Paine. For Paine's *Common Sense* demanded first an American revolution, but then also a new supreme national American legislature. America needed a "continental form of government," said Paine, with all 13 state legislatures made "subject to the authority of a Continental Congress,"

whose members would be "the legislators and governors of this continent" while in office, with apparently no other branches of government appointed to check them.[36] Americans responded to Paine's call for revolution. They completely ignored his call for a new and fully supreme national legislature.

To get a sense of how little the Americans of 1776 cared about Locke's actual political philosophy, we can look at the two pre-1776 American pamphlets that include (so far as I know) the most extensive quotations from England's most quotable Whig philosopher. James Otis's opening salvo of the imperial crisis (1764), as well as the famous "Boston Pamphlet" drafted by Samuel Adams and others (1772), both contain long block quotes from Locke's *Second Treatise* on the limits of the legislative power. Yet in both cases, these quotations get significantly doctored by the respective pamphlet authors. And neither gives any indication of knowing (or caring) that he is changing Locke's meaning—much less that these changes are flatly contradicted by Locke's statements just a few pages later in the *Second Treatise*.

Thus, faced with Locke's claim that only the legislature can "decide the Rights of the Subject," Otis simply deletes the phrase from his quotation from Locke. The Bostonians instead alter the grammar so that the legislature is no longer the one deciding. Both Otis and the Bostonians boldly insert the word "independent" before Locke's word "judges." Where Locke had said that the legislature is "bound to dispense justice" through its subordinate judges, the Bostonians alter it so that the legislature is only "bound to see that justice is dispensed" by independent judges.[37] And when quoting Locke on the supreme legislative power, Otis brazenly inserts the un-Lockean and pro-American claims that "subordinate legislative" bodies have rights against the "supreme" national legislative body and that those subordinate legislative bodies are constituted independently by "the community" (rather than by a supreme legislative authority that can fire them again at pleasure).[38]

Any one of these would have been a career-ending act of dishonesty if Otis or the Bostonians had been engaged in academic scholarship on

Locke. But they did not claim to be. I would be surprised if either had intended to mislead their readers. My best guess is that both believed, erroneously, that they were simply offering friendly amendments to correct lapses or infelicities of expression by the great Whig philosopher and defender (as they assumed) of the post-1688 British constitution. The same assumption about Locke was likely made by most, or even all, of the other Revolutionary-era Americans whom these pamphlet authors represented and influenced. Even among Americans who read Locke today, I have generally found the same lack of interest in his manifest disagreements with American understandings of constitutionalism. When confronted with those disagreements, Americans tend to respond with a shrug that says, "Too bad for Locke."

I do not think we can leave it at that shrug if we wish to understand the Declaration of Independence correctly. For Locke was at least as suspicious of arbitrary, unchecked power as any Patriot in 1776. If he believed that so much unchecked power had to be granted to the legislative in any government, he must have had a reason for believing so. What was his reason?

Lockean Natural Rights and the Common Good

Locke believed he had no choice. His constitutionalism, such as it is, follows directly and logically from his understanding of the purpose of government. And his understanding of the purpose of government, in turn, follows directly from his famous teaching on the state of nature and natural rights. Americans were able to disagree with Locke's constitutionalism only because they already disagreed with his understanding of natural rights.

According to Locke, natural law commands no more and no less than the comfortable, bodily preservation of all mankind.[39] This is the same as saying that it commands the preservation of everyone's natural rights to life (including health), bodily liberty, and property. For liberty and property are "means of" comfortable self-preservation and are, under Lockean

natural law, valued only as such.[40] This same natural law sets the strict limits of all governmental power. Political society is formed precisely when naturally free individuals hand over to society their own power of enforcing this same natural law.[41] The political society formed in this manner—and a fortiori its legislative, whose powers are merely delegated by the society—can therefore have no power except what is needed to preserve life, liberty, and property. The legislative power can never "destroy, enslave, or . . . designedly impoverish" its subjects in the service of any cause whatsoever.[42] Locke makes that assertion, and then he restates it: The legislative power "is limited to the publick good of the Society" or must serve "the good of the People."[43] In other words, since the Lockean political common good is defined by the Lockean natural rights teaching, "the common good" in Lockean political society is limited to the preservation of "every one"—that is, "himself his Liberty and Property."[44]

War, for Locke, is a state of "Mutual Destruction" and hence the polar opposite of mutual preservation. This is why Locke can also say that natural law commands "the Peace and Preservation of all Mankind."[45] Hence, "one great reason" why people form governments is to avoid the state of war.[46] Locke understands the state of war roughly as Hobbes understood it: a lawless, amoral fight to the death, where neither side is bound by any rules or rights except the rational desire to escape the state of war where possible.[47] Locke famously insists that our natural state is, *pace* Hobbes, a state of peace.[48] But he is equally clear that in that natural state of peace, "every the least difference is apt to end" in the Hobbesian state of war.[49] For in a state of peace without government to protect us, everyone still has the natural right to regard the slightest perceived threat to his life, liberty, or property—indeed, "reason bids me look on" any such threat—as a plunge into the state of war.[50]

For this reason, Locke considers it an essential and nonnegotiable task of government to prevent any and all of the threats that could reintroduce the very state of war that civil society is designed to prevent. Government therefore has to resolve "every the least difference," to the extent it can. Humans under government must never be allowed to risk a fight by laying

claim to the same property. Government *must* exclude "*all* private judgement of every particular Member," and must decide "*all* the differences that may happen between *any* Members of that Society, concerning *any* matter of right."[51] (Emphasis added.) If your so-called government includes no "known Authority, to which *every one* of that Society may Appeal upon *any* Injury received, or Controversie that may arise," then you have no government at all, and your would-be citizens are "still in the state of nature."[52] (Emphasis added.) For a government that fails to reliably protect our natural rights actually leaves us worse off than in the state of nature, and so would not receive the consent of any rational human.[53]

Thus, Locke leaves no place for any government official to claim that a particular act of the legislative power is invalid—so long as this legislative power remains in place (that is, in a situation short of revolution). In fact, Locke deliberately designs his political system to rule out any such claim. Because a single and ultimate authority must be able to "determine all the Controversies . . . that may happen to any Member of the Commonwealth," this single and ultimate authority can only be the legislative or the magistrates it appoints (and can replace) at pleasure.[54] For if a chief executive, any number of high-court judges, or an entire provincial legislature could challenge a procedurally valid law passed by a valid national legislative power, then we would have on our hands a controversy with no governmental authority to resolve it. This would be true even if the law were being challenged by an appeal to some written constitution that the law allegedly contradicts. For who would have the constitutional power to interpret this written constitution? If the legislative has such a power, then it can simply reinterpret the constitution to resolve the conflict in its own favor. But if instead someone else were the final judge of the legislative power's limits, then that inferior official could override some of its acts while the rest remained in place. Locke calls that idea "ridiculous" and even "impossible to conceive."[55] For it would leave it ultimately unclear to ordinary citizens what is "*the* Standard of Right and Wrong . . . to decide *all* Controversies" between them, and hence it would leave them open to the type of ambiguity that can

lead to disagreement, conflict, an appeal to force, and eventually civil war.[56] (Emphasis added.)

Locke's constitutionalism follows from his natural rights teaching. Like Hobbes, he regards civil war as the *summum malum* of all political life, since it is the greatest of all risks to our fundamental natural right of comfortable preservation.[57] A political system would be irrational, and hence impossible for rational creatures to consent to, if it permitted that risk to exist anywhere that it had the option of eliminating it—at whatever cost. No other consideration, no real or alleged common good could possibly be balanced against the risk of avoidable, violent conflict. The government has no business caring about any real or alleged good other than comfortable bodily preservation.

The American Founders' Un-Lockean Constitutionalism

At this point it should be clear how foreign to American political thought is Lockean constitutionalism. From 1788 on, we have taken for granted that we should have an independent executive, an independent judiciary, state governments with their own independent authority not delegated from Congress, and enumerated constitutional rights that limit the legislative power itself. All these standard features of American constitutionalism are not only absent from Locke's thought but expressly contradicted by it. Had our federal Constitution been written by convinced Lockeans, it would have ended at Article I, Section 7.

Nor is this an instance in which the period 1787–88 produced some radical improvements unthought of in 1776. Every state constitution, written in 1776 and thereafter, already presupposes that the people of each state constitute its executive and judicial branches in addition to its legislative branch. Every state constitution presupposes that those other branches can act as independent checks on the legislative—not only as its deputies. (In Washington's 1787 letter to Congress introducing the new federal constitution, he states as an obvious deduction that, once we needed to

give Congress new legislative powers, we would also need to constitute two other branches of government to check Congress.)[58] Every state constitution also presupposes that the people can, and indeed ought to, enumerate positive restrictions on the legislative power in the form of bills of rights. Those rights included not only natural rights but positive civil rights (such as trial by jury). The people of each state thought they were, by writing these constitutions, putting these enumerated rights out of the reach of their own legislative branches.

And many American political thinkers before *Marbury v. Madison*—starting with Otis in 1764—argued that the judicial branch could and should enforce these same positive, constitutional rights against the legislative branch.[59] They did not agree with Locke that the people can vindicate their civil rights against the legislature only by the extreme expedient of a revolution. When Americans from the 1760s onward have used the word "constitution," they have consistently referred to something that Locke thought impossible. John Dickinson in 1767—just before quoting Locke on the principle of no taxation without consent—defines "a free people" as "*those*, who live under a government so *constitutionally checked and controuled*, that proper provision is made against its being" exercised unreasonably.[60] (Emphasis in original.) The Bostonian preacher John Tucker, in 1771, cites the Lockean state-of-nature teaching, but concludes from it that

> the fundamental laws, which . . . form the political constitution of the state,—which mark out, and fix the chief lines and boundaries between the authority of Rulers, and the liberties and privileges of the people, are, and can be no other, in a free state, than what are mutually agreed upon and consented to.

He goes on to say that only these "constitutional laws of the state," and no mere governmental authority, "are, properly, the supreme power, being obligatory on the whole community," including on the legislature itself.[61]

The Town of Boston, in 1772, asserts with Locke that "when Men enter into Society, it is by voluntary Consent." From this they, too, conclude

that such men must "have a Right to demand and insist upon the Performance [by their legislature] of such Conditions and previous Limitations as form an equitable *original Compact*."[62] (Emphasis in original.)

An anonymous but popular Philadelphia pamphlet in 1776 follows the same logic:

> Individuals . . . agreeing to erect forms of government . . . must give up some part of their liberty for that purpose; and it is the particular business of a Constitution to make out *how much* they shall give up, [saying] to the legislative powers, "Thus far shalt thou go, and no farther."[63] (Emphasis in original.)

In light of British parliamentary supremacy, the pamphlet argues, the British in reality have no constitution.

The loyalist Charles Inglis, in 1776, defines "constitution" as "*that assemblage of laws, customs and institutions which form the general system; according to which the several powers of the state are distributed, and their respective rights are secured to the different members of the community*."[64] (Emphasis in original.) The "Essex Result" of 1778 expects a constitution to establish "the several lines in which the various powers of government are to move," which require the people's positive civil rights to be "ascertained and defined . . . with a precision sufficient to limit the legislative power." It again derives this expectation from a seemingly Lockean state-of-nature teaching.[65] Even Paine, in his swiftly ignored demand for a national supreme legislative power, still seems to assume that the expected "Continental Charter" (a national written constitution) should delineate "the line of business and jurisdiction between" Congress and the state legislatures and should include a bill of rights. Even Paine assumes that these restrictions on the legislative power belong to "such . . . matter as is necessary for a charter to contain."[66]

Americans thus rejected Lockean constitutionalism from the beginning. And we have seen that Lockean constitutionalism is closely connected to Lockean natural rights. It therefore seems to me that the Declaration

of Independence's apparently small deviations from the Lockean natural rights teaching are more significant than is usually noted.

The American Founders on Natural Rights and the Common Good

As we saw above, it is essential to Locke's political teaching that our *only* natural right is to comfortable self-preservation—that is, to life, health, liberty, and property. Locke is often associated as well with the so-called rights of conscience (a phrase he never uses in his published writings), but those rights are epiphenomenal on his view. Locke thinks we have a natural right not to follow the dictates of our own conscience but to live under a government that is concerned only with preserving the genuine rights of life, liberty, and property—a government that will interfere with our religion only insofar as our religion interferes with the government's attempts to preserve life, liberty, and property.[67]

The Declaration of Independence refuses to limit our natural rights as Locke did. It lists only three natural rights, but it says these are among *other*, unnamed natural rights. And one of the three rights that it does name is the ambiguous, and potentially expansive, "pursuit of Happiness." This, too, is a Lockean phrase, but it appears in Locke's treatise on psychology, not on politics—and for good reason.[68] For as Locke emphasizes there, the pursuit of happiness means all sorts of things to all sorts of people.[69] Such a polysemous right could never be a basis for the peaceful and conflict-averse Lockean society, which must agree on uniform regulations for the unambiguous, natural goods of life, liberty, and property.[70]

The Declaration's more expansive understanding of natural rights is visible in every reference to natural rights that I have seen in official founding-era documents. That is, unlike the French Declaration of the Rights of Man and of the Citizen, every public founding-era American enumeration of natural rights explicitly says that these rights go somehow beyond the Lockean rights of comfortable self-preservation. (I am taking for granted that none of the founders—particularly none

of those who mutually pledged "our Lives, our Fortunes and our sacred Honor" to the fight against tyranny—regarded the pursuit of happiness as definitionally identical or reducible to "property" or "comfortable self-preservation.")

It is to secure *these* natural rights—including the non-Lockean right to the pursuit of happiness and others not listed—that the Declaration says governments "are instituted among men." Thus, when the founders stated the truism that governments ought to protect the common good, they did not understand that common good as reducible to comfortable self-preservation or to life, liberty, and property. Naturally, they wanted their governments to secure life, liberty, and property (as did every political thinker prior to Karl Marx). But it is no secret that they also wanted their governments to secure other common goods.

I will name just a few examples of those goods, as the founders saw them:

- Public morality;
- Moral education of the young;
- Intellectual education of the young;
- Sabbath rest;
- A healthy marriage culture;
- Worship of God according to the dictates of each person's conscience, but also sometimes communally;
- Republican self-government, including jury trials and full civic participation by all property owners (not just the Lockean right to vote on tax increases);[71] and
- The rule of law—understood as a law above all individuals and groups, binding even on the popularly elected legislative power, and even (as far as republican principles will permit) binding on the majority of the people themselves.

According to the Declaration's logic, the founders may have thought that these other, non-Lockean political goods belonged among our other, unnamed natural rights. Or they may have thought that these other political goods were components of the pursuit of happiness. Or they may have thought both. Certainly none of them ever claimed that all the other common goods listed above were simply means to the protection of life, liberty, and property. I am not aware of any founder who, for instance, felt the need to argue publicly, as Locke was forced to argue, that the reason "Adultery, Incest and Sodomy" should be criminalized is that they impede population growth.[72] Rather, the founders were satisfied with the following type of deduction: Good public schools are needed because "religion, morality and knowledge" are "necessary to good government *and* the happiness of mankind."[73] (Emphasis added.)

The founders' understanding of natural rights was capacious enough to encompass what they believed mattered most in human life. It encompassed what they believed they knew about how humans pursue happiness, as it had been taught to them by the institutions that formed their souls: their families, their schools, and their churches. The language of the Declaration, one could say, incorporates by reference what the founders had learned from those institutions. Today, we have undergone a different formation, so we will interpret in the Declaration's terse formulas a somewhat different list of political common goods—although I hope not radically different.

Either way, any conception of the common good grounded in the Declaration of Independence will be more expansive than the Lockean conception. It will therefore be in some tension with the Lockean conception. Locke saw this as clearly as anyone, which is why comparing him to the founders is so helpful here. One cannot have a government instituted to secure non-Lockean common goods without some risk to the Lockean common goods. Hence Locke thought that governments had to confine themselves to securing the Lockean common goods. Yet because of the founders' more expansive conception of natural rights and the common good, they went so far as to enshrine non-Lockean aspects of

the political common good in their state constitutions, and even—to a more limited degree, given its limited scope—in their federal constitution. They bound their legislatures in writing to secure *these* rights, even though that would mean some unavoidable trade-offs for comfortable self-preservation. And even where they did not specifically mention non-Lockean rights or goods in their constitutions, they simply took for granted that state and federal legislatures would pass laws securing those non-Lockean rights and goods. They never dreamed that their judiciary would invalidate laws contrary to the legitimate purposes of government (the way Locke suggests it should).[74]

Perhaps the most important of these non-Lockean common goods pursued by our founding-era governments was the rule of law in its more-than-Lockean sense. For to ensure the rule of law rather than men, the founders consciously refused to create in any of their constitutions a single, ultimate governmental power with unambiguous authority to judge any potential disputes between private individuals or public officials.

Instead, they divided power among the three branches of government. They did this first at the state level and then, once it became clear that an actual federal legislative power was needed, again at the federal level. They made the executive independent of the legislature. They armed the executive in most states and at the federal level with the legislative veto to defend its independence. They made judges likewise independent of the legislature, choosing them either by election or by executive appointment. They armed federal and some state judges with the extra protection of lifetime tenure. They allowed those judges to enforce *positive* constitutional provisions (not the Lockean natural law) against the legislature. They built up a body of what we now call "constitutional law," which not even the legislature can change and which, therefore, contains permanent potential for conflict and ambiguity over "the Standard of Right and Wrong," "the Rights of the Subject," and the "due Bounds" of rulers.[75] Perhaps most significantly, the founders soon invented a remarkable and historically unprecedented type of constitutionalism, under

which the supreme government would have only enumerated powers, while the subordinate governments retained sovereign power in their proper spheres. I have not heard of a single American in the subsequent 236 years expressing the Lockean view that the residual sovereignty of states, as "Domestick Subordinate Powers," must have been delegated to them by the United States Congress.[76]

Of course, not all of this American non-Lockean constitutionalism was yet fully clear in the minds of the signers of the Declaration of Independence. But some of its aspects, such as the separation of coordinate branches of government, were already clear to them. We can gather this from how quickly after July 1776 the Declaration's signers went home and wrote state constitutions that enshrined that separation. Other aspects of American constitutionalism, especially federalism and—to some extent—judicial review, would develop over the coming decade or two. But the Declaration is already visibly open to those developments. Locke could never have been open to an arrangement where the Supreme Court could overturn some laws, Congress could pass new laws if it wanted to, and the executive branch could reinterpret those laws if it wanted to—where no single power has the unambiguous right to bind the actions of all Americans in case of serious disagreement.

Today, when we read the clauses in which the Declaration of Independence signals its openness to our subsequent constitutionalism, we take their views so much for granted that we may miss how important and controversial they are. Again, we can understand these clauses better by contrasting them with Lockean thought. Here are those familiar clauses: "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."

Locke thought he had already set out in his *Treatises* the principles on which the foundations of every valid government must be laid. He left no room for the people to lay their foundation on whatever principles may seem to them most likely to effect their own happiness, particularly if this "happiness" is defined as anything beyond comfortable self-preservation.

Likewise, Locke thought he had already set out how any government's powers have to be organized: The legislative must be absolutely supreme, and all other powers will be organized however the legislative wants to organize them. Locke knew his views were unusual. Many countries of his day had what they regarded as set "Constitutions," specifying how various of their nonlegislative powers should be organized.[77] But as we have seen, Locke was confident that this was not the rational meaning of "constitution," which can only mean the makeup of the supreme legislative power. Finally, Locke thought that the people constituted that legislative power only to ensure their "comfortable, safe, and peaceable living," not their safety and happiness.[78] Or rather, he thought the people constituted their legislative to ensure such "Political Happiness" as can be ensured by a government that, aiming only at the Lockean common good of comfortable preservation, must and will sacrifice all other considerations in order to secure *that* common good.[79]

The Declaration is probably again referring to the Americans' non-Lockean constitutionalism in its lapidary phrase "Deriving their just powers from the consent of the governed." For the most natural way to read that phrase is that different valid governments may have *different* just powers, depending on what the governed have chosen to consent to.[80] At least this is what nearly all Americans, both at the time and since, appear to have assumed. For only on that reading would it be important for us to write down positive, constitutional enumerations of the precise governmental powers that we have (and have not) consented to. According to Locke (and Hobbes), by contrast, all valid governments everywhere have exactly the same powers by consent of the governed.[81] On that view, any written constitutions would at least have been much shorter and less necessary than on the usual American view. All subsequent American constitutionalism thus rests on what Locke, in light of his own natural rights teaching, believed to be a logical impossibility.

At any rate, the Declaration of Independence asserts that our natural rights give us the political right to choose principles of government—and organize its powers—with a view to political happiness as we collectively

understand it. That is, our natural rights give us the political right to write our constitutions as we see fit, just as the American states quickly began to do in 1776. That political right is indeed what the Declaration is most immediately defending. Its preamble would never have mentioned natural rights unless its authors were convinced that natural rights, correctly understood, are the foundation of the political right to write our own constitutions as we see fit. Yet according to Locke, if we correctly understand natural rights, we should see that nobody ever has the political right to write the sort of constitutions that Americans wanted to write.

Locke denies the political premise of American constitutionalism because he is confident that, as rational creatures, we could never rationally assent to any avoidable risk to our own natural right to bodily self-preservation—nor, therefore, to a government that would pursue any common good other than bodily self-preservation. American constitutionalism presupposes the Declaration's understanding of natural rights and the common good rather than Locke's.

In particular, because of their understanding of the rule of law, the founders created a constitutional division of limited powers among different branches with no governmental authority entirely supreme over any other. They were aware (to at least some extent) that the rule of law in this sense would mean risking a constitutional crisis unresolvable by the text of the Constitution itself, and hence risking civil war.[82] They chose to form no Leviathan, no unstoppable earthly power to prevent that civil war. At some point, the only power to prevent such a war would be their own awareness of the sacred bonds that united them to each other as fellow Americans.[83] The risk still did not appear to them intolerable.

In light of all that we have seen from Locke, this might mean that the founders departed from his thought in one of two ways. Maybe they did not share Locke's Hobbesian terror of civil war as the absolute *summum malum* in this life. Or maybe they did not share Locke's Hobbesian optimism that human beings, guided by rational political philosophy, can construct a government that will permanently rule out the danger of that

civil war.[84] Or, more likely as it seems to me, they shared neither view. The founders were afraid of violent death, but they were also afraid of other things. And they knew that if governments are to have any chance of securing *all* the rights for the sake of which they are instituted among men, then governments cannot be constantly hemmed in by the political maxim that is the ultimate consequence of the Hobbesian and Lockean natural rights doctrines: "Safety first."

A Novel Natural Rights Teaching

Adams was thus wrong to think that he and the French revolutionaries were all animated by the same Lockean natural rights principles. As Locke proves so elegantly, our understanding of natural rights determines our understanding of the proper ends of government, which in turn determines the limits of what we can do when writing a political constitution. The Americans could write the constitutions that they did only because they had already departed significantly from the Lockean natural rights teaching. If Adams did not read Locke carefully enough to notice these departures, then the oversight, at any rate, seems to have done little harm to Adams's own drafting of the Massachusetts Constitution. (His biggest innovation in that constitution, the qualified executive veto, would soon be copied into our federal Constitution as the mainstay of its anti-Lockean executive independence.)[85]

Conversely, although it would take much more work to prove Burke's assertion that the defects of the French revolutionaries' constitution followed directly from the defects in their understanding of natural rights, that assertion appears highly plausible in light of what we have seen.[86] Burke himself offered an alternative and more moderate understanding of natural rights.[87] But Burke, too, failed to understand what the American colonists meant by those rights. The Declaration's rage at King George arose from Americans' long-frustrated hopes that their beloved king would assert his executive independence and check Parliament's

tyrannical depredations on their subordinate legislatures' rightful authority.[88] Americans were rejecting with contempt, and in large numbers, the 1766 Declaratory Act's assertion of absolute parliamentary supremacy.

Burke, by contrast, voted for the Declaratory Act in Parliament and supported it right up until its repeal in 1778.[89] He had read the philosophically grounded American protests against parliamentary supremacy but, as he said, "I do not enter into these metaphysical distinctions; I hate the very sound of them" and he "never ventured to put [Parliament's] solid interests upon speculative grounds."[90] He believed, mistakenly, that the real American grievances could be fully resolved by prudent and statesmanly action from a still-supreme and uncheckable Parliament.

It is not enough to note that, as shown by Burke's repeated failures from 1767 through 1778, his colleagues in Parliament were incapable of that prudent and statesmanly action. For even before Lexington and Concord, the most farsighted Americans were already demanding what Burke thought impossible: written, constitutional checks on the authority of Parliament to legislate for its colonies, checks that would bind Parliament itself.[91] Not until the Revolutionary War had begun did Burke reluctantly acknowledge that the British Empire would need to invent constitutional checks of this kind, and even then, he could imagine no power higher than Parliament to enforce them.[92] The Americans had sensed, before even the wise Burke, that a new kind of written constitution would be needed to bind both the national and the subordinate legislatures of a modern federal empire under the rule of law. And in the American mind, the demand for such a constitution was a direct consequence of their own understanding of natural rights and the common good.

Burke and Locke had two very different understandings of natural rights—different from the Americans' and even more different from each other. Yet remarkably, those different understandings still led them by different paths toward accepting, in their respective ways, the old British view of national legislative supremacy. If Parliament had just given the Americans the right to vote on tax increases, then Burke and Locke could each have been satisfied. By 1776, the Americans could not be.

The Declaration of Independence arose out of, and gives voice to, the Americans' rejection of the old British view of national legislative supremacy. Its wording clearly reflects that origin. The American political commonplaces that it expresses so beautifully would become, 12 years later, the basis for the American people's most astonishing political success. For in 1788 and thereafter, Americans would succeed where Burke and his parliamentary colleagues had failed: They would build a modern federal empire of free governments under the rule of law.

The founders' deviations from the Lockean natural rights teaching are therefore essential to their political thought and their political success. What may seem like small verbal deviations from Locke—"among these are," "the pursuit of Happiness"—reflect substantive changes with truly massive constitutional consequences. Without those departures from Lockean thought on natural rights and the common good, the United States as we know it would never have gotten off the ground. Even and precisely if Americans could have allowed Paine to actualize here his Lockean fantasy of a national supreme legislature (as it was briefly actualized in France), we would likely never have made it to 1787, let alone 2026.

Conservatives, in particular, have long been tempted to invoke Locke against his socialist adversaries. This may have been pardonable during the Cold War. But we will need to look to other intellectual sources if we wish to understand and defend the constitutional, legal, and moral structures that have truly made our country what it is. Those structures include our peculiar, homegrown understanding of natural rights. We can see as much in the Declaration's own remarkably lucid text—particularly when we read it alongside the equally clear statements by Locke that contradict it.

Notes

1. "Speech on American Taxation," in *The Writings and Speeches of Edmund Burke*, ed. Paul Langford, vol. 2, *Party, Parliament, and the American Crisis, 1766–1774*, ed. William B. Todd (Clarendon Press, 1981), 406–63; "Speech on Conciliation with America, 11 March 1775," in *The Writings and Speeches of Edmund Burke*, ed. Paul Langford, vol. 3,

Party, Parliament, and the American War, 1774–1780, ed. Warren M. Elofson and John A. Woods (Clarendon Press, 1996), 102–69; "Second Speech on Conciliation, 17 Nov 1775," in *The Writings and Speeches of Edmund Burke,* 3:183–220; "Speech on Cavendish's Motion on America, 6 Nov 1776," in *The Writings and Speeches of Edmund Burke*, 3:253; "Address to the King [Jan 1777]," in *The Writings and Speeches of Edmund Burke*, 3:264, 269; "Address to the Colonists [Jan 1777]," in *The Writings and Speeches of Edmund Burke*, 3:279, 283–84; and "Speech on the Use of Indians, 6 Feb 1778," in *The Writings and Speeches of Edmund Burke*, 3:364.

2. "Speech on American Taxation," in *The Writings and Speeches of Edmund Burke*, 2:458; "Speech on Conciliation with America," in *The Writings and Speeches of Edmund Burke*, 3:138–39, 146; "Second Speech on Conciliation," in *The Writings and Speeches of Edmund Burke*, 3:196; and "Letter to the Sheriffs of Bristol, 3 April 1777," in *The Writings and Speeches of Edmund Burke*, 3:318–19.

3. "Amendment to Address, 31 Oct 1776," in *The Writings and Speeches of Edmund Burke*, 3:251; "Petition for Bristol [Jan 1777]," in *The Writings and Speeches of Edmund Burke*, 3:257; and "Letter to the Sheriffs of Bristol," in *The Writings and Speeches of Edmund Burke*, 3:329.

4. Edmund Burke, *Reflections on the Revolution in France* (1790; Stanford University Press, 2002), 387–88.

5. Burke, *Reflections on the Revolution in France*, 155–231.

6. "A Dissertation on the Canon and the Feudal Law," in *The Works of John Adams, Second President of the United States: With a Life of the Author, Notes and Illustrations, by His Grandson Charles Francis Adams*, ed. Charles Francis Adams, vol. 3 (Little, Brown, 1851), 461, 456–57.

7. John Adams to Richard Price, 19 April 1790, in *The Works of John Adams, Second President of the United States*, 9:563.

8. John Adams to Richard Price, 19 April 1790, in *The Works of John Adams, Second President of the United States*, 9:563–64.

9. John Adams to Richard Price, 19 April 1790, in *The Works of John Adams, Second President of the United States*, 9:564.

10. John Adams to Samuel Adams, 12 September 1790, in *The Works of John Adams, Second President of the United States*, 6:411–12.

11. Adams assumes erroneously that Locke had a free hand in the drafting of the Fundamental Constitutions of Carolina. "A Defence of the Constitutions of Government of the United States of America, Against the Attack of M. Turgot, in His Letter to Dr. Price, Dated the Twenty-Second Day of March, 1778 vol. 1," in *The Works of John Adams, Second President of the United States*, 4:463.

12. "A Defence of the Constitutions of Government of the United States of America, Against the Attack of M. Turgot, in His Letter to Dr. Price, Dated the Twenty-Second Day of March, 1778, vol. 1," in *The Works of John Adams, Second President of the United States*, 4:284, 289–91, 296–98.

13. *Discourses on Davila*, in *The Works of John Adams, Second President of the United States*, 6:252, 273–74, 284, 299–300, 323, 340–41, 365, 399.

14. *Discourses on Davila*, in *The Works of John Adams, Second President of the United States* 6:274n, 299n, 300n, 312n, 393n, 394nn.

15. Thomas Jefferson to Diodati, August 3, 1789, in *Thomas Jefferson, Writings: Autobiography, Notes on the State of Virginia, Public and Private Papers, Addresses, Letters*, ed. Merrill Peterson (Library of America, 1984), 958.

16. Thomas Jefferson to James Madison, September 6, 1789, in *Thomas Jefferson: Writings,* 959–64. The Lockean statement is "that whatever Engagements or Promises any one has made for himself, he is under the Obligation of them, but cannot by any Compact whatsoever, bind his Children or Posterity." John Locke, *Two Treatises of Government* (1689; Cambridge University, 1970), 2.116.

17. Jefferson calls Louis XVI an "honest," "unambitious" king, selflessly devoted to his people's welfare in Thomas Jefferson to John Jay, May 9, 1789, in *Thomas Jefferson: Writings*, 952–53.

18. Jefferson to William Short, January 3, 1793, in *Thomas Jefferson: Writings,* 1004.

19. "To the President of the United States (George Washington)," May 8, 1791, in *Thomas Jefferson: Writings*, 977–78.

20. Thomas Jefferson to Thomas Paine, June 19, 1792, in *Thomas Jefferson: Writings*, 992.

21. Thomas Jefferson to John Breckinridge, January 29, 1800, in *Thomas Jefferson: Writings,* 1074. For Locke's statement of this "Law of Nature and Reason," see John Locke, *Two Treatises of Government,* 2.95–99.

22. Daniel E. Burns, "An Arab Spring Autopsy," *The American Interest*, July–August 2018, 43–47, https://www.the-american-interest.com/2018/04/05/arab-spring-autopsy/.

23. Locke, *Two Treatises of Government*, 2.132, 2.143.

24. Locke, *Two Treatises of Government*, 2.150–53. See also the definitions of "executive" in Locke, *Two Treatises of Government,* 2.88, 2.147.

25. Locke, *Two Treatises of Government*, 2.131, 2.136, 2.150.

26. Locke, *Two Treatises of Government*, 2.134, 2.152.

27. Locke, *Two Treatises of Government*, 2.153–57, 2.132.

28. Locke, *Two Treatises of Government*, 2.136, 2.137.

29. Locke, *Two Treatises of Government*, 2.150.

30. Thomas Hobbes, *Leviathan* (1651; Hackett, 1994), 110–18.

31. Locke, *Two Treatises of Government*, 2.149, 2.240.

32. Locke, *Two Treatises of Government*, 2.150.

33. "To the Inhabitants of Great Britain," in *The Papers of James Iredell*, ed. Don Higginbotham, vol. 1, *1767–1777* (North Carolina Department of Cultural Resources, 1976), 263–65.

34. Thomas Hutchinson, "The Speeches of His Excellency Governor Hutchinson, to the General Assembly of the Massachusetts-Bay," in *The American Revolution: Writings from the Pamphlet Debate*, ed. Gordon S. Wood, vol. 2, *1773–1776* (Library of America, 2015), 77.

35. William Knox, "The Controversy Between Great Britain and Her Colonies Reviewed," in *The American Revolution: Writings from the Pamphlet Debate*, ed. Gordon S. Wood, vol. 1, *1764–1772* (Library of America, 2015), 647.

36. Thomas Paine, *Common Sense; Addressed to the Inhabitants of America*, in Wood, *The American Revolution*, 2:677–79.

37. James Otis, "The Rights of the British Colonies Asserted and Proved," in Wood, *The American Revolution,* 1:77; Town of Boston, "The Votes and Proceedings, in Town Meeting Assembled, According to Law," in Wood, *The American Revolution,* 1:768; and Locke, *Two Treatises of Government*, 2.136.

38. Otis, "The Rights of the British Colonies Asserted and Proved," 75; and Locke, *Two Treatises of Government*, 2.134.

39. Locke, *Two Treatises of Government*, 2.6, 2.135, 2.183. For the assumption that "preservation" means "comfortable preservation," see Locke, *Two Treatises of Government*, 1.86–87, 2.95.

40. Locke, *Two Treatises of Government*, 2.149.

41. Locke, *Two Treatises of Government*, 2.87–89.

42. Locke, *Two Treatises of Government*, 2.135.

43. Locke, *Two Treatises of Government*, 2.135, 2.142.

44. Locke, *Two Treatises of Government*, 2.131, 2.135.

45. Locke, *Two Treatises of Government*, 2.19, 2.7, 2.8.

46. Locke, *Two Treatises of Government*, 2.21.

47. Locke, *Two Treatises of Government*, 2.16–24; and Hobbes, *Leviathan*, 76.

48. Locke, *Two Treatises of Government*, 2.19.

49. Locke, *Two Treatises of Government*, 2.21.

50. Locke, *Two Treatises of Government*, 2.16–18.

51. Locke, *Two Treatises of Government*, 2.87.

52. Locke, *Two Treatises of Government*, 2.89–90.

53. Locke, *Two Treatises of Government*, 2.90–94, 2.137.

54. Locke, *Two Treatises of Government*, 2.89.

55. Locke, *Two Treatises of Government*, 2.132, 2.134, 2.150.

56. Locke, *Two Treatises of Government*, 2.124.

57. Locke, *Two Treatises of Government*, 2.230; and Hobbes, *Leviathan*, 219.

58. George Washington, "Letter to the President of Congress," in *George Washington: Writings,* ed. John H. Rhodehamel (Library of America, 1997), 654.

59. Otis, "The Rights of the British Colonies," 81, 87; *Federalist*, no. 16 (Hamilton); *Federalist*, no. 33 (Hamilton); *Federalist*, no. 39 (Madison); *Federalist*, no. 42 (Madison); and Thomas Jefferson to James Madison, March 15, 1789, in *Thomas Jefferson: Writings,* 943.

60. John Dickinson, "Letters from a Farmer in Pennsylvania, to the Inhabitants of the British Colonies," in Wood, *The American Revolution,* 1:449–50.

61. John Tucker, "An Election Sermon," in *American Political Writing During the Founding Era, 1760–1805*, ed. Charles S. Hyneman and Donald S. Lutz (Liberty Fund, 1983), 1:162, 1:168–69.

62. Town of Boston, "The Votes and Proceedings, in Town Meeting Assembled, According to Law," 764.

63. "Four Letters on Interesting Subjects," in *American Political Writing During the Founding Era, 1760–1805*, ed. Charles S. Hyneman and Donald S. Lutz (Liberty Fund, 1983), 1:384–85.

64. Charles Inglis, "The True Interest of America Impartially Stated, in Certain Strictures on a Pamphlet Intitled Common Sense," in Wood, *The American Revolution*, 2:721.

65. Town of Essex, "Essex Result," in *The Popular Sources of Political Authority: Documents on the Massachusetts Constitution of 1780*, ed. Oscar Handlin and Mary F. Handlin (Belknap Press, 1966), 325–26, 327–32.

66. Paine, *Common Sense,* 679.

67. See John Locke, "A Letter Concerning Toleration," in *Locke on Toleration*, ed. Richard Vernon (Cambridge University Press, 2010), 30–37, especially 33. "An individual's private judgment concerning a law made for the public good on a political matter does not . . . merit toleration." The founders were misled about Locke's views on this point by William Popple's popular translation of Locke's letter, which adds to Locke's text the non-Lockean phrase "Liberty of Conscience is every mans natural Right." See John Locke, *A Letter Concerning Toleration*, trans. William Popple (Hackett, 1983), 51; Locke, "A Letter Concerning Toleration," 37; and Town of Boston, "The Votes and Proceedings, in Town Meeting Assembled, According to Law," 765. The latter erroneously cites Popple's non-Lockean introduction as part of "Lock's Letters on Toleration."

68. John Locke, *An Essay Concerning Human Understanding* (1689; Clarendon Press, 1970), 2.21.43, 2.21.47, 2.21.50–52, 2.21.59, 2.21.61.

69. See John Locke, *An Essay Concerning Human Understanding*, 2.21.55–56, 1.3.3, 1.3.13, 1.3.6: "Men in this world prefer different things, and pursue happiness by contrary courses"; the innate "desire of Happiness" operates in everyone and would "carry Men to the over-turning of all Morality" if unrestrained; and "the great variety of Opinions, concerning Moral Rules, which are to be found amongst Men, [are] according to the different sorts of Happiness, they have a Prospect of, or propose to themselves."

70. John Locke, *An Essay Concerning Human Understanding*, 2.21.45, 2.28.9.

71. See "A Defence of the Constitutions of the Government of the United States of America, Against the Attack of M. Turgot, in His Letter to Dr. Price, Dated the Twenty-Second Day of March, 1778, vol. 1," in *The Works of John Adams, Second President of the United States*, 4:466. "Americans in this age are too enlightened to be bubbled out of their liberties, even by such mighty names as Locke, Milton, Turgot, or Hume . . . they know, though Locke and Milton did not, that when popular elections are given up, liberty and free government must be given up."

72. Locke, *Two Treatises of Government*, 1.59.

73. Northwest Ordinance of 1787, art. III.

74. See Locke, *Two Treatises of Government*, 2.12: The "Laws of Countries . . . are only so far right, as they are founded on the Law of Nature, by which they are to be regulated *and interpreted*." (Emphasis added.)

75. Locke, *Two Treatises of Government*, 2.124, 2.136–37.

76. Locke, *Two Treatises of Government,* preface, 2.99.

77. Locke, *Two Treatises of Government*, 2.152, 1.168.

78. Locke, *Two Treatises of Government*, 2.95.

79. Locke, *Two Treatises of Government*, 2.107, 2.57.

80. See a similar idea from two years earlier in Thomas Jefferson, "A Summary View of the Rights of British America [1774]," in Wood, *The American Revolution*, 2:103. "When [representatives] have assumed to themselves powers which the people never put into their hands."

81. Locke, *Two Treatises of Government*, 2.135; and Hobbes, *Leviathan*, 118–20.

82. *Federalist*, no. 16 (Hamilton); "John Adams to Richard Price, 19 April 1790," in *The Works of John Adams, Second President of the United States*, 4:564.

83. *Federalist*, no. 14 (Madison).

84. Hobbes, *Leviathan*, 210; and John Locke, "A Letter Concerning Toleration," in *Locke on Toleration,* 38.

85. *Federalist*, no. 69 (Hamilton); and *Federalist*, no. 73 (Hamilton).

86. Burke, *Reflections on the Revolution in France*, 335–95.

87. "Address to the King [Jan 1777]," in *The Writings and Speeches of Edmund Burke*, 3:271; and Burke, *Reflections on the Revolution in France*, 217–21.

88. For extensive evidence of this, see Eric Nelson, *The Royalist Revolution* (Harvard University Press, 2014).

89. "Second Speech on Conciliation," in *The Writings and Speeches of Edmund Burke*, 3:195; and "Speech on Repeal of Declaratory Act," in *The Writings and Speeches of Edmund Burke*, 3:373–74.

90. "Speech on American Taxation," in *The Writings and Speeches of Edmund Burke*, 2:458; and "Letter to the Sheriffs of Bristol," in *The Writings and Speeches of Edmund Burke*, 3:313.

91. See, for instance, Otis, "The Rights of the British Colonies," 86, 111, 111–12n; "On the Tenure of the Manor of East Greenwich," in *The Papers of Benjamin Franklin*, *vol. 13, January 1, 1766 Through December 31, 1776*, ed. Leonard W. Labaree (Yale University Press, 1969), 22; John Dickinson, "Letters from a Farmer in Pennsylvania, to the Inhabitants of the British Colonies," in Wood, The American Revolution, 1:460; Edward Bancroft, "Remarks on the Review of the Controversy Between Great Britain and Her Colonies," in Wood, The American Revolution, 1:735–41; "To the Inhabitants of Great Britain," in *The Papers of James Iredell*, 1:263–65; James Wilson, *Considerations on the Nature and the Extent of the Legislative Authority of the British Parliament,* in Wood, *The American Revolution*, 2:145; Jefferson, "A Summary View of the Rights of British America [1774]," 2:107; and "Novanglus; or, a History of the Dispute with America, from Its Origin, in 1754, to the Present Time," in *The Works of John Adams, Second President of the United States*, 4:107–8, 114. See even the loyalist Inglis, "True Interest of America Impartially Stated, in Certain Strictures on a Pamphlet Intitled Common Sense," 761–62.

92. "Second Speech on Conciliation," in *The Writings and Speeches of Edmund Burke*, 3:193–95; and "Speech on Conway's Motion, 22 May 1776," in *The Writings and Speeches of Edmund Burke*, 3:235–36.