

Interpretation

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Milton and the Declaration of Independence

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I propose to reconsider the principles of the Declaration of Independence in the light of the thought of John Milton, my thesis that the Declaration is better understood by reference to the republican theorizing of Milton than by assimilation to the thought of John Locke, or, to put it somewhat more modestly, that our founding document envisions civil society under terms that require us to correct Lockean premises with Miltonic.

Let me clarify by stating that I do *not* intend to propose to sanitize the Declaration of its indisputably Lockean influences, an undertaking the futility of which Harry Jaffa has demonstrated. Nor do I mean to say that because the Founding Fathers had an understanding of Locke something short of entirely accurate—a goodhearted misunderstanding explored at least to my satisfaction by the explications of Leo Strauss, and more recently by Thomas Pangle—that we must therefore adjust our view of the Lockean influence to the mistaken readings attributable to eighteenth-century Americans. I think this argument is true and that, indeed, Locke naively misunderstood provides adequate guidance to the political life or, in any event, guidance judged adequate by the founders. Evidence for widespread benign misprision has been already established, again at least to my satisfaction, by Thomas G. West in several writings. Hence, my contention will not be that wisdom and happiness consist in being well gulled by Locke, however true to say so. Nor is my plea the good one advanced by Jaffa, George Anastaplo, and William B. Allen that the understanding of government announced in the Declaration and implemented in the Constitution is the natural completion of a tradition of republican thought extending back to Plato, Aristotle and Cicero. To my mind this contention has also been adequately established by the efforts of these scholars to which I can add little. Nor, finally, would I want my brief to be filed as amicus with recent attempts to align the founding document with a tradition of Atlantic “civic humanism.” Although there is much to be said for this argument as well, one may have reservations regarding what seems its exaggeration of the secularization theme, and one may be put on guard by a suspicion that revisions by J. G. A. Pocock and his followers amount to attempts to pedigree socialism by indirect means.¹

Instead, what I propose is that Jefferson and his colleagues uttered the sense of the subject in accord with a perennial wisdom elucidated in the writings of thinkers so widely separated in time and place as Aristotle, Cicero, Locke, Sidney, and, as Jefferson said in the letter to Richard Henry Lee which cites

these authors, “etc.”² Among the “et cetera” Milton, I would contend, deserves pride of place because, unlike Aristotle and Cicero and to a degree unequalled by Sidney, Milton understood what was at stake in adapting this perennial republican philosophy to conditions arising out of Christianity and from the divisions of Christendom created by the Protestant Reformation. I will suggest, moreover, that, while it was essentially continuous with Milton’s thought, the Declaration resolved a fundamental problem left unresolved in Milton. I might anticipate my proposal in this way: Recall the obverse image on the emblem of the Great Seal of the United States, a pyramid over which hangs an apex proportionate to, but not yet joined with, the ascending pile. Milton, I will suggest, provides Jefferson and his colleagues with the already completed portion of the pyramid. The Declaration itself adds the summit of necessary thought which Milton’s premises point toward as their necessary completion but at which he never arrived in his own writings. Since I do not mean to contrive suspense, let me say at once that the necessary completion of Milton’s thought added by the Declaration is a practical connection between the doctrine of consent and the articulation of that principle in a specifically democratic transformation of the class-based mixed regime hitherto thought the only likely durable form of republics. Nevertheless, the colonists understood they would more directly and securely arrive at that particular form of regime through the principles Milton espouses than through those propagated by Locke.

To provide here the argument I think necessary to support the contention just advertised, I should require an exposition the length of a book. The table of contents of such a book would begin with a chapter relating the thought of the Declaration to Milton’s argument in defense of regicide and the Commonwealth developed in his *Pro Populo Anglicano*, would proceed to a chapter on Milton, Aristotle, and Cicero which would focus on Milton’s adaptation of a classical republican tradition to the exigencies of a Europe agitated by conflicts between Catholic and Protestant, taking into account such writings as *The Reason of Church Government*, *A Treatise of Civil Power in Ecclesiastical Causes*, *Areopagitica*, and *The Readiest Means to Remove Hirelings*, and thereafter would open onto a third chapter dealing with Milton’s proposal for transforming the British constitution into a Protestant republic, a plan expounded in his late pamphlet, *A Ready and Easy Way to Establish a Commonwealth*. Add considerations upon Milton’s idea of the role of education in a republic, a scheme which underlies *Areopagitica* and is fleshed out in Milton’s public letter to Samuel Hartlib, *Of Education*. The enlarged study would then conclude with a chapter arguing that the Declaration and Constitution appropriate everything for which Milton had hoped while providing the political institutions necessary to realize his ideal of a commonwealth of Christian citizens moderated in their practice of Christian precepts by training in the sort of prudence inculcated by classical political philosophy and classical poetry.³

Instead of that book, perhaps it will serve to consider a precis of its first

chapter, focussing upon the question of how the Declaration appears when projected upon the background provided by Milton's thoughts in *Pro Populo*. I mean to dwell upon the initial paragraphs of the Declaration, following that exegesis with some remarks on one item in the bill of particulars and ending with a final hypothesis on the closing oath by which the signers pledge in support of their cause, their lives, fortunes, and honor.

"LAWS OF NATURE AND NATURE'S GOD"

Preliminary sidebar: What follows distinguishes sometimes between Jefferson and the chief author of the Declaration. Jefferson's name will designate the man whose personal views throughout his career seem to have been deist, and in their coherence best understood by alignment with the materialist skepticism of the follower of Epicurus, Lucretius. By contradistinction I designate as the draftsman of the Declaration Jefferson circa July 1776, who, in putting himself forward as representative of the beliefs of his countrymen, was obliged to accommodate his own convictions to those of "the committee of five," the expected signatories, and their constituencies up and down the seaboard.⁴ The difference between the two Jeffersons is in some respects so marked as to put the two almost in antithetical relation.

Jefferson the independent deist was more Lockean than his work of 1776. This distinction bears upon the first important assertion of the Declaration, the reference to "Laws of Nature and Nature's God."⁵

Although one might be inclined to dismiss the references to God in Locke's *Second Treatise* as the author's self-protective bow to orthodoxy (like the fast-and-loose treatment of the unimpeachably orthodox Hooker in Locke's notes), the Congress and conventions in the colonies made clear from the outset their expectation of a document friendly to scriptural religion from whoever should compose a statement of the colonies' separation from the parent country. A Massachusetts Provincial Congress, presided over by John Hancock, had issued December 6, 1774, a resolution addressed to church ministers stating:

In a day like this, when all the friends of civil and religious liberty are exerting themselves to deliver this country from its present calamities, we cannot but place hopes in an order of men who have ever distinguished themselves in their country's cause .

Jefferson may have had less faith in Virginia ministers, but whether he had or not he found himself instructed in piety by the official proclamation of his own Virginia convention who on May 27, 1776, had urged congress to revolution appealing to "the Searcher of hearts" to witness their sincerity.⁶

The record of congressional pronouncements from 1774 through 1776 indicates Virginia could expect from Congress a hospitable reception of counsels

recommending piety. It was presided over by the same man who had signed the Massachusetts resolve just cited and who had also read the revolutionary manifesto of "Inhabitants of Boston" (July 26, 1774) which had boasted of Bostonians having been "stationed by providence" and which had identified resistance to the British with "the cause of God." Anyway, Congress itself was speaking the same language. In an appeal to Canadians of May 29, 1775, Congress had referred to "the bounty of an indulgent Creator"; in its *Declaration of the Causes and Necessity of Taking Up Arms* (July 6, 1775) it had spoken of a "divine Author," "our great Creator," of "the supreme and impartial Judge and Ruler of the Universe," and, as if the members sought to quash beyond question any imputation of deism, they "gratefully acknowledge, as signal instances of the Divine favour toward us, that his Providence would not permit us to be called into this severe controversy, until we were grown up to our present strength." They then conclude with an oath addressed "before God and the world" and once more thank "our beneficent Creator." As he sat to his writing desk Jefferson would have had to be aware that Congress was well disposed toward a Deity it publicly spoke of as a creator, a lawgiver, a judge, a ruler, and the agency of a special providence (not just a principle of general laws left to their own operation). He would also know that national political acts based on assumptions of Judeo-Christianity were already being set afoot by the nascent union of colonies, for on June 12, 1775, Congress had published a call for a day of "public Humiliation, Fasting, and Prayer" to implore God to avert an effusion of blood. That proclamation had concluded with a recommendation "to Christians of all denominations to assemble for public worship, and to abstain from servile labor and recreations on said day." Small wonder must it have been to Jefferson, therefore, that his preliminary draft of the Declaration was altered by the time Congress was done with it to include an express reverence for superintending "Providence." Congress's emendation was in the spirit of Milton's continual expressions of faith in a Providence which he thought had directed the course of the Puritan-Commonwealth revolution. (See for instance *Pro Populo*, pp. 305, 525, 535, 537, in the Yale edition.)

Before Locke and Sidney had demolished poor Robert Filmer in *The First Treatise* and the *Discourses on Government* respectively, Milton had employed the same anti-absolutist arguments to skewer Filmer's predecessor, the French scholar Claude Salmasius, in *Pro Populo*. Similarly, with respect to the words the Declaration makes its fons et origo, before the phrase which heads this section was Jefferson's, it was Milton's.⁷ Replying to the question of his adversary who had asked by what law the parliamentary party had broken its oath to Charles, making war against and later killing its legitimate king, Milton answers, "by the law of God and Nature." Much of *Pro Populo* is devoted to establishing the character of this natural and divine prescription. The effort leads Milton to a philosophical tradition he attributes to Aristotle and Cicero and the Roman republican historians chiefly, and to classical tragic poets sec-

ondarily. It leads concurrently to a lengthy examination of both the Hebrew and Christian scriptures. Philosophy and revelation concur, says Milton, in setting forth the law by which Parliament disposed of a king. What then is the character of this divine and natural law?

Essentially it consists in the duty to repudiate any civil authority, royal or otherwise, if that authority fails to uphold a covenant assumed to exist between the government and the governed, a contract which obligates the government so to rule that it enables the governed to fulfill their duties to other men and, ultimately, to God. There are three parties to this implicit contract: the officers of government (kings or magistrates), the people in their corporate capacity, and the final authority who umpires the two principals, God. This conception of the agents participatory in the divine-natural covenant has consequences, consequences which come to sight once we compare Milton's concept with Locke's view of the natural law.

The status of nature and hence of the law of nature in Locke is unclear. It is not clear from Locke's reasoning, for example, whether he is entitled to claim for his law of nature moral obligatory force. From time to time it serves Locke's rhetorical purposes to speak as though the axioms he formulates establish moral imperatives. Yet one may say anything. The test is whether one can make one's statements consistent with one's most authoritative principles. A more securely grounded understanding of Lockean natural law might put his statements regarding nature on the footing of description rather than prescription: that is to say, generalizations about probable human conduct derived from an hypothesis about an aboriginal state of nature but having the force of scientific predictive statement rather than the authority of moral apodictic prescription. In fact, I think Locke's natural laws fall into the former class, and subsequently I return to this issue. Yet for now it may suffice to point out that, whatever may be their relation to moral obligation, Locke claims his first laws derive from nature, and although he begins the *Second Treatise* by naming God as author of nature, the most one can say of Locke's deity is that he is inert, inasmuch as he neither supervises the social contract nor occupies the consciousness of the consenting parties except in the single instance of violent rebellion where, although Locke says rebels submit their cause to God, he gives no indication he believes God can be distinguished from the might of the contending parties.⁸ By contrast, the Declaration and Milton agree in locating a constant standard for political life in a concord of divine and natural prescription. We may further observe there is in Locke no three-cornered covenant enfolding men, government, and God but solely a two-party agreement without divine Supervisor and Guarantor. The Declaration, however, refers to a divine legislator, judge, and executive of Providence, a deity continually relevant to political life. The Declaration proposes a Miltonic three-party covenant rather than the Lockean two-party agreement. Our question, to recall, is whether Locke or Milton has better claim to grandpaternity of the Declaration. On the

basis of the foregoing analysis of the status of natural law, one would think Milton has stronger claim, because the draftsmen echo Milton's explicit phrase, not Locke's, but second, and more decisively, because the subsequent language of the Declaration expressly petitions God to judge the justice of Americans in breaking with England. As in Milton's notion of providence having decided the Civil War, the colonists invoke the divine umpire of their covenant with the British government.

More is involved here than Jefferson's choice to enlist the greater rhetorical efficacy of a double ("and Nature's God"), in preference to a single ("laws of Nature"), sanction. Milton says explicitly in another of his writings and argues throughout the one we are presently considering that the revealed law dispensed by God and the natural law (in its essentials) are the same. Yet this does not mean that the two sources of promulgation deserve equal deference. God is superior to nature because he is the Creator of nature. In this respect the God of Milton differs from the First Cause of Aristotle, as well as from the first principle of the pre-Machiavellian philosophic tradition generally, insofar as that tradition is non-Hebraic, non-Islamic, and non-Christian. For Aristotle, to take this thinker as representative, the issue of deference cannot arise because the First Cause, since it is nonpersonal, cannot be either a judge or an "interested party" to an agreement, and, moreover, for Aristotle it makes no sense to ask whether we owe greater deference to the Creator of nature than to nature because the world, comprehensively considered, was not created. How does Locke stand on this? The creaturely status of the world in Locke seems to be assumed but subordinated to a politically more important conviction that, whatever its origins, nature is begrudging and adversarial and, hence, less to be accepted in gratitude than contended with to make it yield more helps to our ease than its Author seems to have been inclined to provide.

If the Declaration asserts Locke's principles, we may wonder why did not the draftsmen put foremost Locke's all-sufficing principle of self-preservation? Indeed, why did they not so much as mention self-preservation anywhere? Because anyone who gives thought to the matter can understand that Lockean self-preservation is a default bias built into his system and has the effect of nullifying the morally obligatory status that he initially attributes to his version of the natural law. Consider Locke's description of the law of nature as it operates in the state of nature. Men under no civil authority are equal in that all have more or less the same capacity for preserving their lives and the necessary adjuncts to life in freedom of movement, liberty of disposing their labor, and security of possessing such tools (property) which compounded with labor give them the means of sustaining their bodies. They have thus two desires: first, to forge a livelihood from natural materials, and second, to protect themselves as well as the fruits of their labor from the violence of others. At this point Locke introduces a further law which he speaks of as though it had morally obligatory force. What may I do to protect myself and the fruits of my labors? Locke

answers, anything proportionate to the end of self-preservation but nothing that encroaches upon the equal right of others to protect themselves and the fruits of their labors. This seems merely a restatement of the golden rule, an anticipation of the Kantian imperative, or a variation upon the truth that one ought to conduct oneself with justice. Yet at just this point what I have termed the Lockean default comes to bear once Locke observes: “when his own preservation comes not in competition, ought he to preserve the rest of mankind” (2. 6). Upon reflection one can perceive that the apparently obligatory character of this generalization disappears once we appreciate the effect of the restrictive clause. For we are not obliged to preserve others when to do so “competes with” (Locke, notice, does not say prevents) our own preservation. This may seem at first glance to mean no more than that no one is obliged to be a self-sacrificing hero, and so it does. But the restriction carries much further as becomes manifest when one asks what is this *self* which must (or can) be preferred to others when its preservation is at stake? I return to this issue subsequently, but here it will suffice to say that by *self* Locke understands consciousness of “indolence,” meaning absence of pain. But what is required for indolence is nothing short of bodily life plus all the gains one has wrested from unimproved nature. Thus the effectual truth of Locke’s restriction upon the golden rule is to propose that one has an overriding compulsion to protect (and why not to augment?) one’s own, whether to do so is or is not at the expense of another. The effectual truth of Locke’s restriction upon the golden rule is to negate that rule of justice. Locke’s natural law is a law of interest. It can be God’s law (as Locke maintains it is) only if one so alters one’s notion of God as to make Him indifferent to moral obligation. Locke’s law differs from that of Hobbes only as a definition of self ordained to indolence differs from a self as seeking pleasure after pleasure or power after power, which is to say, it does not differ. Thus, although Locke will say in chapter 11 that his law of nature carries forward into civil society, thereby imposing a limit upon arbitrary government, we must understand that it carries forward burdened with the specified restriction and, consequently, whatever limit it places upon arbitrariness it imposes not after the manner of a moral prohibition but in the manner of one natural force setting bounds to another.

Either Jefferson himself recoiled from invoking a first principle so weakened as Locke’s is in its moral authority, or he would not risk it with the Congress. Either way the result was that he did not bottom the Declaration on Locke’s keel. Instead of any reference to self-preservation as the foundation of civil society, we have Jefferson-in-Congress’s recourse to an understanding of natural cum divine law, a prescription which proclaims categorical moral obligation. That understanding accords with the teaching of Thomas Aquinas, Richard Hooker, or Milton, but not, except on the unnecessary assumption of benign misprision, with Locke.

I have given perhaps undue emphasis to the second part of the phrase “laws of Nature and Nature’s God” because the second part goes largely ignored

today. It is time for me to redress by emphasizing that the first part is liminary upon the second.

If the obeisance to God sanctifies the laws of nature, it is also true that the laws of nature “civilize” (i.e., politicize) the creator God. The Declaration declares to be important not just anything that has been said of the Deity but rather that which is pertinent to political life. Moreover, the Declaration excludes from self-evident truth theological affirmations not established by consistency with natural reason. The only laws ascribed to God that the draftsmen will countenance are those also ratified by sound reasoning. The founding thus is theological but not fideist. It cannot countenance a morally relativistic understanding of natural law as Locke appears to have propagated, but neither will it accept a moral law which has no other claim upon one’s allegiance than its allegedly divine promulgation. One may even go the length of saying that the political truth of such laws of God as the Declaration envisions does not depend on a demonstration of God’s existence and indeed does not depend upon the fact, if it be a fact, of God’s existence. Three of the committee of five (Jefferson, Adams, Franklin) were surely Deists, and only the suppositious God knows whether they were atheists in their inmost heart. Yet all three were given throughout their lives to pious utterances and even to exhorting their colleagues to prayer. Adams once stated his position publicly and rather baldly:

Let us conclude with one reflection more which shall barely be hinted at, as delicacy, if not prudence, may require, in this place, some degree of reserve. Is there a possibility that the government of nations may fall into the hands of men who teach the most disconsolate of all creeds, that men are but fireflies, and that this *all* [i.e., universe] is without a father: Is this the way to make man, as man, an object of respect? Or is it to make murder itself as indifferent as shooting a plover [a bird], and the extermination of the Rohilla nation as innocent as the swallowing of mites on a morsel of cheese?

And twenty years later:

If I were an atheist . . . I should believe that chance had ordered the Jews to preserve and propagate to all mankind the doctrine of a supreme, intelligent, wise, almighty sovereign of the universe, which I believe to be the great essential principle of all morality, and consequently of all civilization.⁹

The Jefferson who could quip at one point in the *Notes on the State of Virginia*: “It does me no injury for my neighbor to say there are twenty gods or no god” can also ask on another page of the same book:

can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are of the gift of God? That they are not to be violated but with his wrath? Indeed I tremble for

my country when I reflect that god is just: that his justice cannot sleep forever.
(*Notes on the State of Virginia*, Query 17, Query 18)

Whether God exists or not, most men will not believe their rights and duties are firmly grounded unless they believe these to be the gift of God. For political purposes belief in God is of more consequence than His existence.

Similarly with respect to the Declaration's concluding expression of trust in Providence, a Lockean could make the same avowal, as in fact Locke does in the section of the *Second Treatise* which refers to violent rebellion as a referral to God's arbitration (19 in Sherman ed., pp. 148 and 163). Locke is appealing to Providence in the sense of the aboriginal law of nature, self-preservation. The colonists seem to imply something more akin to the medieval notion of an ordeal by combat over which God was thought to preside. Either position seems exposed to the same objection, as for that matter Milton's appeal to manifest Providence in the successes of the New Model army invites the same retort: that such views of Providence, given the Deity's inconstancy in favoring justified but small battalions, reduce to a belief that might makes right. Milton, however, possessed an alternative view of Providence which permitted him to believe God would make his judgment known elsewhere than on the field of battle, namely, at a judgment convened beyond this world. From the words of the Declaration alone one cannot tell whether the Congress means to assert such an alternative view of providential confirmation, yet one cannot rule out the possibility in view of the signatories' willingness to expect Providence to manifest itself after they may have given those lives of theirs which at the end of the document they pledge to their cause.

In any case, the Declaration seeks to secure the efficacy of natural laws by proposing a divine source and a divine judge operative not just in the crises of violent rebellions but at every moment when the rights of men are at stake, which is as much as to say at every moment. The God of the Declaration, like Milton's supervising trinity but unlike Locke's *deus absconditus*, works a sort of high-maintenance providence through constant judgments, however secret these may be. One cannot say with any confidence that natural right has ever been upheld by an historical occurrence clearly, or even probably, supernatural. But one can argue with considerable probability that belief in a God interested in right helps to maintain right. It seems moreover not improbable that such belief is even necessary to maintaining right. Milton would presumably grant the point but distrust its Averroist odor, whereas the revolutionary colonists might take it less fastidiously with the reflection that a stable basis for political life requires a certain breadth for the foundation, including willingness to build with materials less than perfect so long as decent.

By contrast to Locke, the Declaration is not indifferent to the issue of creation and by contrast to Aristotle, the Declaration promulgates the idea of a God who, because he creates, presides over a nature which defers in its author-

ity to its Creator. The God of the Declaration is that God who is worshipped in common by Jews, Christians, and Muslims. This is the God of Milton, especially the Milton of *Pro Populo*, who says little of what might be thought peculiar to Jesus but much regarding the deity worshipped as Creator, lawgiver, and judge by all three scripturally based religions.¹⁰

I should be more specific about this Miltonic-Jeffersonian convergence of theopolitical archai. In its opening words the Declaration is concerned to justify a revolution, a resort to arms against a king and Parliament, or maybe a king-in-Parliament, whose legitimacy as occupant of the throne is undisputed but whose misdeeds are held to negate his claims upon his subjects' obedience. So likewise was Milton concerned to defend his conduct and that of the Independents similarly circumstanced. Similarity of situation does not settle anything, since many controversialists, Locke for one, found themselves so situated. But the parity, rather identity, of the reasoning of Milton and the author of the Declaration deserves remarking. To be sure, Milton, Locke, and the Declaration all shared a common concern to set executive power under law. Milton, however, does not uphold an equation of legislative sovereignty and rule of law, although he maintains this state of affairs *happened* to obtain in Parliament's opposition to Charles. Similarly, Jefferson and his colleagues in drafting the Declaration assert a case by nature, God, and circumstance, but theirs is not Locke's case for identifying rule of law with the formal regime requirement of providing for legislative supremacy. Rule of law for neither Milton nor the drafters means rule of the legislative branch. This is so, even though Milton's mid-Puritan-revolution posture disposed him to champion Parliament's cause. Milton not only could imagine a condition of state in which the monarch would better represent natural right than his entire citizenry (the Father of *Paradise Lost* in relation to his angels), but in defending a Cromwell who had dismissed a Parliament, Milton backed with reasoned partisanship an actual, and, by the time he wrote, unpopular claimant to sole preeminence. Like Aristotle, Milton grants the right of unshared rule to a soul who can attest a degree of virtue manifestly and greatly superior to that of his neighbors. The distinction here, I grant, is not decisive when one allows for the subsequently introduced right of rebellion Locke reserves to the people against even the supreme legislative authority. The difference is rather that in reposing ultimate sovereignty in the people both Milton and the Declaration leave the people subject to a divine natural requirement of justice, whereas Locke subjects the people to nothing but their calculation of whatever they may desire in order the better to preserve themselves.

But if not on Lockean grounds of Whiggish doctrine, how exactly does Milton defend Parliament's regicide? By maintaining the duty of anyone in any station to make resistance to tyrants. Milton insists throughout *Pro Populo* on a distinction between *kings*, who govern for the common good, and *tyrants* who govern for their own interest adversely to the common good. Kings ought to be

obeyed (although Milton once flirts with the notion they may be set aside for the prospect of better governors [p. 494]), whereas against tyrants one ought to resist if resistance seems not impracticable (p. 469). Milton acknowledges his responsibility to ascertain particular deeds of tyranny and adduces specifics he estimates should substantiate a long train of abuses—or perhaps a shorter train of very serious abuses—which includes almost all the particulars recited by the American Declaration, not excluding the king's inciting of Indian savages and “domestic” insurrection (read Charles's alleged use of the Irish as his catspaw against British residents in Ireland). In a word, Milton identifies natural, justifiable independence with detestation of tyranny, as does the Declaration. Again like the colonial draftsmen, Milton allows some ambiguous easement for a more general right of revolution founded on nothing more definite than the people's expectation of improvement. Milton anticipates Jefferson's very wording as he moves from the strong defense (right to rebel after long forbearance against outright tyranny) to the more latitudinarian implied right of the people to exchange one form of government (tyrannical or not?) for some other which may “seem” to them better suited to their welfare. Finally the people's right of rebellion in both Milton and the Declaration remains always subject to the necessity of conforming their judgment to the dictates of a higher moral law of God and nature.

“SELF-EVIDENT” TRUTHS: EQUALITY

Equality is hardly a proposition confined to post-Milonic or post-Lockean political speculation. A republican tradition rooted in Solon, the Greek tragedians' praise of *isonomia*, Aristotle, and Hellenic-Roman Stoics instructed Europe in the standards of civil regulations applied uniformly to all persons whatever their differences of origin, accident, or group affiliation.¹¹ Still, there is something if not altogether modern then distinctly postclassical in the particular version of the notion of equality inculcated through the Declaration. I would not contest the general view which holds that this new departure owes something, or, if you will, much, to Lockean assumptions. Yet I would suggest the particular understanding of equality Jefferson ascribes to “We” (Americans? republicans? a cognoscenti of the enlightened? any and every mind capable of grasping the self-evidentiary character of “these truths”?) owes more to Milton's way of thinking about things political. Let me first attempt to substantiate my claim with regard to equality then, with a more pointed concession toward Locke's influence regarding “pursuit of happiness,” in reference to the Declaration's teaching about individual rights.

Whether the proposition “all men are created equal” be a self-evident truth as Jefferson, Lincoln, and most Americans prior to the 1960s believed, a self-

evident lie as C. C. Pinckney said and many southern partisans then and now believe, or a truth the self-evidentiary character of which requires a recovery of traditional liberal education to grasp as, following C. S. Lewis, I would maintain, it is in any event necessary to be more careful in explaining the equality proposition than almost all statesmen and many scholars have been inclined. What I plead for is not yet more canvassing of eighteenth-century opinion, because such opinions are worth no more than the perspicacity of the acts of thoughtful reading upon which they first arose, and thoughtfulness in reading we can attempt by our own lights. What one might wish for is rather a more attentive scrutiny of the equality proposition in the context provided by the document itself. How might such a scrutiny proceed?

It might proceed from the observation that the terms of debate over the meaning and consequences of the equality proposition have been (as far back as we have record) incorrectly framed. The debate has hitherto turned on the issue of whether the notion of equality conveyed by the Declaration relies on assumptions about the prescriptive status of Englishmen or, alternatively, upon axioms positing durable human nature.¹² Proponents of the second position have the better case, because the equality proposition is conveyed in language expressly universal (“all men” and so forth). But proponents of the Anglo-constitutional position have some case because the equal status of all men is in fact an attainment (or an attained perception of a perennially available truth) produced by a British constitutional development the stations of which had been marked by stirrings in the pre-Conquest “Gothic” mists, Magna Carta, Tudor consolidation of the common law, the Puritan-Commonwealth Revolution, Petition of Rights, Glorious Revolution, and Bill of Rights, and by the colonists’ own experience of homegrown representative government founded upon a ubiquitous middle class this side of the Atlantic. This aspect of the debate would seem to admit of a solution in camera: British constitutional development finds its necessary fruition in the principles finally arrived at in the Declaration’s equality proposition. The perceived truth affirmed at Philadelphia in 1776 has its basis in perennial human nature yet, similar to what Aristotle said of the development of dramatic tragic art, to see nature for what it universally and perpetually is may require preparation through a number of approximations that owe to conventional happenings and causes unselfconsciously, or only in part consciously, concerted. To put it in a portable formula: Jefferson may have deduced his understanding of equality from the evolved state of the British constitution, yet that understanding is not the less radically natural inasmuch as the end toward which British constitutionalism was evolving *is*, considered *sub specie aeternitatis*, radically natural.

But however all that may be, my business here is not to patch a peace but to bring another sword to the conflict, because it may be that a misconstruction of the equality proposition shared by almost all representatives of either side of the debate just described more obscures the demonstrable significance of the equal-

ity proposition than their contention. What both contestants share is a view of the subject accommodated to the secular outlook that is reputed to have carried the day among academics, and even among intellectuals, if not quite yet among plain folk between coasts.

Both sides assume that the *creaturely* foundation of equality, although expressly stated by the language adopted by Congress in the document, has no bearing, no decisive bearing anyway, on the meaning of the equality asserted therein. Anglophiles maintain Jefferson and colleagues *really* meant to assert the equal footing Englishmen were entitled to under British law. Their opponents of either Aristotelian or Lockean sympathies argue for an equality derivative from the natural genera of the species (rationality) in the event they are Aristotelians, or, if they favor Locke, they identify Jefferson's equality with the condition of men prior to that contracted civil society hypothesized by Locke, Hobbes, and Rousseau. Yet both contending parties turn aside from the actual language of the Declaration, which asserts plainly enough not that Britain made men to be equal, not that genera detectable through scientific morphology establish equality, and not that a balance of powers among men in a presocial state of nature constitutes equality, but that men are equal because they are so "created." As observed above, Aristotle would not say the human species, or anything else, was created, whereas from the perspective of the British constitutionalists as well as from the view espoused by the followers of social-contract philosophers, whether men are created or produced in some other way is immaterial to a proper consideration of their equality. (This is not to deny that for other considerations Hobbes, Locke, and Rousseau might have interests in the issue, probably with a view to introducing doubt regarding the political implication of divine creation.) But the draftsmen of the Declaration neither disputed nor were indifferent to the connection between God's creation and man's equality. They so insisted upon the importance of creatureliness to equality that they asserted that connection three times in different but interdependent propositions within the first hundred words of their manifesto ("laws of Nature and Nature's God," "are created" . . . , "and are endowed by their Creator"). If it is proper to speak strictly about anything, it would seem proper to speak strictly about a matter of such consequence as the principle said on all hands to preside over our national life. Strictly speaking, therefore, Jefferson must say human equality proceeds from an act of divine grace, a benefaction that, perhaps, need not have occurred and therefore prompts gratitude. Although once conferred by divine creative grace, the unpredetermined benefaction of the Deity subsequently determines everything in human affairs, perhaps determining even the terms upon which God himself may justly deal with this particular creature. With this observation of the centrality of the Declaration's view of divine initiative and human response, we may return to Milton and perceive his preparatory relation to the founders.

Equality occupies a prominent place in *Pro Populo's* defense of regicide, in

Milton's plan of a reformed Commonwealth, and indeed by implication throughout the polemical prose as well as everywhere in the major poems. What is Milton's conception of equality, and how well does it accord with that of the Declaration? It accords fairly closely and, if not precisely, it accords much better, I would contend, than Locke's comparable teaching.

To return to *Pro Populo*, Milton holds against Salmasius that every form of absolutist government violates a human equality conferred by God on Adam at the time of his creation. Milton identifies ordinary equality with the assurance given in Genesis that "male and female he created them, in the image of God he created them [or him!]." By the *imago dei* Milton understands rationality, broadly speaking, but a certain kind of rationality, with political implications attached to it. One may have to go beyond *Pro Populo* to *Areopagitica* and, especially, to *Paradise Lost* coupled with *Paradise Regained* to gather all of Milton's thought on human participation in divinity. Yet even in *Pro Populo* un-supplemented one can take the crucial point that for all politically relevant considerations the aspect of rationality men share with God, the aspect thereof which makes them (politically) equal is the capacity for deliberative choice. Unlike other animals, human animals can direct their conduct by reflection and hence by choice grounded in an understanding of what they ought to do. Men differ in their particular capacities for deliberative choice, but they do not differ so markedly that anyone better fitted for deliberation may govern others in the unlimited way even the worst man may rightly govern even the best beast. (Milton, however, acknowledges men may so disfigure their share in the divine image that God may indirectly punish by permitting despots to rule them more harshly than men discipline beasts.) Yet the parenthetical qualification gives no comfort to bad rulers. For whatever the dispensation arranged by divine providence, absolutist rule offends against an Edenic equality which continues *de jure* even after the corruption worked by original sin. The tyrant Nimrod was the first so to offend, Charles Stuart more recently.

Lockean teaching on primal equality overlaps Milton's somewhat, admittedly, since Locke also locates the specific difference of the human species in rationality (*Second Treatise*, 2. 11). Yet an underlying difference between Locke and Milton seems to me more decisive than their partial agreement, since Locke says nothing about man's existing in the image of God (neither does the Declaration, but I will come to that at the proper place). The issue goes beyond merely nominal divergence in the frequency of theological reference. For from Locke we would infer we owe no gratitude to divine provision for our rationality because Locke, as indicated above, does not concern himself with the question of ultimate human origins. Even were this not so, there are between Locke's and Milton's views of the intrinsic character of reason differences sufficient to distance the two thinkers. Lockean practical (i.e., not speculative) reason turns out to be the calculative auxiliary to an all-compelling yet pre-rational instinct of self-preservation. Men begin to calculate with respect to what

is subject to their disposition because they seek to preserve themselves, and they calculate what they can change always with a view (actually a compulsion) toward the same end. Self-preservation stands back of reasoning at reason's origin in or just before contracting into civil society and as well presides over reason all through life. Milton by contrast, although not inattentive to the prevalence of individuals' desire to preserve themselves, finds a wider scope for reason, altogether apart from a consideration of whether in any given instance the reason of a man serves good or evil. That is, reason coordinates practical action with speculative truth (truth as perceived, whether rightly or wrongly). For this essential attribute produces essential human freedom to live not by instinct but by the truth that comes to men according to their various lights. Such an understanding carries forward to an ethical obligation to know truth and live accordingly, whether consequent conduct conduces to self-preserving or not. I do not wish to dwell, however, on the edifying but on the political implication of the difference between Milton and Locke with respect to taking rationality for their first ground of equality. The important political consequence is that within Milton's conception, but not within Locke's, men may, and ought to, alter their predispositions so as to bring these into conformity with obligations descending from perceived truth. This combination of capacity and obligation makes us resemble God inasmuch as God's wisdom and goodness work inseparably. Yet men are dissimilar to God to the extent that while they have the ability to wed speculative reason with practice, they actually join the two functions most imperfectly when they join them at all. To be at once remarkably similar to something of superior excellence and yet markedly to differ is the mode of being proper to an image. God's truth and action *are* one; man *can* make his action conform to truth. Human beings are then only images of God.

Since acknowledgement was made above that Jefferson says nothing of an *imago dei*, it is incumbent upon me to suggest where in the Declaration one might discover Milton's understanding of a rationally voluntaristic ground of equality. First one might say nowhere expressly and everywhere by implication, since the enabling premise of the entire document is its expectation that submitting "facts to a candid world" will persuade said world to behave favorably toward rebel colonists. Given the likelihood that considerable portions of that world would be predisposed against the revolutionaries, Jefferson and the Congress must trust that by reasoned argument men may be induced by insight or shame to alter their first intents in the light of perceived truth. Jefferson, committee, and Congress seem to have implicated themselves in irremissive logocentrism if that means they could not kick free from the assumption that deeds should answer to compelling rational speech.

Thus much might be said, however, of any conception of human nature that emphasizes the morally rational, say, for example, classical rationalism as represented by Plato, Aristotle, Cicero, and the Stoics. But there is a more particular

emphasis upon a conception distinctive to scriptural religion which, when superimposed upon the rational, bespeaks a theistic participation as the specific difference marking off the human from other species within the genus animal. Jaffa has hit upon this conception in his remarks on the similarity drawn by the Declaration between the three aspects of divine activity, on the one hand, and, on the other, the three dimensions of governmental authority. Civil society operates by making laws, executing the laws, and judging particulars in accordance with general law. Hence the Declaration speaks of British violations of sound legislation, of neglecting faithful execution of law, and of corrupt judicial process, while it prescribes standards for a good legislature, executive, and judiciary. Similarly, the Declaration speaks of God, first, as a giver of law, second, as an executor of law through His creation of nature and endowment of human beings with rights, and, third, as the supreme judge making manifest His judgment by His Providence, His application of general principles of right to particular instances of proper conduct or of wrongdoing. But one must go further to observe the reason civil authority sorts out into a threefold activity shared by God and governments: man qua individuated soul is essentially this threefold. Classical rationalism, or, alternatively, such modern rationalists as Montesquieu or Locke discern the same three essential features of civil government—hence the celebrated doctrine of separation of powers. But scriptural religion distinctively, if not uniquely, provides the ground for grasping the human being's nomocratic-executive-judicial activity as the flawed simulacrum of God's conduct. Man's judgment and action alike answer to self-acknowledged law just as with God, although, unlike God, the three powers only fitfully harmonize in the souls of men. This is nothing other than to say that human beings are not God but at their best only images of God. This understanding prescribes how we are to think about God and at the same time how we are to think about man. Milton in *Pro Populo* and in *The Tenure* expressly invokes the idea of participation in the divine being as the underlying basis of an equality of rights. Because it is the one feature of man's prelapsarian nature which survives the fall, it is spoken of in Genesis at the time of the creation of Adam and Eve but also repeated (twice) after the account of the first transgression, appearing a final time well along in the narration of new transgressions leading to the story of Noah's election. This is significant in view of Milton's endorsement of a distinction between a "primary" natural law, pertaining to prelapsarian perfected human nature, and a "secondary" natural law, accommodated to man's fallen nature. Yet the basis of the imago dei, as well as its moral consequence of requiring nondespotic government, persists through both versions of Milton's law of nature. Men should be ruled nondespotically because even in their corrupted state they retain their semblance of God sufficiently to deserve rule by law rather than subordination to the ruler's mere will. Either from his own conviction or in result of accommodating to the exigencies of composing a document of state for a people predominantly Christian and Jew, Jefferson so modifies Lockean doctrine on human nature as to redirect it toward this Miltonic teaching.

What bearing has this belief in divine participation upon the doctrine of equality? Aristotle and good sense concur in prescribing that justice demands treating equals equally and unequals unequally in proportion to their inequality. Since this is so, one deduces that accurate judgments of inequality are as important for political purposes as perception of equality. Does a predication of equality on the basis of divine semblance obscure necessary distinctions of better and worse? No. In the first place, fixing upon the aspect of human nature which entails equality permits true distinction of better and worse to come to sight by removing irrelevant considerations (of race, birth, sex, beauty, strength) which themselves obscure true distinctions because they are based on a nonessential standard. In the second place, human beings differ in the degree of their resemblance to God just in proportion to the difference in their abilities to execute and to judge in accord with law properly so called, as well as in their ability to discern law in the first instance. Does this mean that equality founded in divine semblance invites Orwellian irony of putting forth a beguiling egalitarianism while carrying in its tail the stinger of a covert hierarchy? Yes. Yet the irony itself is shallow, since to operate at all it must assume that distinctions within a species are unwarranted. But not only are distinctions warranted, they are indispensable to justice. The following implications can be claimed for the understanding of equality predicated on divine semblance: (1) It finds the commonality of the species on essential rather than accidental or extrinsic properties; (2) it consists with a rationalist basis for asserting equality; (3) it enlists piety in the service of reason while dissipating simple fideism.¹³ Such an effort was Milton's aim throughout his political writings, and such an aim appears to have impelled the draftsmen who contrived to induct Locke into a civil theology generally acceptable to the non-Loyalist colonists.

The one well-founded objection to Jefferson's work, to my mind, attaches to the bare word *equality*. What actually seems the proper word for the reality Jefferson discerns cannot be well designated by the arithmetical term, since the essence Jefferson has in mind more resembles an analogy or, perhaps, a proportion. Human rulers, like the herd stallion, govern for the good of the herd. But the good of the human group, unlike a herd, consists not solely in its preservation but in the perfection of each individual member. That perfection has reference in the first resort to the individual person's contribution to civil society but in the last resort to the individual person's attainment of the highest approximation of the divine that his particular resources allow. Thus the individual human being must be regarded ultimately as subject and only incidentally and provisionally as instrument. This is the self-evident yet complicated truth somewhat inadequately conveyed by the word *equality*. Yet, it seems necessary to add, my objection to Jefferson's verbalization applies to any conception of equality, however grounded, and not particularly to the conception here discussed of a standard of equality grounded in divine semblance. We might conclude that there is indeed no better means of referring plainly and persuasively to a notion

so readily accessible as *equality* is to common experience yet so elusive of precise philosophical formulation.

SELF-EVIDENT TRUTHS: RIGHTS

The segment of the Declaration most indebted to Locke extends from Jefferson's stipulation of inalienable rights through the final item in the list of self-evident truths, the doctrine of consent with its correlative assertion of a right to revolution. Scholars point out these doctrines were espoused by Locke and note that Jefferson expressed them in language identifiably Lockean. Granted. I do not suggest we supplant Locke's influence altogether with Milton's. What I would observe, however, is that the context provided by Jefferson's antecedent and subsequent language seeks to accommodate Lockean thought to a teaching Locke presumably would not endorse, a teaching similar in all respects—save one later considered—to Milton's.

Since the declaration regarding rights follows logically from the equality proposition, which in turn presupposes creation, one must begin the Lockean section with a large qualification introduced into that Lockean perspective which relies upon notions of self-preservation. Then there is the matter of the still more consequential qualification upon Locke's theory of rights attached to the predicative addition "are endowed" (i.e., by a Creator). Having already anticipated the point to some extent, we should not make a meal of it but be content with one observation harkening back to the previous characterization of the quarrel over equality. The two quarrels come down to the same issue and are subject to the same charge of posing fallacious alternatives. Prescriptive rights of Englishmen versus natural rights (whether Aristotelian-Ciceronian or social contractarian) as exhaustive alternatives puts the matter on the same false footing as the contention for conventional or natural egalitarianism as exhaustive alternatives for understanding Jeffersonian equality. A generally ignored alternative, though once again plainly stated by the Declaration, would hold that the rights here mentioned are entitlements neither conferred by Britain nor deduced from nature (even if Jefferson believed Britain had once so conferred them and that the nature of the human species so requires them). The rights in question are characterized by their inalienable character (more on this directly), but as for their source neither Britain nor nature but a Creator-God is credited in the document. As for the act that establishes these rights, it is identified neither with the evolution of Britishers' self-understanding nor with nature's having taken its course but with another gratuitous divine deed added to that of creating, this time the divine act of "endow[ing]." Life, liberty, and the pursuit of happiness and other rights unspecified but pointed to ("among these") are endowments conferred by God.¹⁴ This understanding of rights conforms well with Milton's understanding, not so well with Locke's. Milton would and does

insist upon tracing human rights back to God's will, whereas Locke may agree to designate divine origin, on occasion and for purposes peculiar to his own secular project, but cannot agree in a sense that consists with his most authoritative theoretical positions upon the necessarily self-elevating fundament of preserving self whatever the costs.

Besides the divergence just mentioned, Jefferson's characterization of the endowment as *unalienable* opens a certain distance between his doctrine and Locke's. I am supposing the Declaration mentions the inalienable character of these rights rather than employs some more logically essential adjective because its author correctly sensed that for political purposes inalienability is the crucial predicate. Late eighteenth-century legal jargon relied on two adjectives to modify the meaning of rights: *indefeasible*, and *in[or un]alienable*. An indefeasible right could not be justly infringed by another but could be waived by its bearer.¹⁵ ("I could if I chose assert my right to remain silent, but for the moment I shall lay my right aside.") The parenthetical example exposes the quick of the distinction. As distinct from *indefeasible*, *inalienable* rights confer along with moral suasive power benefitting their bearers, coincidental duty imposing obligations on the bearer. I have not merely a privilege of living, which I might justly assert or not as I am disposed, but a duty of living. How could this be so except on the supposition that my life is not my own to dispose of in fee simple, that is to say, not alienable property? Similarly with respect to the second right, liberty. One has not merely the privilege but the obligation to be a free man. To glance at the jeremiad most dear to undergraduates and other bloodhounds of hypocrisy, a mind which recognized an obligation of all men to be free could justly resent "domestic insurrections" only to the extent he deemed personal liberty to be dependent on self-government and deemed the latter not yet within the reach of slaves. Locke does say that a man cannot justly slay himself because his life belongs to God not to himself simply (*Second Treatise*, 2. 6). Yet I indicate below why Locke's concept of self nullifies the merely apparent moral obligation to preserve one's own life. As for liberty, Locke makes no claim that a man has the obligation to be free.

"[P]ursuit of happiness" poses a problem to the exegesis here proposed because it is hard to see how pursuing one's own contentment could be inalienable in any sense other than (the Lockean) sense one has in mind when one says an animal cannot help seeking pleasure after pleasure. One might further object to an imputation of moral obligation via "inalienable" that every familiar moral code seems to require setting aside one's own contentment on behalf of something lofty but disagreeable. If Jefferson had stuck with the more shop-worn triad climaxing in property, it would be easier to see the connection between a liberating and an obligatory aspect to the right.¹⁶ Our property is not entirely subject to our arbitrary disposition because our family and neighbors depend on it. Locke employed the phrase "pursuit of happiness" (*Essay*, chap. 21. 44, 51, 52) evidently because he thought it more comprehensive of varied

self-seeking than *property* (though he sometimes appears to take *property* and happiness synonymously). Isn't Jefferson here making a Lockean case in Lockean language? Possibly so. One must give Locke his due tribute money. Yet if the preceding enumerated rights come freighted with responsibilities, Jefferson has predisposed us to hedge the most apparently selfish right with some corresponding obligation also. That obligation, I suggest, would amount to a summation of all the preceding duties now directed toward a concerted end, a superduty, if you will. We could understand Jefferson to express the paramount obligation to pursue the end (happiness) of the properly independent rational creature rather than the servile end of the person who prefers subordination to others (priests and prelates? the high-born? the powerful or wealthy? the racially pure, or their ethnarchs?) deemed more worthy of happiness than men who, if truth were known, are equal in the sight of a Creator who has dispensed equal endowments of liberty. The best textual objection to this construction is that it makes "pursuit of happiness" redundant to "life, liberty." A reply might appeal to a sense of rhetorically fitting subsumption, or more substantially, to a familiar distinction between mere life and living well. Living requires tenure of breath and the elementary freedom of bodily movement, of emigration, and of disposing of one's labor and tools; living well (happiness) carries the further obligation of cultivating moral and intellectual virtue. In this latter sense we may be said to have an obligation to pursue happiness. I would maintain the context added by the bill of particulars adds plausible support to a moral view of "the pursuit of happiness," inasmuch as these proponents of independence from Britain make case less from the inconvenience Britain has made for them than from the difficulty of discharging their civil and religious duties in the face of British interference. Most of the charges listed in the body of the Declaration are complaints against British interference with colonial lawmaking and the colonists' efforts toward good government. Then, in a cloud still the size of a man's hand but looming sinisterly at the eastern horizon, gathers a threat to the colonists' religious responsibilities, a king-commissioned bishop. But this brings me to the Declaration's specific indictments of George III. I defer discussion of the last of the self-evident truths—the principle of consent of the governed—until the way can be prepared by taking account of the similarity of the Declaration with *Pro Populo* evident in a comparison of the itemization of grievances against kings included in both texts.

BILL OF PARTICULARS

In chapter 12 of *Pro Populo* Milton comes to his bill of particulars against Charles Stuart. As the Declaration will indict George III for imposing taxes without the consent of the colonial legislatures, Milton indicts Charles I for levying new taxes (Ship-Money and other) without consent of Parliament (p.

521). As the colonists will charge George with having suspended the American legislatures, or with having caused them to convene in remote places, Milton inveighs against Charles for having abolished the Short Parliament once he had gotten revenue from that body (p. 521). He had earlier protested that the king has no right to veto needful legislation as Charles had done and as the Americans claim George to have done. The Declaration will complain of the king's raising an army of German mercenaries. So had Milton complained of Charles (p. 521). Jefferson will echo Milton's claim that the king had reneged on "leige protection" (p. 528), or as the Declaration puts it, "he has abdicated government here by declaring us out of his protection." Milton notes Charles had waged war against his own subjects, as the colonists will, "and waging war against us." Jefferson will repeat Milton's complaint against Charles for having "taken away our charters" (for Milton, Magna Carta, for the colonists chiefly their royal charters prior to 1674) and for having abolished "our most valuable laws, and altering fundamentally the forms of our government." Milton like Jefferson had groaned under the weight of swarms of executive officers and had protested the king's having set brother against brother. I have already mentioned the equivalence of fomenting insurrections by Irish with George's "exciting domestic insurrections," or perhaps also with George's stirring up those prepossessing, autochthonous, indigenus inhabitants prejudicially and stereotypically characterized by the phallo-Euro-logo-centric Jefferson as "merciless Indian savages" (See *Pro Populo*, pp. 522–23, 524–25).¹⁷ Since elsewhere in *Pro Populo* Milton had protested Charles, Laud, and Wentworth's Star Chamber abuses of the judicial processes, including denial of trial by jury, we may say that in most areas Milton's bill of particulars parallels that of the Declaration with a fair exactness. Even the colonists' alarm over George's fashioning a nursery of despotism and a military outpost in a "neighboring province" had been anticipated by Milton's complaints regarding Charles's dealings with the Scots. But this matter deserves the separate treatment given below. Let us consider here not just the fact but the significance of the parallelism between *Pro Populo* and the Declaration respecting their bills of particulars.

I trust not to have conveyed the impression that I suppose the colonists could not feel the points of redcoat bayonets without literary precedent to sensitize their backs. My case is not to establish literary derivation but to explore a continuity of republican thought and hence to suggest the perennially applicable grounds of both Milton's and Jefferson's particular grievances against arbitrary government. Both lists of grievances proceed from the principles Milton and the Declaration alike hold self-evident, truths now applied to particular political misdeeds which when analyzed yield up that doctrine of free government which in Jefferson's time was coming to be enshrined in the notion of separation of powers.

Yet one massive element of Milton's notion of tyranny may seem to be missing from Jefferson's otherwise parallel itemization. Milton probably

thought none of the wrongdoing he taxed Charles with approached the gravity of Charles's and Laud's misgovernment evident in their insistence upon uniformity in church doctrine and worship. The Declaration may seem not to bear a similar grievance against George, as it manifestly says nothing of churches, of church doctrine and discipline, or of worship. Although the emphasis of the Declaration in the practical domain is certainly more secular than the emphasis of *Pro Populo*, we should consider what religious concerns may be entailed in that one item of the particulars which has probably drawn the least attention in our day.

QUEBEC AND DISESTABLISHMENT

A half-century after the Declaration one of the members of the drafting committee remembered colonial suspicion of a British plot to transport Anglican bishops to America. John Adams recalled the issue had in 1776 sounded

an universal alarm against the authority of Parliament. It excited a general and just apprehension that bishops and dioceses, and churches, and priests, and tithes, were to be imposed on us by Parliament. It was known that neither King, nor ministry, nor archbishops could appoint bishops in America without an Act of Parliament; and if Parliament could tax us, they could establish the Church of England with all its creeds, articles, tests, ceremonies, and tithes, and prohibit all other churches, as conventicles and schism shops.¹⁸

If historians are correct in their estimate that prospects of a royal prelate alarmed colonists, and if I am right in supposing the draftsmen of the Declaration were proceeding with grievances Milton had laid out over one hundred years before, we would expect the bill of indictment somewhere to add to its complaints over the king sending swarms of officers to eat us up and over his preparing to send mercenary troops something like this: "In concert with others he intends to send arrogant bishops to subdue our churches, haughty churchmen whose rule of spiritual warfare is the indiscriminate subjugation of men, women, and children, relying on the adulterous misalliance of temporal with spiritual authority, a device known everywhere to tyrants and consistent nowhere with that independent exercise of conscience owed the Creator." Of course these words do not appear in the document, despite Jefferson's probable fondness for some such statement in view of his subsequent pride over his achievement in getting a tolerationist statement into the Virginia Statute of 1786. The probable prophylactic against such an insertion was this: although relations between the Church of England and the Episcopal sect in America were ill defined, very clearly prominent was the status of Episcopalianism as a beneficiary of taxes in Virginia. It must have seemed inexpedient to risk alienating Virginians more kindly disposed than Jefferson is known to have been to-

wards their colony's internal arrangements. Besides there were denominations in other colonies which relied on official colonial support.

The problem as it must have seemed for the draftsmen was how to tap resentment against Britain's suspected Erastian project without alarming those colonists who might not be prepared to go the length of Jefferson towards disestablishment. Their solution was clever, not outrageously inconsistent with principle, if inconsistent at all, and we should add, in the spirit of Milton.

Whether one should credit Jefferson's second thoughts, revision by Adams, Franklin, the entire committee of five, or one of its other two members (Sherman or Robert Livingston), someone had the genius to add to Jefferson's draft the charge of George's preparing a weapon against the colonists through his governing of Quebec. The addition stipulates George III is culpable

[f]or abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies.

Now Quebec had become noxious for two causes: it had recently officially espoused the French legal code (although long practiced there by custom), and George had leant legal sanctions to establishing Roman Catholicism for French subjects of the British crown.¹⁹ The Quebec connection thus provided the Philadelphia draftsmen with a fearsome two-handed engine precisely suited to extricating themselves from their dilemma of appealing to disestablishment patriots without alienating American Protestant establishmentarians by insisting too much on an identification of a state-supported religion with despotism. The colonists were left at liberty to attach their odium to Catholicism, or to political intrusion into a properly private religious domain, or to fear of Anglican miters. Like the Milton of *Areopagitica* and *Of Reformation* they might, if they chose, embrace liberty for Protestants while denying it to Catholics. Milton had provided the rationale by arguing that Catholicism was not a proper religious denomination at all, but an international secular interest dressed in priestly robes. Adams, or whoever, worked the further rhetorical and expedient refinement of excluding any mention of Catholicism per se, thus inoculating against blatantly offending minutemen Catholics while still allowing antipapists to incense themselves by giving a name to what they could imagine the worst of the mischief George's "fit instrument" might inflict on their consciences. By such backdoor but probably effective and arguably defensible means, Milton's cause on behalf of conscience got into the second thoughts of the committee or into the floor debate and, hence, into the draft Congress ordered engrossed on July 4.

From beginning to end of his career as thinker and statesman Jefferson follows Locke in his belief that civil authority ought to have no free hand in

legislating for salvation of souls.²⁰ Yet at times Jefferson also appears to desire to have it both ways, as in the letter declaring a “wall of separation,” a letter which Jefferson concludes with a prayer. If Congress and the colonial conventions can be counted the indices of Revolutionary-era public opinion, American belief diverged from the Lockean side of Jefferson to the extent of holding that what is common to Jews and Christians in scriptural religion not only comports with, but proves indispensable to, sustaining those self-evident truths Jefferson himself endorses. In this respect the colonists diverged from Locke-Jefferson to follow Milton, who on the one hand would debar political authority from ecclesiastical causes but, on the other, would exclude Catholics from liberty of worship, doctrine, and speech, and who, moreover, recognized that republican government in a Christian era required civil encouragement of fundamental Christian principles, not of a denominational sort but pretty much identical with that common theism combined with a morality of the two great commandments of Jesus (also of Deuteronomy), a compound which Hobbes derided as “Aristotelity.”²¹ Jefferson’s more latitudinarian sentiment, once it had been accommodated to the revisions passed in Congress and consolidated in the Quebec passage, that is to say Jefferson shorn of his deism or agnosticism, conveys through this item of the bill of particulars just the mixed view of civil religion that Milton professed in *Areopagitica*, *Of Reformation*, *Pro Populo*, and indeed everywhere in his mature writings down through the last, *A Ready and Easy Way*.

On disestablishment Locke and Milton come closer to meeting than on other points. But they approach each other from origin-points diametrically opposed and therefore reaching the limits of the elastic tethers anchored at their opposite stations of departure they do not quite join.

True, if we could take the Locke of the *Letter on Toleration* at his word, Milton’s position and Locke’s all but coincide, for Locke agrees with Milton that secular and sacred authorities are completely distinct and that the civil ordinarily should not compel uniformity either in belief or worship. Moreover, both Milton and Locke exclude from toleration atheists and those Christians who require of their communicants immoral practices. Locke, although more apparently congenial to Catholics than Milton, also agrees ultimately with Milton that Catholics who think one need not keep faith with heretics, or who think themselves dispensed from obedience to excommunicated rulers also do not warrant toleration. The one difference separating Milton and Locke is that (on the basis of his argument in *Areopagitica*) Milton would exclude pagans from free speech and worship, whereas Locke emphatically says pagans should be tolerated (*Letter*, Sherman ed., p. 180). This, to repeat, if one takes Locke’s explicit teaching to be his ultimate teaching. If, however, Locke’s professions of abhorrence of atheism are mainly self-protective, his divergence from Milton becomes obviously greater and the more consequential politically as conditions favoring unbelief approach those of our own day. My reason for thinking

Locke's express teaching is not his ultimate teaching rests on the discrepancy between his profession of piety and the logic of his argument. If we examine the careful appeal Locke makes in favor of tolerating pagans, it appears there is no impediment to making that tolerance extend to irreligion simply, although Locke does not expressly say so much, leaving it to his readers to draw the inference. Locke makes strong his argument for a universal tolerance (subject to the two abridgements noted above), while he makes flimsy his objections to irreligion.²²

If my reading of Locke is accurate, one may distinguish four positions on toleration and disestablishment relevant to the situation of Americans at the moment they declared independence. Arranging a spectrum of these alternatives extending from more universal toleration at the left toward more restricted at the right would give us Jefferson at the left and Milton at the opposite end, with Locke next to Jefferson, and the Declaration just left of Milton, thus: Jefferson, Locke, Declaration, Milton. The two leftward positions are separated from the two on the right by their lack of fervor with respect to scriptural religion, a disregard which also entails of course their greater indifference to, hence toleration for, religious differences. Put Jefferson left of Locke because the Virginian was less vocal than Locke in rendering the tribute of hypocrisy to orthodox Christianity. Put the Congressional draftsmen left of Milton because the Declaration leaves anti-Catholicism implicit or at any rate makes toleration of papists provisional upon their properly accommodating their conduct by foregoing papal supremacy over secular rulers. A similar rating of the four positions on the score of their opposition to a state-sponsored religion, however, would have Milton and the colonists exchange places. Of course the issue here becomes complicated once we remind ourselves that residual attachments to government-sponsored religion in a particular colony might prove quite a different matter from endorsing civil religion on a national level. Making this likely adjustment would move the colonists much closer to Milton.²³

If the antiestablishment Americans sought the biblical principle for their indignation in Milton's writings they would have discovered it in Milton's several antiprelatical tracts written between 1640 and 1647: *Of Reformation, Reason of Church Government*, and *A Consideration of Civil Power in Ecclesiastical Causes*, together with the sonnets and the later *Likeliest Way to Remove Hirelings* (1660). In these writings Milton attempts to demolish Anglican pretensions to find authority in scriptural and primitive Christian practice for church government by bishops while he endeavors to establish decentralized governance by elders on these same two prescriptive bases. Permeating this argument from prescription, the colonists would have found, as some of them doubtless did find, an argument from reason which links Milton's reasoning on churches with his reasonings on state. Republicanism in church and state is his consistent conclusion derived from his inveterate premise that all governments derive their just powers from the consent of the governed. And if the colonists sought the

statement of the ultimate standard for regulating the relation between civil authority and religion they would have found it in this formulation from *Pro Populo*:

Primo homines ut tuto ac libere sine vi atque injuriis vitam agerent, convenere in civitatem; ut sancte et religiose, in ecclesiam; illa leges, haec disciplinam habet suam, plane diversam: hinc toto orbe Christiano per tot annos bellum ex bello seritur, quod Magistratus et Ecclesia inter se officia confundunt. ("Preface," p. 34, Columbia edition)

Men at first to lead their lives safely and freely without force and wrongs congregated in a civil order; that they might be holy and religious, in a church; the first has laws, the second her doctrine, manifestly distinct: because [our] Magistracy and Church confuse their authorities, for so many years war is sown from war throughout the entire Christian world. [My translation. Yale has "followed" for "sown," *seritur*. Alternatively Milton may be echoing an idiom of Sallust, *Histories*, Bk 4, 61. Perhaps the Yale translation took *seritur* in the sense of "sew" or "join" and produced therefrom its "followed."]²⁴

Obviously not all the colonists would have subscribed to Milton's blanket condemnation since, as noted above, many (most) lived in regions which provided tax support for a single denomination. Moreover, *all* the colonies provided some form of support for a general Christianity through tax exemption, state sponsorship of prayers and fasts, and laws encouraging indissoluble marriages, if not by actual state subsidies. For considerations Lockean, Miltonic, or for both at the same time, some (many?) of the signatories may have hoped animadversions against London and Canterbury would prove the thin end of a wedge with which they could open more space between civil coercion and preferred denominations nearer home. Other colonists would have been content to keep a fairly porous fence (hardly any desired a wall, it seems) separating Christian sheep and shepherds from civil overseers. Probably to the disgust of Jefferson the freethinker, the Declaration permits its constituency to find their own reasons for resenting a prelate of royal creation. Yet the Congress probably reckoned upon almost every non-Tory identifying his grievance over this matter with some variety of a position Milton had established on wider grounds than Locke ("wider" not conceptually but representatively, on the assumption that Christian republicanism was more generally endorsed than Lockean crypto-Lucretianism). In any case, such a Miltonic antiprelatism one can perceive better consists with the scriptural religion underlying the Declaration's creation, equality, rights, and consent propositions than does Locke's teaching on toleration, a teaching which did not expressly require disestablishment of Anglicanism. (By inference, granted, Locke's logic as distinct from his explicit concessions may so require.) By Miltonic reasoning Jefferson could have his scripturally based self-evident truths now and his wall of separation later. One

may doubt whether the wall can well consist with perpetuation of the Declaration's self-evident truths. But that was Jefferson's problem of consistency of thought as it is today our problem; it was not a problem for most colonists, or for Milton.²⁵

LIVES, FORTUNES, SACRED HONOR

One final passage of Jefferson's first draft left undisturbed by Congress provides support for the interpretation advanced to this point. I have argued that a proper grasp of the Declaration's doctrine of rights points to the conclusion that Jefferson means to accommodate a Lockean and relativistic notion of rights to a more traditional, probably Miltonic, understanding, one which derives rights from duties and ultimately from a superordinate duty of rendering gratitude to a creating, providing, and judging Deity. With regard to the passage on rights itself, my argument amounted pretty much to a supposition of Jefferson's consonance with Milton offered in correction of a more academically popular supposition of Jefferson's consonance with Locke. I assert, therefore, a conclusion which would have to be established by a more thorough exposition of Locke's writings than can be undertaken here, namely one that should demonstrate that Locke's doctrine of rights relies on no sense of divine origin nor any deference to an idea of rights imposing inseparable moral obligations. Be all that as it may prove to be, the support for my supposition comes chiefly from the context of theological apodicta antecedent to the rights stipulation. Chiefly but not solely upon those grounds, however, because the context subsequent to Jefferson's enumeration of liberties provides, besides the support claimed just previously, a brief yet rhetorically prominent passage that I would contend joins the Declaration with Milton and kindred spirits while disassociating its ardently heroic temper from Locke's flatfooted utilitarianism. The passage here offered in evidence is the oath with which Jefferson concluded and which Congress approved.

After the foundational work laid down in the opening paragraphs and after raising the arch of particular indictments in the body of the document Congress sets the capstone with a closing vow pledging its members to the cause they have already begun to defend in speech and deeds (i.e., continued war) and in the continued service of which they now write they pledge to hazard their "lives, [their] fortunes, and [their] sacred honor." Suitable to a climax for the entire manifesto, the sequence of items here avowed is itself arranged climactically. As important as are the signatories' lives, their property is more important, and their honor more important than either life or property. In fact, they return to the theological rhetoric of the document's opening both to invoke the approval of "Providence" and to assert that their honor is sacrosanct. Why do the signatories so estimate and discriminate among their pledged stakes?

Life is the condition for the crown of life but not itself a suitable term for the most estimable good available to man. Property is more precious than life because a man equipped with possessions is morally more important than an individual man considered in his nakedness. The signatories would understand Shakespeare's Talbot in 1 *Henry VI* who boasts that his enemies, though they have captured his physical person, have not gotten the substance of Talbot which, he claims, resides in his social identity founded on his landholdings back in England and, more significantly, upon the reciprocal bonds of responsibility, established loyalties, and political power residing in the connection between this lord and his dependents. Jefferson's lifelong work against primogeniture, entail, and patents of nobility alters the basis of this idea of an enlargement of the individual to propertied representative of a community, but his efforts serve only to relocate Talbot's substance in a different, perhaps more natural, setting. Propertied individuals hold their life in trust rather than by fee simple because, as observed above, small communities of superiors, dependents, and (albeit demotivated) peers rely on a man for his responsible deployment of his labor, tools, and for the accumulated labor and sacrifice monetized in the man's ownership of finance capital. Because the propertied person is the individual enhanced by power and its accompanying responsibilities, property is a further completion of homo politicus. Hence the signatories, wealthy or not, accord more deference to their property, abundant or not, than they do to their mere life. Even unpropertied "unaccommodated man," invested as the Declaration claims him to be with inalienable dignities by virtue of the grace of his Creator, is more than "a poor, bare, forked animal"; so much Lear eventually learns. But, excepting the slaves, there are few such men in this land, or at least there will be few among the newly independent who will have a property in such talents as they bear and every one of whom has already a property in the rights this Revolution seeks to secure. Wealthy or not, a man viewed from the vantage of his property surpasses in dignity the mere (though rational and though divinely benefacted) organism.

Still, or rather therefore, honor, not property, is put last because it is first in dignity. *Honor* replaces "the pursuit of happiness" of the initial rights triad because honor more definitely declares the moral desiderata constitutive of happiness. *Sacred* added thereunto deflects inferences of vainglory or ambition. Honor here obviously means attested integrity rather than avidity for fame, even if one is willing to acknowledge with Douglas Adair that the two dispositions usually go together in public men and that the inferior motive greatly promoted the interest in acquiring reputation for integrity and performance among founding fathers. It may not be too tenuous an inference to propose that "sacred honor" amounts to an identification of happiness with a politicized virtue which, in turn, rests on moral and intellectual attainments, accomplishments which, in their turn, constitute in the Declaration such return of one's debt to a Creator as it lies with fallible men to render.

Be all that too as it may, how do these observations affect the issue of Locke versus Milton in our present prosecution of their paternity suit? One knows what comes first, last, and ever for Locke: self-preservation. To grasp finally what Locke understands by self-preservation requires a consideration, inconveniently lengthy and controversial, of what Locke understands to be this "self" which is, or ought to be, or must be, preserved. Let the following suffice for our purposes here: "self," Locke states in the *Essay* and contradicts nowhere as far as I know, "[is] that conscious thinking thing . . . which is sensible, or conscious of Pleasure and Pain, capable of Happiness or Misery, and so is concerned for it *self* [*sic*], as far as that consciousness extends." One of those attempts at definition which amused Plato's Socrates by enumerating what all a thing does rather than what it is, Locke's effort is also defective by including the thing to be defined in the definition: the self is that which is concerned with "it self." A reader occasionally suspects that Locke falls into wells of illogic in seeking to avoid saying outright that self reduces to body. In any case, he seems to mean in this passage to equate self with consciousness and specifically with the consciousness of "Pleasure and Pain," evidently requiring, though not in strict logic requiring, a body. Is not this notion what most readers carry away from the *Essay* and the *Second Treatise*? Nothing elsewhere in Locke causes one to discard this downright but textually verifiable reduction of his teaching on self-preservation. What is to be preserved is the individualized capacity to experience pleasure (and pain?), the tenure of our bodies, preferably in that Epicurean condition of imperturbability Locke terms *indolence*.

If there is anything to my previous argumentation, one must conclude that self-preservation in Locke's sense Jefferson makes subordinate to other concerns in the Declaration. As Milton was not inattentive to safety, health, and mere life in *Pro Populo*, the drafters of 1776 were not negligent of self-preservation. Though they never employ that word itself, they resent king and Parliament's killing of citizens, whether one takes these citizens as seats of consciousness of pleasure and pain or otherwise. But the rebelling colonists tend to take people otherwise. They tend to take them, as Milton took them, to be the beneficiaries of divine endowments and of corresponding responsibilities unique to the species. Milton's *Pro Populo*, although not by any means the sole rendition of such a view of human nature and ordination, was accessible, widely known, and was probably the exposition most easily adaptable to the colonists' circumstance, since considered constitutionally, legally, religiously and morally, their situation and aims were close to those Milton knew in 1651.

CONSENT: CULMINATION OR VITIATION?

Close, but not identical. I have deferred discussion of Jefferson's statement on political consent because it seems to me to indicate an advance upon the

reasoning of *Pro Populo* but an advance better appreciated from the vantage offered by an analysis of Jefferson's points of agreement with Milton. The one major disagreement is, however, not inconsiderable.

Throughout his career as a champion of the Commonwealth revolution Milton found himself bedevilled by opponents who fastened upon his notion of consent as the most vulnerable part of that defense. Salmasius had sneered over the pretensions of an advocate of covenantal foundation who was willing to confine his covenanters to a minority of those citizens who would be subject to the covenant's arrangements. Milton did not blink the problem, yet one may doubt his attempted solution. In *Pro Populo* he concedes the revolution was carried forward and continued to be sustained by a party by any plausible reckoning less than a majority. He maintained, nevertheless, that a constitutional change so implemented was nonetheless just. Milton will go the length of affirming that a minority may more truly represent the people than a majority:

why should I not say that the act of the better, the sound part of the Parliament, in which resides the real power of the people, was the act of the people? If a majority in Parliament prefer enslavement and putting the commonwealth up for sale, is it not right for a minority to prevent it if they can and preserve their freedom? (P. 457)

Milton's practical problem arose from his bitter recognition of his confinement to a minority position. Liberty, he says, is proper only to good men (*TKM*, Yale ed., p. 190) and he had assured himself that the preponderance of Englishmen were not good. But, because the poet of man's first disobedience thought that Englishmen were better than most people and that men generically were not good, he realized that he confronted not only an immediate practical difficulty but a perennial limit upon any doctrine deriving the just powers of government from consent. One aspect of the dilemma: If men will not consent to a free government, can they be forced to accept freedom? Another: If government to be just requires consent at its beginning, does government also require consent in its operation? To both questions Milton answers, yes. But to the further question, whether something like democracy must follow, Milton answers, no. Why? Because to do so submits civil life to the caprice of a majority predictably composed of the unregenerate. For Milton the substantive desideratum of just laws can be distinguished from the formal desideratum of having policies devolve from acts of consent. The former principle must prevail over the latter expedient. He attempts, therefore, to salvage his teaching on foundational consent from the perceived catastrophe of requiring continuous majoritarianism through recourse to a notion of virtual representation. A majority, or the people as a whole, ought not to represent its will directly and continuously in the formation of policy but should instead acquiesce in a system which professes to represent them virtually and better than the people would represent themselves

if present in person. Milton says the upright minority represents the people not as they happen to be but, so to say, at their best.

This is precisely the understanding of representation that the British argued they provided yet which the American colonists rejected.²⁶ The more temperate of the British were prepared to accede the justice of no taxation without representation but replied that Americans were *virtually* represented in a Parliament that seated no Americans. At the eleventh hour Joseph Galloway would propose, impracticably, that some Americans be installed in Commons. The Declaration repels this accommodation, without actually acknowledging it, by arguing first principles. Actual and not virtual representation, exclusively, satisfies the criterion of consent derived from divinely conferred equality. Locke, incidentally, appears to have dodged the issue in his *Second Treatise*.

Is Jefferson or, alternatively, Milton sounder on the matter over which they disagree? Jefferson is sounder. His solution consists better with abstract principle and would seem more conducive to civil friendship if only it could be made practicable. Moreover, Americans seem to have convinced themselves they possess actual representation at some level of government and frequently say they would not part with it. Jefferson's solution is not, however, without its difficulties, as Jefferson himself would have to acknowledge when years later he remarked that although the will of the majority must prevail, rightly to prevail it must be just. Milton had reversed the effectual truth of the same conundrum. Jefferson's success lies in his having averted the logical debit of importing a notion of virtual representation, but he succeeds at the expense of apparently opening his position to an equally serious objection. For does not his formal requirement of consent vitiate the substantive justice demanded in the Declaration's resounding self-evident truths? This is to ask whether we are left with an organic law which asserts that men are created equal, endowed by their Creator with certain rights, and so forth, *unless* a majority at any given moment holds otherwise?

Men will be governed. The ultimate authority of government must be reposed somewhere. Wherever it is reposed, including in a majority of the governed, the worry still arises who will govern the governors. Or as a subsequent founder will put it: "the great difficulty lies in this: You must first enable the government to control the governed; and in the next place, oblige it to control itself" (*Federalist* No. 51). My statement of the problem may seem to place the Declaration and Milton on opposite horns of a recurrent dilemma unresolved by any theory of civil society whatsoever.

Yet perhaps the risky options need not be so nicely equipoised. Jefferson's choice makes for the less imperfect solution. The self-evident truths are indeed absolute and not dependent upon any majority's opinion or will. Discrete and historically insular majorities have and always will act contrary to these truths and hence violate their neighbors' rights from time to time. The same observation, however, holds for any group identifiable by their species rather than,

when it is too late, by their deeds. If there be therefore no odds between majorities and minorities, a reasonable mind would favor the majoritarian settlement, provided he had a tolerable assurance that majorities could usually be made responsible, perhaps by devising institutions designed to sift and refine the majority will. Milton might agree with this general proposition and yet insist upon being permitted his doubts regarding seventeenth-century English majorities long debased by kings and bishops. Or he might reply to the reasoning here imputed to Jefferson that given the unregenerate character of post-lapsarian man, one can never reasonably expect responsible majorities to identify their betters unless one could discover a people fairly well disposed to the theologico-political manifesto Jefferson attributes to the "We" who hold his opening propositions. But Jefferson at least professes to think he envisages such a people so disposed, and presumably his signatories agreed. Subsequent devices for the frame of government proposed in 1787 would help keep majorities so disposed, and, as *The Federalist* argues, the extent and diversity of the society might contribute additional antidemagogic and refining influences. With a view to the concerted effect of all three causes operating upon the colonists' gamble on behalf of actual rather than virtual representation, we may now reinvoke our image of Jefferson's work relative to Milton's as apex to pyramidal foundation. The image may connote more exaltation than the reality warrants, however, if the foundation rests on ground subject to tremors. For instance, respectable, or at least reputable, academics assure us that belief in laws of nature has nowadays the same status among college inmates as belief in ghosts. If there be in fact such skepticism of natural law, this would pose a more serious threat to the currency of Jefferson's principles than eroded religious belief, since belief of some sort always will find sustenance in sentimentality and dread if nothing better. More crucial to sustaining Jefferson's gamble must be a general conviction that the source of creation and lord of history is also the guarantor of natural right.

I have said Milton could not resolve the patent inconsistency of his new-modeled regime with his archprinciple of political covenant requiring general consent. Milton's notion of the best practicable regime for England was an aristocratic republic, a polity featuring rule of law, some separation of powers, complete disestablishment of the state church, and some (not very definite) provisions for claiming popular approval at least at the inception of the government. Yet Milton's model required above everything his reposing authority in a group reliably Protestant, congregationalist, and wary of a populace the majority of whom were not at once Protestant, republican, congregationalist, and disestablishmentarian. Hence, notwithstanding the logic seemingly incumbent upon a theorist dedicated to consent, Milton would not draw the necessary inference that would have transformed his aristocratic polity into a democratic republic. Jefferson and his successors in attendance ten years later at the constitutional convention improved Milton by embracing the inference Milton had repelled.

Delegates deliberating the Constitution wrestled with the question whether representation would be based on any consideration other than population and finally concluded it ought not. When set against a hitherto prevailing tendency of the Western tradition of republican thought their decision was momentous because they thereby turned aside from the vastly predominant conviction among previous republican theorists that the best practicable constitution is a mixed regime—like Rome and Britain—in which property and possibly some other attainments would be proportionally represented as well as population (of male adults) arithmetically determined. Therefore the American founders in rejecting any determination of representation other than the census and any formal principle other than equality (the wealthy and the propertied middle class could still protect themselves by using wealth politically yet informally) declared their work would produce a democratic republic. That was probably a necessary consequence of maintaining subsequent to the Revolutionary War the principles appealed to in 1776 in justification of that war.

Although a decade later than *Pro Populo*, in *The Ready and Easy Way* Milton came closer to projecting such a democratically biased model, he never did so entirely, and in *Pro Populo*, as I have said, he shied from the logical consequence which would have required him to do so. If we look then to the apex of Milton's uncompleted pyramid, we find it filled in with the constitutional provisions needed to substitute a democratic republic for the traditionally favored republican expedient of the mixed regime. The Declaration as subsequently articulated in the 1787 Constitution sublates Milton, and to this extent the principles of the Declaration cannot be simply confined to what Milton had argued in defense of the Commonwealth.

Yet suppose one imagines a Milton transported to Philadelphia in 1776, where he would find himself surrounded by a populace in its majority certainly Protestant augmented with politically defanged Catholics, and in significant numbers sympathetic to loosening if not to severing entirely an unholy alliance of secular authority with particular Christian denominations. Would not the Milton of *Pro Populo* so transported most likely embrace the democratic consequence a differently situated Milton had avoided? Of course one establishes nothing by testing only in favorable circumstances. We might come closer to principle by asking whether there is anything in *Pro Populo* theoretically inconsistent with democratic republicanism, or is it not rather that Milton's foundation indeed calls for, even if Milton himself does not envision, the architecture Americans subsequently provided?

CONCLUSION

And what of the Jefferson of the Declaration, the freethinker-by-circumstances-bound so to call him, versus Jefferson the freethinker-to-have-his-say? Did Jefferson, who would write his deistic speculations, construct his de-

mythologizing expurgation of the gospels, and substitute courses in Anglo-Saxon for biblical studies in founding the University of Virginia, did this unfettered Jefferson provide sufficiently for preserving a public belief in the Creator God of the Scriptures upon whose act of creation and conferral of special dignity and equal rights the draftsman of the Declaration had relied to establish his case for independence from Britain and a new order for mankind? Judging by the last-mentioned achievement, Jefferson in setting a curriculum for Virginia's young men seems to have been intent upon undermining the authority of those writings which Jews, Christians, and Islamics call the Book in favor of authors republican but pagan, Anglo-Saxon, Baconian, Lockean, recent American and, with his chair in "Ideology" (a word of late eighteenth-century coinage for research into the material basis of thought processes), positivistic.²⁷ After the Declaration a Jefferson theistic for the occasion seems to have reverted to the Jefferson of inconsistent piety if not outright agnosticism. The interesting question for students of political philosophy is whether with respect to political wisdom the first Jefferson or the second should be judged superior. In jargon more consonant with an academic audience that question could be posed as follows: on what grounds other than those occupied by the peoples who espouse scriptural religion can equality, rights, and consent be reasonably established, and if they can be so founded in thought, can they also be established sufficiently to moderate the self-seeking of the generality of nonphilosophic citizens in the conduct of their practical lives? This question almost comes to the same as asking whether the notion of a democratic republic is a practicable ideal, an impracticable but helpful goal, corruptive wishful thinking, or simply a yoking of contradictory terms.

If that is the question for philosophers, for us the issue may lie rather in our neglect of what the Declaration actually says. Our founding document ties "laws of Nature" to "Nature's God" with that most indefinite of all coordinate conjunctions, *and*. The preeminent challenge to rational minds consists in subjecting that conjunction to patient yet skeptical scrutiny, since at stake is nothing other than the question of the relation between reason and revelation, the life of thought and the life of piety. The Declaration in its silence on this final question—a silence which, however, makes the final question obtrusive—provides Americans with an invitation or a provocation to participate in philosophic reflection so far as our abilities permit in a society inhospitable to true leisure. This blessing may constitute the best part of our legacy of independence held out by the Declaration.

More prosaically but more practically, if we try reading the Declaration through the eyes of theologically minded republicans such as Milton, we may read it more discerningly, a gain which in turn might excite parental resentment over the habits of teachers at all levels of schooling who oblige their students to read about the document but not to read the Declaration itself, or when rarely they do exact a reading to do so with a fugitive attentiveness dulled by secular

predispositions or worse. Not the least benefit of such a recovery might be that we should not have soon again inflicted on us the embarrassment of listening to a two-term president misattribute to the Declaration Lincoln's watchwords "of the people, by the people, for the people," and have no one notice.

NOTES

1. Harry V. Jaffa, *How to Think About the American Revolution* (Durham: Carolina Academic Press, 1976), pp. 37–38. Compare Willmoore Kendall, "John Locke Revisited," in Nellie D. Kendall, ed., *Willmoore Kendall, Contra Mundum* (Lanham, MD.: University Press of America, reprinted 1994), especially p. 426; Thomas G. West, "The Classical Spirit of the Founding," in J. Jackson Barlow, Leonard Levy, and Ken Masugi, eds., *The American Founding: Essays on the Formation of the Constitution* (New York: Greenwood Press, 1988), pp. 1–56; "Leo Strauss and the American Founding," *The Review of Politics* (Winter, 1991), pp. 157–72; George Anastaplo, *The Constitution of 1787* (Baltimore: Johns Hopkins Press, 1989), pp. 2–25; William B. Allen, "The Constitution to End All Constitutions" in an address delivered to a conference on "The Constitution in the Twentieth Century" at the University of St. Thomas in Houston, 1983.

The classical exposition of the case for a Lockean reading of the Declaration is William F. Dana, "The Political Principle of the Declaration," *Harvard Law Review* 13 (Jan., 1900): 319–43. See also Carl Becker, *The Declaration of Independence: A Study in the History of Ideas* (New York: Alfred A. Knopf, 1922), also, Morton G. White, *The Philosophy of the American Revolution* (New York: Oxford University Press, 1978). For a more penetrating treatment of the Lockean theme, see Ronald Hamowy, "Declaration of Independence," in Jack P. Greene ed., *Encyclopedia of American Political History* (New York: Charles Scribner's Sons, 1984), pp. 455–65. See Jaffa, op. cit., and Martin Diamond, et al., eds., *The Democratic Republic* (Chicago: Rand McNally, 1966), pp. 95–97, and Michael Zuckert, "Self-Evident Truth and the Declaration of Independence," *The Review of Politics* 49, no. 3 (Summer, 1987): 319–39. Garry Wills, *Inventing America: Jefferson's Declaration of Independence* (New York: Doubleday, 1978); Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1953); Thomas L. Pangle, *The Spirit of Modern Republicanism: The Moral Vision of the American Founders and the Philosophy of Locke* (Chicago: University of Chicago Press, 1988); J. G. A. Pocock, *Politics, Language, and Time: Essays on Political Thought and History* (New York: Atheneum, 1971), pp. 96–103. Pocock says "few of Adam Smith's teachings [on civic responsibility] have survived," yet Smith's large book, *Theory of the Moral Sentiments*, is just such a teaching.

I discovered late that my argument was anticipated at the beginning of the century in a little pamphlet self-published by Gilbert G. Davis, *A Brief Account of John Milton and His Declaration of Independence*, limited ed. (Worcester, MA: Gilbert G. Davis, 1903). Mr. Davis thought he could make his case merely by setting out in parallel columns eight paragraphs spliced from *Tenure of Kings* and *Pro Populo* faced by the opening paragraphs of the Declaration. This might have sufficed for a time better instructed than ours in the principles of fundamental law, yet today when senators can with apparently unfeigned naivete confront the natural law beliefs of a candidate for the Supreme Court as though they had met with an extraterrestrial, a more analytic treatment such as I seek to provide may be appropriate.

2. *The Writings of Thomas Jefferson*, ed. Thomas A. Lipscomb, 20 vols. (Washington, DC: Thomas Jefferson Memorial Association), 16: 118–19.

3. A most searching argument for reversing the priorities I see in Milton's thought, i.e., prudence based on classical political philosophy's taking precedence over Christian teaching, has been proposed by Paul Dowling, *Polite Wisdom: Heathen Rhetoric in Milton's "Areopagitica"* (Lanham, MD: Rowman & Littlefield, 1995).

4. I mean Jefferson and the committee had so to compose that they could satisfy anticipated signatories. With regard to what occurred when the document was laid before Hancock, historians

tell us we cannot know who signed what, and when they signed whatever it was they did sign, if they did. We have no official record of what may have passed between the members of Congress assembled to consider approval of the committee's work. We do have Jefferson's recollections from 1823. See *The Papers of Thomas Jefferson*, ed. Julian P. Boyd, 26 vols. (Princeton: Princeton University Press, 1950) 1: 300–329.

5. The committee and Congress approved Jefferson's introductory reference to "Nature and Nature's God," yet Jefferson originally gave a less emphatically scriptural cast to the equality proposition by writing: "from that equal creation [men] derive in rights inherent and inalienable." The committee of five's revision substantially strengthens theological language, already in Jefferson's draft fairly definite, by substituting: "endowed by their Creator."

6. On May 24, 1774, the Virginia House of Burgesses had also designated a day of prayer and fasting requiring all members of the House to "proceed with the Speaker and the Mace to the Church in this City for the Purposes aforesaid" (Boyd, 1: 105–6). Governor Dunmore, taking offense for George III, thereupon dissolved the House. See also Jefferson's approval of the resolution regarding the day of fasting "cooked up," he says, "[from] the revolutionary precedents and forms of the Puritans" (*Autobiography*, Ford ed., 1: 9–11, as cited by Boyd, 1: 106 note).

7. Similarly, even in an instance wherein Jefferson's debt to Locke seems to be a matter of direct literary influence, one may discover a precedent in Milton. Jefferson says prudence counsels enduring despotism up to that point when a people has witnessed "a long train of abuses" (cf. *Second Treatise* 19. 225). Jefferson doubtless recalled Locke's phrase, since it is identical with the verbiage employed in the Declaration. Yet *Pro Populo*, while varying the language, had made the same charge against Charles's despotic accumulations accompanied by the same praise of Parliament's long-suffering forbearance (cf. *Pro Populo*, p. 523).

8. Of course in his *Second Treatise* Locke had spoken of the natural law as a product of God's will at the outset (1. 2), yet since he makes no more of this divine origin than to reduce the divine law to the principle of self-preservation, one must wonder why such an elemental necessity shared with all animals needs to be supplemented with a divine command; in any event, from Locke one derives no sense of the propriety of rendering thanks to God for human origins. Quite the contrary, over the subsequent course of the argument of the *Second Treatise* Locke will introduce no cause for gratitude towards, but abundant reasons for resentment against, whatever personal agency, if there be any, upon whom we must lay responsibility for our straitened and penurious condition in unimproved nature. See also 1. 11. See Pangle, pp. 198–244. See also Paul Rahe, *Republics Ancient and Modern: Classical Republicanism and the American Revolution* (Chapel Hill: University of North Carolina Press, 1992), pp. 295–97, 493–500.

9. This and the previous passage are cited in Thomas West, "Religious Liberty: The View from the Founding," in Daniel Palm, ed., *On Faith and Free Government* (Lanham, MD: Rowman & Littlefield, 1997).

10. Milton's writings were widely accessible in America after 1690. From George Sensabaugh, *Milton in Early America* (Princeton: Princeton University Press, 1964, pp. 110–46), one gathers the following information: Evidently the chief late colonial disseminator of Miltonic ideas was Jonathan Mahew, who drew upon both *Areopagitica* and *Pro Populo* for ammunition in his attack upon the pro-Episcopal machinations in Boston of an Anglican missionary (!) organization. "Independent," writing in *The Boston Gazette*, applied Milton's *Ready and Easy Way* to America's situation in 1770.

More pertinent to our concerns, at least three of the "committee of five" commissioned to draft the Declaration are known to have read Milton and to have left a trail of citations. Franklin had reproduced a long passage from Book 4 of *Paradise Lost* in his "Articles of Belief and Acts of Religion." John Adams studied Milton throughout his life, and explicitly cited Milton (side by side with Locke) in a list of republican authors he recommended to George Wythe in a public letter to Virginians advising them on the merits of a republican form of government. Adams's essay was sent to Virginia early in 1776.

Jefferson records some forty-seven references to Milton in his *Commonplace Books*. Many of these are rather perverse (yet republican) readings of Satan's speeches at the beginning of *Paradise Lost*; some are moralisms drawn from *Samson Agonistes*. Milton's ecclesiastical pamphlets Jeffer-

son drew upon in preparing notes for his efforts in the Virginia legislature on behalf of religious toleration, beginning with An Act for Exempting Dissenters from Contributing to the Anglican Church (passed in December, 1776) and extending through A Bill for Religious Freedom (1786). Jefferson cites *Of Reformation and Reason of Church Government* in his memoranda for debating the legislation.

In a 1770 letter to Robert Skipwith containing a list of recommended reading (Boyd, 1: 76–81) Jefferson includes “Milton’s *Works* (2v. 8vo.) in Donaldson’s Edinburgh edition (1762).” Since he puts Milton in the “Fine Arts” section and does not include any Milton titles under “Politics, Trade,” “Religion,” “Law,” “History, Ancient” or “History, Modern” (though he does list several writings of Locke), one can hardly posit from this an acquaintance with *Pro Populo*. The only other reference to Milton I find in the *Papers* is the tantalizing but cryptic praise of Jefferson’s “few lines in the Miltonic Stile” effused in 1771 by a Mrs. Drummond, a companion of Jefferson’s on a coach journey but otherwise little known (Boyd, 1: 65). Sometime before November 19, 1776, but not certainly before July, Jefferson had referred twice to yet another edition of Milton’s *Works*, a 1698 Amsterdam printing, to which he makes reference in citing Milton’s *The Reason of Church Government Urged Against Prelaty and Of Reformation* (see Boyd’s notes 1: 553). Did this edition contain *Pro Populo*?

Jefferson’s epitaph, “Resistance to tyranny is obedience to God,” ascribed by him to Ben Franklin, who in turn had attributed to John Bradshaw (the judge presiding in Charles’s “trial” and praised by Milton in a lengthy panegyric as a “tyrannicide” at the end of the *Second Defense* [Yale, pp. 637–39]) sounds very like a lapidarian adaptation of a Senecan tag Milton cites in both *Pro Populo* and *The Tenure of Kings and Magistrates*: “the blood of tyrants is the dearest sacrifice to Zeus.”

For a general discussion of Milton’s probable influence on Jefferson, see, besides Sensabaugh, pp. 135–46, Jony Davies, “Borrowed Language: Milton, Jefferson, Mirabeau,” in David Armitage, Armand Himy, and Quentin Skinner, eds., *Milton and Republicanism* (Cambridge: Cambridge University Press, 1995), pp. 254–71.

In his letter to Madison, August 30, 1823, Jefferson claimed he had “turned to neither book or pamphlet while writing.”

According to the inventory of Jefferson’s library published by the Library of Congress, besides the volumes of Milton’s poetry Jefferson possessed at least one collection of Milton’s prose. Whether the volume contained *Pro Populo* and if it did whether it was marked in Jefferson’s hand, and, if it were, whether the markings dated from before July, 1776, I have been unable to determine. This does not much militate against the argument pursued here (though it certainly does not help it), since my concern is with a parallelism of thought—parallel up to a point—and with an analysis of the significance of the Declaration for which Milton’s thought in *Pro Populo* provides, I maintain, an illuminating point-for-point analogue.

11. For an account of the status of equality within the context of rule of law, see M. Stanton Evans, *The Theme is Freedom: Religion, Politics and the American Tradition* (Washington, DC: Regnery Publishing, 1994). For an antithetical account see Orlando Patterson, *Freedom in the Making of Western Culture* (New York: Basic Books, 1991), pp. 47–181. The best philosophical consideration of the subject may well be Bertrand de Jouvenal, *On Power: The Natural History of its Growth* (Indianapolis: Liberty Fund, 1993).

12. See for example the controversy between Jaffa, pp. 141–61, on the natural rights side and M. E. Bradford, “The Heresy of Equality,” *Modern Age* 20, no. 1 (Winter, 1976): 62–77, on the British conventional rights side.

13. See Wilson Carey MacWilliams, “On Equality as the Moral Foundation for Community,” in Robert H. Horwitz, *The Moral Foundations of The American Republic*, 3rd. ed. (Charlottesville: University Press of Virginia, 1990), pp. 283–88.

14. Jefferson’s *A Summary View of the Rights of British America* (1774) identifies as “possessed by the American colonists as of natural right,” the liberty “of a free trade with all parts of the world” (Boyd, 1: 123). This, however, would be a corporate right presumably, not necessarily an individual natural right. The interesting case for the argument made in this essay would be right of conscience. On the question of the positive (prescribing government action on behalf of) or nega-

tive (circumscribing government action in respect to) character of these rights, see the intelligent discussion in Hamowy, pp. 458–59.

15. *Oxford English Dictionary*, 2d ed., 8: 771, and compare p. 840. The Oxford entries provide only British illustrations. I may be wrong in assuming that American eighteenth-century usage conforms, but see John Adams's *A Dissertation on the Canon and Feudal Law*.

16. Speculations about the ancestry of Jefferson's pursuit of happiness have ranged from Locke (Becker, Jaffa), to Burlamaqui (Frank Donovan, *Mr. Jefferson's Declaration* [New York: Dodd, Mead, 1968], pp. 138–40), to the Scots empiricists (Wills), to Aristotle (Charles Murray, *In Pursuit of Happiness and Good Government* [New York: Simon and Schuster, 1988], pp. 32–36, 136–37). Apart from context the phrase seems to me irresolvable in its ambiguity, and, even taking every feature of the context into account, I put in for Milton while acknowledging that one can hardly pin down a term of such wide suggestiveness.

St. Augustine culled out of Varro 288 philosophically attested definitions of felicity. So broad and fundamental are the categories of pleasure, virtue, and property of which these varieties are compounded one doubts the curiosity of de Sade, Foucault's inversions, or even Nietzsche's genuinely philosophical transvaluations do anything to augment Varro's enumeration (*City of God*, 19. 1).

17. The British might have protested they were only replying in kind, since "Indians" had thrown their tea into the sea. The colonists also employed in their ranks certifiable Indians, although presumably they disciplined these in their more civilized European usages of war.

18. As cited in Bernard Bailyn, *Ideological Origins of the American Revolution* (Cambridge, MA: Belknap Press of Harvard University Press, 1992), p. 256–57.

19. The *Virginia Resolutions on Lord North's Conciliatory Proposal* (of 1775) had spoken of the House of Commons' "changing the government and Religion of Quebec" (Boyd, 1: 172).

20. In his *Commonplace Books* Jefferson set down copious extracts from Locke's *Letter on Toleration*, the most interesting of which in the present context is the following: "[Lo]cke denies toleration to those who entertain opns. contrary to those moral rules necessary for the preservation of society; as for instance, that faith is not to be kept with those of another persuasion, that kings excommunicated forfeit their crowns, that dominion is founded in grace, or that obedience is due to some foreign prince, or who will not own & teach the duty of tolerating all men in matters of religion, or who deny the existence of a god." Jefferson then comments: "It was a great thing to go so far (as he [Locke] himself sais [sic] of the parl. who framed the act of toletern.) *but where he stopped short, we may go on*" (Boyd, 1: 548, emphasis added).

21. The Locke of the *Letter on Toleration* would presumably find little here to engage his concern. Locke expressly allows a state-supported church, although it does not appear he can do so and maintain consistency with the logic of the *Letter*. But for colonists more Miltonic than Lockean, as I've been contending they were, the impending prelate would be a concern comparable to the other British violations of the laws of Nature and Nature's God listed in the indictment of particulars.

22. The *Letter on Toleration* challenges the Christian intolerant of pagans to imagine himself in a regime ruled by a pagan prince. Locke asks, should he not extend to pagans the same liberty of conscience he would desire for himself under pagan rule? To the objection that the superior truth of one of the creeds ought to be preferred, Locke replies that the orthodoxy of one man is the heterodoxy of another (C. L. Sherman ed., pp. 181, 200–201). Locke thus anticipates an illogic today pervasive among undergraduates and all but orthodox among their teachers, having this generalized form: "X maintains A entails B; but Y maintains A entails C; therefore A entails neither B nor C (nor anything else)." That practitioners apply their illogic selectively usually compounds mischief, though sometimes it provokes truth spasms.

23. Bailyn does offer convincing evidence that establishmentarians were on the run everywhere in the colonies by 1776. Even so, Congress in the midst of war could ill afford to risk losing any backers if there could be found some way to alarm disestablishmentarians without panicking the stand-patters. That the latter still retained some influence seems attested by Jefferson's remark that his passage of the Bill for Religious Toleration ten years later required a "severe struggle."

24. I owe this observation to a suggestion by Kathleen Alvis and David Sweet.

25. Writing on the different but related subject of the development of American English and its political implications and evidently from a perspective he probably would not consider sympathetic with my own, David Simpson nevertheless in a contrast of Emerson with Cooper hits upon the theological spirit I perceive in the Declaration. In the following quotation Natty Bumppo epitomizes to my mind the outlook characteristic of the draftsmen: "When Emersonian man stares at the horizon, he beholds 'somewhat as beautiful as his own nature,' and he is 'never tired' as long as he can 'see far enough' Natty on the contrary never thinks of his own nature; he registers the glory of God, and then starts looking for suspicious woodsmoke" (*The Politics of American English, 1776–1850* [New York: Oxford University Press, 1986], p. 254).

As he does more often than not, Hawthorne gets it just right when at the end of his story "Endicott and the Red Cross" he sums up the ironies he has developed over the course of this portrayal of New England Puritan revulsion over Charles and Laud to imply that the Independence of 1776 not only resolved the problem of conscience coerced by foreign rule but also America's indigenous religious intolerance. Yet so superior a thinker is Hawthorne compared with such a simplistic ideologue as Arthur Miller (in *The Crucible*) he conveys at the same time the costs of toleration in a resultant erosion of moral decency, a cost which Hawthorne suggests ought to be borne but a loss even so. The gods set their gifts on the right hand and on the left.

26. See Ed Erler, *The American Polity: Essays in the Theory and Practice of Constitutional Government* (New York: Crane Russak, 1991), pp. 115–16.

27. For an illuminating account of Jefferson's efforts to undermine the Bible at the University of Virginia, see Eva T. H. Brann, *Paradoxes of Education in a Republic* (Chicago: University of Chicago Press, 1979), especially pp. 58, 81, 86, 91–92, 93, 98, 139.