Defending Natural Law:
British Constitutional Philosophy in the Defense of Life, Liberty, and Property

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There was very little "American" or "revolutionary" in what is commonly referred to as the "American Revolution." It is more historiographically correct to understand the *Declaration of Independence,* as well as its precedent and antecedent political and military clashes, as a natural expression of British ideals by British colonists arguing for the recognition of British rights based on the concept of natural law. It is important to understand that to British citizens of the 17th and 18th centuries, all laws were fundamentally rooted in the idea of natural law. As British political thought changed, was more clearly articulated, and eventually codified, the concept of natural rights came to be inextricably linked to the idea of a pre-existent natural law, which provided a basis for the legitimacy of positive law, and ultimately the moral justification for civil disobedience, rebellion, and secession. To the colonial rebels, it was impossible to conceive of any one of these ideas independently. As historians today, it is equally impossible to conceive of any "American" political revolution of the 18th century; the political philosophy behind the *Declaration of Independence* was, in fact, British.

Coke's ideas about the *Magna Carta* and common law[1] provided the interpretative framework that was adopted by the Parliamentarians and Levellers of the English Civil War,

[1] Zimmermann, Augusto. "Christianity and the Common Law: Rediscovering the Christian Roots of the English Legal System." *University of Notre Dame Australia Law Review 16*, 2014. 145-177.

Augusto Zimmermann showed that Coke had not originated these ideas, but rather drew them from pre-existing English attitudes. The first one who should be discussed is Sir Henry de Bracton (d. 1268) who clearly articulated that the king is never to be an arbitrary power, but rather subject to two very important powers that supersede himself: God and the law. The next influential contributor to common law principles is Sir John Fortescue (d. 1603), who argued that God alone had authority over the Natural Law, and that "God instilled in every person a sense of natural liberty." Another important English thinker that had a profound impact on the development of natural law theory was Christopher St. Germain (d. 1540) who argued that there are three types of laws: "The law of nature or reason; the written law of God; and the 'law of man'."

It should be understood then that Coke was not originating a novel interpretation of natural law from the *Magna Carta*, English and British political philosophers were drawing on a deep tradition of common law, which saw it as being totally separate from and higher than civil law and naturally evident to all. These ideals help to provide a historical context for the "self-evident" nature of the "inalienable rights" described by the *Declaration of Independence* that extend well before there were even colonies in America. In turn, Coke's ideas were not radical or novel ideals at all, but rather represented a natural progression in British political tradition that extended well into the medieval English period.

then the Whigs, and eventually by the political thinkers during the time of the American War for Independence. Coke was primarily concerned that "his Majesty would maintain all his subjects in the just freedom both of their persons and estates."[2] The combination of the "freedom of persons and estates" was the idea of natural rights that became highly influential within British political thought and was the basis of all limited constitutional government. Coke also wanted to ensure "that [the King] will govern us according to the laws and statutes." [3] This was significant because in the common law system that came to define British legal thought, there was a strong desire to prevent arbitrary rule by a king that was able to dictate to his subjects how they ought to be ruled. Coke stated that the purpose for these systems was "that we shall enjoy all our rights and liberties with as much freedom as ever any subjects have done in former times." [4]

Coke died prior to the English Civil War, but his interpretation of the rights of British citizens was instrumental to the thinking of many different political groups that opposed the monarchy during this time period. When the Parliamentary forces that were opposed to Charles I drafted their political ideological platform, the *First Agreement of the People* plainly stated that the right to individual conscience of religion and participation in war was an essential component of what Coke considered the freedom of one's own person, and specifically protected these rights.[5] It also clearly stated that "every person may be bound alike" by the laws

[2] Sir Edward Coke. *Petition of Right (1628).* Liberty Fund, 2013.
[3] Ibid.
[4] Ibid.
[5] Bear, Edmond, Robert Everard, George Garrett, Thomas Beverley, William Pryor, William Bryon, Matthew Weale, William Russell, John Dover and William Hudson. *The First Agreement of the People, for a Firme and Present Peace, Upon Grounds of Common Rights,* London, 1648.

and that those laws should "be equal, so they must be good, and evidently not destructive to the safety and well-being of the people."[6]

These ideas exemplified the theoretical justification for revolution against the existing government.[7] By citing "the examples of our ancestors," the *First Agreement of the People* clearly articulated a right to revolution on the basis of resistance to tyrannical rule which rendered that ruler illegitimate on the basis of the violation of the "native rights" of the citizens in conflicts such as the War of the Roses and the struggle that eventually led to King John's acceptance of the *Magna Carta*. The right to revolt based on a violation of natural rights was reiterated by Locke and later in the *Declaration of Independence,* demonstrating that the ideas articulated in the *Declaration* were well entrenched in British political thought long before the 18th century, and if the drafters of the *First Agreement* are correct about the assumptions of their ancestors, was well entrenched even prior to the 17th century.

It is important to understand what these "native" or natural rights were. Both Locke and Hobbes, drawing on British natural law theory which pre-dated both of them, had logically established the existence of certain rights that were native to humans before the institution of government was established. Since these rights, or abilities pre-dated government[8], both

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[6] *The First Agreement of the People*.

[7] Ibid. "These things we declare to be our native rights, and therefore are agreed and resolved to maintain them with our utmost possibilities against all opposition whatsoever; being compelled thereunto not only by the examples of our ancestors, whose blood was often spent in vain for the recovery of their freedoms."

[8] Hamburger, Philip A. "Natural Rights, Natural Law, and American Constitutions." *The Yale Law Journal 102*, 1993. 908.

A "natural right," according to Hamburger, is any ability that a man would have had prior to the existence of governments. Therefore, it follows that freedom of speech is a natural right, since before government every man in the state of nature had the ability to say whatever he wanted. Interestingly, this logically precludes all people who are acting as members of a government from being said to possess any natural rights within their governmental capacity. The office within the government exists only after government, and therefore natural rights cannot apply. Put bluntly, politicians do not have the freedom of speech as a natural right, because their role doesn't exist in the state of nature. "Natural law," according to Hamburger, is the logical restraints on natural liberty; it is what is apparent that although one in the state of nature may have the ability to do, it would be

Hobbes and Locke argued that they needed to be voluntarily surrendered to the institutional government by the people. It is important to note that while some political philosophers today question the validity or self-evident character of natural rights, this would not have been the case in the 17th or 18th century British world.[9] The fundamental difference in Lockean and Hobbesian philosophies was in how many, and which of these rights were retained by the people or the individual, and pursuant to that, what the nature of the relationship between the citizen and the government was or ought to be.

It is perhaps even more important to understand what, specifically, the natural rights were that were considered to be within the jurisdiction of the individual rather than the institutional government, according to established British legal thought. Raoul Berger concludes basically that:

> "These 'absolute,' 'fundamental' rights of "'life, liberty, and property' referred, in sum, to (1) personal security; (2) freedom of locomotion; and (3) ownership and disposition of property."[10]

Specifically, Berger, in showing the limited definition of these rights, also summarily rejected a wider application of these rights, as is frequently the case in our contemporary times. [11] As Berger discussed at length, it is also really important to understand that these three rights are not

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considered senseless or wanton for one to actually execute such an action. This explains the "self-evident" nature of natural law and natural rights.

[9] Geuss, Raymond. "Rights." In *Philosophy and Real Politics*, Princeton University Press, 2008. 60-70.

According to Guess, there is the moral use of the word "right" to mean that it is good or justified to do something (i.e. It is right to tell the truth) and there is its noun connotation, which denotes something which is metaphysically in the possession of an individual (i.e. My rights are being violated.) Many political philosophers argue that certain rights are considered to be pre-existent to codification, and therefore exist outside of and above the actual laws of a given society. Guess challenges the entire idea of natural rights as being self-evident at all. He claims that in the Greek language it is not even possible to discuss "rights" as a noun. He suggests instead that we should change statements like "I have a right to own property" to "It is right that the government protect personal ownership of property."

[10] Berger, Raoul. *Government by Judiciary: The Transformation of the Fourteenth Amendment.* Liberty Fund, 1997.

[11] If one was to look at the United Nations' *Universal Declaration of Human Rights* it could be effectively argued that "natural rights" expressed in Western ideology prior to the 20th century are not at all the same thing as "human rights" discussed today.

nearly so limited in scope as they may appear. *Cato's Letters,* written by John Trenchard and Thomas Gordon is an example of the arguments based on natural rights which are in reference to "ownership and disposition of property" but have much further-reaching implications.[12]

It is also important to understand natural law as opposed to the various other types of law that could exist. Regardless of the specific terminology applied, there are three basic types of law: natural law, divine law, and positive law. According to Fukayama, Locke concluded that divine rights are problematic on a societal level, because "it is extremely difficult to achieve social consensus on issues involving religion" which rules out the application of divine law within modern societies.[13] Fukayama argued that civil rights have to be based on some standard outside of themselves, otherwise anyone who claims to believe in human rights has to concede that their concept of such rights has no moral basis.[14] He stated simply that the "problem. . .in practice if not in theory, is that there are no positive [civil] rights that are universal" and that those who argue that the moral legitimacy for any positive law is the acquiescence of the governed are forced to concede that this has the limited application to each particular society, and not humanity as a whole.[15] Locke, Jefferson, and Hobbes's insistence on basing the

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[12] Gordon, Thomas and Trenchard, John. *Cato's Letters Vol. 1 (1720-1721)*. The Liberty Fund, 1995.

Trenchard and Gordon argued that the government had a moral obligation to not interfere in the corrupt business dealings of the South Seas Company, or to use the people's money (i.e. taxes) to spare them from the consequences of their poor business management. To Trenchard and Gordon, this issue was so serious that it justified civil disobedience or revolt and would constitute tyranny. Essentially, since the people's natural right of property was sovereign, and the government was acting as a steward of those funds, it was accountable to the people for how it utilized those funds.

[13] Fukuyama, Francis. "Natural Rights and Human History." *The National Interest, no. 64*, 2001. 22.

This doesn't mean that divine rights do not have a place in society, they just need to be kept on an individual level, where each person is free to believe and act as they will, as long as they do not try to project divine law into civil law. Fukayama even goes so far as to state that those from a secular humanist perspective like Watson who have little patience with others who have deeply held religious views need to be more tolerant.

[14] Ibid. 24.

Fukayama explains that if civil law is the arbiter of all legitimate law, then Western nations have no moral authority to claim that Chinese laws repressing freedom of religious expression are "wrong."

[15] Ibid.

authority of civil law upon natural law is, therefore necessary for the moral legitimacy of positive law.[16]

Although the Parliamentarians during the English Civil War sought to justify their revolution against Charles I based on the concept of natural law, it was another contemporary political group that sought to more generally apply natural law principles to citizenship principles throughout England. The Levellers, who represented the libertarian and democratic political extreme during the English Civil War, wanted to add certain provisions to the first *Agreement of the People* which had been written by more moderate elements within the Parliamentary forces opposed to Charles I. Several important principles which came to be more common British ideas in subsequent years were articulated by the *Second Agreement of the People,* intended by the Leveller leadership to even more clearly define the natural rights and relationship of the people and their government. The Levellers articulated stronger protections for religious tolerance, *habeus corpus* and due process that were listed in a section of the *Second Agreement* that clearly identified a sort of Bill of Individual Rights in a negative constitutionally framework. However, the Levellers were also acutely aware of the potential for tyranny by the legislature, and as such, also specifically reserved powers from the People's Representatives. The Levellers specifically enumerated eight acts that Parliament could not have, and clearly articulated a constitutional principle of checks and balances by stating its power only "extend[ed] to the enacting, altering, repealing, and declaring of Lawes."[17] A common complaint of the First Continental Congress was that Parliament was engaging in

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[16] Fukayama, "Natural Rights and Human History." 24.

Fukayama concludes that it is logical that since the law of nature is the only one of the three potential sources of law that every human being shares in common, it is the best basis for legal philosophy, rather than an antiquated view as is argued by many modernists.

[17] Lilburne, John, William Walwyn, Thomas Prince, and Richard Overton. *Second Agreement of the People: Foundations of Freedom, or an Agreement of the People.* London, December 15, 1648.

unconstitutional practices that were outside of the jurisdiction of Parliament by enforcing rather than simply writing the laws.

One of the leading Marxist historians of 17th century political thought, C.B. Macpherson, attempted to reinterpret the Leveller ideology as "possessive individualism" rather than based on liberty. To summarize possessive individualism in an extremely basic statement, according to Macpherson, all 17th century British thinkers essentially viewed natural rights as property, and attempted to preserve their property constitutionally on the basis of natural rights. According to the historian Joseph Carens, "Macpherson argued that the Levellers made individual freedom central to their political thought and property central to their conception of individual freedom."[18] Macpherson concluded that the Levellers were the beginning of the Lockean and ultimately Whig tradition within English society that sought to use the existing power structures to solidify the interests of the bourgeoisie.[19]

The first part of Macpherson's thesis is refuted, in part, by a broader view of liberty. Quentin Skinner explained a seeming inconsistency between certain groups within the Levellers by looking at the different ways that "liberty" was interpreted during the 17th century. According

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[18] Carens, Joseph C. *Democracy and Possessive Individualism: The Intellectual Legacy of C.B. Macpherson.* State University of New York Press, 1993. 6

[19] Ibid. 23-24.

Macpherson's thesis of possessive individualism claimed that: "Man, the individual, is seen as absolute natural proprietor of his own capacities, owing nothing to society for them. Man's essence is freedom to use his capacities in search of satisfactions. This freedom is limited properly only by some principle of utility or utilitarian natural law which forbids harming others. Freedom therefore is restricted to, and comes to be identified with, domination over things, not domination over men. The clearest form of domination over things is the relation of ownership or possession. Freedom is therefore possession. Everyone is free, for everyone possesses at least his own capacities. (2) Society is seen, not (as it had been) as a system of relations of domination and subordination between men and classes held together by reciprocal rights and duties, but as a lot of free equal individuals related to each other through their possessions, that is, related as owners of their own capacities and what they have produced and accumulated by the use of their capacities. The relation of exchange (the market relation) is seen as the fundamental relation of society. Finally (3) political society is seen as a rational device for the protection of property, including capacities; even life and liberty are considered as possessions, rather than as social rights with correlative duties."

to Skinner, there is a big difference between being "free-born" and being a "free-man." "Free-born" referred to all men, and essentially was the argument that each individual should have equal access to the law within a nation. However, in order to be a "free-man," you must "be able to exercise your rights and liberties without undue interference."[20] This definition of liberty fits the contemporary interpretation within the Roman *res publica* construct[21], but to this Skinner added a second condition of free-men, that their "capacity to exercise your rights and liberties must never be subject to anyone else's will."[22] This is what explains the stipulations put on votership and political engagement by even groups like the Levellers who seem to have supported essentially universal rights. The one stipulation put on individual participation by the Levellers on a citizen in the civic process is that the person's vote could be said to have represented their own views, and not the view of another to whom they were beholden.[23]

One of the most common criticisms against Jefferson and other Founders of the American system is that they did not grant full political rights to all, and therefore were violating their own principles expressed in documents like the *Declaration* and *Bill of Rights.* When viewed within Skinner's semantical interpretations, we must be careful not to confuse political rights and natural rights, for they are not the same historically or philosophically. There is an element of natural rights which are, in a sense, the property of the individual, but they were also

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[20] Skinner, Quentin. "Rethinking Political Liberty." *History Workshop Journal,* 2006. 157

[21] This idea of a more limited application of citizenship based on one's ability to exercise his political participation without being beholden to others is a part of the political philosophy of citizenship expressed by Cicero.

[22] Skinner, "Rethinking Political Liberty," 157.

[23] *Second Agreement of the People.* " That the Electors in every Division, shall be Natives or Denizons of *England,* such as have subscribed this Agreement; *not persons receiving Alms*, but such as are assessed ordinarily towards the relief of the poor; *not servants to, or receiving wages from any particular person*." (emphasis added)

the state of mind of the individual and cannot be confined to mere possessions as Macpherson attempts to claim.

The second part of Macpherson's thesis is refuted by the commonwealth viewpoint of natural rights. Johnathan Scott argued that the commonwealth principles of the 17th and 18th century were much larger than simply being civically-minded. Republicans sought to refine the person and character of man in general, and this struggle was intertwined with the generally republican language common during 17th century England. Furthermore, these ideas of commonwealth were a hallmark feature that continued to influence not only "Adams and Jefferson, but Montesquieu and Rousseau, Robespierre and Marx."[24] In modern discourse, the most common emphasis is on the political goals of 17th and 18th century republican thought, rather than the moral ambitions of the same. These must be seen to go together.

To only emphasize the political goals of republican thought are to think of Locke's social contract in terms of any other civil contract entered by two parties in a *quid pro quo* arrangement. The 17th and 18th century concepts of social contract were much deeper than this and incorporated a strong sense of the "reciprocal rights and duties" that each citizen had toward the other, and that each political entity had toward the other.[25] The entire view of common law encumbered the ruler with the purpose of serving God and God's law by administering justice well. If it was simply an exchange in a market economy, as Macpherson claimed, then there would be a simple transaction between people and ruler, and no reason for Locke and Jefferson both to discuss the immense responsibility of the people to not revolt over trivial things.

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[24] Scott, Johnathan. "What Were Commonwealth Principles?" *The Historical Journal,* 2004. 613.

[25] The *Declaration of Independence* stated that "We mutually pledge to each other our lives, our fortunes and our sacred honor."

The third part of Macpherson's thesis is the most correct, in the sense that Locke, Blackstone, and others stated very explicitly that the main purpose of government was the protection of property, which was included as one of the natural rights of the individual. This makes it difficult to refute Macpherson's third point, except the conclusion that he draws, that "life and liberty are considered as possessions, rather than as social rights. . ." does not follow in light of the objections already raised to the first two points, primarily that simply because property is one of the natural rights, does not mean that all natural rights are property.[26] Furthermore, if natural rights can be essentially considered possessions, then there is no way to view natural rights as inalienable to the individual, however Locke and others did view certain rights as inalienable.

Levy directly refuted this aspect of Macpherson's thesis by calling into question his limited interpretation of "property" as physical objects or possessions. According to Levy, John Lilburne, a Leveller leader, "used the word 'property' in an extended sense. . .[which] cannot be reduced to land, capital, or material objects even though it may involve them."[27] Levy noted that Lilburne and the Levellers were reacting to claims made by Sir Robert Filmer that via Adam, the King possessed all, and it was only at his will and good pleasure that any was able to utilize it.[28]

For Lilburne and, according to Levy, many 17th century writers, "property as a term still included sets of private and common rights."[29] Since this concept of property was "far more expansive" than Macpherson's definition of it, it "opened up a wide variety of properties which

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[26] Carens, *The Intellectual Legacy of C.B. Macpherson.*

[27] Levy, Michael B. "Freedom, Property and the Levellers: The Case of John Lilburne." *The Western Political Quarterly*, 1983. 118.

[28] Ibid, 119.

The refutation of this claim was also the expressed object of Locke's *First Treatise.*

[29] Ibid. 122.

an individual might have held."[30] This meant that those leaders in the 17th century who believed in common law, which traditionally did not apply to copy-holders, could be applied to all Englishmen with respect to their natural rights. One can also see the influence of Leveller ideology in later works like *Cato's Letters* in the 18th century given Lilburne's concern with economic monopoly as generating a state of slavery among citizens.[31] Tyranny had many faces to Levellers, and one of the major threats to freedom was the corruptive influence of crony capitalism which used its money and influence to turn the government into a vehicle of oppression. It followed that the government would then be a slave to an entity which was not the People, which would then imperil all Englishmen's rights, not just their ownership of property.

Furthermore, rights must either be possessions which can be disposed of as one will, or they are gifts from the Creator that are inseparable from the individual and whose protection is the genesis of the just rule of government. John Simmons's discussion of inalienable rights is incredibly helpful to the important task of clarifying exactly what this idea meant to political writers in the 17th and 18th centuries. He first summarized Locke's position by stating that there are three ways in which rights may be lost:

> "(a)voluntarily given away or exchanged (alienated),
> (b) lost involuntarily through negligence or wrongdoing (forfeited), or
> (c) taken away by some other party (prescribed)."[32]

There were, however, other inalienable rights which could not be legitimately lost in any of the three ways described above, these being inalienable, natural rights.[33] Simmons furthermore claimed that the view of inalienability among Locke's contemporaries lacked the permanence often prescribed by a narrow interpretation of the terminology among modern scholars. He

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[30] Levy, "Freedom, Property and the Levellers." 122.

[31] Ibid, 127.

[32] Simmons, A. John. "Inalienable Rights." In *On the Edge of Anarchy: Locke, Consent, and the Limits of Society*, Princeton University Press, 1993. 104.

[33] Ibid.

claimed it was understood by these political thinkers that members of a society could defer their natural rights for a short period of time within a limited application without actually giving up the right.[34] While this may not actually be how power operates, Jouvenel for example would say that while it may be philosophically possible, Power would never actually relinquish a right that was placed under its authority, it does explain the apparent beliefs of men like Gordon and Trenchard who advocated in *Cato's Letters* that there were times when despotism was called for in the defense of liberty during uncommon times of threat to the commonwealth.[35]

Simmons finally made the point that the primary purpose of the belief in "inalienable rights" was not to list specific rights as being inalienable and others as not, but in justifying the right which is always reserved to the people, by which the governed has legitimate claim to define a government as "tyrannical." Therefore, Simmons concluded, the true meaning of inalienable rights to Locke and other British thinkers was that

> Certain of our rights are inalienable and our governments nonetheless act as if we lack these rights, the moral justification of resistance has its solid foundation. The thesis of inalienable rights, then, has its most important revolutionary implications when conjoined with the consent or contract account of political authority.[36]

In light of this interpretation, Simmons claimed that Locke's views of natural rights were that "natural rights" should be better understood as a trust from God, rather than actually rights that we ourselves possess.[37] It should logically follow, therefore, that although men have

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[34] Simmons, "Inalienable Rights." 104-105.
This also was a Roman ideal, in which the rule of law could be temporarily suspended in a national crisis. It was understood based on Roman ideology that the rights still resided ultimately with the citizen, but that the citizen was voluntarily deferring them for a short period of time.

[35] Gordon, *Cato's Letters No. 11.* "Many nations have had particular officers appointed on purpose to punish uncommon crimes, which were not within the reach of ordinary justice. The Romans had a dictator; a great and extraordinary magistrate, vested with an extraordinary power, as he was created on extraordinary exigencies; and his commission was limited only by the publick good, and consisted in a very short direction, *Nequid detrimenti respublica capiat*; in English, *To save the state."*

[36] Ibid. 108.

[37] Ibid. 116.

"inalienable" rights, as it pertains to certain matters of life and liberty, they are not at liberty to dispossess themselves of these things because they are not truly possessions at all. This explains the moral and legal basis for Locke's opposition to slavery.[38] Simmons argued that the same logic followed for "political slavery" in which a government would gain arbitrary power over the people.[39] According to Locke's view of government, since each citizen is accountable to God for his or her stewardship of the trust of rights as well as individual actions, he or she does not have the authority to delegate those responsibilities to others. It is hence, that the *Declaration of Independence* can claim that not only is it morally justified to resist tyrannical government, it is the duty of the citizens to do so.[40]

"Inalienability" therefore takes on a totally new interpretation. According to Simmons' interpretation of Locke, there is no such thing at an inalienable right in the sense that it is a possession to be controlled by the citizen, but there are certain abilities of Man related to the natural law, the continued experience of which Man is accountable to God. Frank Leavitt further logically developed the concept of "inalienability" in the terms of the duty that natural law places upon each individual. Leavitt argued that the fact that men have certain inherent duties is the reason why certain rights cannot be alienated from them, for in forfeiting those rights, men would also forsake the ability to perform their divinely ordained duties.[41] By Macpherson's own definition of possessive individualism, there is no way that a possessive individualist could believe in inalienable rights, and yet the Levellers like Lilburne, and political thinkers like

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[38] Locke, *Second Treatise of Government,* Chapter IV. Locke argued that man could not even voluntarily submit himself to slavery, but that only those who had violated the law of nature by anti-social activity (crime) could be legally regarded as a slave.

[39] Simmons, "Inalienable Rights." 117.

[40] *Declaration of Independence.* "When a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security."

[41] Leavitt, Frank J. "Inalienable Rights." *Philosophy 67*, 1992. 115

Locke, Blackstone, Jefferson, and the rest of the political thinkers (with the exception of Hobbes) seem to have believed precisely that.[42]

It must be noted at this point that Macpherson's "possessive individualism theory" is the most significant Marxist historiographical interpretation of the 17th century natural law theory which sought to redefine the actions of the Levellers, Locke, and Hobbes, within the Marxist historical construct. Even more significantly, possessive individualism sought to explain not only the actions but the philosophical motivations of mid to late 17th century English world within a sheerly economic construct. As a Marxist, his philosophy also necessarily excludes religion. The problem is that it is anachronistic to read one's own philosophical outlook into the historical motivations of others. Christopher Hill, another Marxist historian, and perhaps the most prolific writer on 17th century England, gave much more credit to the religious influence on groups like the Levellers, acknowledging that Lilburne's actions were with "Coke in one hand, and the Bible in the other."[43] There is also no evidence that Hill attempted to argue that possessive individualism was the theoretical construct that guided Leveller or Lockean views of natural rights. As it has been shown, Macpherson's thesis is anachronistic to argue that 17th century British political thought was not profoundly influenced by Judeo-Christian presuppositions. Most significantly, it failed to account for natural law based on Judeo-Christian principles as a major component of 17th century English thought, substituting for it a purely economic philosophy.

Another writer who had a large influence on the development of British political thought from a Judeo-Christian perspective was the Dutch humanist, Grotius. Although Grotius himself

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[42] de Jouvenel, Bertrand D. *On Power: The Natural History of Its Growth*. Liberty Fund, 1993. 234. Jouvenel noted in *On Power* that the essential freedoms of man are bound to be abandoned once Man abandons a theological perspective of rights.

[43] Hill, Christopher. *Puritanism and Revolution.* Schocken Books, 1958. 28.

was not British, his work was widely read in England, and influenced many political writers of the 17th and 18th centuries. Meirav Jones looked at Grotius's scholarship and arrived at a conclusion that there was significant influence from Hebrew texts in addition to the Neo-Roman texts that influenced all 17th century thinkers. Jones observed that it is dangerous to attempt to attribute ideas to one particular school or ideology because "seventeenth-century authors, [are] probably best understood as having written from a mosaic of texts."[44] Any reductionist tendency to ascribe a particular writer's influences in a narrow scope is to ignore the fact that most, if not all, of the major thinkers in the 17th and 18th centuries were well-read in Greek and Roman philosophies, as well as influenced by Aquinas, Calvin, and the religious traditions of both Judaism and Christianity. One of the most significant anti-Scholastic movements that took place in the 17th century was to re-incorporate the Mosaic Law (or elements of it) as a valuable source for jurisprudence and political thought. Jones suggested that even if Jewish ceremonial laws were not adopted by most political thinkers as part of natural law, they did serve as a valuable comparison point of what was not natural law (i.e. specific to Jews as opposed to universal) and could help narrow the list of what should be considered the underlying principles of natural law which would then be codified as positive law.[45]

To the British colonists, "civil law was expected to reflect natural law" and therefore there should be no tension between civil law and natural law.[46] Philip Hamburger gave the example of civil laws making one libel for slander or defamation of character as being consistent with natural law, and therefore not a violation of the freedom of speech.[47] This is a really

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[44] Jones, Meirav. "Philo Judaeus and Hugo Grotius's Modern Natural Law." *Journal of the History of Ideas 74,* 2013. 341.

[45] Ibid.

[46] Hamburger, Philip A. "Natural Rights, Natural Law, and American Constitutions." *The Yale Law Journal 102*, 1993. 909

[47] Ibid.

important logical progression to understand; the basic idea of natural rights within 17th and 18th century British thought, did not imply that one could act with impunity in all circumstances. One's actions were still expected to conform to the natural law which was meant to be a restraint

on total liberty. Hamburger also claimed that that the colonists

> "derived social obligations from enlightened self-interest—morality from something deceptively similar to materialism—and therefore could talk about natural law both as a law of human nature and as the foundation of moral rules."[48]

This explains how Jefferson and others could derive moral principles from logical conclusions about "enlightened self-interest."

When applied more broadly within a *res publica* framework, "enlightened self-interest" allowed for moral ideas to be applied both individualistically (i.e. personal freedom) and communally (i.e. via laws). Even more importantly, this explains how these rights could be derived from secular sources, since prior to this point, the refutation of Macpherson's thesis required the presupposition of the existence of God. What was considered to be "enlightened self-interest" were the ideas that: (a) all people have equal freedoms in the state of nature, (b) that they ought to seek to preserve those freedoms for themselves, and therefore (c) that the best way to accomplish this was to ensure that the State did not have the authority to infringe upon anyone's rights.[49] This led to the idea among many that "natural law [did not] require the adoption of a particular set of civil laws."[50] Although it is not necessary to do so since it has already been established that a vast majority of 17th and 18th century writers approached natural

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[48] Hamburger, "Natural Rights," 924.

[49] Ibid, 937.

[50] Ibid.

Here we have the answer to the question of why the *Bill of Rights* was not originally included in the *US Constitution.* The essential idea of British common law was understood by the Founders to still be in existence, and it was only at the insistence of less optimistically minded Founders that the *Bill of Rights* was formally declared.

law theory from a theistic perspective, it is possible to make a case against Macpherson's thesis of possessive individualism on both theistic and secularist definitions of natural rights.

Also significant in the Leveller proposals were the inclusions of specific rights to be reserved to the people, a Bill of Rights that specifically enumerated those natural rights that were not under the purview of the government whatsoever. While perhaps significant to the ideological thought within England at the time, the idea of specifically enumerating the natural rights reserved from the government was not formally incorporated into the English Constitution until the Glorious Revolution. The *English Bill of Rights* was foundational to the development and implementation of the Leveller principle of a negative constitution which specifically enumerated those natural rights which cannot be alienated from the individual by any government. In the opening of the *Bill of Rights*, the reason for declaring these rights was so that "[citizens'] religion, laws, and liberties might not again be in danger of being subverted."[51] The *Bill of Rights* made it clear that these rights were not new and were in fact part of their "ancient rights and liberties"[52] but that the enumeration of the rights specifically was the best way to ensure their continued protection. The first two clauses of the *Bill of Rights* are not rights of the people at all, but rather an assurance that the respective branches of government are kept distinct from one another and able to effectively limit one another. This was clear evidence of the Leveller political framework of natural rights being adopted into the English political ideology; the separation of powers was an essential aspect of natural rights.

The constitutional thinking of England was established in the legal institutions within the British colonies as well, one example being the Pennsylvania Charter written by William Penn.

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[51] Cheyney, E.P. "The English Bill of Rights, 1689." in *Readings in English History,* Ginn and Company, 1922.

[52] Ibid.

Penn began his *Charter* in an almost identical fashion to Locke's *First Treatise*, in that Penn derived the pre-eminence of natural rights from the nature of creation.[53] Like Blackstone and Locke, Penn also focused more on the relationship between citizens and their government, rather than the specific system utilized. Penn affirmed that the essential precursor to liberty in any government was that common law was applied uniformly and to all, and that some kind of legislative branch exists that makes the people "party to those laws."[54] Penn also established in Pennsylvania the same checks and balances system as existed in England and had been previously envisioned by the Levellers whereby the legislative branch would be responsible for the passage of laws, but it would be the responsibility of the executive to ensure that the laws were "duly and diligently executed."[55] The influence of the *Magna Carta* was also evident in the requirement that the laws needed be posted and read annually.

Locke's work is most commonly cited as the origination of the Western concepts of social contact and natural rights, but what was truly significant about Locke's work was that he effectively and systematically articulated a social contract theory based on the idea of natural rights that essentially saw these rights as being inalienable from the individual. Locke's *First Treatise* established the principle of natural rights as based on the synthesis of reason and Biblical principles. He then proceeded in the *Second Treatise* to follow these conclusions to the essential idea of a commonwealth, or a government that is working for the protection of the natural rights[56] of the individuals connected to the society. Locke, who never questioned the

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[53] Penn, William. *Charter of the Liberties and Frame of Government of Pennsylvania (1682)* in *Colonial Origins of the American Constitution: A Documentary History* ed. Donald S. Lutz, Liberty Fund, 1998.

[54] Penn, *Charter of Pennsylvania*. "Any government is free to the people under it (whatever be the frame) where the laws rule, and the people are a party to those laws."

[55] Ibid.

[56] Arneil, Barbara. "John Locke, Natural Law, and Colonialism." *History of Political Thought 13,* 1992. 591
Locke used examples of the Indians in America to clearly illustrate his ideas of the natural man, prior to civilization. While it may not have been Locke's intention to do so, his theories of natural law and property

specific institution of monarchy, and in fact, clearly had no problem with a limited monarchial system adopted the term "commonwealth" to describe a state of relations between citizens and their government, and not necessarily a governmental system as such. In discussing the requirements for the preservation of natural rights, Locke argued that the legislative branch needed to be "supreme. . . sacred and unalterable" but still bound by common law principles to avoid it becoming "arbitrary over the lives and fortunes of the people" because "the obligations of the law of nature cease not in society."[57] Locke also recognized the need for separation of powers[58] because "it may be too great a temptation to human frailty, apt to grasp at power, for the same persons, who have the power of making laws, to have also in their hands the power to execute them." [59]

James Harrington, who was a contemporary of Locke's, presented an important alternative view of the British commonwealth which had important implications for the British colonists' view of republican government. According to John Wettergreen the first distinction that needs to be made, in order to understand Harrington's influence on the colonists, is between republicanism and liberalism. According to Wettergreen, liberals tend to be individualistic in their view of the relationship between government and people. Hobbes is what Wettergreen

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possession did provide colonists and kings with the legal excuse for claiming land, as many Indian tribes did not meet the enclosure requirements stipulated in Locke's theories.

[57] Locke, *Second Treatise on Government*

[58] de Jouvenel, *On Power.* 206-210.

Jouvenel made the case that the English Constitutional system was so good at preventing tyranny precisely because it preserved the aristocracy in its power struggle against the king. It is most likely true that Locke, Blackstone, and others took this idea for granted, and that their concept of "Parliament" was very much associated with "aristocracy." This helps to explain the colonists' argument that the English government was guilty of "taxation without representation." The colonists viewed their own governments, which were structurally modeled on British models, to be the only authority to legitimately tax themselves. That the colonial governments were essentially representatives of the aristocratic class in the colonies was unimportant; their own legislatures were the only ones that could morally levy taxes because institutionally, they were the limit on the executive or arbitrary governmental power.

[59] Locke, *Second Treatise on Government,* Section 143.

labels a "modern liberal" and Locke is a "classic liberal" with the fundamental difference being the general view of human nature, Locke having had a much more positive viewpoint and therefore arguing for a social contract that defaults rights to the individual, whilst Hobbes's negative view argued that the state of nature needs to be overridden by Leviathan.[60] Opposed to the liberal ideologies, one finds republicans, who generally speaking, tended to focus more on the good of the society as a whole, rather than individuals. Classic republicanism would be that which looked at the ideology of the Romans and Greeks and tended to focus on the implementation of their political goals.

Wettergreen argued that the final political ideological group was represented by James Harrington in what he terms a "liberal republican."[61] He cited significant evidence that Harrington agreed with Hobbes on the underlying conditions of humanity, but strongly disagreed

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[60] Wettergreen, John A. "James Harrington's Liberal Republicanism." *Polity 20*, 1988. 665-666.

[61] Zuckert, Michael P. "A Neo-Harringtonian Moment?: Whig Political Science and the Old Republicanism." In *Natural Rights and the New Republicanism*, Princeton University Press, 1994. 150-84.

Zuckert claimed that the historiographical interpretation of the War for Independence either needs to be based on rights or republicanism, but that these two ideologies are different enough that either one or the other is the cause of the action by the colonists, but not both. Zuckert reviewed the main historians of the "Republican synthesis" school of thought and their essential ideas.

Bernard Bailyn viewed five different influences on the colonists' political thought: ancient historians, Enlightenment writings like those of Locke, Montesquieu and Voltaire, Puritanism, writings on English law, especially Coke, and finally more modern Whig Opposition writers like Trenchard and Gordon. Bailyn argued that the Whig Opposition influence was the most profound influence on the colonists and led them to view all events in a conspiratorial manner, whereby Power was always trying to expand its influence over them There was no way to discuss this conspiracy without incorporating natural rights, so this is not to say that Locke and other natural law theories were not influential, simply that they were not derivative, according to Bailyn.

Gordon Wood then significantly changed Bailyn's label to "classical republicanism" and gave significantly more credit to the ancient (i.e. Greco-Roman) sources than Bailyn did while taking away from the idea that Lockean thought was a major contributor to American political ideology. Wood's republicanism was founded in a communal sense of liberty, rather than individualistic, which is one of the reasons why he assumed Locke to be mostly uninvolved in the political thought of the colonists.

The last republican synthesis historian was A.J. Pocock, whose ideas Zuckert termed as "humanistic republicanism" because Pocock emphasized the Renaissance humanist elements of American thought blended with class ideology. Pocock emphasized the role that Machiavelli's ideas played in the American political mind. Pocock totally discounted the role of Locke, claiming that Locke's ideas had nothing to do with classical thought, and therefore nothing to do with the Opposition Whig tradition, which Bailyn, Wood, and Pocock all adopted as the main influence on the American Republicanism.

about the best type of government to address these moral failings, and furthermore, for Harrington, the political philosophy was the overriding philosophy, to which all others must be subservient.[62] Harrington essentially argued and sought to redefine key aspects of Hobbes' argument by saying that man's natural state was artistic in the sense that it could see various potentials of the future (as opposed to Hobbes's state of war) and that within these various potentials, man was also able to assess which would be more productive for himself in the acquisition of property.[63]

Harrington discussed what he termed "native rights" (to distinguish it linguistically from English common law) and believed that all men were equal in their ability to reap the products of their labor, and to have the essentials required for sustaining life.[64] This was a big departure from Hobbes' belief. Harrington also believed that men were capable of moral behavior, which is why he believed that Leviathan was not necessary to restrain man's evil impulses. Harrington argued that once man had associated himself with society, that the natural rights resided more in the total polity than in the individuals that comprised the collective, which reveals his republican leaning.[65] The natural political rights were then for those who were more skilled at moral and political reasoning (i.e. the aristocracy) to conduct public debates which were then arbitrated by the people via a vote. Each individual had a natural right to his role within society, but once man had joined to a society, the locus of rights then transferred to the body politic rather than continuing to reside with the individual, with the exception of the native rights, which continued to be individual rights protected by common law.[66]

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[62] Wettergreen, "James Harrington's Liberal Republicanism." 667-668.
[63] Ibid, 672.
[64] Ibid, 674-675.
[65] Ibid, 676.
[66] Ibid.

Another large departure from Hobbes for Harrington was his belief that although political liberty did not exist (i.e. one could not resist the sovereign), the sovereign, to Harrington was the law (rather than the king), and its best interest lay in allowing as much personal liberty as possible.[67] It is important to note that this does not mean that they are natural rights, simply that Harrington recognized that within a republican system of government, the government allowing personal freedom was beneficial to all, and that the best way to achieve this was the rule of law.[68]

Harrington certainly had influence on the political thought of the Founders, particularly their ideas about the republican nature of government, however it should not be argued that one must choose between natural rights and republicanism as Michael Zuckert has claimed.[69] Rather, the *US Constitution* and the *Declaration of Independence* should be viewed as serving two very different philosophical purposes to the Founders. The *Constitution*, which is based on republican ideals, expressed the practical implementation of positive law, to which the colonists would have been influenced by Harrington and others for the best way to achieve a moral positive law. However, the *Declaration of Independence* dealt specifically with the moral and philosophical basis for government's existence and the proper relationship between government and citizens based on natural law. Since Harrington's approach was more pragmatic, his ideas were better used to explain the subsequent structure of American government rather than the philosophical ideals which caused its creation.

Sir William Blackstone was a major link between Lockean ideology and the British colonists. According to Blackstone's legal interpretation of the English Constitution, there were natural rights which were "commanded" and also a negative constitutional framework necessary

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[67] Wettergreen, "James Harrington's Liberal Republicanism," 683.

[68] Ibid.

[69] Zuckert, Michael P. "A Neo-Harringtonian Moment?: Whig Political Science and the Old Republicanism." In *Natural Rights and the New Republicanism*, Princeton University Press, 1994. 150-84.

to prevent the "wrongs that are forbidden" to the government.[70] Blackstone also found the foundation of all governmental authority to be based on the concept of natural rights.[71] What was unique about Blackstone's political ideas was that the form of government, specifically the constitutional and common law nature of England's legal system was the source of the freedom enjoyed by all subjects. Based on this fact, Blackstone went so far as to claim that slaves in England were more free than most foreigners.[72] The context of his statement makes it clear that in Blackstone's view, the legal protection of certain natural rights that was afforded even to slaves under the English common law granted them comparative freedom when compared with the "arbitrary and despotic power. . .in the prince, or in a few grandees" which was the system throughout continental Europe.[73] Blackstone explicitly traced a direct legal evolution between the common law system established by the *Magna Carta,* the *Petition of Right* discussed and interpreted by Coke, and the *English Bill of Rights*.[74]

The fact that men like Edmund Burke, who were familiar with the English constitution, made arguments supporting the colonists based on the constitution suggests that there was nothing inherently radical about the case being made by the colonists. Burke clearly identified the colonists' grievances toward the British Government with the Roundhead cause in the English Civil War.[75] Burke accused the King and Parliament of being guilty of the same

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[70] Sir William Blackstone. *Of the Absolute Rights of Individuals (1766)*. Liberty Fund, 2013. "I shall. . . in the first place, consider the rights that are commanded, and secondly the wrongs that are forbidden."

[71] Ibid. "the principal aim . . . to protect individuals in the enjoyment of those absolute rights, which were vested in them by the immutable laws of nature."

[72] Ibid. "a slave. . .the moment he lands in England, falls under the under the protection of the laws, and so far becomes a freeman."

[73] Ibid.

[74] Ibid.

[75] Burke, Edmund. *Thoughts on the Cause of the Present Discontents.* London, 1770. "When an arbitrary imposition is attempted upon the subject, undoubtedly it will not bear on its forehead the name of Ship-money. There is no danger that an extension of the Forest laws should be the chosen mode of oppression in this age." The metaphorical straw that broke the camel's back in the 1630's and 40's was the attempt by Charles I to raise taxes without the approval of Parliament, commonly referred to as "Ship-Money." The actual causes of the conflict were

aggressive acts toward the colonists that Charles I had taken against the people of England in the 1630's. The unmistakable connotation of his accusation is that the actions of the government were arbitrary which was synonymous within English political discourse with "tyrannical" and opposed to the very principles of natural law. Burke claimed that the reason for the injustices being perpetrated within the British Empire was because the balance of power between Parliament and the King had been eroded to the point that the King had secured "the unlimited and uncontrouled use of its own vast influence, under the sole direction of its own private favour. . ."[76] What is truly interesting about Burke's work is that he did not view the colonists' grievances as a political crisis in the sense that there was the potential for their secession from the British Empire, but rather as a constitutional crisis that was exposing the erosion of the essential constitutional restraints of the separation of powers as a limit on the King, and the common law as a protection of the freedom of every British subject. In its place, the executive branch had created a "Cabal"[77] of bureaucrats who were, to borrow Jefferson's language of six years later, "swarms of Officers" whose purpose was to "harass the people."[78]

While the *Declaration of Independence* was addressed to King George III, it is equally important to note that the British colonists saw their perceived emerging constitutional crisis as extending to the actions of Parliament as well as George III. Under British common law, every citizen was presumed to have equal representation and equal rights under that law, and as such, the colonists were clearly demonstrating their belief that, as British citizens, the foundational problem was the lack of respect given to the enforcement of those laws equitably. Calling

much more complicated, but any reference within contemporary British literature to Ship-Money was an undeniable link to the English Civil War.

[76] Burke, Edmund. *Thoughts on the Cause of the Present Discontents*.

[77] Ibid.

[78] *Declaration of Independence*.

attention to this fact was the purpose of the *Declaration of Rights and Grievances* written by the First Continental Congress.[79] The colonists' resolutions were grounded in the belief that the "inhabitants of the English Colonies in North America, by the immutable laws of nature [and] the principles of the English constitution" were entitled to their natural rights as British citizens.[80]

The colonists, and specifically John Adams and Thomas Jefferson, did not just formulate their commonwealth principles of government from Harrington, but also Lord Kames. Kames had argued for the refining of human society through progressive moral improvements, which was an idea that was clearly a foundational belief for Jefferson's own republican ideals. Andreas Rahmatian discussed the influence that Lord Kames's natural law theory had on John Adams and Thomas Jefferson. According to Rahmatian, what was especially appealing to Adams and other like-minded colonial lawyers was Kames's conclusion that the feudal system was "so contrary to all the Principles which govern Mankind."[81] Adams therefore concluded that the actions of the British government against the colonies were a sort of reinstitution of a feudal system in which natural law was being disregarded.[82]

In Thomas Jefferson's higher education, Kames's works were included with Coke and Blackstone as being foundational texts in the studies prescribed by George Wythe, Jefferson's professor.[83] According to Rahmatian, Kames was often mentioned in conjunction with Blackstone, which demonstrates how large of an influence his ideas had on the emerging

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[79] *Declaration of Rights and Grievances.* "the respective colonies are entitled to the common law of England."

[80] Ibid. "their indubitable rights and liberties; which cannot be legally taken from them, altered or abridged by any power whatever."

[81] Rahmatian, Andreas. "Lord Kames's Influence on Some of the Founders of the United States." In *Lord Kames: Legal and Social Theorist*, Edinburgh University Press, 2015, 323.

[82] Ibid.

[83] Ibid, 325.

political ideologies of the colonists.[84] Kames is often noted for the metaphysical nature of his writing, which is often expressed as a criticism of his work in general, but it was precisely this aspect that made his ideas on natural rights so compelling. He was focused to a very large degree on the philosophical underpinnings of the philosophy of natural rights, which then had a deep influence on Jefferson and others who, although perhaps not likely to have cited his ideas in court, were deeply influenced in their own personal philosophies which later came to be expressed in their own legal and philosophical works.[85]

Kames, Jefferson, and others believed in a progressive view of natural rights, whereby they continued to evolve as society progressed. These were not Utopic views however, but moral sentiments on an individualistic level. The Lockean and Blackstonean definitions of natural rights were far too narrowly defined to be considered "human rights" by today's standards, and even Jefferson's views were a far cry from the modern concept of human rights[86] expressed by the *Universal Declaration of Human Rights*, but one can see how Jefferson may have dared to hope that someday, Western society's refinement would make such a declaration possible.

Consistent with British legal ideology since the early 17th century, it is clear that the British colonists in America believed that the ideas of natural rights, separation of powers, and common law could not be separated from one another and perhaps no other document

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[84] Rahmatian, "Lord Kames's Influence on Some of the Founders," 326.

[85] Ibid, 327.

[86] Spiers, Duncan. "Natural Law." In *Jurisprudence Essentials*, Edinburgh University Press, 2011. 5-22.

Spiers divides natural law theory into a "classical" and "modern" time period, and identifies David Hume as the beginning of the modern period, mainly because Hume rejected the theological basis for the morality of natural law. Spiers acknowledged that a belief in natural law tends to exist within humanity and then based on moral relativism, rejected its authority as a source of validity for positive law on the grounds that pluralistic societies could not reach consensus on the moral code to be used in order to justify the law. However, the fact that most, if not all of the thinkers discussed in this research project fall into Spiers's "classical" label presents no problem in essentially arguing that the colonists subscribed to the popular British construct of natural rights and natural law.

demonstrated this better than the *Declaration of Independence.* The opening of the *Declaration* clearly connected established British natural law principles to the colonists' contemporary issues.[87] The *Declaration* echoed the application of the logical conclusions of British political thought by declaring:

> That whenever any Form of Government becomes destructive of [the realization of natural rights], it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.[88]

The inclusion of the function of government and the laws being to ensure the "safety and happiness" of the citizens was the same foundational principle expressed in the *First Agreement of the People.* Additionally, the *Declaration* cited resistance to tyranny as foundationally connected to the principle of the peoples' natural rights superseding positive law. In the list of grievances, the colonists saw fit to list as the first cause of their revolt that King George had "refused his Assent to Laws, the most wholesome and necessary for the public good" which violated the principle expressed by Coke and many others within the British legal tradition that the functional role of the king was to enforce the laws, not to create them.[89] Many grievances thereafter focused on the King's refusal to accept a political balance of power which had been established in Britain in which the Legislature, Judiciary, and Executive branches of government all played clearly defined roles.[90] There were also numerous grievances related to impressment of sailors and interference with commerce, which the colonists clearly interpreted as their natural property rights, these rights having been established over the last three centuries of English conflicts. There was, in fact, almost nothing distinctly "American" or novel about the ideology

[87] *Declaration of Independence*
[88] Ibid.
[89] Ibid.
[90] Ibid.

of the *Declaration of Independence,* since every idea expressed in the document had been stated over the previous two centuries by other British political thinkers.

The conflict between the colonists and the British government cannot be considered a revolution because the colonists were not seeking to redefine the government structure[91] and it cannot be considered a civil war because they didn't want to wrest control of the British government from the British, so an alternative interpretation needs to be suggested. D.W. Livingston argued that "Secession is often confused with revolution and civil war. . .secession. . .attempts to limit the jurisdiction of. . .government over the territory it occupies."[92] Had the British government been willing to follow the jurisdictional limitations in the colonies that already confined it in England, there would not have been a War. It can therefore be concluded that what is popularly referred to as the "American Revolution" was, in fact, a war initiated by the British to suppress a secession effort by the colonists.[93] Based on this interpretation, the struggle between the British government and its colonists in the 18th century should be considered a War for Independence because it better fits the thoughts, actions, and beliefs of the British colonists who were arguing for the preservation of their own sovereignty against the policies of a British King and Parliament whose actions violated the fundamental principle of natural law, as understood and defined by established British law and precedent.

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[91] Livingston claims that even Lockean thought prevents secession from occurring, but this does not seem consistent with Locke's conclusion to the *Second Treatise* where Locke specifically stated that man cannot withdraw himself from the society, but that secession of a sovereign state or society is very much allowed. (See Locke, *Second Treatise on Government*, Sections 242 & 243.)

[92] Livingston, D.W. "The Very Idea of Secession." *Soc 35*, (1998), 45.

[93] Ibid.

Bibliography

Arneil, Barbara. "John Locke, Natural Law, and Colonialism." *History of Political Thought 13,* no. 4 (1992): 587-603.

Bear, Edmond, Robert Everard, George Garrett, Thomas Beverley, William Pryor, William Bryon, Matthew Weale, William Russell, John Dover and William Hudson. *The First Agreement of the People, for a Firme and Present Peace, Upon Grounds of Common Rights,* London, 1648.

Sir William Blackstone. "Of the Absolute Rights of Individuals" (1766). Indianapolis: Liberty Fund, 2013.

Berger, Raoul. *Government by Judiciary: The Transformation of the Fourteenth Amendment.* Indianapolis: Liberty Fund, 1997.

Burke, Edmund. *Thoughts on the Cause of the Present Discontents.* London, 1770.

Carens, Joseph C. *Democracy and Possessive Individualism: The Intellectual Legacy of C.B. Macpherson.* New York: State University of New York Press, 1993.

Cheyney, E.P. *The English Bill of Rights, 1689.* in *Readings in English History*, New York: Ginn and Company, 1922.

Sir Edward Coke. *Petition of Right (1628).* Indianapolis: Liberty Fund, 2013.

First Continental Congress, *Declaration of Rights and Grievances,* Philadelphia, 1774.

Fukuyama, Francis. "Natural Rights and Human History." *The National Interest, no. 64* (2001): 19-30.

Geuss, Raymond. "Rights." In *Philosophy and Real Politics*, 60–70. Princeton; Oxford: Princeton University Press, 2008.

Gordon, Thomas and Trenchard, John. *Cato's Letters Vol. 1 (1720-1721)*. Indianapolis: The Liberty Fund, 1995.

Hamburger, Philip A. "Natural Rights, Natural Law, and American Constitutions." *The Yale Law Journal 102*, no. 4 (1993): 907–60.

Hill, Christopher. *Puritanism and Revolution.* New York: Schocken Books. 1958.

Jones, Meirav. "Philo Judaeus and Hugo Grotius's Modern Natural Law." *Journal of the History of Ideas 74,* no. 3 (2013): 339-59.

de Jouvenel, Bertrand D. *On Power: The Natural History of Its Growth*. Indianapolis: Liberty Fund, 1993.

Leavitt, Frank J. "Inalienable Rights." *Philosophy 67*, no. 259 (1992): 115-18.

Levy, Michael B. "Freedom, Property and the Levellers: The Case of John Lilburne." *The Western Political Quarterly* 36, no. 1 (1983): 116-33.

Lilburne, John, William Walwyn, Thomas Prince, and Richard Overton. *Second Agreement of the People: Foundations of Freedom, or an Agreement of the People.* London, December 15, 1648.

Livingston, D.W. "The Very Idea of Secession." *Soc 35*, (1998): 38–48.

Locke, John. *Two Treatises of Government.* London, 1689.

Macpherson, C.B. *The Political Theory of Possessive Individualism: Hobbes to Locke.* Oxford: Oxford University Press, 2011.

Onuf, Peter S., and Ari Helo. "Jefferson, Morality, and the Problem of Slavery." In *The Mind of Thomas Jefferson*, 236–70. Charlottesville, Virginia: University of Virginia Press, 2007.

Penn, William. *Charter of the Liberties and Frame of Government of Pennsylvania (1682)* in *Colonial Origins of the American Constitution: A Documentary History* ed. Donald S. Lutz, Indianapolis: Liberty Fund, 1998.

Rahmatian, Andreas. "Lord Kames's Influence on Some of the Founders of the United States." In *Lord Kames: Legal and Social Theorist*, 316–33. Edinburgh: Edinburgh University Press, 2015.

Scott, Johnathan. "What Were Commonwealth Principles?" *The Historical Journal; Cambridge Vol. 47*, Iss. 3, (2004): 591-613.

Second Continental Congress, *Declaration of Independence*. Philadelphia. 1776.

Simmons, A. John. "Inalienable Rights." In *On the Edge of Anarchy: Locke, Consent, and the Limits of Society*, 101-46. Princeton, New Jersey: Princeton University Press, 1993.

Skinner, Quentin. "Rethinking Political Liberty." *History Workshop Journal, no. 61* (2006): 156-70.

Spiers, Duncan. "Natural Law." In *Jurisprudence Essentials*, 5-22. Dundee: Edinburgh University Press, 2011.

Wettergreen, John A. "James Harrington's Liberal Republicanism." Polity 20, no. 4 (1988): 665-87.

Zimmermann, Augusto. "Christianity and the Common Law: Rediscovering the Christian Roots of the English Legal System," *University of Notre Dame Australia Law Review 16* (2014): 145-177.

Zuckert, Michael P. "A Neo-Harringtonian Moment?: Whig Political Science and the Old Republicanism." In *Natural Rights and the New Republicanism*, 150-84. Princeton, New Jersey: Princeton University Press, 1994.