"In perfect accordance with his character": Thomas Jefferson, Slavery, and the Law

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Few issues in American history remain as troubling as Thomas Jefferson's toleration of slavery, so clearly inconsistent with his own expressions of man's natural rights. Not only the cruelty but also the manifest injustice of slaveholding detracts from Jefferson's reputation. The terrible irony of his public life was that the very principles he advocated for the design of the new nation—a commitment to majority rule, limited government, the authority of law, and the protection of property rights—restrained him in attacking the institution that he knew threatened the American republic. This is not to say, as some have argued, that republican ideology embraced slavery, but that Jefferson's conception of its implementation in the new nation's political and legal institutions precluded aggressive governmental action to emancipate the slaves. Jefferson accepted the "form" of republican government as the only means of securing man's political liberty. This governmental form included a commitment to the rule of law as the basis of both social organization and change.

Jefferson's belief in the importance of form, evident in his architectural and musical preferences, and even in his personal relationships, is less obvious in his commitment to law as the means of social governance. In this commitment he epitomizes the Enlightenment modernist's acceptance of form as liberalizing. In the same way that the symmetry of Mozart's compositions or the American adaptation of classical columns or friezes reflected the limits upon man's reason posed by taste and judgment, the founding father's dependence upon law reflected a recognition of liberty restrained by the need for social order. Only when the parameters of taste, judgment, order, or virtue were accepted could man truly be free to pursue the limits of his reason. In this way law restrained the policy initiatives that could legitimately be pursued to achieve social goals. As Richard Posner writes, "Systems of thought that emphasize hierarchy, tradition, authority, and precedent disvalue the kind of critical inquiry that tests belief and advances knowledge, and as a result, the truths that

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such systems accept are not robust." Jefferson's actions on slavery must be understood in this context.

Jefferson, perhaps more than any of the founding fathers, has had his political motivations, economic status, psychological composition, and personal relationships explored in attempts to explain how the author of the Declaration of Independence could hold slaves. Jefferson's own musings on slavery have been portrayed as rationalizations for his tolerance of the institution. The recent Jeffersonian historiography emphasizes social, economic, and psychological factors, arguing that Jefferson's true motivations were political self-interest, greed, or racism. In embracing social concerns as the sole

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"The literature on Jefferson is consistent with a larger body of work on slavery in general, which subordinates ideology to social factors. Gary Nash contends that southern colonists overcame "restraining ideologies" to "develop a labor process unknown in England," and thereafter "articulated an ideology of racial paternalism to justify and support it." Gary Nash, "Social Developments," in Colonial British America: Essays in the New History of the Early Modern Era, eds. Jack F. Greene and J. R. Pole (Baltimore, 1984), 233-61. Edmund Morgan asserts that white southern society overcame gross disparities in wealth that threatened republicanism by subordinating dark-skinned peoples to an underclass, thereby constructing a social equality among the white population upon which participatory government could be premised. Edmund S. Morgan, American Slavery, American Freedom: The Ordeal of Colonial Virginia (New York, 1975), 363-87. David Brion Davis adds that southern planters found a rationalization for slavery consistent with the paternalistic role that they played in society. The moral obligation of free persons to care for those who could not care for themselves reinforced the holding of slaves as it did the obligation of public service. David Brion Davis, The Problem of Slavery in the Age of Revolution, 1770-1823 (Ithaca, N.Y., 1975), 212. Winthrop D. Jordan explains that slaveholders justified their actions through the creation of an image of black men and women as evil and oversexed heathens. Racial differences required the exclusion of blacks from education, religious practice, property ownership, and other accoutrements of freedom. Society could then reject them for their cultural failings after denying them the opportunity to become acculturated. Winthrop D. Jordan, White Over Black: American Attitudes Toward the Negro, 1550-1812 (New York, 1968).

According to Davis, "Jefferson had only a theoretical interest in promoting the cause of abolition." Davis attributes Jefferson's position to his political aspirations and his being imbued with the cultural values and beliefs of his society. Abolition had subversive implications, and therefore "it was not accidental that [it] was virtually ignored by Jefferson and the other political leaders who professed an abhorrence of slavery." Davis, The Problem of Slavery, 172. Erik H. Erikson's study of Jefferson uses the man as an example of the thought processes of southern slaveholders. Erikson asserts that a lower class was necessary to provide the "negative identity" as a counterpoint to the role to be played by the natural aristocracy. The recognition of people in need of paternal care by their social betters at once legitimized aristocratic involvement in a democratic government and the perpetuation of institutionalized inequality. Erik H. Erikson, Dimensions of a New Identity: The 1973 Jefferson Lectures in the Humanities (New York, 1974), 29, 36, 71. Paul Finkelman concludes that Jefferson did little, if anything, to further the case of abolition. Social considerations as reflected in reputation and lifestyle were paramount. Finkelman finds his subject "more concerned with avoiding irritation [or personal controversy] than he was in promoting emancipation... Jefferson could not maintain his extravagant lifestyle without his slaves and, to judge from his lifelong behavior, his grand style was far more important than the natural rights of his slaves." Paul Finkelman, "Jefferson and Slavery: Treason Against the Hopes of the World," in Jeffersonian Legacies, ed. Peter S. Onuf (Charlottesville,
determinants of historical action, modern scholars have lost something in historical understanding. As Joyce Appleby observes, the post-1960s maxim of historians and social scientists that "cultural influences are manifest in all intellectual activity" has created "new models [that] have structured the historian's imagination." This artificial structure has often obscured historical truth.

Don Fehrenbacher reads Query XIV in Jefferson's Notes on the State of Virginia as evidence of both the man's racial prejudice and fears. Yet he does not attribute Jefferson's inaction on slavery solely to racism, finding political self-interest as party leader and southerner to limit Jefferson's political options. Don E. Fehrenbacher, Slavery, Law and Politics: The Dred Scott Case in Historical Perspective (New York, 1981), 46-47. Even recent historians who are more sympathetic to Jefferson have focused attention away from ideology in attempting to understand their subject's tolerance of slavery. Psychological or social considerations, politics, and economics are used to explain Jefferson's reticence on this issue. Merrill Peterson writes that "neither he nor any other prominent Virginian was ever willing to risk friends, position, and influence to fight for it." Merrill D. Peterson, Thomas Jefferson and the New Nation (New York, 1970), 153. Jack Greene found Jefferson to be restrained in his approach to abolish slavery by overriding doubts that differences in color, culture, and possibly intellectual ability precluded freed slaves from ever "achieving full civic competence or being satisfactorily incorporated into the polity as a whole." Jack P. Greene, "The Intellectual Reconstruction of Virginia in the Age of Jefferson," in Jeffersonian Legacies, ed. Peter S. Onuf (Charlottesville, Va., 1993), 229, 244. William Freehling describes Jefferson's antislavery as an "antiblack conservatism," conditional, and racist. William W. Freehling, The Reintegration of American History: Slavery and the Civil War (New York, 1994), 121. This book includes a revision of Freehling's article, "The Founding Fathers and Slavery," American Historical Review, LXVII (February, 1972), 81-95. Freehling's revision is more critical of Jefferson and the founding fathers but still acknowledges their good intentions. "If men were evaluated in terms of dreams rather than deeds," he observes, "everyone would concede the antislavery credentials of the Founding Fathers." The founding fathers desired to abolish slavery but were restrained in doing so both by radical sentiments and social-political concerns. "The master passion of the age," Freehling writes, "was not with extending liberty to blacks but with erecting republics for whites," but he does not explain how the pursuit of the latter precluded the former. Most significantly, Freehling, like Fehrenbacher, recognizes the founder's philosophical commitment to property rights as at least equal to the rights of the slaves to liberty. Freehling, "Founding Fathers," 83. Donald Robinson finds the revolutionary era and early republic were periods of great paradox, as America embraced liberty, political equality, and slavery. He too argues that political, economic, and social exigencies prevented the founders from addressing slavery in the early days of the new nation. Yet Jefferson, Robinson says, was "the only political leader of consequence in Revolutionary America who moved openly against Negro slavery." Robinson reads Query XIV less as a racist diatribe than as a sincere, yet embarrassingly inadequate and erroneous, examination of "the best available evidence of natural science" on racial differences. Donald L. Robinson, Slavery in the Structure of American Politics, 1765–1820 (New York, 1971), 80-97. It certainly was not the only time Jefferson was wrong in his conclusions drawn from natural science—the megalonyx debate and his inability to explain the presence of seashells in the soil of Monticello were other examples. Dumas Malone, Jefferson and the Ordeal of Liberty: Vol. III, Jefferson and His Time (Boston, 1962), 314-45.


"Defining culture as "common ideation" and society as "behavioral interdependence," Robert Berkhofer writes, "The less the coincidence between a culture and society, the less the construction of that culture will tell the analyst about that society." Robert K. Berkhofer, Jr., A Behavioral Approach to Historical Analysis (New York, 1969), 167. Certainly for Jefferson's generation, culture and society did not constitute radically different conceptions.
Joseph Ellis has commented on the relevance of "ideology" to Jefferson, noting that he "harbored a set of attractive ideals . . . that he mistakenly believed could be implemented in this world merely because they existed in his head." Focusing on ideology as a determinant of behavior broaches the issue: given this set of beliefs, what could the historical actor have been expected to do with regard to a certain issue? Examining Jefferson's toleration of slavery from this perspective may not provide the sole explanation for his seemingly inconsistent position, but it will provide a necessary piece in the attempt to understand and reconstruct this complex historical puzzle.

Studying Jefferson's approach to slavery from an ideological perspective helps to explain his refusal to work more aggressively for abolition. Jefferson believed that his ideological position inhibited greater action. Because the idea of a social contract involved compromise, the sacrifice of some natural rights was necessary in order to secure others in a societal context. Jefferson's conception of American democracy required that all citizens subordinate themselves to the rule of law. As American law came to embody the values and goals of republicanism, it too served to restrain those who sought to use institutional authority to abolish slavery.

Jefferson believed in the necessity of a government of laws secured by the Constitution. The law ensured that social policy and change would derive from the expressed wishes of the public by denying the governing elite, however enlightened and wise, the power to dictate policy to the nation. The people should make the laws; likewise, reform in them must result from expressed public opinion. Jefferson wrote that the only way to accomplish the legitimate objects of power was to institute "government by the people, acting not in person but by representatives chosen by themselves—that is to say, by every man of ripe years and sane mind who either contributes with his purse or person to the support of his country."

In the prelude to his second draft of Virginia's constitution, Jefferson premised the authority to write the social contract on the popular election of delegates selected for that purpose. In his Notes on the State of Virginia (1785) he criticized the adopted constitution, asserting that the majority of men who paid for and defended the state were not represented. He wrote, "I am not among those who fear

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the people. They . . . are our dependence for continued freedom.79 In the same letter he stated that the people should regularly exercise their will to amend the constitution.10 In this ideological framework the men who shaped and applied the law were compelled to do so in accordance with the wishes of the public.11 The popular will, once expressed, created the law in accordance with which all in the society were to live.

Despite Jefferson’s confidence in the people, he was nonetheless frustrated at times by the impediment to social progress posed by the popular will. Early in his first term as president, he complained, “how difficult it is to move or inflect the great machine of society, how impossible to advance the notions of a whole people suddenly to ideal right.”12 However, instead of encouraging him to vest more authority in government, this realization compelled Jefferson to put greater emphasis on education. “I know of no safe depository of the ultimate powers of the society but the people themselves,” he wrote, “and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them but to inform their discretion by education.”13 If at times popular will frustrated a desired policy, then education, not tyranny, was the preferred solution. “Laws and institutions,” Jefferson thought, “must go hand in hand with the progress of the human mind.”14

Law could represent the best in man. It could limit the evils that resulted when men, unrestrained by law, exercised their passions, greed, and pettiness in economic or political dominion over others. It could at once serve to ennoble men in their pursuit of virtue while it restrained them in their exercise of selfishness. This two-pronged focus of law as empowering man in the creation of civil society while restraining him in the exercise of his baser instincts is key to understanding how Jefferson’s ideology compelled a temporary acceptance of slavery. For it is precisely the need for law to restrain the passions of those without virtue that created a system of laws that could also restrain the most farsighted from effecting major social change. Jefferson’s reliance on the rule of law to address society’s problems precluded radical solutions inconsistent with existing substantive law.

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79TJ to Samuel Kercheval, July 12, 1816, in ibid., XV, 32.
80Ibid.
81“We say with truth and meaning,” Jefferson observed, “that governments are more or less republican as they have more or less of the element of popular election and control in their composition; and believing as I do that the mass of the citizens is the safest depository of their own rights, and especially that the evils flowing from the duperies of the people are less injurious than those from the egoism of their agents, I am a friend to that composition of government which has in it the most of this ingredient.” Ibid.
82TJ to Walter Jones, March 31, 1801, in Jefferson Writings, X, 256.
83TJ to William C. Jarvis, September 28, 1820, in ibid., XV, 276.
84Quoted in Merrill D. Peterson, “Afterward,” in Jeffersonian Legacies, Onuf, 462.
This reliance was derived from a political ideology that was shaped by Enlightenment thought, influenced by legal training and practice, and reinforced by Jefferson's own rationality and dogmatism. Jefferson's adherence to established legal means to address social issues can be seen as a commitment to form over substance that blinded him to the intellectual inconsistency of even the temporary toleration of slavery in a republic committed to human liberty.

The Enlightenment world view, the context of Jefferson's political ideology, rested on the belief of an ordered universe. Man's nature was a given truth, represented in the inherent proclivities and rights that defined his essence. Winthrop Jordan describes the Enlightenment perception of man's rights as absolute: "to know whether certain men possessed natural rights, one had only to inquire whether they were human beings." Writing later in life of his peers and himself at the time of the Revolution, Jefferson stated, "We believed . . . that man was a rational animal, endowed by nature with rights and an innate sense of justice." To Jefferson the right to be free to pursue one's own happiness was inherent in human nature. Yet, as human beings existed in a society formed by law, their rights were given meaning only through legal expression. As David Thomas Konig notes, a political contract was necessary to allow humanity to exercise its natural rights, albeit with restrictions necessitated by consent to the rule of law.

Popular thought in revolutionary America may have associated natural law and natural rights with man-made law under the premise that "what is right is therefore what is the law." Leaders in the law at the time, such as Jefferson, "were seldom, if ever guilty of confusing natural right with law." Natural law was evident only in the actions, morals, and attitudes of man. In Jefferson's words:

Questions of natural right are triable by their conformity with the moral sense and reason of man. Those who write treatises of natural law, can only declare what their own moral sense and reason dictate in the several cases they state. Each of them as happen to have feelings and a reason coincident with those of the wise and honest part of mankind, are respected and quoted as witnesses of what is morally right or wrong in particular cases.

Theoretically natural law imposed limits on the legitimate exercise of governmental authority. Statutes were required to conform

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"Jordan, White Over Black, 431.
"TJ to William Johnson, June 12, 1823, in Jefferson Writings, XV, 439.
"TJ, "Opinion on the question whether the United States have a right to renounce their treaties with France, or to hold them suspended till the government of that country shall be established," April 28, 1793, in Jefferson Writings, III, 226-47, 235.
to the broad principles of natural law. In examining the relevance of natural law to the slavery debate in the late eighteenth century, Robert Cover finds that natural law ideas were used to judge slavery intolerable in the fifteen to twenty-five years after the Revolution. During this time slavery was abolished in the North and seriously debated in the South. Yet, natural law merely provided principles against which slavery was measured. It was still subordinate to law made by man in constitutions, statutes, and case law precedent. According to Cover, the use of natural law in the slavery debate recognized the gap between law as it was and as it should be.  

Thus an unwritten natural law, in the presence of contradictory man-made law, had little legal relevance outside the realm of theory. Konig notes that by the late 1700s natural law “had little or no practical force in American jurisprudence.” Natural law reflected the natural rights of slaves to liberty and political equality. To deny these rights in the late eighteenth century was a moral wrong, but to assert them was to contravene positive man-made law. Moreover, that same man-made law also recognized the rights of people—the slaveholders—and established protections for them.

The distinction between natural law and a separate body of law governing man in the polity is best seen in the perceived necessity, amounting to what one commentator described as a “compulsive mania,” for constitutions. Constitutions recognized the need to form a body of laws to govern a civil society. While natural law embodied eternal truths in the theoretical realm of the state of nature, positive law governed man’s social interactions in the polity, in which liberty was restrained by social duty. No society ever existed, nor ever could exist, in which all of one’s natural liberties were freely exercised.

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20 Cover, Justice Accused, 33-35.
21 An example of how natural law offered only theoretical guidance is presented by Cover in contrasting St. George Tucker’s role as professor of law at William and Mary with his subsequent duties as judge. As a professor, Tucker once sent an essay to the Virginia legislature pleading for the emancipation of slaves as inconsistent with the natural right of freedom. Ten years later, while seated on the Virginia Supreme Court in review of George Wythe’s decision in Hudgins v. Wright, he was unwilling to apply natural law or even to consider positive law so as to recognize an implicit incorporation of natural rights. Tucker reversed Wythe, who found that the “free and equal” clause in the Virginia constitution made all men in the state presumptively free. Wythe asserted a specific positive law was necessary to overcome the presumption. Tucker refuted Wythe’s argument as inconsistent with the intent of the drafters, regardless of its compliance with natural law. Cover adds that “by the late eighteenth century, natural law had been rejected as lacking relevance and meaning, as a basis of social policy through law.” Ibid., 37-40, 50-55, 25.
23 Cover, Justice Accused, 27. More recently Jack Rakove noted the difficulty Jefferson had in reconciling “natural rights with the legal protection of those rights.” Constitutions were an attempt to restrict the legislature’s ability to infringe upon natural rights. Jack N. Rakove, Original Meanings: Politics and Ideas in the Making of the Constitution (New York, 1997), 312-13.
Jefferson recognized the same principle in asserting that social duties corresponding to the preservation of rights arose naturally in civil society. In his commonplace book he transcribed the following quotation from Lord Kames: “The perfection of human society consists in that just degree of union among individuals, which to each reserves freedom and independency, as far as is consistent with place and order.” Jefferson believed that social duties included the subordination of one’s own political will to the will of the majority and the acceptance of the rule of law governing one’s actions. “Every man, and every body of men on earth, possesses the right of self government,” Jefferson wrote in 1790 in a “Cabinet Opinion.” “They receive it with their being from the hand of nature. Individuals exercise it by their single will—collections of men by that of their majority; for the law of the majority is the natural law of every society of men.” He expressed the same idea in his correspondence to Washington. “I consider the source of authority with us to be the nation. Their will, declared through its proper organ, is valid till revoked by their will declared through its proper organ again also.” To Jefferson, law was both an expression of the majority’s will and a limitation on the exercise of personal liberties to be accepted by all members of the society, even those dissenting. “The first principle of republicanism,” he wrote, “is that the lex majoris partis is the fundamental law of every society of individuals of equal rights; to consider the will of the society enounced [sic] by the majority of a single vote as sacred as if unanimous is the first of all lessons in importance, yet the last which is thoroughly learnt.”

Ideally, man’s moral sense would express itself in majority rule to conform society’s laws to natural law. Yet Jefferson realized that the creation of a civil society held no short-term guarantee of the fulfillment of this ideal. Rather than causing him to abandon his reliance on law, this realization only reinforced the need for law to exercise a restraining influence.

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14TJ to Francis W. Gilmer, June 7, 1816, in Jefferson Writings, XV, 23. While denying the diminution of any of man’s natural rights through participation in a civil society, Jefferson accepted the limitation of those rights by corresponding natural duties.
4TJ to George Washington, February 4, 1792, in Jefferson Papers, XXIII, 100.
5TJ to Alexander Humboldt, June 13, 1817, in Jefferson Writings, XV, 126.
6James Madison similarly believed that, because in a republic the powers of the government were subjected to the will of the majority, danger to the social interest emanated from the majority using law to pursue its own interests at the expense of minority rights. James Madison to TJ, October, 1788, in The Papers of James Madison, Congressional Series, eds. Robert A. Rutland et al. (17 vols., Chicago and Charlottesville, Va., 1959–1991), XI, 297-98.
Jefferson’s fear of state power tempered his conviction that members of a civil society granted some of their natural liberties to the state in order to secure protection for the rest. Governments were to do no more than use their limited powers to allow the exercise of liberty in a social environment. The aggrandizement of the state, either by exercising more power than was necessary for this task or by interference in matters not properly contained within its legitimate scope of authority, Jefferson deemed tyranny. The exercise of liberty within a social setting could be restrained by government or by each person in the society recognizing the rights of others. Jefferson approvingly quoted Vattel to the effect that justice is the equivalent of an "obligation to respect the rights of others." Man-made law existed to ensure a just society by sanctioning men or governments who failed to recognize this obligation to respect others’ rights. Jefferson noted that “every power is dangerous which is not bound up by general rules.” The threat to rights from government was greater than that from individuals and was addressed by constitutions and declarations of rights restricting governmental authority.

In a bill of rights the government both recognized individual liberties and pledged not to abridge those liberties. One writer has described this as a “Lockean conception of liberty as a ‘natural right’ to be protected against government.” Jefferson made the same point in the following terms: “that a bill of rights is what the people are entitled to against every government on earth, general or particular; and what no just government should refuse or rest on inference.”

John Locke wrote that government “has no other end but the preservation of property.” His position was definitive for many Enlightenment theoreticians and was shared by most colonial leaders. Jefferson,

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30TJ to Noah Webster, December 4, 1790, in Jefferson Writings, VII, 112-13.
33TJ to James Madison, February 17, 1828, in Jefferson Writings, XVI, 156.
34James MacGregor Burns, The Vineyard of Liberty (New York, 1982), 263.
35TJ to James Madison, December 20, 1787, in Jefferson Writings, VI, 387-88.
37Bernard Bailyn states that the natural rights of men were generally understood to be life, liberty, and property. Pamphlets of the American Revolution, 1750-1776,
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apparently, departed from Lockean orthodoxy on property. In the Declaration he listed only life, liberty, and the pursuit of happiness as unalienable rights and recommended the same to Lafayette in his drafting of the Declaration of the Rights of Man. Nonetheless, Jefferson believed the right to property essential to the pursuit of happiness and a legitimate focus of governmental action. Laws for the protection of private property were essential to the maintenance of the civil society.

Jefferson contended that laws governing property and society in general should reflect the natural law and serve the social good. "A right to property," he wrote, "is founded in our natural wants in the means with which we are endowed to satisfy these wants, and that right to what we acquire by those means without violating the similar rights of sensible beings." He also wrote of "a right given by nature to all men, individual or associated: that of rescuing their own property wrongfully taken."

Property rights were established by labor or creative energy. Both were products of man's natural wants that produced social good. Land rightfully belonged only to men who would occupy and use it. Likewise, an inventor could benefit from the product of his ideas, but the ideas belonged to society, not to the individual. Accordingly, the profits due a person from his efforts in working land or inventing a new product should not be taken arbitrarily. The laws of property should protect a man's economic interest in these pursuits. But inheritance on the basis of birth was something else. No labor or invention created a property right in inherited property. Jefferson saw inheritance laws that transferred the benefit of property to people who expended no effort in creating its value as inconsistent with natural


"To the contrary, he described the purpose of government to be the more inclusive provision for the people's happiness. TJ to Republican citizens of Washington County, Maryland, March 31, 1809, in Jefferson Writings, XVI, 355; TJ to Francis A. Vanderkamp, March 22, 1812, in ibid., XIII, 135.


"TJ to Pierre Samuel DuPont de Nemours, April 24, 1816, in Jefferson Writings, XIV, 487.

"TJ to W. C. C. Claiborne, May 3, 1810, in ibid., XII, 383.

"TJ to Rev. James Madison, October 28, 1785, in ibid., XIX, 15; TJ to Isaac McPherson, August 13, 1813, in Selections of the Writings of Thomas Jefferson, ed. Saul K. Padover, 1011-17. See also the discussion of early property rights in English law and society in Morgan, American Slavery, 23-24. Morgan notes a general acceptance, as early as the sixteenth century, of the precept that work on the land preceded property rights in the land, the sole purpose of the latter being to protect the former.
law. These laws could be changed without depriving a person of any natural rights.43

Jefferson conceived another function of government to be the protection of equality. "Of liberty," he wrote in 1819, "then I would say that, in the whole plenitude of its extent, it is unobstructed action according to our will, but rightful liberty is unobstructed action according to our will within limits drawn around us by the equal right of others."44 For Jefferson "equal rights" existed not as a positive right to be secured by government, but as a legal recognition of the limits of liberty. Government authority preserved one citizen's rights from interference by others. Yet the government's ability to exercise this authority was tempered by the greater risk posed to human rights from government than from other men.45 Jefferson never envisioned a government acting positively to create or assert the rights of one citizen relative to another, especially not in the name of "equality": "To take from one, because it is thought his own industry and that of his father had acquired too much in order to spare to others who or whose fathers have not exercised equal industry or skill is to violate arbitrarily the free principle of association, the guarantee to everyone a free exercise of his industry and the fruits acquired by it."46

Jefferson believed that government should be limited both in size and scope and that government power should be centered in those institutions closest to the people. David Mayer has recently written that Jefferson's Whig constitutionalism was rooted in "a profound distrust of concentrated political power and, with it, an especially intense devotion to the ideal of limited government."47 In his Notes Jefferson wrote that the "legitimate powers of government extend to such acts only as are injurious to others."48 At his 1801 inauguration he described his institutional ideal as "a wise and frugal government, which shall restrain men from injuring one another, which shall leave them free to regulate their pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government." Ellis, relying on this and similar pronouncements, has concluded that Jefferson "remained true to the Whig tradition, which regarded any explicit exercise of authority that was not consensual or voluntary as inherently invasive."49 Thus to ensure that the government did not exceed its authority, Jefferson believed that local and state governments should be

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43TJ to James Madison, September 6, 1789, in Jefferson Papers, XV, 392.
44TJ to Isaac H. Tiffany, April 4, 1819, in Political Writings, Dumbauld, 55.
46TJ to Joseph Milligan, April 16, 1816, in Jefferson Writings, XIV, 466.
48"TJ, Query XVII, Notes on the State of Virginia, in Jefferson Writings, II.
49Ellis, American Sphinx, 183.
given broad responsibility relative to the “general” or national government.50

The Kentucky Resolution of 1798 in protest of the Alien and Sedition Laws and the Proposed Protest of Virginia in 1825 both reflect Jefferson’s commitment to this constitutional ideal. In 1798 he wrote:

Resolved, That the several States composing the United States of America; are not united on the principle of unlimited submission to their General Government, but that, by a compact under the style and title of a Constitution for the United States, and of amendments thereto, they constituted a General Government for special purposes, —delegated to that government certain definite powers, reserving, each State to itself, the residuary mass of right to their own self-government.51

The same idea he expressed even more vehemently in 1825:

But the federal branch has assumed in some cases and claimed in others a right of enlarging its own powers by constructions, inferences, and indefinite deductions from those directly given, which this assembly does declare to be usurpations of the powers retained to the independent branches, mere interpolations into the compact, and direct infractions of it.52

Some have claimed that Jefferson, while president, compromised or was untrue to these professed beliefs in limited government exercised in institutions closest to the people.53 However, as Mayer argues, Jefferson came increasingly to a republican constitutionalism in which the Constitution and the elective power of the people together checked governmental authority. As president, he had surplus revenues in the treasury and recognized a public need for internal improvements that could not feasibly be pursued on anything but a national scale. Yet he still would not act without a constitutional amendment authorizing the government to undertake the construction of “new and indissoluble ties” through expenditures in support of “rivers, canals, roads, arts, manufactures, and education.”54

—ADDITIONAL REFERENCES—

50TJ to Archibald Stuart, December 23, 1791, in Jefferson Papers, XXII, 436; TJ to George Wythe, September 16, 1787, in ibid., XII, 127. See also Ellis, American Sphinx, 264, 261.
53For a response to this contention see Joyce Appleby, “Jefferson and His Complex Legacy,” in Jeffersonian Legacies, Onuf, 11.
54TJ, Second Inaugural Address, March 4, 1805, in Jefferson Works, X, 130. John Lauritz Larson concludes, however, that Jefferson’s ideological dogmatism on this point is attributable less to a belief in limited government than to a reactionary position of political opposition and perceived Federalist abuses of power. John Lauritz Larson, “Jefferson’s Union and the Problem of Internal Improvements,” in Jeffersonian Legacies, Onuf, 340-68. Yet, even Larson implicitly recognizes Jefferson’s need for compromise and the way in which his ideology restrained his political behavior. During the presidency of John Quincy Adams, federal government initiatives for building roads and canals were proposed. In the course of debate on these proposals,
The law, in the form of the Constitution, could restrain elected officials from addressing necessary social goals until the people allocated to them sufficient authority. A similar adherence to constitutional principle is evident in Jefferson's hesitancy in finalizing the Louisiana Purchase or advocating a national university without a constitutional amendment.55

American republicanism rested on civic humanism that envisioned rational and virtuous men exercising their natural rights of political self-governance with full respect for the equal rights of fellow citizens to pursue their own political, economic, and personal goals. Gordon Wood writes that this ideal of "republicanism meant more for Americans than simply the elimination of a king and the institution of an elective system. It added a moral dimension, a utopian depth, to the political separation from England—a depth that involved the very character of the society."56 In the years after the Revolution, the civic humanism contained in American republicanism would be challenged by, and integrated with, a liberal doctrine of unfettered individual freedoms and capitalistic pursuits.57

While political leaders fought their constitutional and public law battles over how much the new nation was going to reflect "republican virtue" or "democratic self-interest," the decision was largely being made in the private law forum. The importance of private law courts derived in part from the legal confusion following the Revolution. Morton Horowitz finds that postrevolutionary America had to reconstruct the legitimacy of law on a consensual foundation. This required either legislative enactment, reliance on custom, or, as James Wilson maintained, acceptance of common law judges as agents of a sovereign people. The judges themselves chose the third option in the absence of any other authority. Judges came to see their function as having expanded beyond merely applying existing law to reshaping and modifying law to meet the needs and wants of a growing society. Judges believed that they could be more responsive than the legislatures—they had to be for their dockets would not wait for legislative direction. Implicitly, they argued, judicial authority remained checked, for if the legislature disagreed with a developing common law doctrine, it could always reverse it. Meanwhile, the growth of judicial authority created an expanded role for common law judges to play in directing the nation's course into the nineteenth century.58

Jefferson remarked that disunion was a great calamity, "but not the greatest. There is yet one greater—submission to a government of unlimited powers." TJ, "Protest of Virginia," in Jefferson Works, X, 348-52.


Wood, Creation of the American Republic, 31.

The judicial assumption of greater power did not meet with universal approbation. Republican theory provided that under a constitutional framework judges were to follow the letter of the law as expressed by the populace through its legislature. Jefferson wrote in 1785 that by applying their own sense of right and reason judges had sought to render the law more certain, but instead they made it more uncertain. Partly in response to these attacks, a self-conscious judiciary moved to ensure greater legitimacy by insisting on published reports of common law precedents, relying on stricter enforcement of legal rules of procedure and thereby sharpening pleadings and limiting the role of juries, elevating the stature of a professional bar, and relying on established common law principles to instruct juries or set aside jury verdicts. Justice Joseph Story, himself a key proponent of judicial positivism, notes that judges were restrained in shaping the law by immutable principles of reason, morality, and order, as well as by the need to follow precedent. 

Recent scholarship in the American legal history of the early republic has opposed the earlier teachings of the instrumentalist school that law served merely as a tool to organize society to reflect prevailing social values. Newer work in this area has shown law's role to be much more complex than initially postulated. Law does not merely reflect social values, economic interests, or political structure. It is not subject to change at the whim of a business, political, or legal elite. The multiplicity of legal actors and their varied motivations reject this reductionist idea.

Law, to maintain its legitimacy, must rely on certain eternal truths as well as its own internal integrity, referred to as precedent, procedure, or constitutionality. It also must either embody prevailing social values and beliefs or risk divorcing itself from the public and prompting anarchy or revolution. In America it has fulfilled both these needs by assuming a relatively autonomous and hegemonic function, reminding society of its traditional values and beliefs even as it has reoriented them in changing legal decisions. Many authors have noted that the pace of legal change is incremental. Law's struc-
tural dependence on the Constitution, common law precedent, and the procedural dictates of pleading recognizable legal arguments mitigate any social tendencies toward rapid transformation. Typical of many of the founding fathers, Jefferson respected law precisely for its institutional inertia.

To Jefferson the Constitution guaranteed that the people’s will should be expressed in the laws. He was unwilling to give the court any authority that might impinge on the rights of the electorate. Herbert Sloan argues that Jefferson’s advocacy of generational revision of the Constitution must not be misunderstood as endorsing the idea of a living constitution. Jefferson was a strict constructionist. To him the only proper interpretation of law was the original intent of the drafters. To rewrite the Constitution because it no longer fit social needs was quite different than to misread the old document to serve political purposes. Likewise, statutory law was to be modified only in accordance with the opinions of a changing electorate. Judges and legislators alike were compelled to accept the laws as written. Jefferson expressed the supremacy of law as the basis of a judge’s authority when he wrote, “Relieve the judges from the rigor of text law, and permit them, with praetorian discretion, to wander into equity and the whole legal system becomes uncertain.” Elsewhere, he advocated “strict and inflexible” rulings by judges acting as “mere machines.” John Dos Passos notes that Jefferson wanted law to create a system of authority. This differed from the practice of much of the world where authority laid down the law. Christopher Tomlins summarizes what could be Jefferson’s own thoughts on legal authority: “Law, not politics, furnished the discourse of rule in this American model . . . . America was to be a polity of laws and not men, a polity of the rule of law.” Law embodied the best in man—his reason, rationality, and ability to conceive a social ideal. It could not be subordinated to the passions of a few reformers.

In the early republic law came to encompass republican ideals. Constitutions delineated the authorities of various governmental bodies and restricted the scope of their actions relative to citizens’ rights. Public and private law expressed the Jeffersonian precepts of the primacy of civil law, a preference for limited government exercised in institutional bodies closest to the people, respect of majori-
ty rule, and the security of property rights. Moreover, law came to function as the civil authority. Its reliance on precedent, constitutionality, and procedural conformity precluded radical social change. As an expression of Jeffersonian ideas as well as the authority within the civil society, it would shape whatever alternatives the man or the country could pursue regarding slavery.

Whether Jefferson was restrained by his own political and legal ideology in his approach to slavery would be largely irrelevant if he had not desired its abolition. The historiography that has been critical of Jefferson's inaction on slavery has frequently assumed that Jefferson condoned the institution. His writings and public actions, however, expressed a different attitude.

Jefferson believed slavery to be a social evil because it denied men their natural liberties. In addition, it corrupted the slaveholders and their society. Lastly, it created the possibility of armed conflict within society through a slave revolt. Jefferson explained the basis of his fears of revolt in his belief that “all men would and should rise up against so antirepublican a horror as slavery.” The “Saint Domingue” revolt was an example of this fear becoming reality. Jefferson's statements of his own attitude about slavery included condemnations of the institution for each of the above reasons, combined with elements of self-excoriation and rationalization. Yet these statements are included in the Notes in which Jefferson also emphasized perceived differences between the races, appearing to some even to justify slavery.

In Query XIV of the Notes, Jefferson identified only one “difference . . . fixed in nature” between the races—that of color. And while he derived from that difference some aesthetic conclusions, he did not find color to render blacks any less entitled to recognition of their natural rights than whites. Jefferson wrote of a “suspicion . . . hazarded with great diffidence” that blacks were “inferior to whites in the endowments of both mind and body,” while seeming willing, even anxious, to have his suspicion proved wrong. In any case political equality was never dependent upon equal faculties but rather on a natural liberty. Jefferson never doubted the humanity of slaves. “Nothing is more certainly written in the book of fate than that these

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Ellis argues similarly, finding that Jefferson believed “that slavery was morally incompatible with the principles of the American Revolution” and felt embarrassment before both French friends and even God for his country’s toleration of the institution. Ellis, *American Sphinx*, 86-87.

This fear and the irony of Americans themselves being victims of a republican revolution is also evident in a letter to George Tucker in 1787, in which Jefferson writes, “if something is not done, and done soon, we shall be the murderers of our own children; . . . the revolutionary storm, now sweeping the globe, will be upon us.” *TJ to St. George Tucker, August 28, 1787, in Jefferson Writings*, IX, 418.

people are to be free,” he observed in his autobiography. In the Notes he even referred to them as “citizens.”

Cover notices that Jefferson’s tone on slavery in the Notes varies from the chapter on “Administration of Justice,” (Query XIV), in which he offers a “racist tentative justification,” to a strong condemnation in (Query XVIII), “Particular Customs and Manners.” He surmises astutely that Jefferson could allow himself less room to offer radical criticism in writing about the laws than he could in writing about social behavior. Citizens in the society were to live in accordance with the laws until they were changed; social customs were not due any similar deference. John C. Miller writes that “the significance of the Notes is not that Jefferson presented a brief for black inferiority but that he demanded the extinction of slavery.” This reading puts the work in agreement with Jefferson’s other public writings, correspondence, and political actions regarding slavery and the law.

Jefferson believed black slaves to be human and thus entitled to the legal protection of their natural rights. This belief, in part, led him to take the actions opposing slavery that he did. Yet the extent to which Jefferson was willing to take public action in support of abolition was restrained by other ideological beliefs as strong and important to Jefferson as his belief in the humanity of the slaves. Jefferson’s awareness of these competing tensions was manifested in his public actions. These actions, when examined in light of his political philosophy, show him to have acted purposefully in a manner consistent with his beliefs.

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74 As much as many slaveholders may have been troubled by slavery, it was a fact of their lives. Jefferson was surrounded by slavery. He owned slaves, his friends owned slaves, and the law recognized slaves. Despite personal anguish over the institution, Jefferson continued it. When he wrote the Declaration of Independence, Jefferson had almost two hundred slaves; fifty years later he had over two hundred. Morgan, American Slavery, 4. He bought and sold over fifty slaves between 1784 and 1794. Miller, Wolf By the Ears, 107. Indeed, Virginia’s law limited manumission in order to preserve civic order and economic stability; yet Jefferson asserted that slaveholders merely “lacked the courage to divest their families of a property, which however, keeps their conscience unquiet.” TJ to Richard Price, August 7, 1785, in Jefferson Writings, V, 55.


In 1769, as a young legislator in the Virginia House of Burgesses, Jefferson attempted to change the law in his state to allow private manumission of slaves. He subsequently referred to the experience in his autobiography and in a letter to Edward Coles:

I drew to this subject the attention of Col. Bland, one of the oldest, ablest, and most respected members, and he undertook to move for certain moderate extensions of the protection of the laws of these people. I seconded his motion, and as a younger member was more spared in the debate; but he was denounced as an enemy of his country and treated with the grossest indecorum.

The next public statement Jefferson made on slavery came in his drafts of grievances against Britain prior to the Revolution. Perhaps the best insights into Jefferson’s understanding of law as establishing a “form” of social governance are presented in these writings. Jefferson’s commitment to including comments on slavery in his draft of the Declaration of Independence is evident in his earlier use of a slavery clause in a submission to the Virginia Convention that was later published in *A Summary View of the Rights of British America* (1774). There Jefferson accused the king of perverting the government “by prompting our negroes to rise in arms among us, those very negroes whom, by an inhuman use of his negative, he hath refused us permission to exclude by law.” In the Declaration Jefferson separated these two arguments. In his draft he wrote, “He has incited ... insurrections among slaves ... [encouraging them to] rise in arms.” His point in this grievance was that the king was using slaves, like Indians and loyalists, to fight for Britain, a reference to Governor Dunmore’s call in 1775 for slaves to attack their masters. Congress condensed the assertion: “[he has] excited domestic insurrection amongst us.” The other argument, from *A Summary View*, Jefferson spelled out in greater detail:

He [the king] has urged cruel war against human nature itself, violating its most sacred rights of life and liberty in the persons of a distinct people who never offended him, captivating and carrying them into slavery in another hemisphere or to incur miserable death in their transportation thither. This piratical warfare, the opprobrium of infidel powers is the warfare of the Christian king of Great Britain. Determined to keep open a market where men should be bought and sold, he has prostituted his negative for oppressing every legislative attempt to prohibit or to restrain this execrable commerce.

Jefferson referred to King George’s veto of colonial bills limiting the importation of slaves. Congress struck this paragraph when South Carolina and Georgia made plain their desire to continue importing slaves and because it deemed the provision inconsistent with

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7TJ, “Autobiography,” in *Selections*, Padover, 1148. Jefferson mentioned this action only in two writings many years after the event, but this should not, of itself, render his account unbelievable.

ISAAC JEFFERSON (1775–1849)

Monticello, Thomas Jefferson Memorial Foundation, Inc.,
Charlottesville, Virginia.
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the earlier criticism of the king. Garry Wills puts the congressional position succinctly, "How can Congress criticize the King for freeing the slaves to fight against their owners and also for imposing slavery, a cruel and inhumane institution, upon the colonies?"

Yet Jefferson did not see the inconsistency. He believed that the colonial exercise of the public will through elected officials to limit the growth of an abhorrent institution was legitimate, while encouraging slaves to revolt against the American populace, as the king did in total disregard for property rights and law, was not a legitimate governmental action. To most of the world the revised document is more consistent and supportable. But for Jefferson the point concerning the legitimate exercise of governmental power was lost in the revision. He expressed an antipathy toward slavery by referring favorably to bills designed to limit the importation of slaves. Yet the draft also expressed his anger at the king's efforts to free the slaves. The inconsistency disappears if one's focus is not the slaves but the use of governmental authority consistent with constitutional law. Both actions by the king were illegal according to Jefferson. If Jefferson's statements concerning slavery in the Declaration are read in reference to the colonial petitions against British policy in the years before the Revolution, his antipathy toward slavery and his insistence that it be addressed within the limits of law become clear.

The Declaration offers an excellent example of Jefferson's reasoning regarding the use of governmental authority and law in dealing with social concerns. John Phillip Reid argues that American grievances were written as appeals to King George to reassert the traditional 1688 constitution of England in which the colonists perceived the king's prerogative as a check on parliamentary tyranny. Jefferson's language in the Declaration evinced the same argument. In this way, the Revolution is understandable as a legalistic reaction to changes in the English constitution that resulted in increased parliamentary rule over the colonies. Parliament had not only undermined the authority of colonial legislatures by 1765 but the authority of the king as well.

Some might argue that if Jefferson could advocate revolution, seemingly in disregard of the legitimacy of law and constitutional order, to secure the natural rights of white Americans, how could he

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*In his "Autobiography," Jefferson referred to a subsequent bill he proposed in 1778, which passed. Its stated purpose was to stop "the increase of the evil by importation, leaving to future efforts its final eradication." Jefferson's sincerity may be judged by the repeated expression of this same desire to take steps to eliminate slavery, ultimately to be accomplished only when the public willed it. Jefferson, "Autobiography," in *Selections*, Padover, 1141.

be restrained by a political theory endorsing the primacy of law and constitutionalism from acting to secure the same rights for black Americans? The answer is that in justifying the Revolution Jefferson was appealing to, not arguing against, the established constitutional order. He believed that England had violated its own constitution and was dependent upon America to save it. The same argument would not support political action to free black Americans held in slavery. In that case, America's own elected representatives created positive laws of slavery. As Judge Mansfield implicitly said in the Somerset case in England in 1772, positive law could occasionally create a situation contrary to reason and nature. When this occurred, as it did in the instance of slavery, Jefferson had confidence enough to rely on the ultimate reason of the American people to bring about change through the political-legal system. He could encourage that change first in the minds of his fellow citizens and then through proposals to revise its laws; but he could not dictate it.

During the Revolution, Jefferson served on a committee to revise the laws of Virginia, whose lofty purpose he described as follows: "that our whole code must be reviewed, adapted to our republican form of government, and now that we had no negative of councils, governors, kings to restrain us from doing right, that it should be corrected in all its parts with a single eye to reason, and the good of those for whose government it was formed." But doing what was right and reasonable for the good of the governed did not include freeing the slaves. For Jefferson complete abolition was not then, or evidently at any other time, even a possibility. Abolition would either have taken from current property holders that which they had earned by their own efforts or forced the government to amass huge sums of money for purchasing slaves and making some provision for them. The committee did, however, make a more modest proposal, one consistent with Jefferson's ideas on property and the limits of government power.

The first and only meeting of the committee in January, 1777, dealt with the conceptual framework of a revision. Edmund Pendleton proposed using William Blackstone's model, to which Jefferson objected. In his 1765 edition of the Commentaries on the Laws of England, Blackstone asserted natural persons "are such as the God of nature formed us." Blackstone deduced that slavery was invalid except as regards prisoners of war and then only for the duration of the war. Chattel slavery, recognizing bondage in perpetuity, did not and could not exist in England. In his 1773 edition Blackstone modified his text to recognize slavery resting on contract law in the colonies but did not change his conclusion regarding the legality of

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the institution in England.84 John Quincy Adams later surmised that Jefferson realized that adopting Blackstone's expression of English law would mean the abolition of slavery. "They [then] must have restored slavery after having abolished it," Adams wrote, "they must have assumed to themselves all the odium of establishing it as a positive institution, directly in face of all the principles they had proclaimed."85 Jefferson remembered that Blackstone's model was rejected because it would have eliminated the body of common law that had been developed in America. The new code would then be subject to interpretation by the courts, with the inevitable problem of property rights being, in Jefferson's words, up "in the air" until decisions could be issued.86 Certainly the peculiar American property right of slavery would have been one of those up "in the air."

Jefferson and Wythe instead suggested a gradual abolition, emancipating slaves born some time after the passage of the new code, educating them, and transporting them to a new land.87 This plan preserved current property interests, posed only a minimal disruption to society, expanded governmental powers only slightly, and rid America of slavery and the risk of racial violence and miscegenation. Moreover, because inherited property could more lawfully be alienated by government action than earned property, postponement bought legitimacy. Jefferson's reasoning in this proposal is best seen in his more detailed explanation of a similar plan put forward in 1824. He proposed establishing a colony of freed slaves in Africa:

To send off the whole of these at once, nobody conceives to be practicable for us, or expedient to them. Let us take twenty five years for its accomplishment, within which time they will be doubled. Their estimated value as property, in the first place, (for actual property has been lawfully vested in that form, and who can lawfully take it from the possessors?) at an average of two hundred dollars each, young and old, would amount to six hundred million dollars, which must be paid or lost by somebody.88

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84 William M. Wiecek, "Somerset: Lord Mansfield and the Legitimacy of Slavery in the Anglo-American World," in Law, the Constitution and Slavery, ed. Paul Finkelman (New York, 1989), 582. Blackstone's 1773 edition reflected the effects of the Somerset decision of 1772. That case said of slavery, "It is so odious that nothing can be suffered to support it, but positive law." Judge Mansfield ruled that positive law, such as the laws on slavery in the colonies, could create a situation contrary to reason and nature. Once created, this law and the social situations it engendered, would have to be enforced. To a lawyer in the late eighteenth century, the law determined justice.

It should also be noted that Jefferson's aversion to Blackstone may have been rooted in concerns other than slavery. Jefferson and other colonial lawyers and political theorists found greater empathy with the writings of Coke expressing ideas more compatible with the colonists' understandings of constitutional law. An excellent analysis of this issue is found in John Phillip Reid, Constitutional History. For a discussion of the colonial preference of Coke over Blackstone see also A. E. Dick Howard, The Road from Runnymede: Magna Carta and Constitutionalism in America (Charlottesville, Va., 1968).

85 Noonan, Persons and Maske, 50.
86 TJ to Shelton Jones, July 28, 1809, in Jefferson Writings, XII, 298-99.
88 TJ to Jared Sparks, February 4, 1824, in Jefferson Writings, XVI, 10.
Jefferson obviously did not find this plan feasible and suggested instead emancipating children, since the “estimated value of the new born infant is so low (say twelve dollars and fifty cents), that it would probably be yielded by the owner.” Yet even this proposal was rejected. “It was thought that this should be kept back,” he reflected in his autobiography, “and attempted only by way of amendment. . . . It was found that the public mind would not yet bear the proposition, nor will it even this day.” Instead, the bill contained only a provision banning the importation of slaves, which, rather than limiting the growth of slavery, merely increased the value of the “property” already in the commonwealth. In 1783 Jefferson had prepared a draft of a new Virginia constitution that called again for gradual abolition. “The General assembly shall not . . . permit the introduction of any more slaves to reside in this state,” the document declared, “or the continuance of slavery beyond the generation which shall be living on the 31st day of December 1800; all persons born after that day being hereby declared free.” While Jefferson’s plan was never enacted, it confirmed the consistency of his approach to slavery.

In 1784 Jefferson took an important role in the congressional debates over westward expansion. Virginia had ceded millions of acres north and west of the Ohio River to the government. Jefferson was assigned to a committee to draft an ordinance outlining the course of expansion into these lands. The committee recommended that the territory be closed to slavery after 1800. It was the first proposal of federal government action regarding slavery. This provision failed by one vote. The defeat prompted Jefferson to write that the “fate of millions unborn [was] hanging on the tongue of one man, and heaven was silent in that awful moment.” He could support this provision because it deprived no one of property and did not expand federal powers. At that point there was no law permitting slavery in the Northwest Territory, so in its absence, natural law applied. In this instance, Jefferson could give free expression to his antislavery sentiments.

This was not the case when, in 1815, Congress attempted to dictate policy to territories attempting to become states. Jefferson feared recent Supreme Court decisions expanding federal power relative to the states. He believed that Congress lacked the power to prohibit new states from entering the union by prescribing condi-
tions or establishing restrictions different from those imposed on the original thirteen states. In support of states' rights and the primacy of popularly created law, Jefferson was prompted, once again, to tolerate slavery. Unlike the Northwest Territory, the lands in question in 1815, soon to enter the union as Missouri, had legally sanctioned slavery consistent with the United States Constitution. The federal government had no more right to prohibit slavery in these territories than it had in Georgia or Virginia. One is tempted to say that Jefferson's fear of governmental power was greater than his hatred of slavery. Yet this is misleading. Slavery could be wrong; but Jefferson could nonetheless believe that the government lacked the power to alter it.

Drew McCoy notes that there was a "greater issue" involved in the Missouri Compromise than whether Missouri would be free or slave: whether Congress had the constitutional authority either to restrict slavery in the territories or to attach conditions to the admission of new states. Jefferson's opposition to the increase in federal government power at the time of the Missouri Compromise was an expression of concern with this "greater issue."

The Constitution provided that Congress could not act for twenty years, or until 1807, to abolish the slave trade. William Wiecek observes that Jefferson as president at the time "called for action at the earliest possible moment." Even then, the proposed ban of the slave trade resulted in "heated...almost riotous debate" in the House. In Jefferson's annual message to Congress on December 2, 1806, he said,

I congratulate you, fellow citizens on the approach of the period when you may interpose your authority institutionally [to stop Americans] from all further participation in those violations of human rights, which have been so long continued on the offending inhabitants of Africa, and which the morality, the reputation, and the best interests of our country have long been eager to proscribe. 

In retrospect, the abolition of the slave trade, secured in legislation, signed into law in 1807, and effective January 1, 1808, may appear inconsequential. Slavery continued unabated in the South, and the primary effect of the legislation was the increase in the value of slaves already in America. Yet, William Freehling thinks disparaging the ban on the slave trade is a mistake. "This accomplishment," he writes, "too often dismissed as a non-accomplishment, shows more clearly than anything else the impact on anti-slavery of the Revolutionary generation. Furthermore, nowhere else does one see so clearly that Thomas Jefferson helped cripple the Southern slave establishment."

*Wiecek, Sources of Antislavery, 96-97.
*Ibid.
Jefferson believed that reform must be premised on public opinion. Only the will of the people could legitimately change social policy. Therefore, prohibitions of slavery must come as a result of public sentiment. “You know that nobody wishes more ardently to see an abolition not only of the trade but of the condition of slavery,” he wrote in 1788. “But . . . I am here as a public servant; and those whom I serve having not yet been able to give their voice against this practice, it is decent for me to avoid too public a demonstration of my wishes to see it abandoned.”

He believed that the change would occur soon. In a letter in 1785 he wrote that the abolitionist feeling was growing stronger in Virginia because the young men there “under preparation for public life” had “sucked in the principles of liberty as if it were their mother’s milk” from the teachings of Wythe. The key to abolition for Jefferson was education and experience. Confident in the innate ability of man to perceive moral correctness and right reason, it was only a matter of time before the public would realize the untenability of slavery.

But, at the same time, Jefferson was concerned “that premature endorsement by a figure of his prominence might easily damage the antislavery cause.” In 1785 he told his friends that they could not count on his active participation in the abolition movement and later denied support to Edward Coles, who planned to release his slaves and establish them as free farmers. Coles sought Jefferson’s public voice and the voluntary manumission of his slaves, but Jefferson felt compelled to wait for public opinion to take its course.

Many have criticized Jefferson for his failure to help Coles, deducing from this refusal only a tepid commitment, at best, to the antislavery cause or finding it an example of inconsistency between ideological expression and public action. Jefferson was not alone in refusing support, however. Coles approached Jefferson and Madison and was turned down by both. These men both believed that the actions of a few in support of abolition could delay the ultimate success of the movement. Isolated instances of emancipation may well have led southerners to intensify their defense of the institution. Coles had, in the words of McCoy, “a principled and passionate hatred of slavery.” Yet he not only forgave Jefferson and Madison for their lack of support, but he believed their positions to be consistent with their political postures. He wrote that Madison’s principles were “sound, pure, conscientious.” Coles described Jefferson’s position as “in perfect accordance with his character, in fine harmony with his philanthropic republicanism, and in every way worthy of the renown[ed]

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* TJ to Brisot de Warville, February 11, 1788, in *Jefferson Papers*, XII, 577-78.
* TJ to Richard Price, August 7, 1785, in *ibid.*, VIII, 357.
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author of the Declaration of Independence.”103 Apparently, in 1814 even the most assertive abolitionists recognized more than one means by which to attain their goals.

David Brion Davis notes that Jefferson had a “hostility to any interference with slavery or race relations on the part of the central government.”104 This is not surprising. Jefferson consistently opposed federal government involvement in any realm outside of interstate and foreign relations. He could support federal laws to ban the international slave trade and restrict slavery in federal territories, but he would not sanction any federal action compelling abolition or emancipation in the states. In this opinion, he was far from alone. Donald Fehrenbacher contends that after 1787 the Constitution recognized slavery as almost entirely in the jurisdiction of the states, much like the subjects of other legal codes concerning personal property relationships—marriage, inheritance, and contract.105 James Madison believed that for the federal government to affect slavery legally, a constitutional amendment would be required.106 Davis too recognizes that many who despised slavery believed abolition was beyond the scope of the federal government’s powers.107

Wiecek implicitly comes to the same conclusion. He contends that the Somerset decision was well known in America only two years after its issuance. Antislavery advocates cited the decision as evidence that slavery could not exist but for positive law creating it. Yet Wiecek also notes,

Americans, for better or worse, are a peculiarly legalistic people. Moral or ideological pressures alone, divorced from secular legal considerations, would not have accounted for the potency of antislavery in the United States. But slavery was, among other things, a legal institution, and attacks on its legitimacy were especially congenial to the American temperament. Abolitionists struck one of their most telling blows when they asserted that slavery had been established in America in violation of natural law, the common law, and the constitutional order of the British colonies. Yet, even abolitionists making this argument based on natural law and Somerset denied that the federal government had any constitutional authority to invalidate state slavery laws.108

If slavery remained outside the scope of federal authority in Jeffersonian America, abolition would have to be a state matter. In northern states abolitionist leaders did not have to wait for public

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103 McCoy, Last of the Fathers, 310-13. McCoy also notes David B. Davis’s “different and somewhat misleading slant” on the same topic in Slavery in the Age of Revolution. McCoy observes that Madison discouraged an antislavery Quaker from seeking an emancipation bill in the Virginia legislature in 1791, as the pressure was “likely to do harm rather than good.” McCoy, Last of the Fathers, 305. See also Dumas Malone, The Sage of Monticello: Vol. VI, Jefferson and His Time (Boston, 1981), 320-23.
104 Davis, Slavery in the Age of Revolution, 190.
105 Fehrenbacher, Slavery, Law, and Politics, 16.
106 McCoy, Last of the Fathers, 277.
107 Davis, Slavery in the Age of Revolution, 190.
108 Wiecek, Sources of Antislavery, 602, 20, 603.
opinion, manifest in new laws after the Revolution, to embrace the enlightened reason that Jefferson hoped to see in his Virginians. Where the majority will so desired, state action could be taken to abolish slavery. Even in the North, however, abolition was accompanied by a respect for the property rights of the slaveholders. States either compensated slaveholders for their losses or after 1776 imposed gradual abolition.108

In the South, reaching the same accommodation was more difficult. Political ideology may have defined the issue, but regional variations in culture and economics produced different results. Jefferson could not obtain majority support for abolition in Virginia because, by 1780, slavery was too well enmeshed into southern society. Timothy Breen points out that the “charter” colonists exercised great influence in shaping colonial culture for subsequent generations. Early in the seventeenth century the North and South established different social arrangements that later generations accepted. Of Virginians, Breen writes, “They were not free to abolish slavery or staple crop agriculture: these had become expressions of a regional way of life.” Abolition in the North did not involve depriving families of their fortunes or raising huge sums of money through taxation to compensate them for their losses. Jeffersonian ideology, respecting property rights, state sovereignty, majority rule, the primacy of law, and limited government, provided the terms on which abolition would have to occur. Southern society could not easily meet those terms. Recognizing the role of political ideology also helps to explain the temporary northern acceptance of the retention of the institution in the South to a degree that economic, social, and psychological explanations cannot. The North and South in the early republic shared a basic political ideology and legal structure, if not a common psychological, social, or economic basis.

Because he tended to confound political principle with virtue, Jefferson found compromise difficult. He saw all human behavior as a reflection of character. His condemnation of much of contemporary Virginia life in the Notes, from its economy and architecture to its inadequate constitution, reflected more than a difference of opinion with his fellow Virginians; his comments betray a disgust with the inability of his peers to live up to his ideals. The Newtonian world view was, after all, premised on absolutes in the form of natural laws. Absolutes resist variation.

Many observers of Jefferson, both in his own time and subsequently, have commented on his rigid adherence to principle and his

108Freehling, Reintegration of American History, 17-18. See also Davis, Slavery in the Age of Revolution, 507-508; Cover, Justice Accused, 43-62. Freehling states that even in the North, abolition involved a balancing of interests, “splitting the difference between property rights and human rights.”

intolerance of opposing views that to him appeared merely "wrong," St. George Tucker said of Jefferson that "he was occasionally somewhat dictatorial and impatient of contradiction." Gordon Wood writes, "not only did Jefferson not have an original or skeptical mind, he could in fact be downright doctrinaire, an early version of a knee-jerk liberal." Wood accepts Bernard Bailyn's assertion that Jefferson was an eighteenth-century Enlightenment stereotype, accepting liberal attitudes and ideas totally and uncritically. "Jefferson was inspired by a vision of how things could and should be," continues Wood. "He was the pure American innocent. He had little understanding of man's capacity for evil and had no tragic sense whatsoever." One need not go so far as Wood in characterizing Jefferson in order to recognize him as a man so deeply committed to ideals and principles that even the most desired expedients for social good would be rejected if they contradicted, and therefore threatened, the greater good. Leonard Levy describes Jefferson as having "little room for compromise . . . and no room for self doubt." He had the "passion of a true believer" and "behaved as if a prisoner of his own ideas." Ellis notes Jefferson's "instinctive tendency to think in terms of moralistic dichotomies," his "affinity for idealized or idyllic vision," and his "all or nothing mentality." Ellis writes, "Rather than adjust his expectations in the face of disappointment, he tended to bury them deeper inside himself and regard the disjunction between his ideals and worldly imperfections as the world's problem rather than his own." For Jefferson, Ellis concludes, "there was one truth, not many." "Jefferson's truth did include recognition of the natural right to freedom. His political ideology, however, required positive law to give effect to natural rights in a civil society. It was precisely Jefferson's hopeful "innocence," as Wood puts it, that led him to believe that the majority of people in his beloved Virginia and in the whole of the United States would eventually embrace abolition. But, until then, respect for the laws, embodying the ideas of constitutionalism and republican government, had to be preeminent. Appleby notes that Jefferson felt compelled to reconcile his "radical understanding of personal freedom with pervasive assumptions about order and justice." Only in this context does Wood's comment make sense: "He knew slavery was a great evil, but he believed his generation could do little about it."

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114Ellis, American Sphinx, 43, 34, 53, 35, 200.
Jefferson and Slavery

Jan Lewis and Merrill Peterson concur that Jefferson measured "worth in ideas and institutions, not human relationships." Take, for example, his calm detachment at the news of deaths in Shays' Rebellion. "I like a little rebellion now and then," he wrote. "It is like a storm in the atmosphere. It was too bad that some people were killed, but the tree of liberty must be refreshed from time to time with the blood of patriots and tyrants. It is its natural manure." And of the French Revolution, Jefferson observed, "Rather than it should have failed, I would have seen half the earth desolated.

Family tradition had it that when Shadwell, Jefferson's childhood home, burned in 1770, his first concern was for his books and papers. And in a letter to his beloved daughter Polly he seemed to justify his love of her on her continued fulfillment of his ideals for womanhood. Jefferson was just as hard on himself, insisting that correspondence be answered and guests received, in fulfillment of the expected role, even when he suffered pain and ill health in the months before his death. To this man even the cruelties of slavery could be extended one additional generation in order that the problem should be dispensed of in "the right way"—through law and within a constitutional scheme that respected property rights, majority will, and limited government.

Jefferson's almost compulsive concern for order and rationality were not solely a function of his personality, for each was a tenet of the Newtonian system. The acceptance of absolute truths derived from order and rationality influenced popular thought on natural science, music, architecture, and politics. Jefferson simply adhered to these precepts with more dedication or "principle" than most. Ellis emphasizes Jefferson's attachment to ideals that compelled him to adopt deductive reasoning by which certain inviolable moral truths predetermined the resolution of specific issues.

Jefferson's practice of law also reinforced his natural proclivity for order and rationality. As Stephen Conrad has noted, Jefferson never really turned away from the law, even though his active prac-
Jefferson always relied heavily on the written law. The practice of law in America has long been a contest between lawyers whose approach to cases is determined by the law and those who emphasize the facts. Do the facts speak for themselves in calling for relief? Or rather, is the law the final arbiter in dispensing justice regardless of the emotional response engendered by the facts? Accounts of Jefferson's law practice indicate his emphasis on law as controlling the outcome of cases. He took the law as doctrine and reasoned logically from general to specific instances in making legal arguments. Edmund Randolph contrasted Jefferson's style with Patrick Henry's when he commented that, "Mr. Jefferson drew copiously from the depths of the law, Mr. Henry from the recesses of the human heart." Men such as Jefferson, who envisioned a future society of greater justice, yet were committed to the rule of law as the only means of its attainment, could be frustrated by the restraining effect of law. Changes in law depended upon changes in popular sentiment, and accordingly law was sometimes slow to embrace other ideals.

Perhaps no endeavor in Jefferson's life is more indicative of his desire to do things "the right way" than his fifty-four-year commitment to building Monticello. During this time, Jefferson was always refining and reconstructing. Still, his passion was not the process but the ideal end product. Rhys Isaac argues that historians reconstruct the past by careful study of how people lived. He sees Jefferson the builder of Monticello as "a quantifying, rationalizing taskmaster." Likewise for Jack McLaughlin humanity replicates itself in its architecture. By looking at the building process one can see the man revealed in "a deep and unaccommodated way." Jefferson, according to McLaughlin, left a detailed portrait of himself in Monticello, etched in timber, brick, plaster, and paint.

In Monticello Jefferson's acceptance of absolutes is evident from design to finishing touches. "Wythe... reinforced Jefferson's belief that the models for a pure architecture had been cast in concrete by the Romans," McLaughlin notes, "and formulated mathematically—with the finality of a papal bull—by the sixteenth-century master, Andrea Palladio." Jefferson's home was to be more than a residence; it was also to be a model for his society and a reflection of the absolute values by which he lived his life. McLaughlin's study of Jefferson as builder lays out the values and thought processes of the man:

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124Conrad, "Rights Talk," 273. Mayer says that Jefferson was referred to as "one of the finest legal minds on either side of the Atlantic." Mayer, Constitutional Thought, ix.
125Malone, Jefferson the Virginian, 69-70.
128Ibid., 41.
These early drawings and the voluminous notes that accompany them reveal much about the Jefferson personality. They are of a kind with his other known character traits: self-discipline, his insistence on personal privacy, his need to save and account for everything—money, books, records, facts. Even his choice of the law as a profession was a measure of his desire for an ordered social and political universe made permanent by rationally ordained statutes. He became a revolutionary in part because of what he perceived to be the crown's breach of the integrity of the English legal system. This was not simply a political or ethical decision on his part; in taxing the colonies without representation, Parliament denied the validity of his very personality, of everything that he was. His architectural drawings are symbolic of his kind of compulsive personality. Lines are executed mechanically with rule and compass, to precise scale. Measurements are carried out to four or five decimal places, an absurdity in the building trades where carpenters and bricklayers are often lucky if they can keep to the inch rather than the ten-thousandth of an inch. For Jefferson, those measurements were not simply practical means to an end, instructions to an artisan; they were mathematical absolutes that recorded universal verities.\(^\text{12}\) Jefferson's insistence on exact measurement and his obsessive attention to detail betray not a rationality predicated on the practical or the expedient, but a quest for the ideal. When confronted by a choice of practical utility or abstract aesthetics, Jefferson invariably chose the aesthetic and then tried to satisfy the practical within that aesthetic construct. McLaughlin observes that "he was a man who demanded of his life the same symmetry he found in the Newtonian universe he believed in so explicitly." Jefferson assembled data on so many points of interest that McLaughlin concludes that it was something of an end in itself—"a way of fitting these meaningless bits into a rational system was a way of structuring and ordering his personal universe."\(^\text{13}\) Jefferson arranged the thousands of books in his personal library according to a scheme established by Francis Bacon and used by Jean LeRond d'Alembert in the Encyclopedia. It was a scheme that premised organization on the faculties of the mind. Memory, reason, and imagination became history, philosophy, and fine arts. Over 6,700 volumes in Jefferson's home were organized into categories and subcategories of classification.\(^\text{14}\) Perhaps even more compulsively, he counted how many peas fit in a pint jar so that he knew precisely how many pints of seed to store for the next spring's planting.\(^\text{15}\) In both the most personal and public moments of his life, Jefferson's behavior expressed a fervent commitment to principle and order.\(^\text{16}\) He was comfortable when order imposed a restraining influ-

\(^{12}\)Ibid., 58.

\(^{13}\)Ibid., 35-36, 22.

\(^{14}\)Wilson, "Jefferson's Library," 171-75.

\(^{15}\)McLaughlin, Jefferson and Monticello, 22.

\(^{16}\)Recent scientific research suggests a sexual liaison between Jefferson and Sally Hemings, his deceased wife's half sister and a slave at Monticello. Accepting this assertion as true, for the sake of argument, Jefferson's silence on this issue, in fact his denial of it, can be seen as another instance of his attempt to maintain an ideal image of himself consistent with his own perceptions of principle and honor.
WEST FRONT OF MONTICELLO (C. 1803)

Massachusetts Historical Society, Boston, Massachusetts.
ence in his life, perceiving it as rational and natural. Yet the order to which he subscribed was derived from broader principles. Architectural drawings conformed to the pure absolutes of mathematical symmetry; library organization conformed to the logic of man’s thought processes; even the retention of pea seeds recognized the virtue of frugality.

Jefferson’s passion for ideas and his conviction that ideas formed the basis of social order made it extremely unlikely that he could perpetuate the cruel institution of slavery and rationalize its continuation if he believed that it was inconsistent with his political beliefs and their expression, at least in part, in the government of his society. As John Lauritz Larson notes, Jefferson at times became a victim of his own ideological rhetoric. Fearing the “monarchist” leanings of the Federalist uses of government power, he emphasized his preferences for limited government, eventually restricting his own abilities, and those of his followers, to serve the public good.134

Jefferson’s ideology did eventually trap him within a system in which he was forced to accept a tragic consequence rather than to encourage a restructuring of a society that had come to accept his conceptions of government power and social law. Slavery was an evil, but its eradication could have been a greater evil, not only in the social, political, or economic effects of abolition, but in the restructuring

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of the government necessary to effectuate it. The abolition of slavery would have necessitated an expansion of governmental authority to legislate the social arrangements, property values, and moral construction of the society. This would have been inconsistent with Jefferson's political ideology. Jefferson could never have endorsed the growth of federal government authority necessary to dictate political change to the states. Neither would he have tolerated state officials determining public policy contrary to the wishes of the majority or judges pronouncing positions contrary to established law. Once established, laws on slavery could not be changed by the moral opposition of a political or legal elite. Morton Horowitz contends that the common law in eighteenth-century America was a fixed body of law applied to individual cases and that judges could not use the law to effect social change. Jefferson decried the growing power of nineteenth-century judges in developing legal positivism from the bench. His legal ideal remained the eighteenth-century model. For either a judge or a governor to assume the position of an enlightened leader, abolishing slavery in the best interests of the society and contrary to popular sentiment, was antithetical to the constitutional republicanism that defined Jefferson's political ideology. Any change in a state's position on slavery would have to come through its legislature and then accord a due respect for the property rights of slaveholders. Jefferson's proposals on abolition did just that; he recognized, however, that they would not gain popular acceptance in his lifetime.

The question then remains: given this set of beliefs, what could the historical actor have been expected to do with regard to a certain issue? In the case of Jefferson and slavery, given the man's political ideology premised on the primacy of law, limited government, states' rights, property rights, and majority rule, there was little more he could have done to abolish the hated institution. Had he tried Jefferson would have breached one of his basic beliefs, which would have proved to be more inconsistent with his ideology than his position of waiting for the next generation to abolish slavery.

In this context then, Jefferson's position on slavery is not the great example of his intellectual inconsistency but rather of his ideological consistency. Furthermore, the legal and ideological factors that limited Jefferson also limited the nation. Ironically, the most democratic country on earth was the last western nation to abolish slavery, perhaps because of its democracy. Enfranchised Americans never used their political voice to express enough hatred of slavery to eliminate it. When widespread emancipation did occur, it came not through normal political means but by unprecedented use of the president's

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135Horowitz, Transformation of American Law, 1. 8. Jack Rakove cites William Nelson in confirmation of this position: "Americans of the prerevolutionary period expected their judges to be automatons who mechanically applied immutable rules of law to the facts of each case." Rakove, Original Meanings, 300.
powers as commander-in-chief to act in the best security interests of the nation. By avoiding the very legal and ideological factors that Jefferson and his generation faced, Abraham Lincoln testified to the substantial impediment that they posed to more drastic action when civil war did not provide a constitutional alternative.