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### Natural Rights and Thomas Jefferson, Attorney at Law

Though often overlooked in favor of his work during the Revolution and beyond, Thomas Jefferson's law career actually impacted his ideologies and beliefs to the extent that it birthed the American ideal and pursuit of happiness so exhibited in the Declaration of Independence.

Beginning as a seed planted in his head during his formal studies as a budding lawyer, the idea of natural rights sprouted and flourished all the way through his law career—from his service in the House of Burgesses to his work as an attorney and his revisions of Virginia law, it would become the backbone of Jefferson's philosophy and thus the United States of America.

Beginning in 1760, Jefferson spent the first two years of his formal education at the College of William and Mary. Though he did not benefit much from this “rude, mis-shapen”<sup>1</sup> college, it was the people he met in Williamsburg that initiated the beginning of Jefferson's journey as a natural rights proponent. For one, Jefferson became rather attached to Dr. William Small, a man from whom “I got my first views of the expansion of science & of the system of things in which we are placed;”<sup>2</sup> by exposing Jefferson to the Enlightenment, Small equipped him with the philosophical tools necessary to explore and form his own view of the relationship between the government and its people. Furthermore, Small “fixed the destinies of [his] life,”<sup>3</sup> by introducing Jefferson to his good friend George Wythe, with whom Jefferson began to study law and form a lifelong friendship after his brief sojourn at the College of William and Mary:

“No man ever left behind him a character more venerated than George Wythe. His virtue was of the purest tint; his integrity flexile, and his justice exact; of warm

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<sup>1</sup> Jefferson, *Autobiography*, 278

<sup>2</sup> *Ibid.*, 4

<sup>3</sup> *Ibid.*,

patriotism, and, devoted as he was to liberty, and the natural and equal rights of man.”<sup>4</sup>

It is most likely that no formal master-apprentice relationship existed between Wythe and Jefferson,<sup>5</sup> but through Wythe’s inspiration and guidance, Jefferson was able to gain the spirit, independence, and superior legal training necessary to become a leader in building a nation and “laying its foundation on such principles.”<sup>6</sup> It is obvious that both Small and Wythe, being Jefferson’s mentors, held much influence over Jefferson and his approach to life and natural rights, for Jefferson even claimed that “under temptations & difficulties, I would ask myself what would Dr. Small, Mr. Wythe... do in this situation?”<sup>7</sup>

It was from here that Wythe introduced Jefferson to the works of Sir Edward Coke, who readily promoted the provisions of the Magna Carta,<sup>8</sup> a charter written in 1215 that is linked to the ideals of democracy and demands that King John recognize certain liberties—liberties Coke reinterpreted to mean the same as individual liberties.<sup>9</sup> A look at Jefferson’s personal letters, one in which he urges a law student to incorporate Coke’s Institutes into his studies,<sup>10</sup> reveals Jefferson’s deep reverence for Coke and his ideology revolving around citizens’ rights and common law. Drawing heavily from Coke, Jefferson was thus able to begin to accumulate his own principles of government based on personal freedoms.

After five years of tutelage under Wythe and two years of service with Virginia bar, Jefferson was admitted to the Virginia House of Burgesses in 1769.<sup>11</sup> Though records of his

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<sup>4</sup> Jefferson, Gardner, Joan Paterson, *Thomas Jefferson: A Biography in His Own Words*, 21

<sup>5</sup> Schachner, 35

<sup>6</sup> Jefferson, *Autobiography*, 19

<sup>7</sup> *Ibid.*, 1194

<sup>8</sup> Powell

<sup>9</sup> *Ibid.*,

<sup>10</sup> Jefferson, Gardner, Paterson, *Thomas Jefferson: A Biography in His Own Words*, 29

<sup>11</sup> Jefferson, *Autobiography*, 1519

public papers during this time are lacking, a close look at his account books indicates that his service in the House of Burgesses further solidified his thinking and interest in natural rights. Jefferson's Commonplace Book for 1769 "lists an order for fourteen books, all dealing with the theory of government, instead of his usual assortment of books on literature, law and other subjects."<sup>12</sup> The list truly reveals Jefferson's mindset and interests with regard to the relationship between law, the government, and the citizen. While works like *History of Parliament*, *Determinations of the House of Commons*, *Civil Society*, *Political Economy*, *Oeuvres de Montesquieu*, and *Modus Tenendi Parliamentum* focused on aspects of government unrelated to natural rights, others on the list championed natural rights: John Locke's *Second Treatise On Civil Government* argued for a civil state built upon natural rights, Anthony Ellis' *Tracts on the Liberty* argued for natural rights as they applied to the accused, and Jean-Jacques Burlamanqui's *Le Droit Naturel* examined natural law theory. These last three works indicate Jefferson's enthusiasm for the incorporation of natural rights in the government and society. Jefferson's Legal Commonplace Book and its 905 entries, most of them written before 1776, provide further insight into the branching off of Jefferson's studies and thoughts during his time at in the House of Burgesses. The first 749 entries relate exclusively to law; the next 156 relate to liberal theories of government.<sup>13</sup> While some of the later entries pertain to social contract and colonies in the Classical Period, "most... relate to the theory of natural rights as expressed by others."<sup>14</sup> This pattern displayed in Jefferson's Commonplace Book just goes to show that Jefferson had already been seeking written precedence for his own ideas on government as they related to natural rights. It is also interesting to note that Jefferson claimed to have "turned to [no one] book nor

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<sup>12</sup> Donovan, 62

<sup>13</sup> Ibid.,

<sup>14</sup> Ibid., 63

pamphlet”<sup>15</sup> for his ideas but studied the works of many others before forming his own beliefs as so famously stated in the Declaration.

Unsurprisingly, these theories and ideas manifested in Jefferson’s own practice. Though Jefferson represented many land cases, the case to be noted most is *Howell v. Netherland* (1770), in which Jefferson made his first known public statement regarding natural rights. Jefferson represented the slave Samuel Howell, whose biracial mother had been sentenced to slavery until the age of 31 as a result of being born out of wedlock to a white woman. The law of *partus sequitur ventrem* thus sentenced Samuel Howell, her son, to the same circumstances, as it linked a child’s legal status to that of the mother.<sup>16</sup> Jefferson, helping Howell to sue for an early release from servitude, argued:

“Under the law of nature all men are born free, every one comes into the world with a right to his own person which includes the liberty of moving and using it at his own will. This is what is called personal liberty, and is given him by the author of nature, because necessary for his own sustenance. The reducing of the mother to servitude was a violation of the law of nature; surely then the same law cannot prescribe a continuance of the violations to her issue, and that, too, without end, for if it extends to any it must to every degree of descendants.”<sup>17</sup>

Tacked onto unpersuasive legal arguments<sup>18</sup>, this argument failed and Jefferson lost before Wythe, the opposing attorney (it is to be noted that Wythe opposed slavery; being a lawyer, he was merely advocating for the interests of his client), even spoke.<sup>19</sup> Nevertheless, despite publically opposing slavery, Jefferson owned approximately 40+ field hands and

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<sup>15</sup> Paul Aron, 95

<sup>16</sup> Gordon-Reed, 100

<sup>17</sup> Ibid.,

<sup>18</sup> Finkelman, 138

<sup>19</sup> Gordon-Reed, 100

household servants at this time, all either inherited from his late father 6 years prior or naturally reproduced.<sup>20</sup> Described by one slave as “very kind to his servants”<sup>21</sup> Jefferson’s ability to compartmentalize his personal life, finances, and role as a Virginia gentleman from his public life and philosophical theories allowed him to occupy both worlds without any seeming conflict. That compartmentalization, however, was never complete and he privately wrestled with his dual role as standard bearer for natural rights and slaveowner throughout his life.

Whereas *Howell v Netherland* contained Jefferson’s first public declaration of natural rights, *A Summary View of the Rights of British America* was his first public paper in which he articulated a clearly defined concept of natural rights and their application to the British colonies. This pamphlet delineated a set of grievances against King George III; it reminded him that the ancestors of the colonists were Englishmen too and “possessed a right, which nature has given to all men,” of being under laws promoting “public happiness,” just as the Englishmen’s Saxon ancestors had also possessed this right.<sup>22</sup> Jefferson claimed that Great Britain was actually unjustified in governing its colonies as he reiterated the inseparableness between life and liberty: “The god who gave us life, gave us liberty at the same time: the land of force may destroy, but cannot disjoin them.”<sup>23</sup> By beginning to implement natural rights into the political life of the colonies and establishing them as the central argument behind America’s quarrel with Great Britain, Jefferson was able to pin natural rights at the forefront of the American ideal.

This growing prevalence of natural rights also manifests itself in Jefferson’s revisions to Virginia law. His draft of the Virginia Statutes of Religious Freedom states:

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<sup>20</sup> “Property”

<sup>21</sup> Rosenberger, 75

<sup>22</sup> Jefferson, *Autobiography*, 105-106

<sup>23</sup> *Ibid.*, 122

“That our civil rights have no dependence on our religious opinions any more than our opinions in physics or geometry; that therefore the proscribing any citizens as unworthy the public confidence by laying upon him an incapacity of being called to offices of trust and emolument unless he profess or renounce this or that religious opinion is depriving him injuriously of those privileges and advantages to which, in common with his fellow citizens, he has a natural right.”<sup>24</sup>

By using natural rights as his central argument for religious freedom, Jefferson only cemented their relevance to American society.

Thomas Jefferson did not just formulate his theory of natural rights while drafting the Declaration of Independence—his ideology steadily took form throughout his law career, from his studies to his application of natural rights to *Howell vs. Netherland*, his *Summary View of the Rights of Great Britain*, and his revisions to Virginia law. His declaration of natural rights are now ingrained in the hearts and minds of millions of American and have become the vanguard of numerous reform movements across the world as humankind seeks to live up to the words so famously written in 1776 but inspired in the decades previous.

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<sup>24</sup> Ibid., 346-347

## Works Cited Page

- Aron, Paul. *We hold these truths--: and other words that made America*. Lanham, Md.: Rowman & Littlefield Publishers., 2008.
- Donovan, Frank Robert. *The Thomas Jefferson Papers*. New York: Dodd, Mead., 1963
- Finkelman, Paul. *Slavery and the Founders: Race and Liberty in the Age of Jefferson*. 2nd ed. Armonk, N.Y.: M.E. Sharpe, 1996.
- Gordon-Reed, Annette. *The Hemingses of Monticello: an American family*. New York: W.W. Norton & Co., 2008.
- Jefferson, Thomas, Joseph L. Gardner, and Joan Paterson. Kerr. *Thomas Jefferson: A Biography in His Own Words*. New York: Newsweek., 1974
- Jefferson, Thomas, and Merrill D. Peterson. *Writings: Autobiography, a Summary View of the Rights of British America, Notes on the State of Virginia, Public Papers, Addresses, Messages, and Replies, Miscellany, Letters*. New York: Library of America., 1984
- Powell, Jim. "Edward Coke: Common Law Protection for Liberty." *The Freeman* 47.  
[http://www.fee.org/the\\_freeman/detail/edward-coke-common-law-protection-for-liberty](http://www.fee.org/the_freeman/detail/edward-coke-common-law-protection-for-liberty)  
 (accessed July 27, 2014).
- "Property." Thomas Jeffersons Monticello Blog RSS. <http://www.monticello.org/site/plantation-and-slavery/property> (accessed July 27, 2014).
- Rosenberger, Francis Coleman. *Jefferson Reader*. N.Y.: Dutton, 1953.
- Schachner, Nathan. *Thomas Jefferson: a biography*. New York: T. Yoseloff, 1957.