

Harmonizing Sentiments

Masterworks in the Western Tradition

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Hans L. Eicholz

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The Declaration of Independence
and the Jeffersonian Idea
of Self-Government



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For my son, Tristan Alexander Eicholz

Acknowledgments

The idea for this book grew out of two concerns. The first was a basic dissatisfaction with the growing consensus among historians that the American revolutionaries and the entire founding generation were bereft of a coherent political tradition, but spoke numerous conflicting political tongues, with very different meanings attached to even such commonly used words as “liberty.” The second has been an ongoing concern with the way Americans presently think about the nature of self-government. Today self-government is typically taken to mean the collective expression of the majority will in government, and there is little recognition that it once meant primarily to control oneself. “Government of the self” was the original basis for republican government, reflecting the view that civil society was much more than politics. Society was made up of men and women who gave order to their lives by entering into associations on a voluntary basis, quite apart from government, for all of the various reasons of fellowship, philanthropy, faith, and commerce. It was the flourishing of this order that a limited government was meant to protect, but it was never conceived of as the source of that order, except perhaps among a few Tory loyalists. Now it appears that we often use “government” and “society” interchangeably.

To gain a better sense of the earlier definition, it seemed necessary to go back to the original statement announcing and giving the reasons for America’s independence from Great Britain: the Declaration of Independence. It also seemed like an excellent place from which to address the issue of the coherence of early American political thought. The work is thus directed to a broad audience of students and the interested reader, covering the major interpretive schools on the subject, from history to political theory. The hope is that this work will encourage continued interest in and exploration of the meaning of American self-government

and society, so as to further our civil discourse about who we are as a people.

Over the course of writing this work I have incurred a number of intellectual debts. For suggested readings, comments on various rough drafts of some of the early chapters, and moral support, I want to thank John Alvis and my colleagues in history, William C. Dennis and George M. Curtis. Michael Zuckert was generous with his time and provided exceptionally helpful comments on a late draft of the manuscript. My friend Richard B. Vernier was of considerable influence in shaping my understanding of early Whig thinking on civil society and its role in America, and I am especially grateful for his extensive comments on the third chapter. James E. Bond was very helpful both in conversations about the relationship of natural rights to the Constitution and in his close reading of the fourth chapter and the conclusion. For his assistance in ferreting out the history of the idea of Parliamentary supremacy, I am thankful for the breadth of knowledge and the library of Emilio Pacheco. On the sources of early Whig thought, especially in regard to common law and the ancient Saxon constitution, James McClellan was generous with his sources and time. Steven D. Ealy helped me to understand the Straussian perspective, especially that of Harry V. Jaffa, and provided helpful comments on the bibliographic essay. I am also grateful to Eugene Miller who first suggested that I consult Jaffa's work and to Karl Walling, who introduced me to the essays of Martin Diamond. Jean M. Yarbrough was very kind to let me read an early draft of a chapter of hers on the meaning of Jefferson's pursuit of happiness. I also benefited from more informal discussions with Randy Simmons on the history of power and the meaning of government; Douglas Rasmussen on the history and implications of natural law philosophy; Tom Palmer on Thomas Paine's notion of social order; M. Stanton Evans on the medieval origins of constitutional thought; Leonard Liggio on Destutt de Tracy and the influence of French liberalism; Barry Shain on Christianity and politics in early America; Susan Collins on the ancient meaning of autonomy; and Nicholas Capaldi on the early conceptualization of this project. Finally, Joyce Appleby provided important references to sources at the very outset of the project and helpful comments on the final drafts, but my debt is considerably greater. Relying, as I do, on her insights into the centrality of economic thought to early liberal ideas, my thinking on this topic reflects the enduring influence of her mentoring in my graduate years. In addition to the encouragement of all those just mentioned, their disagreements also helped to clarify my thinking and any errors that remain are due entirely to my

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Introduction

Engaging the History of the Declaration

During the first four decades of the American republic, the irascible William Findley was the leading state politician of the western Pennsylvania backcountry. He had seen action as a captain in the American army during the Revolution, was an outspoken Antifederalist during the state's ratifying convention, and was a persistent critic of both state and national public finances. Many a high-born Philadelphian of the likes of Robert Morris and James Wilson, crossed swords with William Findley, only to come away with a healthy respect for his tenacity and shrewd political sense. It came as little surprise that Findley would write the definitive critique of the first administration's handling of the western counties' resistance to the federal excise tax on whiskey in the early 1790s. In that work Findley felt compelled to remind his readers that America was not great because of those in power or because of its "privileged orders," but derived its "dignity and importance, through the natural and honourable channels of prudence and industry."¹ These were not political qualities, but social values of individual responsibility and integrity. Government in America was not their source. They sprang from the people through their own private and civil associations. But when government exercised power badly, it threatened to break up those "natural and honourable channels." State and society were not the same. It was not so long ago that this distinction was still part of American understanding.

In the earliest dictionaries of American English, the definition of self-government was not political, but reflected the same personal quality expressed by Findley—it was the "government of one's self." This remained true as late as 1959 when the Merriam-Webster dictionary defined self-government as "Self-control; self-command," and self-control meant simply, "control of one's self." The second definition followed, and is the one usually expressed today as majority rule. What was unusual for a dictionary

definition was that this second definition was made dependent on the first: “Hence, government by the joint action of the mass of people constituting a civil body; also, the state of being so governed; specifically, democratic government.” By the inclusion of “Hence,” the dictionary reflected the view that you could not have democracy or the rule of law without individuals capable of governing themselves. The present edition of the dictionary has dropped that beginning, and today, we appear to think primarily of the collective, governmental meaning of self-government.² Indeed, many current English dictionaries simply list majority rule as the only definition of the term. To recapture a sense of the older notion, we need to go back to a time when Americans still maintained a clear conception of themselves as a people composed of individuals capable of self-government.³ The American Revolution was the dramatic culmination of just such a moment.

I. The Objective of the Present Work

The Declaration of Independence holds “that mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed.” But when is the point surpassed where a people react to the frustrations of the day and take a chance on a new political order? Resisting the familiar, they might improve their lives or—just as likely—bring on something far worse. By what reasoning do they summon the courage to confront that uncertainty? This was the political and social dilemma facing the British colonists in North America in 1776. The Declaration was the synthesis of reasons and principles by which the colonists, united in a confederation of states, fortified themselves to plunge into the unknown condition of independence.

This work attempts to explain the basis for that decision by relating it to the essential themes running through Anglo-American political thought. The intention is not to be original, but rather to introduce the reader to the primary reasons underlying America’s resolve to declare for independence. Different schools of interpretation are introduced to illustrate the wide disparity of views among scholars, but the work is not meant to be an exercise in historiography. Rather it seeks to show that the leading contributions on the nature of the American Revolution in general, and the Declaration of Independence in particular, are actually component parts of a coherent liberal tradition that speaks directly to the meaning of self-government. For the better part of this century, scholars have variously characterized American revolutionaries as Lockean individualists,

Christian communitarians, civic republicans, or radical democrats to the point where many now simply assert that they were all these things and America has no coherent political identity.⁴ While not wishing to dismiss the observation that Americans approached the Revolution from many points of view, the notion that these characterizations represent incompatible strains of thought, without a common connecting tie, is unwarranted. Jefferson explained once very emphatically that the Declaration was “Not to find out new principles, or new arguments, never before thought of,” but rather to present “the harmonizing sentiments of the day, whether expressed in conversation, in letters, printed essays, or in the elementary books of public right, as Aristotle, Cicero, Locke, Sidney, &c.”⁵ This work takes that contention seriously.

II. The Historical Conversation

To begin any inquiry into the meaning of the Declaration, it is essential to explain the context that made the move to independence necessary. This is not an easy task, because the history of that endeavor has always been fraught with controversy. The reasons behind the drive for American independence form an essential part of the political identity of the United States, and the Declaration is a primary document in the continuing debate about who we are as a nation. The members of each generation have striven to discover for themselves the truth about the past. In the process, they necessarily engage previous historical interpretations in a conversation about the ideals to be expressed in our civil discourse. The continuous reinterpretation of events can give to history the appearance of so much subjective babble, which is frustrating for those who seek the definitive work. The lesson to be had, however, is not pessimism about history, or abandonment of scholarship, but the real importance of engaging the ongoing discussion about the meaning of America. This is the spirit in which the current work is offered. It is in the style of a comment raised in conversation, and should be viewed, not as a comprehensive examination of the history of the Declaration, but as an introduction to the dialogue about its origins, meaning, and place in American historical understanding. It attempts to draw the student and interested reader into the discourse about America’s founding documents by pulling together the major schools of interpretation in a way that emphasizes their points of congruence with regard to ideas of self-government and social order, while retaining a sense of their differences. The primary documents have, where possible, been taken from readily available collections to allow the reader

easy access to the original materials. The hope is to draw the reader into what should always be a lively and interesting discussion of the meaning of the United States and its institutions.

III. The Structure of the Argument

The approach of this work is to situate the Declaration in the argument between loyalist and patriot Americans. Among the most important aspects of this debate were the very different notions of social order held by those Americans who supported independence and those who contended against it. Often this division is interpreted as a split within a broader English Whig tradition, which is narrowly construed to mean the defenders of more popular representative government. In this case, one branch of the Whigs favored local colonial assemblies, while the loyalists are seen to have upheld the authority of Parliament.⁶ This study breaks from that view by looking deeper into the distinct notions of social order that gave meaning to the different camps' ideas of self-government and social order. The loyalists were Whigs by the standards of late eighteenth-century England, but that had come to mean that they supported rule by Parliament, whereas the patriots were in actuality Old Whigs who were opposed to the abuse of power and in favor of limited government. Since the Glorious Revolution in England (1688–89), the rise of Parliament witnessed a decline in the application of the original Whig critique of power, and its replacement by the notion of Parliamentary supremacy. Parliament, rather than the king, now occupied the principal place of power, and the social order was increasingly seen to be the consequence of Parliament's law. Therefore it can be said that "new" Whigs set their support for Parliament on a Tory foundation, substituting legislative supremacy for the divine right of kings. However, the Old Whigs, both in England and America, continued to hold that social order stemmed not from the government, but from the various institutions of society that had developed spontaneously in law, custom, and the market. They made a strong distinction between state and society that is largely lost today. This work will attempt to recapture a sense of that distinction and show how it rests at the core of both the Declaration and the original understanding of self-government.

By looking at the different conceptions of social order held by early English Tories and Whigs and their later loyalist and patriot counterparts in America, this study underscores the centrality of economic theory to early Whig thought. It was precisely because Whigs believed that large

segments of human life were not dependent on political governance, but formed a parapolitical dimension of human association, that they came to endorse the idea of limited and balanced government. The notion of rational self-interest operating through the economy was later supplemented by the Scots to include a “moral sense” that further vindicated the liberal arguments for a minimal state. It was this conception that informed the Whig idea of civil society and self-government in the eighteenth century, and it was the flourishing of such a society, predominantly self-regulating and composed of non-governmental associations and institutions, that gave meaning to the Whig ideal of “happiness.” The Tory perspective, on the other hand, evinced a profound mistrust of such a limited government. The Tories espoused the importance of an ultimate sovereign and supreme power at the head of a historically evolved governmental hierarchy in maintaining social order and stability. American loyalists adopted this Tory stance once the Revolution was underway, giving themselves over to long pronouncements against chaos and anarchy. Contrasting these two starkly different positions makes manifest the reasons for the confidence that resonates throughout the Declaration, and illuminates why American Whigs were so assured that they could go it alone without the imperial political structure so much revered by their loyalist adversaries.

Situating the story of the Declaration in this manner also allows for a general treatment of the major arguments about the meaning of the American Revolution and the Declaration by looking at the basic questions with which any student of the period should be well acquainted. The work thus serves as an introduction from which the interested reader can then move on to more specific treatments. The first chapter lays out a general outline of the history of the Revolution, introducing the major participants and answering in broad fashion the general question, Why the Revolution? It is here that the Whig and Tory, or patriot and loyalist, distinction is first made, and the reader introduced to some of the revolutionary literature written just prior to independence. The chapter ends on the eve of the Declaration. The second chapter then moves directly to the drafting of the document, its adoption by Congress, and the loyalist response.

This approach is unorthodox by the standards of previous studies, but valuable precisely because it begins, not with Jefferson’s preferred version of the Declaration, but with the final congressionally approved draft of the document that most people, then and now, read. After briefly recounting the story of the Declaration’s composition (a process that has been exhaustively studied elsewhere) the document is treated as the public, political expression it was intended to be.⁷ The loyalist reaction allows

for a serious appraisal of the various charges levied against the King of England, and sets in stark relief the different ways in which loyalists and patriots interpreted and used the constitutional history of the empire. For this endeavor, Thomas Hutchinson's *Strictures upon the Declaration of the Congress at Philadelphia* provides the window through which the loyalist position is evaluated, and answers the question, What were the patriots arguing for and against?

The third chapter addresses in detail the various strands of Whig political and social thought, and their influences on American Whigs in general and on Thomas Jefferson in particular. By keeping Jefferson's contribution as a mouthpiece of the American Whig tradition clearly in view, the book tries to avoid the pitfalls that come from his elevation to prophet. Jefferson's flair for just the right phrase, and his broad acquaintance with the ideas of the Revolution, made him the ideal choice for drafting the Declaration. Yet it was not *his* composition, so much as it was an expression of the American mind at the time, as he himself was keen to point out. Consequently, this chapter puts forward an explanation of how the Whig understanding of common law, of the ancient Saxon constitution, of the Christian religion, and of civic republican political institutions, melded with more current developments in natural law and political economy to form a coherent political tradition upon which Americans like Jefferson could draw. To illustrate this point, particular attention is focused on why Jefferson chose the phrase, "Life, Liberty, and the Pursuit of Happiness," rather than the traditional Lockean "Life, Liberty, and Estates." That understanding is then used to clarify the meaning of the Declaration's opening paragraphs. The main thrust of this chapter is to address the question, What is the meaning of the Declaration?

The fourth chapter develops around the enduring question, Was the Constitution of the United States a rejection or fulfillment of the meaning of the Declaration? It is here that the Whig understanding of the nature of power and the institutional mechanisms necessary for the protection of liberty are explored. The Declaration is not seen to be necessarily in conflict with the Constitution, but certain readings of the latter document might be. The Jeffersonian constitutional approach of strict construction, robust federalism, and a bill of rights is taken to be more in line with the spirit of 1776, and more in keeping with the original argument offered by Federalists at the time of ratification that theirs was a government of delegated powers only. It is during this stage that Jefferson's authorship of the Declaration became the focal point for the development of a distinctive political movement that eventually drove the Federalists from the

field in what Jefferson called the “Revolution of 1800.” Combining a strong sense of the powerful potentialities of a civil society of free individuals with a jealous regard for limiting political power, Americans molded Whig thought into a uniquely American form that can properly be called the Jeffersonian political tradition. That tradition was much more than just Jefferson, who became a symbol, along with the Declaration, of a movement that upheld, not just the Whig theory, but the American fact, of self-government.

The concluding chapter ends with a brief overview of the subject and observations about the course of development of our present understandings of the Declaration, government, and society. It intimates that certain gains for our current reading of the Constitution might be had from a more studied appreciation of the original Whig conception of social order that is embedded in the Declaration. While it is not itself part of the Constitution in any legal sense, the Declaration does provide a window through which to understand the original character of the later document and the purpose behind America’s political institutions. As an expression of a particular moment in Whig thought, the Declaration stands alone in its powerful integration of the different strands of the Whig tradition. While it was part of a long chain of written documents in English and American history, no other document did exactly what it did, and to that extent it was an original American contribution to western political thought.

IV. The Declaration of Independence in Perspective

The composition of the Declaration was the culmination of a synthesis of uniquely modern principles and profoundly ancient practices. The colonists were inheritors of a long tradition of parchment proclamations of rights, grievances, laws, and customs dating back at least as far as the beginning of the twelfth century to the coronation charter imposed by the English barons on King Henry I. This could be extended even further back when one considers that the practice of written law and legal codes is a fundamental part of the evolution of western law.⁸ From this perspective, the Declaration is simply another document in a long series by which people have attempted to appeal over the heads of tyrants to some notion of a higher authority. In the English Declaration of Rights in 1689, which set forth the wrongs of King James II and placed limits on the actions of future kings, the appeal was to the age-old practices of Parliament and tradition. The King was limited to acting in accord with procedures established over “time immemorial.” In the Declaration of Indepen-

dence the appeal was made to the authority of the “laws of Nature and Nature’s God,” and the opinion of the world. It was here that the American document was distinctly modern. Like its predecessors, the Declaration of Independence set forth the limits of power and called to judgment the King’s perceived violations of justice.⁹ Like the English Declaration of Rights, which provided one of many models for the author of our document, the Declaration of Independence was a legal brief presented to a court of higher authority.¹⁰ Its purpose was to set forth the reasons and principles upon which opposition to power was being conducted. It presented a historical case, and that case was itself rooted in an interpretation of the colonies’ proper relation to the mother country. But it was also profoundly modern in the way it judged the abuses of power. King and Parliament were not limited only by traditional practices. Rights were not merely the historical privileges of the barons, but were founded in nature and held by all individuals, inalienably. For government to violate these rights was to violate a universal sense of justice that was powerfully laden with implications about the nature of human society and liberty. If the charges against the King of England in the Declaration of Independence are to be believed, the unfolding of imperial policy after 1760 constituted an affront to the moral life of a free people.

Historians now recognize that British imperial designs towards America began to change well before the French and Indian War, but the American perception of that change did not reach crisis proportions until the Stamp Act of 1765. It is with this act that the first historians of the Revolution generally start their narratives, and is a good place to initiate an examination of the specific claims leveled against the British Empire in the Declaration, weighing them against the counterarguments of the loyalists.¹¹ From here, we can move to an evaluation of subsequent historical interpretations that attempt to further elucidate the underlying causes of American resistance, and take a closer look into the sources influencing Jefferson’s authorship. What becomes apparent is the fundamental importance to the American colonists of the need to limit the use of political power in society. This translated into a strong attachment to certain Whig principles of order and liberty that were assumed implicitly in the early debates between patriots and loyalists. The conversation thus comes full circle to convey the primary importance of the first arguments against parliamentary power for understanding the political tradition inaugurated by the Declaration. That tradition shaped the constitutional era that followed and provides the measure by which we can gauge our own fidelity to the concept of self-government that comprises the essence of the Declaration.

Chapter 1

“A History of Repeated Injuries”: The Designs of Empire

The Declaration of Independence puts forward, in its final congressionally approved form, a list of some nineteen violations of American rights, including nine subcategories in the thirteenth charge. The list draws from the experiences of all thirteen colonies over an extended period of time. The charges against the crown ranged from the most general neglect on the part of the King in approving laws passed by colonial legislatures, to the very specific charges of raising foreign troops and inciting American Indian tribes against the colonists. These charges, when published, were attacked by loyalist writers as vague and unsubstantiated or simply dismissed as false. To properly assess the Declaration and the counterclaims of detractors, it is necessary to retrace the source of American discontent within the empire. The political perception of the American people was shaped by the course of British attempts to raise revenue from them, and it was in the unfolding of events after 1750 that Americans detected the designs of empire. That perception prompted the colonists' efforts to understand the nature of power and its relation to liberty and society, and sparked a remarkable debate among Americans between those who wanted to preserve imperial authority and those who sought to check its extension and consolidation in the colonies. Over the course of these debates, we increasingly see American resisters to British authority incorporating historical, customary, and constitutional arguments with assertions of natural law and natural rights. Their opponents, on the other hand, appear to rely almost exclusively on historical precedent and the necessity of maintaining the existing imperial hierarchy for the preservation of society.

I. The Origins of Imperial Reform

Often historians explain the Revolution as a response to the British Parliament's attempt to find tax revenue to pay for the Seven Years War,

or as it was called in America, the French and Indian War, in which the French were roundly defeated in North America by 1760. This argument was originally raised by loyalists and Parliamentarians who contended that the colonists were ungrateful for the defense of their settlements by England, and were unwilling to pay their fair share of the expenses. Revolutionary writers felt duty-bound to refute this charge and asserted that the colonists had willingly shed sufficient quantities of their own blood and treasure on behalf of the King. As a result of this controversy, historians often assumed the accuracy of the claim that the debt from the war led to a change in imperial policy, which in turn led to the war for independence.¹

More recently this interpretation has been revised, and the new perspective actually comports better with the understanding of the Revolutionaries. Rather than seeking revenue to pay the debts of war, Parliament was attempting to streamline and strengthen its control over the empire. This move predated the French and Indian War by nearly a decade, extending back to the policies of Henry Pelham's administration under George II, beginning with the substantial electoral victories of Pelham's party in Parliament in 1747.² The following year, the Treaty of Aix-la-Chapelle brought a temporary close to hostilities that had been raging since 1739 between France and England. Now, for the first time since the establishment of the colonies, there were no significant internal political divisions in England to distract the attention of Parliament, and no wars outside to channel off imperial energies. The colonists were not far off when they claimed to have detected a design "pursuing invariably the same object."

Since about 1720, the activities of the Board of Trade and the enforcement of the Navigation Acts had been intermittent and minimal. The colonists had been, for all intents and purposes, left to fend for themselves. Edmund Burke called this period a time of "wise and salutary neglect," but it was not what Pelham and the ministry wanted. The hope of imperial administrators was to reinvigorate central controls over North America to prepare for future international conflicts, and it was a significant source of anxiety that the colonists were becoming increasingly populous and prosperous. As one historian has pointed out, many in England believed that if the American colonies were not quickly reined in politically, they would soon be ungovernable by the mother country.³

After 1748, the Board of Trade under the leadership of Lord Halifax began a more vigorous supervision of its colonial responsibilities, including the strengthening of Nova Scotia by the promotion of further settlement through a parliamentary subsidy for colonists willing to settle in the

territory. The Board also instructed the royal governors of the colonies to assent to no laws which contradicted imperial policies and the laws of Parliament. The problems of managing the colonies were staggering, and the newly invigorated Board of Trade came up against the realities of colonial obstinacy and an increasing volume of complaints from royal governors. Despite these obstacles, the Board was still able to get certain measures through Parliament with the support of the Pelham Administration. Most important of these was Parliament's prohibition in 1751 of the use of paper money as legal tender in the New England colonies. A year later this was followed by additional grants of power to the Board of Trade. Henceforth, the Board would have sole power to appoint royal governors, attorneys general, secretaries, and councilors, and these would all answer directly to the Board. Before the effectiveness of these new powers could be properly assessed, the empire was plunged into yet another conflict with France in 1756. Once more in need of colonial support to prosecute imperial aims in North America, the Board of Trade relaxed its power and the colonists were spared the full brunt of England's determination to regulate them until the French defeat of 1760. Now the British Empire would attack colonial administrative problems with renewed vigor, and with the presence of the victorious imperial army in the colonies and the royal navy along the coast, conditions seemed especially well suited to the task. The moment was at hand, or so it appeared, for England to make good on its administrative designs.⁴

II. The Application of Imperial Policy

In 1763, the King and Parliament were ready to resume strengthening the central administration of the colonies. A number of policy decisions and parliamentary acts were annoyances, but did not offer clear grounds for a unified colonial protest. The prohibition on paper money, for instance, was extended to include all the colonies. The usefulness of paper currency had declined with the war's end, but the ban continued to be a point of irritation with the colonists. Another act sought to alleviate tensions with the Indian tribes by restricting western settlement to the pre-war British Appalachian border, but this irritated mainly western interests, and was generally ignored besides. More aggravating was enforcement of the White Pines Act. That law had been designed to protect wood supplies for imperial war ships by prohibiting colonists from cutting white pine trees that were not on privately owned land within a recognized township. It had been invoked only intermittently over the years, but in 1763 the Surveyor for the Crown began taking the new policy more