



1966

John Locke and the Declaration of Independence

Kenneth D. Stern

Follow this and additional works at: <http://engagedscholarship.csuohio.edu/clevstlrev>

 Part of the [Legal History Commons](#)

How does access to this work benefit you? Let us know!

Recommended Citation

Kenneth D. Stern, John Locke and the Declaration of Independence, 15 Clev.-Marshall L. Rev. 186 (1966)

This Article is brought to you for free and open access by the Law Journals at EngagedScholarship@CSU. It has been accepted for inclusion in Cleveland State Law Review by an authorized administrator of EngagedScholarship@CSU. For more information, please contact library.es@csuohio.edu.

John Locke and the Declaration of Independence

Kenneth D. Stern*

IN AN ARTICLE¹ published in the *Journal* of the American Bar Association in 1949, Dean Clarence Manion, then Dean of the College of Law of the University of Notre Dame, stated, "It is misleading to attribute the philosophy of the Declaration (of Independence) to the writings of John Locke." In support of his contention, he quoted Locke's *Second Treatise* of Government,² wherein Locke, in Section 95, states that once men enter into a community or government for the serving of their mutual interests, "the majority have the right to conclude the rest." Dean Manion feels that Locke thereby implies that the rights of minority groups and even of individuals are thus subordinated to the dictates of the majority.

Dean Manion then quoted a letter written by Jefferson to Francis W. Gilmer on June 7, 1816, in which Jefferson said:

Our legislators are not sufficiently apprised . . . that their true office is to declare and enforce only our natural rights and duties and take none of them from us. No man has a natural right to commit aggression on the equal rights of another and this is all from which the laws ought to restrain him. . . . When the laws have declared and enforced all this, they have fulfilled their functions, and the idea is quite unfounded that on entering into society they give up any natural right.

Dean Manion thus concluded that Jefferson's philosophy contrasts sharply with the Lockian creed. A more thorough examination of Locke's writings, however, tends to lead to the opposite conclusion.

Locke's Concern for the Protection of the Minority

In *A Letter of Toleration*,³ Locke criticizes the tendency of many of his contemporaries to condemn those of Roman Cath-

*A.B., Ohio University; Third-year student at Cleveland-Marshall Law School of Baldwin-Wallace College; Law Clerk with the Firm of Hribar & Conway (Cleveland).

¹ Manion, *The Founding Fathers and the Natural Law: A Study of the Source of Our Legal Institutions*, 35 A.B.A.J. 461, at 463-464 (1949).

² The *Second Treatise* is also known by its subtitle, "An Essay Concerning the True Original, Extent and End of Civil Government."

³ First published in 1689.

olic, Jewish, “Mahometan” and Pagan beliefs, saying that it is an essential element of Christianity that the right of any man to his own beliefs be respected. This is not the philosophy of a man who would ignore the rights of minorities; if a man has a tolerance of the views of others when dealing with the emotional field of religion, is he not likely to show the same open-mindedness regarding men’s political convictions?

Returning to the *Second Treatise*, there appears, at the end of Section 121, a further illustration of Locke’s belief that the majority, through its government, cannot rightfully subvert the rights of the minority. Locke says that, once a man enters into the compact by which he surrenders his natural rights to the protection of the body politic, he has not given up his right to return to “the liberty of the state of nature.” There are two happenings, the occurrence of either of which will *ipso facto* justify such a return: (1) where the government is dissolved by some calamity, or (2) where the government, “by some public acts, cuts him off from being any longer a member of it.”

Thus, Locke provides for a rational “escape route” from the “tyranny of the majority” to which De Tocqueville referred in criticizing Rousseau’s theory of majority rule under the general will. Locke *does* say that the majority decides issues, but he also says that a government, in violating an individual’s natural rights, simultaneously betrays the trust placed in it by him, and justifies him in considering himself no longer bound to obey that government’s laws.

The Declaration of Independence Seems to Echo Locke

To dramatize further the intimate relationship, both in thought and in language, between Locke’s writings and the Declaration, a juxtaposed examination of selections from both is revealing:

<i>The Declaration</i>	<i>Locke’s Second Treatise</i>
. . . All experience hath shewn that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed The people are very seldom or never nice in the point or questioning of (executive) prerogative whilst it is any tolerable degree employed for the use it was meant—that is, the good of the people, and not manifestly against it. (Sec. 161)

People are not so easily got out of their old forms (of government) as some are apt to suggest. They are hardly to be prevailed with to amend the acknowledged faults in the frame they have been accustomed to. And if there be any defects, . . . 'tis not an easy thing to get them changed, even when all the world sees there is an opportunity for it.

(Sec. 223)

. . . Till the mischief be grown general, and the ill-designs of the rulers become visible, or their attempts sensible to the greater part, the people who are more disposed to suffer than right themselves by resistance are not apt to stir.

(Sec. 230)

. . . But when a long train of abuses and usurpations, pursuing invariably the same object evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. . . .

But if a long train of abuses, prevarications, and artifices, all tending the same way, make the design visible to the people . . . 'Tis not to be wondered that they should then rouse themselves and endeavour to put the rule into such hands which may secure to them the ends for which government was at first erected . . . (Sec. 225)

Further similarities in phraseology could be shown, but it is assumed that the above passages make the point. It has been said that, in writing the Declaration of Independence, "Jefferson had . . . succeeded admirably in condensing Locke's fundamental argument into a few hundred words."⁴

⁴ Alfred H. Kelly & Winfred A. Harbison, *The American Constitution: Its Origins and Development*, 90 (3rd ed., N. Y., 1963).

Nor is the Declaration of Independence alone in bearing such a similarity to Locke's writings. The Virginia Bill of Rights, adopted June 12, 1776, acknowledges the natural equality and freedom of all men, and speaks of the inherent rights which all men possess, and which they retain even after their entrance into "a state of society." The "Declaration and Resolves of the First Continental Congress," which predates the Declaration of Independence by almost two years, says that the colonists "by the immutable laws of nature . . . are entitled to life, liberty, and property. . . ."

Those last words indicate that the words "the pursuit of happiness" do not constitute a departure in the Declaration of Independence from the property theories of Locke, but are, rather, a delineation of "property rights" as Locke explained them.⁵ Locke speaks of the property a man has in his person, by virtue of his ability to make land more profitable by his labor.⁶ In Section 6 of the *Second Treatise*, Locke refers to the need for "the preservation of the life, the liberty, health, limb or goods" of the individual. Thus the reference even in the United States Constitution concerning "life, liberty, and property" can also be said to have been taken directly from Locke.⁷

All of this is not to say that Locke alone influenced the philosophy of the Founding Fathers. Natural law can be traced to the philosophy of Aristotle, who advised lawyers to resort to arguments based on the laws of nature whenever they found themselves backed into a corner in legal debate.⁸ Jefferson himself cited the works of writers from Aristotle to Locke as being "elementary books" for eighteenth-century Americans.⁹

Jefferson insisted that he "turned to neither book nor pamphlet" in writing the Declaration of Independence.¹⁰ He, however, did not deny that he had been influenced by the thoughts of others. He says, "Whether I had gathered my ideas from reading or reflection I do not know. I know only that I turned to neither book nor pamphlet while writing it. I did not consider

⁵ Adrienne Koch, *Jefferson and Madison*, 78-79 (N. Y., 1950).

⁶ *Ibid.*

⁷ J. A. Corry, *Elements of Democratic Government*, 89 (N. Y., 1951).

⁸ John C. Miller, *Origins of the American Revolution*, 171 (Boston, 1943).

⁹ See Randolph G. Adams, *Political Ideas of the American Revolution*, 26 (3rd ed., N. Y., 1958).

¹⁰ In a letter to James Madison, August 30, 1823. (Dean Manion quotes this phrase in supporting his argument).

it as any part of my charge to invent new ideas altogether and to offer no sentiment which had ever been expressed before.”¹¹ Thus, one sentence, when considered in its original context, takes on a very different meaning than it seems to have when plucked from its environment and made to stand alone.

Jefferson's References to Locke

Other sources offer further evidence of Locke's impact on Jefferson's thinking. On June 7, 1816, Jefferson, in a letter to Francis W. Gilmer, expressed his concern that the nation's legislators were “not sufficiently apprised of the rightful limits of their power.” Jefferson expressed his conviction that a legislator's sole duties are the declaration and enforcement of “our natural rights and duties,” and that no government has the right to take any of these rights and duties from the people. These sentiments are a mere paraphrasing of Locke's statements in Section 222 of the *Second Treatise*. Moreover, Locke's justification of rebellion¹² is based on this very same line of reasoning. The “theory of revolt,” as it has been called, is referred to as one of the most significant elements of his philosophy, “because of its influence on Jefferson and others.”¹³

It cannot be denied that Jefferson was aware of Locke, or even that he was in deep sympathy with the Lockian philosophy. In *Notes on Religion*,¹⁴ Jefferson cites Locke's theories of religious toleration. About nine years prior to the writing of the Declaration of Independence, Jefferson drew up a reading list “for the use of a young friend,” in which he listed various books in a recommended curriculum. Under the heading “Politics” he cites *Locke on Government*, and under “Ethics and Natural Religion,” he lists *Locke's Essay* and *Locke's Conduct of the Mind in the Search After Truth*. Years later, in 1825, Jefferson set forth certain of the recommendations of the Board of Visitors of the University of Virginia, stating in “Political Science”:

. . . It is the opinion of this Board that as to the general principles of liberty and the rights of man, in nature and in society the doctrines of Locke, in his “Essay concerning the true

¹¹ *Ibid.*

¹² Section 220 of the *Second Treatise*.

¹³ Lawrence C. Wanlass, *Gettell's History of Political Thought*, 225 (2d ed., N. Y., 1953).

¹⁴ Written c. October 1776.

original extent and end of civil government," and of Sidney in his "Discourses on Government," may be considered as those generally approved by our fellow citizens of this, and the United States, and that on the distinctive principles of the Government of our State, and of that of the United States, the best guides are to be found in, The Declaration of Independence, as the fundamental act of union of these States . . . (naming others) . . . And that in the branch of the School of Law, which is to treat on the subject of civil polity, these shall be used as the text and documents of the school.

An Ideology Outgrows its Creators

Jefferson's failure to confer specific recognition on Locke as the source of many of the ideas found in the Declaration of Independence is not necessarily dispositive of the question of Locke's contribution to that document. Whenever a great consensus sweeps over large areas of the earth, whenever a new movement, fired with seemingly revolutionary ideas, captures the minds of many contemporary leaders, the tendency is not to dwell on the source-spring of that ideology, but rather to concentrate on shaping the events which are certain to follow. We need look only to the great civil rights revolution which is now taking place to see that this is so.

The "passive resistance" movement currently led by the Rev. Martin Luther King did not begin with him; it began years ago, and, seemingly, no one man could be said to have been the sole originator of the movement. Yet its principal exponent for many years was India's Gandhi, who, inspired by the ideology, left a flourishing law practice in South Africa to return to his homeland, where he preached "Satyagraha," or "passive resistance." While Gandhi coined the term by which the movement was known in India, he acknowledged that the philosophy had been used by Indians living in South Africa for eight years prior to Gandhi's becoming directly involved with it.¹⁵ Although the leaders of the "American Negro Revolution" have referred to Gandhi's philosophy, they are clearly less concerned with mere

¹⁵ Houston Peterson (ed.), *A Treasury of the World's Great Speeches*, 728 (N. Y., 1954). Satyagraha differed from what was then called "passive resistance" in that it was not intended to do harm to the opponent, but to "wean" the opponent "from error by patience and sympathy."

theoretic philosophizing than they are with utilizing the philosophy to meet their practical objectives.¹⁶

In other words, when a fire spreads, people worry about the blaze more than they do about the spark which ignited it. And, like a wildfire, a great idea or philosophy can set the world ablaze, not with flames, but with thoughts and ideas. Frequently, the original exponents of an ideology receive only a tacit recognition, if indeed they receive any at all, from those who eventually act to make the dream a reality. Yet the effect which Locke had, not only on Jefferson, but on all his contemporaries, has been so readily acknowledged and so frequently documented, that it cannot seriously be questioned.

Reliance on Locke by Revolutionary Patriots

When, in 1774, the Congress was meeting in Philadelphia's Carpenter's Hall, where the City Library was also located, the delegates made "great and constant use" of the library facilities, referring chiefly to Vattel, Barlemaqui, Locke and Montesquieu.¹⁷ Thomas Paine, one of the colonial era's foremost opinion-makers, and a strong influence on Jefferson's political philosophy,¹⁸ can be seen to concur with Locke on the existence of natural rights in all men, and on the belief that the society into which a man voluntarily enters for the purpose of gaining the power to execute his natural rights has no right to take those rights from him, since the "society grants him nothing." The fact that a man is a part of his society gives him the right to "draw on the capital" thereof.¹⁹

¹⁶ In a recent interview, Dr. King said, "We should not forget that, although nonviolent direct action did not originate in America, it found a natural home where it has been a revered tradition against injustice." From an interview in *Playboy Magazine*, January, 1965, at p. 68. (It is interesting to note Dr. King's natural law philosophy, where he says, at p. 71, "There are two kinds of laws: man's and God's. A man-made code that squares with the moral law, or the law of God, is a just law. But a man-made code that is inharmonious with the moral law is an unjust law. And an unjust law, as St. Augustine said, is no law at all. Thus, a law that is unjust is morally null and void, and must be defied until it is legally null and void as well.")

¹⁷ According to a letter written by William Bradford to James Madison on October 17, 1774. See William T. Hutchinson & William M. E. Rachal, ed., *The Papers of James Madison*, 126 (Chicago, 1962).

¹⁸ Wanlass, *op. cit. supra* n. 13 at p. 328.

¹⁹ Nelson F. Adkins (ed.), *Thomas Paine, Common Sense and Other Political Writings*, 84-85 (N. Y., 1953).

John Dickinson, a prominent attorney during the Revolutionary period, had long been a fierce opponent of the “abuses and usurpations” against which the Declaration inveighed. In opposing the British effort to impose the stamp tax on the colonists, Dickinson is said to have “relied solidly upon John Locke.”²⁰ In an essay entitled *The Rights of the Colonists*, dated 1772, Samuel Adams cites Locke’s notions of religious toleration, wholeheartedly endorsing them and referring to mutual toleration among men of all faiths as “the chief characteristic mark of the true church.”²¹ In that same essay, Adams quotes directly from Locke’s *Second Treatise*, Sections 134, 136, and 142.²²

Benjamin Franklin so admired Locke’s opinions as expressed in the *Essay on Human Understanding* that he suggested that it be read in the Philadelphia Academy.²³ John Adams, in his *Dissertation on the Canon and Feudal Law* (1765), paraphrased Section 168 of the *Second Treatise* in referring to the divine origin of the natural law. In that same dissertation, Adams also echoed section 121 of the *Second Treatise*²⁴ when he spoke of the right of the people to “revoke (the) authority that they themselves have deputed” (to their rulers), if those rulers, who are but their “agents, attorneys and trustees,” should violate the natural rights of the people.

In the *National Gazette*,²⁵ on February 20, 1792, there appeared a short essay entitled, *On Types of Government*, in which the author, James Madison, stated that Locke had established an “immortal system,”²⁶ and the brilliant James Wilson traced his own theory “back through Vattel and Locke,” which is said to be

²⁰ Dan Lacy, *The Meaning of the American Revolution*, 102 (N. Y., 1964).

²¹ Saul K. Padover (ed.), *The World of the Founding Fathers*, 99 (N. Y., 1960).

²² *Id.* at 101-102.

²³ *Id.* at 40.

²⁴ Discussed *supra*, in the table comparing the *Second Treatise* and the *Declaration*.

²⁵ This was a newspaper, published in Philadelphia by Philip Freneau, a highly prominent journalist and printer. It was the voice of the republican cause, and was strongly supported by Jefferson and Madison, who contributed many articles to its pages. The publication’s principal *raison d’être* was that of answering the anti-republican tirades in the *Gazette of the United States*, edited by John Fenno and under the influence of Alexander Hamilton, who opposed democracy and favored establishment of an oligarchical form of government.

²⁶ Padover, *op. cit. supra* n. 21, at p. 350.

“typical of the political philosophy of the Revolutionary period in America.”²⁷

Summary: Locke and the Justification of the American Revolution

Indeed, it has been said that Locke, more than any other writer, was the authority referred to in order to justify the Revolution itself.²⁸ The brief outline of Revolutionary contemporary references to, and citations of, the Lockian philosophy, as above presented, is eloquent testament to the tremendous impact which one man can make.

Locke had stated that when an executive acts for his own benefit, rather than to serve the ends of the people, he “degrades himself” and becomes “but a single private person without power,” at which point he no longer has any right to rule over the people.²⁹ By asserting the right to rebel against an unjust government, Locke gave the colonists a “matchless arsenal” in their struggle.³⁰ Locke’s concise but eloquent declaration of the individual man’s inherent rights changed what had been a sentiment into a burning conviction. Individuals like the pragmatic Dr. Franklin, who had been reluctant to renounce their ties with the British crown, eventually were engulfed in the rising tide of revolution.³¹ Whereas, in 1765, Patrick Henry incurred the wrath of many of his contemporaries in the House of Burgesses of Virginia by his blunt denunciation of the Stamp Act, the same man was able, many years later, to stir his fellow Virginia delegates to the Continental Congress with his eloquent advocacy of rebellion. Although, in the former instance, he had felt compelled to say, “if this be treason, make the most of it,” he could, in the latter, be certain of the concurrence of all his colleagues as he declared, “Give me liberty or give me death!”³²

Locke’s justification of revolt, as based on his theory of natural rights, was the background from which the Declaration sprang. From this background came also the Bills of Rights of

²⁷ Adams, *op. cit. supra* n. 9, at p. 160.

²⁸ Friedenwald, *op. cit. supra* n. 20, at p. 197.

²⁹ *Second Treatise*, Sec. 151.

³⁰ Padover, *op. cit. supra* n. 21, at p. 40.

³¹ Verner W. Crane, *Benjamin Franklin and a Rising People*, esp. chaps. VI-IX (Boston, 1954).

³² Peterson, *op. cit. supra* n. 15, pp. 139-142.

the several states, and the Bill of Rights of the United States Constitution.³³

The Declaration of Independence, as drawn up by Thomas Jefferson, was the final proof—if Englishmen needed any proof—that the doctrines of John Locke could be made to serve the purposes of revolutionists everywhere. . . . The American mind of 1776 was saturated with John Locke. The Declaration frequently repeats even the phraseology of the philosopher of the “glorious revolution. . . .”³⁴

³³ Edgar Bodenheimer, *Jurisprudence: The Philosophy and Method of the Law*, 50 (Cambridge, Mass., 1962); Sir Frederick Pollock, “Locke’s Theory of the State,” *Proceedings of the British Academy*, 1903-1904 (Read October 28, 1904) at 249.

³⁴ Miller, *op. cit. supra* n. 8, at pp. 491-492.

Additional Bibliography

Henry Steele Commager, *Documents of American History* (7th ed., N. Y., 1963).

R. W. M. Dias, *Jurisprudence* (London, 1964).

Edward Dumbauld (ed.), *The Political Writings of Thomas Jefferson* (N. Y., 1955).

Saul K. Padover (ed.), *The Complete Jefferson* (N. Y., 1943).

Saul K. Padover (ed.), *The Living U. S. Constitution* (N. Y., 1953).

George H. Sabine, *A History of Political Theory* (3rd ed., N. Y., 1961).