

REMEMBERING JEFFERSON

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The College of William and Mary first celebrated its relationship with Thomas Jefferson by conferring an honorary degree upon him in 1783.¹ He was then forty-one years old, a former Governor of the Commonwealth, and about to set sail for France to assume his duties as a diplomat. He had then already achieved the deeds for which most of us honor him still in 1993, 250 years after his birth, and the bothersome inconsistencies and dyspeptic utterances that are too often the wages of longevity had not yet appeared.

As a law teacher, I may perhaps be forgiven for noting that in 1783, Mr. Jefferson was still personally, politically, and intellectually close to George Wythe, who was for five years his law teacher and was his "second father."² Wythe was a member of the drafting committees that assisted Mr. Jefferson in writing both the Declaration of Independence in 1776 and the Virginia statute on religious freedom drafted in 1777 and enacted in 1786.³

Mr. Jefferson's talents were, of course, legendary, but there is neither need nor reason to celebrate them now. Monticello and the grounds of the University of Virginia, spoken of by its members as "his" University, attest to his artistic virtuosity. His exceptional skill as an agronomist in developing a strain of rice for the uplands, his stature as a leading paleontologist of his time, and his talents as an inventor of scientific instruments need no attention in 1993, because his reputation as one of the large intellects of the 18th century is quite secure. Abigail Adams, the wife of John, spoke the judgment of history when she described Mr. Jefferson as "one of the choice ones of the Earth."⁴

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¹ 1 DUMAS MALONE, *JEFFERSON AND HIS TIME* 422 (1948).

² That term was employed by Jefferson's eulogist; it aptly describes the relationship. See IMOGENE E. BROWN, *AMERICAN ARISTIDES* 270 (1981).

³ The statute is set forth in full in FRANK SWANCARA, *THOMAS JEFFERSON VERSUS RELIGIOUS OPPRESSION* 7-9 (1969).

⁴ Letter from Abigail Adams to her sister (May 8, 1785), in *LETTERS OF MRS. ADAMS*, at 292 (Charles C. Little & James Brown eds., 1840).

Nor is there a reason at this time to revisit Mr. Jefferson's oral utterances. As a public speaker, he was notoriously diffident. As a holder of public office, he was remarkably lacking in self-importance. His inauguration as President in 1801 is illustrative and may be contrasted to the spectacles of presidential inauguration that we have come to expect. On inauguration day in 1801, Mr. Jefferson delivered only a few brief remarks of conciliation to his Federalist adversaries. His remarks were said to have been unheard by the audience, so reticent was the speaker. He then returned to his boarding house to stand in line for dinner.⁵

Neither are Mr. Jefferson's literary efforts especially worthy of our attention today. In one respect, it is tempting now to review that part of his work animated by feelings that one commonly hears expressed. His first serious literary project was a survey of grammar for the Anglo-Saxon language,⁶ prepared in the hope that it might encourage his countrymen to find in pre-Norman England a body of customary law that could be Americanized. It could then form the basis for a more democratic, less hierarchical, and less "Eurocentric" law than that being received in the form of William Blackstone's *Commentary on English Law*.

His second book, better known, was *Notes on Virginia*,⁷ in which he undertook to explain the contemporary institutions of this Commonwealth as a product of their time and place. *Notes on Virginia* was an early proclamation of the cultural relativity of law, and it could in a sense be admired as "post-modern," the mark of intellectual trendiness for our own time.

A contemporary reviewer of these works might emphasize that Mr. Jefferson was, by his own lights, anything but a Eurocentrist. His other writings also are replete with expressions of mistrust of European institutions. He described Europe as a great mad house afflicted with a "paroxysm [of] insanity."⁸ He wrote from Paris to the William and Mary professor of modern languages:

But you are, perhaps, curious to know how this new scene has struck a savage of the mountains of America. Not advantageously, I assure you. I find the general fate of humanity here most deplorable. The truth of Voltaire's

⁵ See 4 DUMAS MALONE, *JEFFERSON AND HIS TIME* 29 (1970).

⁶ Thomas Jefferson, *Essay on the Anglo-Saxon Language*, in 18 *THE WRITINGS OF THOMAS JEFFERSON* 365 (Andrew A. Lipscomb ed., 1907).

⁷ 2 *THE WRITINGS OF THOMAS JEFFERSON* 1 (Andrew A. Lipscomb ed., 1904). This work was published in French in 1784.

⁸ Letter from Thomas Jefferson to General Armstrong (May 2, 1808), in 12 *THE WRITINGS OF THOMAS JEFFERSON* 43 (Andrew A. Lipscomb ed., 1905).

observation, offers itself perpetually, that every man here must be either hammer or anvil.⁹

Mr. Jefferson strongly counseled his friends not to send their adolescent sons to Europe to study, lest they be afflicted with European manners and ideology. In another letter written from Paris in 1785, he conceded that one might learn a continental language better by speaking it to natives, but affirmed that, "every other article can be as well acquired at William and Mary College as at any place in Europe."¹⁰ He then made what he described as a partial list of the disadvantages of studying in Europe:

He acquires a fondness for European luxury and dissipation and a contempt for the simplicity of his own country; he is fascinated with the privileges of the European aristocrats, and sees with abhorrence the lovely equality which the poor enjoys with the rich in his own country[;] [h]e is led by the strongest of all the human passions into a spirit for female intrigue, destructive of his own and others['] happiness, or a passion for whores destructive of his health, and in both cases learns to consider fidelity to the marriage bed as an ungentlemanly practice . . . ; he returns to his own country, a foreigner . . . [A]n American coming to Europe for education loses in his knowledge, in his morals, in his health, in his habits, and in his happiness.¹¹

Mr. Jefferson's Europhobia apparently was different in one important respect from its contemporary counterpart. He sought to establish and preserve an American culture that would unite his fellow Americans and strengthen their nascent democratic institutions. He feared Europe as a source of class distinctions and tribalism. Mr. Jefferson likely would not have sympathized with today's Europhobes who invoke the European origins of American culture as a reason to nurture new subcultural or tribal secessions. Indeed, he would have perceived them as a manifestation of one of the most objectionable features of European culture.

⁹ Letter from Thomas Jefferson to Professor Bellini (Sept. 30, 1785), in 5 THE WRITINGS OF THOMAS JEFFERSON 151-52 (Andrew A. Lipscomb ed., 1905).

¹⁰ Letter from Thomas Jefferson to John Bannister, Jr. (Oct. 15, 1785), in 8 PAPERS OF THOMAS JEFFERSON 635 (Julian P. Boyd ed., 1953). See also Letter from Thomas Jefferson to Walker Maury (Aug. 19, 1785), in *id.* at 409.

¹¹ Letter from Thomas Jefferson to John Bannister, Jr., *supra* note 10, at 636-37.

I will not pursue that point further, in part because Mr. Jefferson would have been impatient with it. He had little interest in perpetuating most of his ideas, for he cherished the right of future generations to remake America according to its own lights. Neither was he interested in the pedigree of ideas, for he was, if nothing else, a pragmatist who judged ideas by their worth, not their source.

Nevertheless, and despite his modesty of manners, in his last years Mr. Jefferson was keenly interested in how we might remember him today. If he did not seek popular acclaim in his own time, he nevertheless sought the acclaim of future generations for at least a few of his ideas. With age, he became a man to design his own tombstone. He asked us to remember him for three achievements: for his authorship of the Declaration of Independence, and the Virginia statute proclaiming freedom of religion, and for his role as founder of the University of Virginia.¹²

A great university did arise in Charlottesville, and it will never cease to call Mr. Jefferson its father. Its association with him was surely one cause of its success. Although the creation of the University was his principal public activity in the last decade of his life, he did, in truth, leave but a small distinctive mark on its program. Admirable as "his" University is, it is not the university that Mr. Jefferson dreamed that he had created, foremost because the University of Virginia did not find another George Wythe and hence was unable in their early years to achieve the most important of his plans—placing law at the center of the university curriculum.¹³ To the extent that his thinking presently influences his university, it is largely because he has influenced us all.

We should, in our time, say more of the Virginia statute on religious freedom. The entablature on the Jefferson Memorial captures not only Mr. Jefferson's sentiment on religious freedom but embodies a civilizing attitude that needs currency in many places in 1993. "I have sworn on the altar of God eternal hostility to every form of tyranny over the mind of man."¹⁴ Would that we could find a few more Jeffersonians today in Belgrade! And in so many other places: in Bombay and Srinagar, in Teheran and Cairo, in Khartoum, in Yerevan and Baku, in Phnom Penh, in Jerusalem, everlastingly in Belfast, and wherever men and women are killing and torturing others as a means of reconfirming their faiths and their tribal impulses. Is there a place in the world that does not need, does not badly need, a Jefferson memorial?

¹² These are the events noted on the tombstone designed by him and located at Monticello.

¹³ An account of Mr. Jefferson's plans for the University is set forth in HERBERT B. ADAMS, *THOMAS JEFFERSON AND THE UNIVERSITY OF VIRGINIA* (1888).

¹⁴ The quoted text is engraved on the Jefferson Memorial in Washington, D.C.

Mr. Jefferson needs to be heard still in America, for example, on the picket lines surrounding abortion clinics and even the homes of doctors. Mr. Jefferson would surely have supported the right of those opposing the legality of abortions to express their views, especially insofar as those views are rooted in religious convictions. But many are now expressing their views in such extreme terms, and by such intrusive means, that they are oppressing fellow citizens for their failure to share in those religious convictions. Those who engage in such persecution need desperately to be re-educated by Mr. Jefferson's law on religious liberty.

So, too, do others in America, and perhaps most of all in our universities. Religious convictions, when taken to excess, are not alone among threats to the Commonwealth. Mr. Jefferson taught political, as well as religious, tolerance. The French Revolution began with Mr. Jefferson's enthusiastic approval, but it lost his support when it became infected, as do so many of our causes, with excessive zeal—when the secular fundamentalists, Marat, Danton, and Robespierre, guillotined ordinary citizens and even penniless prostitutes on allegations that they had uttered the hateful words, “Vive le roi,” or “Long live the King.”

Such a spirit of moral excess always begets its like in those who are condemned. Like most fashions, it crossed the Atlantic and produced in America a time of violent language. Imagine the President of your College today uttering the words of the President of the College of North Carolina in Chapel Hill when in 1798 he was dissatisfied with the failure of the legislature to appropriate money for his school: “Be assured,” he told the legislature:

the stupidity of your politics shall be known The grave may open to you a retreat from public anger and contempt, [but] you shall live [as] notorious monuments of that vileness, into which a sinister, a malignant and insidious warfare against the good of the country must very shortly descend.¹⁵

Such verbal excess in Mr. Jefferson's time was often deployed on both sides of public issues, and such practice gave rise to the Sedition Act of 1798.¹⁶ This was the “hate-speech” legislation of its time, forbidding as it did the expression of certain political sentiments uncongenial to Federalists of that day. Mr. Jefferson staked his political career upon opposition to it.

¹⁵ 1 KEMP BATTLE, HISTORY OF THE UNIVERSITY OF NORTH CAROLINA 146-47 (1907).

¹⁶ 1 Stat. 596 (1798).

Today, no one would seriously propose a Sedition Act to any American legislative body. Its like, however, is practiced by distinguished universities in punishing the expression of social and political ideas that do not conform to current fashion among academic professionals. Many individual members of the academic profession would punish their students or even their colleagues for utterances that they choose to deem as offensive, much as Robespierre took mortal offense at those hateful words, "Vive le roi." In many places in America, a teacher's career may be placed in grave danger if he or she is convicted, even in a kangaroo court, of holding sentiments that are characterized as racist, sexist, or homophobic, or that are deemed by sensitive auditors to be "harassment," a term that in some minds embraces all utterances implying sexual differences. If his *Notes on Virginia* were submitted as a dissertation at, for example, the University of Michigan, it seems possible that Mr. Jefferson would not only have been denied his degree, but would have been suspended from the university until he recanted his beliefs.¹⁷ As a one-time chairman of the Civil Liberties Board of that university, I commend to those now governing it a reading of the Virginia legislation of 1786 drafted by Mr. Jefferson with the aid of Professor Wythe. That current academic dogma is secular in form does not make his prescriptions less apposite.

I quote his enduring words:

Well aware that . . . Almighty God hath created the mind free; . . . and . . . that truth is great and will prevail if left to herself; that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict[,] . . . errors ceasing to be dangerous when it is permitted freely to contradict them.

[Be it therefore enacted] that no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer, on account of his . . . opinion or belief; but that all men shall be free to profess, and by argument to maintain, their opinions . . . and that the same shall in nowise diminish, enlarge, or affect their civil capacities.¹⁸

By the time this law was enacted, Mr. Jefferson was in Paris. He wrote Wythe that the Act had attracted much notice and admiration in Europe.

¹⁷ See generally Joseph D. Grano, *Free Speech at the University of Michigan*, in *ACADEMIC QUESTIONS* 7 (Spring, 1990).

¹⁸ For the full text, see SWANCARA, *supra* note 3, at 7-9.

He forewarned Wythe, however, that its message would not be accepted in most of the world, although Mr. Jefferson hoped that it might nevertheless, as he said:

produce considerable good even in these countries, where ignorance, superstition, poverty, and oppression of body and mind, in every form, are so firmly settled on the mass of the people, that their redemption from them can never be hoped. If all the sovereigns of Europe were to set themselves to work, to emancipate the minds of their subjects from their present ignorance and prejudices, and that, as zealously as they now endeavor the contrary, a thousand years would not place them on that high ground, on which our common people are now setting out.¹⁹

Could Mr. Jefferson have had Yugoslavia in mind in 1786?

Mr. Jefferson died on the fiftieth anniversary of the signing of the Declaration of Independence.²⁰ He did so more or less intentionally, clinging to life during his last two days to achieve that purpose, desiring in one last way to assure that he might always be remembered first as the author of the Declaration.²¹ Indeed, the instrument he drafted echoes still on every Continent. Its message has never been so widely and so warmly received as it is in our time.

Of course, the Declaration of Independence was not the product of one mind. The preceding millenia caused it. Had Mr. Jefferson not been there, someone else would have written it. Give credit to the early republicans of Athens and Rome who tried and failed. Give credit to those nameless persons that developed the trireme galley and the printing press, and a hundred other inventions. Give credit to the medieval church that withstood the violence of human nature and nurtured the culture and the literature so deeply shared by those men in Philadelphia in 1776. Give credit to the Protestant clergy who, in resisting religious dogma, made it possible to question political dogma, as well. Give credit to the English revolutionaries of 1688 who established the primacy of Parliament in that country. Give credit to the French and Scottish philosophers who, reflecting on the past, provided in the eighteenth century a rhetoric for the future. Give credit to many citizens who, for a dozen years, had been challenging in Massachusetts, Rhode Island, Pennsylvania, and North

¹⁹ Letter from Thomas Jefferson to George Wythe (August 13, 1786), in 5 THE WRITINGS OF THOMAS JEFFERSON 394, 395-96 (Albert Bergh ed., 1907).

²⁰ His death occurred on July 4, 1826.

²¹ 6 DUMAS MALONE, THOMAS JEFFERSON AND HIS TIME 497 (1977).

Carolina, the prerogatives of a transatlantic monarch acting at the direction of a self-aggrandizing Parliament. Give credit to the American pamphleteers, especially Thomas Paine, whose fevered and reckless prose sounded the tocsin of war, and to his counterparts in oratory, especially Patrick Henry, whom Mr. Jefferson credited with firing the first ball.

Yet Abraham Lincoln was not wrong to conclude that, because of the Declaration, Mr. Jefferson is the "most distinguished politician in our history."²² "All honor to Jefferson," he said:

to the man who, in the concrete pressure of a struggle for national independence by a single people, had the coolness, forecast, and capacity to introduce into a merely revolutionary document, an abstract truth, applicable to all men and all times, and so to embalm it there, that today, and in all coming days, it shall be a rebuke and a stumbling block to the very harbingers of reappearing tyranny and oppression.²³

For so momentous a document, the Declaration of Independence is strikingly brief. Moreover, much of it is devoted to a listing of offenses committed by George III and Parliament, specifications that have limited pertinence today. The truly deathless prose of which Lincoln spoke is found in the second and third sentences:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just power from the consent of the governed. . . .²⁴

Indelible as this prose is, each of these sentences is susceptible to misunderstanding and misuse. First, that power is derived from the consent of those governed imposes duties on those who govern themselves. By clear implication, a majority is not entitled to employ their sovereignty against their fellow citizens as George III and Parliament were charged with doing. Moreover, the Declaration is explicit that those who are dissatisfied with their government are not entitled to resist it "for light

²² Abraham Lincoln, *The Kansas-Nebraska Act*, Address at Peoria, Ill. (Oct. 16, 1854), in 1 ABRAHAM LINCOLN, SPEECHES AND WRITINGS 309 (Don E. Fehrenbach ed., 1989).

²³ Letter from Abraham Lincoln to Henry L. Pierce (Apr. 6, 1859), in 2 ABRAHAM LINCOLN, SPEECHES AND WRITINGS 18 (Don E. Fehrenbach ed., 1989).

²⁴ THE DECLARATION OF INDEPENDENCE (U.S. 1776).

and transient causes.”²⁵ Thus, minorities, too, were declared to have both rights and duties. The failure of self-governing people to perform their interfacing duties to one another has been the cause of much suffering in many nations striving to be democracies. When another Virginian, President Woodrow Wilson, proclaimed in 1918 as one of the “unalienable rights” the right of all peoples to self-determination, he drew upon Mr. Jefferson’s Declaration,²⁶ but he overlooked the need for restraint in the exercise of the minority right that he proposed to confer. We are now learning in a dozen nations that inside of every minority seeking self-determination is another minority ripening to take its turn a few decades hence. Unrestrained, Mr. Jefferson’s doctrine can cause social atomization and thus, havoc in human affairs.

Second, that all men are created equal is prose sometimes taken to sanctify more than it intends. The Declaration did not ratify and endorse every emotion of envy. It did not deny the injustice that is visited at birth on “crack babies,” but neither did it impose on government a duty to redress all the inequalities in our nature. In our time, redistribution may serve important social and political needs; we are all parents of crack babies. Redistribution was not imaginable in the eighteenth century, however, and it is a false reference to pursue that goal in the name of the equality proclaimed in the Declaration.

The equality celebrated in the Declaration is more modest in its pretension, but radical enough, nonetheless. What the Declaration proclaims is the obligation of government to accord equal legal status to all individuals, to confer upon all the same rights, and to impose on all the same duties. That, I say with Lincoln, is an idea for all times and all places. One need not even believe in a Creator to accept as “self-evident” that all governments everywhere, for the sake of all of their people, ought to accept an obligation to treat all citizens as having the same rights and duties. The alternative, as we have seen in a hundred nations, is political disintegration, followed by chaos, despotism, and misery.

The heart of the Declaration, as expressed in the two ideas of government by consent and equality of status, is thus a proposition of law and the predicate to our Constitution, to wit, that governments have duties running to individual citizens. The idea of government having duties is made explicit in the textual phrase: “To secure these rights.” While we, too, have duties to our government, it exists for us and not we for it. That

²⁵ *Id.*

²⁶ See, e.g., Woodrow Wilson, *The Faith and Purpose with Which We Act*, Address at Mount Vernon (July 4, 1918), *excerpts in THE POLITICS OF WOODROW WILSON: SELECTIONS FROM HIS SPEECHES AND WRITINGS* 310-13 (August Heckscher ed., 1956).

idea was not invented by Americans, but it was first embraced here; it is the idea on which much of our national self-esteem depends, and the idea for which we have been most admired by hopeful men and women of all countries. It is the idea upon which all of our public law rests.

Given that the Declaration's essence is a legal idea, it is no coincidence that its author, three years later, as Governor of the Commonwealth of Virginia, caused the creation of the law department of the College of William and Mary. Governor Jefferson was, by modern standards, intrusive when he compelled the governing board of this College to appoint a law professor. He intruded because he deemed it a matter of great importance that the people of Virginia be provided with leadership fit to assure popular sovereignty exercised with appropriate respect for the duties undertaken by the people, duties that he knew were unknown to the people, and ones that they were unlikely to perform over time if they were not wisely led. What he sought, as he more fully explained later when he planned for the University of Virginia, was a "nursery" to train leaders who would understand the obligations of government and its relation to the rights and duties of citizens.²⁷

In this idea of teaching law to nurture wise political leadership, Mr. Jefferson was perhaps first, but not alone. Dozens of other colleges would, in time, follow the lead of William and Mary in teaching law as a means of nurturing public virtue in those who would lead the Republic.²⁸

With its affirmation of equality under the law, the Declaration of Independence announced the genesis of our civil rights movement. In describing as unalienable the rights to life, liberty, and the pursuit of happiness, Mr. Jefferson tracked, but then departed from, the expression of John Locke, who had attributed to the dictates of nature the rights of "life, liberty, and property."²⁹ The substitution of "the pursuit of happiness" for "property" was made by Mr. Jefferson and Wythe so that all might understand that the new nation did not intend to preserve the institution of chattel slavery. It was indeed widely recognized, even in the South, that the concept of individual equality before the law could not be reconciled with the idea of some men owning other men.

Thus, most eighteenth century Americans intended that the slaves be emancipated, and with reasonable dispatch.³⁰ They first forbade the

²⁷ ADAMS, *supra* note 13, at 135.

²⁸ *See generally id.*

²⁹ GARRY WILLS, *INVENTING AMERICA: JEFFERSON'S DECLARATION OF INDEPENDENCE* 229-39 (1978).

³⁰ Whether Jefferson contemplated early emancipation is not as clear today as we might wish. If so, his later conduct indicates a change of heart. No cause exists, however, to question the earnest of his anti-slavery sentiments at the time of the Revolution. *See*

introduction of slavery in the area north of the Ohio River, much of which had been within the boundaries of the royal colony of Virginia. They then made the ownership of slaves unlawful in the seaboard states north of Maryland. Furthermore, serious anti-slavery movements appeared in Maryland, Kentucky, North Carolina, and Virginia. It was not a coincidence that the anti-slavery movement in many states was led by men who were either signers of the Declaration, or law teachers, or both.

Indeed, for a quarter century, the law department of William and Mary was at the center of the anti-slavery movement in the Commonwealth of Virginia. George Wythe, who had given legal training to the author of the Declaration and had himself been a signer, had been educated by his Quaker mother; although he was not himself a member of the Quaker Meeting, he adhered to their stern anti-slavery views.³¹ A few years after Wythe commenced teaching at William and Mary, Mr. Jefferson wrote to a celebrated English abolitionist, Richard Price, predicting that slavery would be abolished in Virginia and Maryland in the not too distant future. He further urged that the Reverend Price write Wythe's law students at William and Mary to enlist their support for his cause:

[It] is the place where are collected together all the young men of Virginia under preparation for public life. They are [under direction of] Mr. Wythe one of the most virtuous of characters, and whose sentiments on the subject of slavery are unequivocal. I am satisfied if you could resolve to address an exhortation to these young men, with all the eloquence of which you are master, that its influence on the future decision of this important question would be great, perhaps decisive.³²

Not only were Wythe's sentiments unequivocal, but his actions adhered to his words. When the legislature in 1782 made emancipation lawful in Virginia, Wythe promptly emancipated his slaves, except for two elderly persons not able to fend for themselves.³³

Wythe was succeeded in 1790 by St. George Tucker. Judge Tucker, a native of Bermuda, had been a naval blockade runner during the Revolution and was prominent in Virginia politics. In addition to being a respected judge and political leader, Tucker was also a poet of parts; his

generally DAVID B. DAVIS, *THE PROBLEM OF SLAVERY IN THE AGE OF REVOLUTION, 1770-1823* at 164-212 (1975).

³¹ IMOGENE E. BROWN, *AMERICAN ARISTIDES* 21, 189 (1981).

³² Letter from Thomas Jefferson to Richard Price (Aug. 7, 1785), in *8 PAPERS OF THOMAS JEFFERSON* 356-57 (Julian P. Boyd ed., 1953).

³³ ALANZO T. DILL, *GEORGE WYTHE: TEACHER OF LIBERTY* 52-53 (1979).

poems include at least one celebrating the brotherhood of black men with white, especially between a white master and a slave named Quaco. When the two are dead and buried, Professor Tucker prolongs their conversation to allow the slave to make the concluding remark:

Know fallen tyrant, I'm no more thy slave!
Quaco's a monarch's equal, in the grave.³⁴

Tucker, like Wythe, was a political, as well as an intellectual, force in the Commonwealth of Virginia. He lectured about Blackstone, *The Federalist*, and primary materials concerning the governments of the United States and Virginia. He also lectured regularly, however, about the abolition of slavery, which was his "dearest wish."³⁵ In 1796, Tucker published an argument and an elaborate plan for the abolition of slavery in the Commonwealth, one that had a modest chance of success but failed to be adopted.³⁶

Indeed, as we all know, the anti-slavery movement failed in the South, defeated in part by the untimely invention of the cotton gin. Despite the movement's failure, however, the dissonance of slavery with a government based on consent of the governed and committed to the equality of all citizens before the law remained in the foreground of our national thought. There would come a time, the nation knew, when the Southern cotton culture was no longer in a position to force its claims on the nation.

In his debates with Stephen Douglas, Lincoln intoned Mr. Jefferson's premise,³⁷ and the events that followed those debates were, at least in part, a product of the Declaration. When remembering Mr. Jefferson, we ought to remember as well the Civil War and the million young men whom it killed or maimed. That was an enormous toll, constituting one out of four of the young Americans of military age and dwarfing the relative toll of such minor skirmishes as Vietnam, Korea, and even the World Wars. Many of those who died in the Civil War can be said to have given their lives in defense of an idea expressed in Mr. Jefferson's Declaration. For those who doubt, it may be helpful to recall Julia Ward Howe's hymn to which hundreds of thousands of men marched into the face of death. They sang:

³⁴ St. George Tucker, *A Fable*, in *THE POEMS OF ST. GEORGE TUCKER OF WILLIAMSBURG VIRGINIA, 1752-1827* at 68 (William S. Prince ed., 1977).

³⁵ RICHARD B. DAVIS, *INTELLECTUAL LIFE IN JEFFERSON'S VIRGINIA 1790-1830* at 413 (1964).

³⁶ ST. GEORGE TUCKER, *A DISSERTATION ON SLAVERY WITH A PROPOSAL FOR THE GRADUAL ABOLITION OF IT IN THE STATE OF VIRGINIA* (1796).

³⁷ GARRY WILLS, *LINCOLN AT GETTYSBURG: THE WORDS THAT REMADE AMERICA* 90-120 (1992).

In the beauty of the lilies Christ was born across the sea,
With a glory in His bosom that transfigures you and me;
As He died to make men holy, let us die to make men free,
While God is marching on.³⁸

The Civil War concluded in a time of moral exhaustion, which Grant Gilmore has described as “law’s black night.”³⁹ Among the features of the American legal culture to survive that darkness, however, were the ideas expressed in the Declaration, now reforming as the civil rights movement. The relationship of that movement to the Declaration was observed cogently by Leon Higginbotham, the most distinguished black legal historian of our time, who said of it:

[T]he unsophisticated might argue that [it] had no ultimate impact of significance in eradicating slavery or diminishing racial discrimination. Yet in the corridors of history, there is a direct nexus between the egalitarian words uttered, even if not yet meant, and many of the changes that later took place. . . . The irony of the unfulfilled American dream of equality is that of all those in the long line of dreamers who have sought the ultimately just society, none had to seek out alien sources for moral authority. They had only to say to the American people: fulfill the largest promise in your first statement as a nation.⁴⁰

The civil rights movement was not the only social cause enveloped in the brief rhetoric of the Declaration. Women recognized at the time that there was a connection between the struggle of the Revolution and their legal entitlements as women. American women in the eighteenth and nineteenth centuries were largely preoccupied with child-bearing and seldom envied the work of men, which was often dangerous and generally entailed heavy lifting. Moreover, in the days before public education, the automobile, and the media, motherhood was indeed a high calling because of the nearly total influence of mothers on future generations. Particularly in America, there was a special need and opportunity to fill a continent with one’s offspring.

An English visitor to Virginia in 1768, therefore, observed that:

³⁸ JULIA WARD HOWE, *Battle Hymn of the Republic*, stanza 4.

³⁹ GRANT GILMORE, *THE AGES OF AMERICAN LAW* 41 (1977).

⁴⁰ A. LEON HIGGINBOTHAM, JR., *IN THE MATTER OF COLOR* 383-84 (1978).

Children swarmed everywhere: "like ants" or "like broods of Ducks in a pond." . . . "Irishmen are nothing to the Yankeys and Buckskins in that Way." . . . Even the beauties of Virginia [are] "great Breeders. . . . The good people are marrying one another as if they had not a day to live. . . . I alledge it to be a plot against the State [for] the ladies (who are all politicians in America) are determined to raise young Rebels to fight against old England."⁴¹

Mr. Jefferson himself recognized the implications of the American idea for the legal status of women. He explained to a French friend:

The plan of reading which I have formed for [my daughter] is considerably different from what I think would be most proper for her sex in any other country than America. I am obliged in it to extend my views beyond herself, and consider her as possibly the head of a little family of her own. The chance that in marriage she will draw a blockhead I calculate at about fourteen to one, and of course that the education of her family will probably rest on her own ideas and direction without assistance. With the best poets and prosewriters I shall therefore combine a certain extent of reading in the graver sciences.⁴²

In 1835, de Tocqueville observed: "In the United States the doctrines of Protestantism are combined with great political liberty and a most democratic state of society, and nowhere are young women surrendered so early or so completely to their own guidance."⁴³

In 1835, Oberlin became the world's first coeducational college. The opposition to the idea was not entrenched, nor was it rooted in concern that higher education would lead women into the professions or make them more independent of men. There was, however, abiding concern for protecting the chastity of women in such an environment. That concern was assuaged at Oberlin by strictly enforced rules against reading novels or dancing, and by other means as well.⁴⁴

⁴¹ JOHN C. MILLER, *ORIGINS OF THE AMERICAN REVOLUTION* 433 (1943) (citations omitted).

⁴² Letter from Thomas Jefferson to Marbois (Dec. 5, 1783), in 6 *THE PAPERS OF THOMAS JEFFERSON* 373-74 (Julian P. Boyd ed., 1952).

⁴³ 2 ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* at bk. 3, ch. 9 (Francis Bowen & Henry Reeve trans., 1945).

⁴⁴ 1 ROBERT S. FLETCHER, *A HISTORY OF OBERLIN COLLEGE: FROM ITS FOUNDATIONS THROUGH THE CIVIL WAR* 290-315 (1943).

As late as 1869, the President of the University of Michigan proposed the establishment of a separate college for women, explaining that the President could not assume personal responsibility for protecting the chastity of all women entrusted to him by their parents!⁴⁵ In defense of his position, at that time the rules of the Regents of that university did not permit a student to miss three classes or leave the village of Ann Arbor without the permission of the President.

During the early years of our Nation, the feminist issues of the day were chiefly those of married women's property rights. Property law derived from the traditions of the English manor was unsuited to American conditions. Among the men leading the effort to reform the law were, by no accident, a number of men who were teaching public law in the tradition established by Thomas Jefferson and George Wythe at the College of William and Mary.⁴⁶

The relationship between men and women is more complex than that between persons with different skin pigmentations. Precisely what equality before the law means when applied to persons of different gender is a question that perhaps we have not yet fully resolved. What has been resolved, however, is that the principle expressed in the Declaration applies with equal force to persons of both genders. In that essential respect, contemporary feminism can be traced to those few words issued from the pen of Thomas Jefferson in 1776.

Still more broadly, the international human rights movement descends from the same utterance. Our nation's two centuries of opposition to imperialism has been an expression of the commitment first expressed by Mr. Jefferson. The existence of the United Nations is, in significant measure, a crude and often ineffectual embrace by all civilization of the ideas of government by consent and equal rights in law. Whatever other motives may have been involved, the willingness of the American people to engage in the Persian Gulf War in 1991 on behalf of the United Nations was derived in part from their commitment voiced by Mr. Jefferson in 1776.

For these reasons, when and if human history extends itself to a time when America is all but forgotten, and only a few words of our language and a single name are remembered, those remembered words likely will be a few sentences from the Declaration of Independence, and the name will be that of Thomas Jefferson. Indeed, those few words and that single

⁴⁵ Elizabeth G. Brown, *The Initial Admission of Negro Students to the University of Michigan*, 2 MICH. Q. REV. 233, 235-36 (1963).

⁴⁶ Timothy Walker, the founder of the University of Cincinnati Law School, was perhaps most ardent. See WALTER T. HITCHCOCK, *TIMOTHY WALKER: ANTEBELLUM LAWYER* 228 (1990).

name may yet be known, as two young Revolutionary American poets foretold:

Till [time] himself has run his long career;
Till all those glorious orbs of light on high,
...
Drop from their spheres extinguish'd and consum'd;
When final ruin with her fiery car
Rides o'er creation and all nature's works
Are lost in chaos and the womb of night.⁴⁷

Even until that last moment, it seems likely that Mr. Jefferson will be remembered.

⁴⁷ Hugh Henry Brackenridge & Philip Freneau, *The Rising Glory of America* (1771), reprinted in *A HUGH HENRY BRACKENRIDGE READER 1770-1815* at 59-60 (Daniel Marder ed., 1970).