

# **Jefferson in Paris and Madison in Philadelphia: two strands of American thinking about democracy, 1787-9**

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## ***Abstract***

Jefferson and Madison were both thinking furiously about democracy while Jefferson was American Minister in Paris and Madison was preparing for, taking part in, and defending the outcome of, the US Constitutional Convention.

Jefferson's thought developed through his active contacts with French mathematicians and liberal politicians (Condorcet, la Rochefoucauld, Lafayette - with whom TJ had a very ambiguous relationship - and Dupont de Nemours). His impractical radicalism (as Madison saw it) shocked his best friend.

Based on their letters to each other and to third parties, the paper explicates their thinking about democracy at this period.

Earlier versions of some of this material have appeared in R. Fatton and RK Ramazani, ed, *The Future of Liberal Democracy: Thomas Jefferson and the Contemporary World* (New York: Palgrave Macmillan, 2004); in S. Kernell ed., *James Madison: the theory and practice of republican government* (Stanford University Press, 2003); and in I. McLean, *Adam Smith, radical and egalitarian* (Edinburgh University Press, 2006).

## Jefferson in Paris and Madison in Philadelphia

*I am among those who think well of the human character generally. I consider man as formed for society, and endowed by nature with those dispositions which fit him for society. I believe also, with Condorcet ... that his mind is perfectible to a degree of which we cannot as yet form any conception* TJ to William Green Munford, 06.18.1799, in Peterson 1984, p. 1064.

*All doors of all departments were open to him at all times, to me only formally and at appointed times. In truth, I only held the nail, he drove it* TJ on his relations with the Marquis de Lafayette in 1789, from speech at banquet in honor of Lafayette, Charlottesville, VA, 11.20.1824, in Malone 1951, p. 46

*I could not spare the time [to translate Condorcet's New Haven Letters into English, and]... I did not approve the tendency of it. If your plan of a single Legislature etc. as in Pena. were adopted, I sincerely [sic] believe that it would prove the most deadly blow ever given to republicanism* JM to F. Mazzei, Dec. 10, 1788, JMP 11, 388–89; see also JM to Mazzei, Oct. 8, 1788, JMP 11, 278–79.

### **The setting**

I assume that for the purposes of this conference only a brief chronology is required, and that readers are familiar with the general political background to the early careers of Thomas Jefferson (TJ) and James Madison (JM). Therefore I open with a bare chronology (Table 1).

[Table 1 here]

As Table 1 shows, the careers of Jefferson and Madison were intertwined from an early stage. They were close confidants throughout their lives. The Monticello tour guides are fond of pointing out the bedroom where James and Dolly Madison stayed on frequent visits there. TJ's and JM's political and intellectual backgrounds were close but not identical.

### **The intellectual background: Scots and French**

Jefferson was a student at Virginia's first university, the College of William & Mary. Madison was not, going instead to the College of New Jersey (now Princeton). This choice has been ascribed to JM's high moral seriousness and/or to the reputation that the College was building under its austere Scots principal John Witherspoon. As students, they both absorbed the philosophy of the Scottish Enlightenment, but with significantly different slants. When Jefferson went to Paris, he was primed for his enthusiastic encounter with the mathematicians and philosophers of the French Enlightenment. Madison was more sceptical – his only exposure to French came from his Scottish schoolteacher and it is said he spoke French with a Scots accent (Rakove 1990 p. 2). However, he was much less sceptical about the Enlightenment than was John Adams.

### **The Scots**

It is now well established that the thought of the Scottish Enlightenment had a profound influence on US constitutionalism (Adair 1974, 2000; Himmelfarb 2004;

McLean 2006). There were two immediate routes: via William Small, Thomas Jefferson's teacher at William & Mary; and via John Witherspoon, James Madison's teacher at Princeton. Small and Witherspoon stood for the liberal and conservative Scottish traditions, respectively. Witherspoon nevertheless taught the work of the 'infidel' David Hume (Adair 2000, p. 26). Adam Smith held a public discussion with Hume in the pages of *The Wealth of Nations* (WN). Hume had argued for church establishment; Smith argued against. Both TJ and JM sided with Smith.

The Scottish Enlightenment started as a dialogue about church and state. The thinkers relevant to this paper may be shown in summary (Table 2).

[Table 2 here]

The Calvinist position is the least understood today. Calvinism involves a set of beliefs about personal responsibility to a God who punishes unrighteousness (especially, it seems, sexual) with eternal punishment, and rewards those elected to it with eternal life. But it also encompasses a set of beliefs about church and state. It is triply anti-hierarchical. First, there are no grades of clergymen – no bishops, archbishops, deans or cardinals. All ministers are of equal standing. (Thus even a conservative Calvinist like Witherspoon could be a political radical). Secondly, church government is in the hands of ministers and lay elders with equal authority. Thirdly, the doctrine of the two kingdoms states that the civil magistrate has a duty to protect the church but no right to interfere in it. In 1596, the real founder of Scottish Calvinism, Andrew Melville, grabbed the sleeve of King James VI (later James I of the United Kingdom) to make his point:

And thairfor Sir, as divers tymes befor, sa now again, I mon tell yow, thair is twa Kings and twa Kingdomes in Scotland. Thair is Chryst Jesus the King, and his Kingdome the Kirk, whase subject King James the Saxt is, and of whase Kingdome nocht a king, nor a lord, nor a heid, bot a member!... the quhilk na Christian King nor Prince sould controll and discharge, but fortifie and assist, utherwayes nocht fathfull subjects nor members of Chryst'.<sup>1</sup>

Seventeenth-century Scotland was an often terrifying place, where kings and their local officials were called upon to fortify and assist Christ's Kirk with numerous floggings and hangings. In 1697, an Edinburgh student, Thomas Aitkenhead, was hanged for blasphemy. But the revolution settlement of 1689-1707 had a dramatic effect on state and church in Scotland. It removed the threat of a hostile (i.e., Episcopalian) state church. William III accepted the Presbyterians' Claim of Right as a condition of becoming king of Scotland in 1689. The position of the Presbyterian Church of Scotland as the "true Protestant Religion" in Scotland was guaranteed by the Act of Union 1707. But this, paradoxically, removed the state altogether from Scottish public life. Scotland became a weak state remotely governed. No officer of the state was available to fortify Christ's Kirk by hanging blasphemers.

This vacuum allowed the liberals Hutcheson and Smith, and the atheist Hume, to survive and to write (more or less) unmolested. Francis Hutcheson (1694-1746;

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<sup>1</sup> Diary of James Melville, 1596, in Pitcairn (1842), pp. 369-70. sillie: plain, simple. divers: various. sa: so. mon: must. Saxt: Sixth. whase: whose. nocht: not. whame: whom. the quhilk na: which no. utherwayes: otherwise [sc. they are]

described by Adam Smith as ‘the never to be forgotten Dr Hutcheson’) was an Ulster Scot who was Smith’s professor at Glasgow University from 1737 to 1740. His philosophy broke free from theology. This led him into trouble with the Presbytery of Glasgow, which tried – but failed - to prosecute him for heresy in 1738 (during Adam Smith’s freshman year). A remarkable student-published *Vindication of Dr Hutcheson* explains that his alleged offence was to have taught that ‘we have a notion of moral goodness prior in the order of knowledge to any notion of the will or law of God’. Yes, that was exactly what he had done, wrote his student defenders – who may have included the precocious Adam Smith:

We count God morally Good, on this account, that we justly conclude, he has essential Dispositions to communicate Happiness and Perfection to his creatures... we must have another notion of moral Goodness, prior to any Relation to Law, or Will.... Otherways, when we say God’s Laws are Good, we make no valuable Encomium on them; and only say, God’s Laws are conformable to his Laws or, his Will is conformable to his Will.... So, when we say God is morally good or excellent, we would only mean, he is conformable to himself; which would be no Praise unless he were previously known to be good. (*Vindication* 1738, p.7).

Thus Hutcheson made the first essential move in the secular ethics of the Scottish Enlightenment. His student Adam Smith would secularise ethics further; his rival David Hume would take religion out of ethics altogether. Hume was open about his scepticism in various writings, including the attack on miracles as a ground of belief in the *Essay on Human Understanding*, and two later works, *The Natural History of Religion* and the posthumous *Dialogues concerning Natural Religion*. On his deathbed he imagined himself arguing with Charon, the ferryman of the dead. Smith published an affecting but sanitised version of what Hume said. The unsanitised version that Hume gave to Smith runs:

I thought I might say, Good Charon, I have been endeavouring to open the eyes of people; have a little patience only till I have the pleasure of seeing the churches shut up, and the Clergy sent about their business;. But Charon would reply, O you loitering rogue, that wont happen these two hundred years; do you fancy I will grant you a lease for so long a time? Get into the boat this instant . (Mossner and Ross 1987, # 163: AS to Alexander Wedderburn 14 Aug. 1776).

Hume’s atheism was too strong for Smith, who was deeply embarrassed by his friend’s deathbed request to publish the *Dialogues*, and squirmed out of the obligation to do so. Both Smith and, earlier, Hutcheson had opposed the election of the atheist Hume to a philosophy chair in a Scottish university.

By 1760, then, Scottish philosophers had challenged orthodox Melvillean Calvinism from both deist (Hutcheson, Smith) and atheist (Hume) standpoints. Two of the three standpoints were institutionalised as factions of the Scottish church. (Hume was beyond the pale). The ‘Moderates’ were a group of ministers in Edinburgh who seized control of the General Assembly in 1750 and retained it until the 1830s, when they were overthrown by the majority ‘Popular’ or ‘Evangelical’ (i.e., orthodox Calvinist) party. In *WN*, Smith vividly characterizes the Moderates and Evangelicals as ‘Loose’

and 'Austere' respectively, and offers a Humean natural history of their religions. Austere Calvinists are austere about drink and sex. This appeals to, and benefits, the poor, because they can be ruined by drink and sex, and therefore they have a material interest in binding themselves to the mast of austerity. The rich can afford to be Loose: drink and sex are superior goods (*WN* V.i.g.10-14).

In Aberdeen, there were two universities, one each for the Loose and Austere. Jefferson's teacher William Small attended the Austere university (Marischal College) but listened to Loose lecturers from the other one (King's College). When Small was a student, Thomas Reid at King's was developing what became Scottish 'common sense' philosophy, a middle way (although not Smith's) between austere Calvinism and Humean scepticism. Small also picked up, and transmitted to Jefferson at William & Mary, what Jefferson describes as 'the first ... ever ... regular lectures in Ethics, Rhetoric & Belles Lettres' given there (Jefferson, *Autobiography*, in Peterson 1984, p. 2).

I hypothesize that Small's W&M lectures on ethics, rhetoric, and belles letters derived from Adam Smith. Smith had started giving such lectures in Edinburgh in the 1740s. Student copies of them circulated around Scotland. The lectures on ethics found their way into Smith's *Theory of Moral Sentiments (TMS)*. Those on rhetoric and belles-lettres were discovered, in a student copy, in 1958 and have now been published in the collected works of Adam Smith.

Thus, referring again to Table 2, three models of church-state relations were available to the Framers at Philadelphia and to the drafters of the Bill of Rights. The atheist model (religion is a potential source of trouble, to be controlled by the state in the interests of social peace) is explicit in Hume. It may be implicit in Jefferson's thought at the time, but he never stated it in public so far as I know. It may have privately appealed to a few delegates. But it was not in contention for polite discussion in America, unlike in France.

The Calvinist model was already in force in New England. The Massachusetts Constitution of 1780, drafted by John Adams, states at Part I Arts II and III:

Art. II. It is the right as well as the duty of all men in society, publicly and at stated seasons, to worship the Supreme Being, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience, or for his religious profession or sentiments, provided he doth not disturb the public peace or obstruct others in their religious worship.

Art. III. As the happiness of a people and the good order and preservation of civil government essentially depend upon piety, religion, and morality, and as these cannot be generally diffused through a community but by the institution of the public worship of God and of public instructions in piety, religion, and morality: Therefore, To promote their happiness and to secure the good order and preservation of their government, the people of this commonwealth have a right to invest their legislature with power to authorize and require, and the legislature shall, from time to time, authorize and require, the several towns,

parishes, precincts, and other bodies-politic or religious societies to make suitable provision, at their own expense, for the institution of the public worship of God and for the support and maintenance of public Protestant teachers of piety, religion, and morality in all cases where such provision shall not be made voluntarily.

And the people of this commonwealth have also a right to, and do, invest their legislature with authority to enjoin upon all the subjects an attendance upon the instructions of the public teachers aforesaid, at stated times and seasons, if there be any on whose instructions they can conscientiously and conveniently attend.

*Provided, notwithstanding,* That the several towns, parishes, precincts, and other bodies-politic, or religious societies, shall at all times have the exclusive right of electing their public teachers and of contracting with them for their support and maintenance.

And all moneys paid by the subject to the support of public worship and of the public teachers aforesaid shall, if he require it, be uniformly applied to the support of the public teacher or teachers of his own religious sect or denomination, provided there be any on whose instructions he attends; otherwise it may be paid toward the support of the teacher or teachers of the parish or precinct in which the said moneys are raised.

And every denomination of Christians, demeaning themselves peaceably and as good subjects of the commonwealth, shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established by law. [Quoted from [http://press-pubs.uchicago.edu/founders/documents/amendI\\_religions38.html](http://press-pubs.uchicago.edu/founders/documents/amendI_religions38.html). Cf McCullough 2001 pp. 220-5].

To be sure, Boston in 1780 was not Edinburgh in 1697. Adams' constitution offers toleration to 'every denomination of Christians'. But each town had the duty of supervising public Protestant worship and schooling. Andrew Melville would not have liked Adams' constitution; but he would have preferred it to the Virginians'. Adams' Constitution recognizably fortifies and assists the congregational church of each town in Massachusetts.

State support for denominational schooling was anathema to Jefferson and Madison. It brought them together for their first joint campaign in Virginia, against a bill levying a state tax to support teachers of Christianity (of any denomination). Madison's successful blast against this, a *Memorial and Remonstrance against Religious Assessments*, shows him to be a follower of Smith, not of Witherspoon. This is particularly clear in point 7 of the Memorial, which is practically a précis of Smith's argument in *WN*:

We remonstrate against the said Bill,

1. Because we hold it for a fundamental and undeniable truth, "that Religion or the duty which we owe to our Creator and the manner of discharging it, can be

directed only by reason and conviction, not by force or violence." [Virginia Declaration of Rights, art. 16] The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right. ... We maintain therefore that in matters of Religion, no mans right is abridged by the institution of Civil Society and that Religion is wholly exempt from its cognizance. True it is, that no other rule exists, by which any question which may divide a Society, can be ultimately determined, but the will of the majority; but it is also true that the majority may trespass on the rights of the minority.

2. Because if Religion be exempt from the authority of the Society at large, still less can it be subject to that of the Legislative Body. The latter are but the creatures and vicegerents of the former. ... The Rulers who are guilty of such an encroachment, exceed the commission from which they derive their authority, and are Tyrants. The People who submit to it are governed by laws made neither by themselves nor by an authority derived from them, and are slaves....

7. Because experience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of Religion, have had a contrary operation. During almost fifteen centuries has the legal establishment of Christianity been on trial. What have been its fruits? More or less in all places, pride and indolence in the Clergy, ignorance and servility in the laity, in both, superstition, bigotry and persecution. Enquire of the Teachers of Christianity for the ages in which it appeared in its greatest lustre; those of every sect, point to the ages prior to its incorporation with Civil policy. Propose a restoration of this primitive State in which its Teachers depended on the voluntary rewards of their flocks, many of them predict its downfall. On which Side ought their testimony to have greatest weight, when for or when against their interest? (Rakove 1999 pp. 30-3).

The Memorial is the first prequel, not only of *Federalist* #10, but of the radical interpretation of the Establishment Clause espoused by President Jefferson in his letter to the Danbury Baptist Association of 1802. Point 1 acknowledges the problem of majority tyranny (it was no doubt designed to appeal to the minority lobby of Baptists in Virginia). Point 2 has an echo of Andrew Melvill, but mostly it, too, looks forward to Danbury. Point 7 is pure Adam Smith.

The second prequel is *Vices of the Political System of the United States*, the briefing note which Madison wrote for the Virginia delegation before the Constitutional Convention started. Under point #11, 'Injustices of the Laws of States', Madison wrote:

A still more fatal if not more frequent cause lies among the people themselves. All civilized societies are divided into different interests and factions, as they happen to be creditors or debtors--Rich or poor--husbandmen, merchants or manufacturers--members of different religious sects--followers of different political leaders--inhabitants of different districts--owners of different kinds of

property &c &c. In republican Government the majority however composed, ultimately give the law....

will Religion the only remaining motive be a sufficient restraint? It is not pretended to be such on men individually considered. Will its effect be greater on them considered in an aggregate view? quite the reverse. The conduct of every popular assembly acting on oath, the strongest of religious Ties, proves that individuals join without remorse in acts, against which their consciences would revolt if proposed to them under the like sanction, separately in their closets. When indeed Religion is kindled into enthusiasm, its force like that of other passions, is increased by the sympathy of a multitude. But enthusiasm is only a temporary state of religion, and while it lasts will hardly be seen with pleasure at the helm of Government. Besides as religion in its coolest state, is not infallible, it may become a motive to oppression as well as a restraint from injustice....

If an enlargement of the sphere is found to lessen the insecurity of private rights, it is not because the impulse of a common interest or passion is less predominant in this case with the majority; but because a common interest or passion is less apt to be felt and the requisite combinations less easy to be formed by a great than by a small number. The Society becomes broken into a greater variety of interests, of pursuits, of passions, which check each other, whilst those who may feel a common sentiment have less opportunity of communication and concert. It may be inferred that the inconveniences of popular States contrary to the prevailing Theory, are in proportion not to the extent, but to the narrowness of their limits. (Rakove 1999, pp. 75-9).

The germ of *Federalist* #10 is here – in fact, more than the germ. *Federalist* 10 had to be composed in a hurry, and Madison simply took the arguments of this section of ‘Vices’, dropped some (but not all) of the references to religion, and polished it for the New York newspapers. An extended republic offers the best solution to the tyranny of the majority, because no one religious or political faction is likely to be dominant:

Among the numerous advantages promised by a well constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction.... A zeal for different opinions concerning religion, concerning Government and many other points, as well of speculation as of practice; an attachment to different leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions<sup>2</sup>, have in turn divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other, than to cooperate for their common good.... From this view of the subject, it may be concluded, that a pure Democracy, by which I mean, a Society, consisting of a small number of citizens, who assemble and administer the Government in person, can admit of no cure for the mischiefs of faction. A common passion

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<sup>2</sup> This may have been a reference to the Jacobite invasions of Scotland in 1715 and 1745. When Hume in his *Essays* talks in similar language, he has the Jacobites in mind. Witherspoon may have passed this on to Madison: or he may be merely echoing Hume’s language divorced from its original referents. Adair 2000 p. 137 contains an excellent discussion.

or interest will, in almost every case, be felt by a majority of the whole; a communication and concert results from the form of Government itself; and there is nothing to check the inducements to sacrifice the weaker party, or an obnoxious individual.... The two great points of difference between a Democracy and a Republic are, first, the delegation of the Government, in the latter, to a small number of citizens elected by the rest: secondly, the greater number of citizens, and greater sphere of country, over which the latter may be extended.... a religious sect, may degenerate into a political faction in a part of the Confederacy: but the variety of sects dispersed over the entire face of it, must secure the national Councils against any danger from that source.

Compare Adam Smith, in *WN* V.i.g.8:

The interested and active zeal of religious teachers can be dangerous and troublesome only where there is either but one sect tolerated in the society, or where the whole of a large society is divided into two or three great sects; the teachers of each acting by concert, and under a regular discipline and subordination. But that zeal must be altogether innocent where the society is divided into two or three hundred, or perhaps into as many thousand small sects, of which no one could be considerable enough to disturb the public tranquility. The teachers of each sect, seeing themselves surrounded on all sides with more adversaries than friends, would be obliged to learn that candour and moderation which is so seldom to be found among the teachers of those great sects whose tenets, being supported by the civil magistrate, are held in veneration by almost all the inhabitants of extensive kingdoms and empires, and who therefore see nothing round them but followers, disciples, and humble admirers.

## The French

The five years that Jefferson spent as American Minister in Paris (1784-9) represent an extraordinary conjunction of the French and American Revolutions. Jefferson arrived in summer 1784, together with John Adams, to join Benjamin Franklin and form a three-person American Ministry in Paris. In 1785, Adams went to London, Franklin returned to Philadelphia, and Jefferson remained as sole American Minister in Paris until his departure in September 1789 after witnessing some of the opening scenes of the French Revolution.

Jefferson, who had had more exposure than Madison to the radical end of Scots philosophy, was therefore an apt pupil for the French. His insatiable wide-ranging intellectual curiosity is already evident from his writings before France, including the drafts of the *Notes on Virginia* written before he reached Paris.

Jefferson enjoyed the radical salons of Mme Helvétius and Sophie de Grouchy, Marquise de Condorcet<sup>3</sup>. Jefferson and the Marquis de Condorcet met regularly in

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<sup>3</sup> Franklin had flirted with Mme Helvétius at her salon in Auteuil. When Jefferson and Adams arrived to join him, they both disapproved of his behavior. In 1786, the young Sophie de Condorcet held a salon in her husband's apartment at the Hotel des Monnaies, quai de Conti (opposite the Louvre: Guillois 1897, pp. 68-76). After the Terror of 1793-4 and the death of her husband, Sophie moved into

Paris and admired one another<sup>4</sup>. More generally, it was a time of fruitful cultural exchange. Where would American architecture have been but for Jefferson's books and sketches from Europe? Would Americans still think Madeira was the finest European wine if Jefferson had not introduced them to Médoc? Where would the Library of Congress and the art and science of bibliography have been, had not Jefferson collected books so eagerly in Paris and then sold his library, and presented his catalog (rediscovered in 1989), to Congress in 1815?

There is enough human interest in the story of Jefferson in Paris to have persuaded Ismail Merchant and James Ivory to film it (moderately accurately). The recently widowed Jefferson arrived with his eldest daughter Martha. On hearing in 1785 that his youngest daughter Lucy had died of 'a most unfortunate Hooping Cough', he arranged for his remaining child Maria ('Polly') to join them in the care of his young slave Sally Hemings (a job she was too immature to do, according to Abigail Adams<sup>5</sup>). Sally Hemings was his late wife's half-sister. DNA (Y-chromosome) analysis has, however, proved that the child she bore in Paris was not Jefferson's (Foster 1998). While in Paris, Jefferson fell in love with Maria Cosway, the flirtatious Anglo-Italian wife of a gay English painter, but in his *Dialogue between my Head and my Heart* (1786) addressed to her, Jefferson's Head suppresses his Heart. There is no evidence that the Heart ever had its way, then or later. In the Terror of 1793-4, Maria Cosway retired to a convent to run a school.

For a long time the French historiography of the Revolution was seen through the lens of contemporary French politics. So, when Jellinek (1902) first suggested that the *Déclaration des droits de l'homme et du citoyen* (DDHC) of 1789 was strongly influenced by the American Revolution and American Revolutionary ideas, he was denounced as a foreigner who had no right to say anything of the sort. He was quite right. But when French scholars have returned to look (however reluctantly) for the American influence on the DDHC, they have looked in the wrong place. Although Jefferson was in Paris, and John Adams either in Paris or in London, for the whole material time, they have looked for influences in the American state constitutions and in the reports reaching France about the drafting and ratification of the US Constitution, while ignoring Jefferson's barely concealed undermining of the court to which he was accredited. But TJ's machinations are all in the relevant volumes of the Jefferson Papers (Boyd et al 1950- ) and some had been known for at least a century.

Jefferson, Adams and Franklin initially comprised plenipotentiary commission 'for negotiating treaties of commerce with foreign nations' (TJ, *Autobiography*, in Peterson 1984, p. 54). Franklin was a world-class scientist, revolutionary, and showman. His desire for an easy-going and cheerful life in the company of younger women did not please either Adams or Jefferson. Relations among the three were

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Mme Helvétius' old house at Auteuil and reopened her salon (Guillois 1897, pp. 94, 177). I read this as a defiant statement of her radicalism and feminism.

<sup>4</sup> Conor Cruise O'Brien (1996) denies that Jefferson was ever close to Condorcet or to any other French Enlightenment figure. He also claims that Jefferson never learnt French. A quick scan of the Princeton edition of the *Jefferson Papers* easily disproves these claims.

<sup>5</sup> The Girl she [Polly Jefferson] has with her, wants more care than the child, and is wholly incapable of looking properly after her, without some superiour to direct her' (Abigail Adams to TJ, July 6 1787), in Cappon 1959, p. 183.

strained, and both younger men were relieved when Adams was sent to London and Franklin returned home in summer 1785.

Nevertheless, as a member of the *Académie royale des sciences*, Franklin could introduce the eager amateur scientist Jefferson to Condorcet and his circle. Politically, Franklin and Jefferson were not close, but the distinctions of American politics eluded their French hosts. To the French, Franklin was a hero of the American Revolution, who had been denounced and insulted by the British after breaking with them. He had negotiated the American-French alliance. He was wrongly assumed to be a Quaker because of his homespun style: and to be the main author of the Constitution of Pennsylvania, which was widely studied in Paris.

John Adams' personal copies of the two collections of US constitutions that were available in Paris at the time have survived. The first was a *Receuil des Loix Constitutives des Colonies Anglaises*. Translated by C.-A. Régnier, it was *dédié à M. le Docteur Franklin*, and purportedly published *à Philadelphie, et se rend à Paris* in 1778. (The Philadelphia imprint was likely fake). It contains the Declaration of Independence, and the constitutions of PA, NJ, DE, MD, VA, and SC. Adams was a great scribbler. In his books he maintains a continuous bad-tempered dialogue with the French Enlightenment. Much of it is transcribed in the seminal, but surprisingly neglected<sup>6</sup>, study by Haraszti (1952). At the start of the page containing the translation of the Constitution of Pennsylvania, Adams writes:

The following Constitution of Pa, was well known by such as were in the secret, to have been principally prepared by Timothy Matlock, Jas. Gannon, Thomas Paine and Thomas Young, all ingenious Men, but none of them deeply read in the Science of Legislation. The Bill of Rights is taken almost verbatim from that of Va.... The Form of Government, is the Worst that has been established in America, & will be found so in Experience. It has weakened that state, divided it, and by that Means embarrasses and obstructed the American Cause more than any other thing (JA annotation in Adams Library, Boston Public Library, 233.7. My readings do not always coincide with Haraszti's (1952) at p. 328.)

This unicameral constitution of Pennsylvania is the target of Madison's attacks: overtly in *Federalist* 48, and more directly (although not by name) in *Federalist* 10 and 51. On this, Jefferson agreed with Madison and Adams. But most of the French students of the American constitution, including Turgot, Condorcet, and the duc de la Rochefoucauld, were attracted by the constitution of unicameral Pennsylvania, backed by the supposed authority of the great Docteur Franklin.<sup>7</sup> La Rochefoucauld produced another translation of the US state constitutions in 1783. It is more flowing than Régnier's and it includes explanatory notes. John Adams also had a copy of that edition, but did not annotate it, not even the section on MA (Van Doren [1938] 1991, 572; Adams Library, Boston Public Library, 40.2).

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<sup>6</sup> Even by McCullough (2001) who cites Haraszti, but barely uses him. The custodians of Adams' books in Boston Public Library told me in December 2001 that demand to read them had scarcely risen since McCullough (2001) had been published.

<sup>7</sup> Franklin was rarely present at the PA constitutional convention of 1776, which he nominally chaired. But he did approve of unicameralism, see the letter quoted by Van Doren [1938] 1991, p. 554.

Adams and Jefferson - the two Americans to whom French constitution-writers turned for advice<sup>8</sup> - therefore had very mixed feelings about the American state constitutions. True, Adams was the main author of the Constitution of Massachusetts and Jefferson of the Declaration of Independence. But these facts were not widely known in Paris.

Jefferson's entrée to science was due to Condorcet. His entrée to French politics was due to the Marquis de Lafayette. Condorcet and Lafayette both tried to influence French discussion of human rights. Their circles intersected but were not the same. Jefferson and Condorcet were soulmates, Jefferson and Lafayette were not. Yet, it was for Lafayette not Condorcet that Jefferson 'held the nail' that drove the Declaration into the French constitution.

## Jefferson and Condorcet

Jefferson and Condorcet both believed that science must banish human misery and superstition. Condorcet coined the term 'sciences morales et politiques'; Jefferson may have been the first to English the latter as political science. The mainspring of the moral and political sciences, according to Condorcet, was probability. The developing theory of probability had an extraordinary range of applications. It drove the new actuarial science and made stable insurance contracts possible. It powered Condorcet's jury theorem<sup>9</sup>. It spurred him to produce the first axiomatic treatment of voting and majority rule. It informed his attitude to justice and human rights.

Condorcet used his position as Perpetual Secretary of the Academy of Sciences to control French and (as far as he could) European science policy. Jefferson was an enthusiastic amateur scientist. The final speech of the Heart to the Head acknowledges the Heart's respect for the Head's heroes: 'Condorcet, Rittenhouse, Madison, La Cretelle, or any other of those worthy sons of science whom you so justly prize'<sup>10</sup>. The respect was mutual. On Jefferson's side it was strained by Citizen Genêt's mission to the USA in 1793. Edmond Genêt was sent by the revolutionary French to stir up revolution in the USA, if necessary by appealing to the American people to rise up against cautious leaders such as President Washington or Secretary of State Jefferson. Condorcet's last letter to Jefferson, endorsing Genêt's mission, may therefore account for Jefferson's temporary estrangement from Condorcet. But in one of the last documents he wrote in hiding before meeting his death in the Terror of 1794, Condorcet consigned his beloved daughter Eliza, should she escape to the USA, to the care of Jefferson, or of Franklin's grandson B. F. Bache. She did not reach the USA, but she and her mother Sophie de Grouchy survived the Terror. After Condorcet's death, in TJ's letter to William Green Munford of June 1799 quoted

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<sup>8</sup> Tom Paine, an author of the PA constitution according to JA, was in Paris in 1787 and again in 1789-90. But he spoke no French. On the first visit, he was mostly promoting his iron bridge. On the second, although he met Lafayette, there is no strong evidence that he influenced the DDHC.

<sup>9</sup> Condorcet (1785). The jury theorem states that the probability that a decision is correct is a positive monotonic function of two things: the average enlightenment of the jurors, and the size of the majority. After two centuries of neglect, it is once again at the centre of scholarly attention. See Austen-Smith and Banks 1996; Miller 1997; List and Goodin 2001.

<sup>10</sup> By Madison, Jefferson probably meant not the politician but his cousin and namesake Rev. James Madison, president of William & Mary College. Jefferson called the Philadelphia scientist David Rittenhouse 'second to no astronomer living; ... in genius he must be the first, because he is self-taught'.

above is to be taken at face value, Jefferson was reconciled to Condorcet's values. In his wonderful post-1812 correspondence with John Adams (Cappon 1959), Jefferson never responded to Adams' fierce and frequent attacks on Condorcet and his fellow thinkers of the French Enlightenment. Adams thought that they were foolishly optimistic about human nature. Jefferson shared Condorcet's optimism.

Elsewhere (McLean and Urken 1992; McLean and Hewitt 1994), we have examined how much TJ and JM understood of Condorcet's revolutionary social science. Briefly:

- Jefferson understood Condorcet's probabilism. His letter to Madison of Sep. 6 1789, anthologized as 'The earth belongs in usufruct to the living' (Peterson 1984, pp. 959-64) derives both its formulae and its modes of reasoning from Condorcet, not (as the editors of the *Jefferson Papers* believed - Boyd et al 1950-, 15: 390 ff) to Richard Gem;
- We checked Jefferson's holdings of Condorcet's works that survived until he sold the Monticello library to Congress in 1815 in the recently rediscovered catalog (Gilreath and Wilson 1989). We examined all that are known to survive in the Library of Congress (some were lost in a fire in 1851). Jefferson has some characteristically sharp annotations on his copy of Condorcet's posthumous *Esquisse d'un tableau sur le progrès de l'esprit humain* ('Outline of a Historical Picture of the Progress of the Human Mind', 1795). In particular he objects to Condorcet's claim that France was the first country to achieve religious freedom. No, says an angry TJ: Virginia was first. But he wrote nothing apart from his characteristic countersigning of the signatures<sup>11</sup> on his copies of Condorcet's work on voting theory. Adams, on the other hand, wrote an entire counter-manifesto in the margins of his copy of the *Esquisse* (Haraszti 1952, pp. 241-56; Adams Library, Boston Public Library).
- Another intermediary between Condorcet and Madison was Philip (Filippo) Mazzei, an Italian-Virginian who wrote frequently to Madison and Jefferson (usually asking for money; see *TJP passim*, *JMP passim*; Marchione 1975). Jefferson commissioned Mazzei to write a four volume *Recherches Historiques ... sur les Etats-Unis* in order to counter anti-American propaganda in Paris (much the same motive as for publishing his own *Notes on Virginia*). Mazzei (or Jefferson) inserted four chapters by Condorcet into this book, which Mazzei sent to Madison, unsuccessfully asking Madison to arrange a translation.
- Condorcet's four chapters were called *Lettres d'un bourgeois de New Haven à un citoyen de Virginie*. Condorcet was indeed a *bourgeois de New Haven* - he was one of ten distinguished Frenchmen made a Freeman of New Haven at a town meeting in 1785. The *citoyen de Virginie* was Mazzei.
- These New Haven Letters argue for a unicameral national legislature, with representatives selected by a very complicated procedure.
- Madison refused Mazzei's request to get them translated, in the terms quoted at the head of this paper.

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<sup>11</sup> Every 16 or 32 pages, a book had a consecutive letter in the bottom margin to show the binder in which order to bind the pages. These marginal letters are known as 'signatures'. Jefferson marked his ownership of books by writing a 'T' before signature J, and a 'J' after signature T.

- John Adams had an even lower opinion of the New Haven Letters: ‘These Philosophers have shewn them selves as incapable of governing mankind, as the Bou[r]bons or the Guelphs. Condorcet has let the Cat out of the Bag’. (JA to TJ, 20 June 1815, in Cappon 1959, p. 445. All of Adams’ other references are equally derisive.) The New Haven Letters were the occasion of Adams’ defence of bicameralism, *A Defence of the Constitutions of Government of the United States of America*, which he wrote in London in a great hurry in 1787 and immediately sent to Jefferson in Paris (McCullough 2001, pp. 374-9; Adams Library, Boston Public Library, 131.12).

Jefferson in Paris took a very cheerful view of Shays’ Rebellion in western Massachusetts in 1787. Whereas Shays scared Madison sufficiently to give momentum to the Constitutional Convention<sup>12</sup>, Jefferson insouciantly pointed out that

We have had 13. states independent 11. years. There has been one rebellion. That comes to one rebellion in a century & a half for each state. What country before ever existed a century & half without rebellion? ... What signify a few lives lost in a century or two? The tree of liberty must be refreshed from time to time with the blood of patriots & tyrants. It is it’s natural manure (TJ to William Stephens Smith (Adams’ son-in-law), Nov. 13, 1787; Peterson 1984, 910-912; cf also TJ to Abigail Adams, Feb. 22 1787, *ibid.*, 889-90).

Jefferson’s language and his (dubious) statistical inference both come direct from Condorcet, who had written,

In the eleven years that the thirteen American governments have existed, there has only been one uprising.... Imagine that the same thing occurred after the same interval in each of the other states. For an uprising to have taken place in all of them, we would have to wait 143 years. Under what other form of government are uprisings so rare? (Condorcet, *De l’influence de la Révolution d’Amérique sur l’Europe, Supplément*, 1787, translated by Sommerlad and McLean 1989, p. 289).

Jefferson admired Condorcet’s mathematics much more than his politics. Condorcet’s fatal error was to endorse unicameralism, and even the Pennsylvania constitution. Jefferson had made his feelings known in his *Notes on Virginia*. He had brought these *Notes*, originally drafted as replies to a set of queries from a French diplomat, with him to Paris, and published them there as part of the campaign to recruit French intellectuals to the American revolutionary ideology. Jefferson denounces the ‘173 despots’ who had replaced the solitary despot George III in Virginia. Although bicameral, ‘the [VA] senate is, by its constitution, too homogeneous with the house of delegates. Being chosen by the same electors, at the same time, and out of the same subjects, the choice falls of course on men of the same description.... An *elective despotism* was not the government we fought for’ (Peterson 1984, pp. 244-5).

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<sup>12</sup> ‘The expedition under General Lincoln agst. the insurgents has effectually succeeded in dispersing them. Whether the calm which he has restored will be durable or not is uncertain’. JM to TJ, Mar.19 1787, in Rakove 1999, p. 67.

## Jefferson and Lafayette

Lafayette admired Jefferson. Jefferson did not admire Lafayette. But he found him useful. The 19-year-old Marquis de Lafayette, scion of one of the best-connected families of France, volunteered for Washington's Continental Army in 1776. Washington made him a major-general. Jefferson met him first in 1781, when Lafayette commanded the force that delayed the British raid on Richmond and Monticello that forced Governor Jefferson to flee his state capital and his home, and cost him over 30 slaves freed by the British. Lafayette left the USA a hero (notably in his own eyes) and returned there for a victory tour in 1784. He was one of Jefferson's first French contacts on the latter's arrival. Jefferson presented him with a copy of the *Notes on Virginia* inscribed to one 'whose services to the American Union in general & to that member of it particularly which is the subject of these Notes ... entitle him to this offering' (quoted in Gottschalk 1950, p. 203).

Lafayette was no political theorist. He later (Gottschalk 1950, ch. 1 *passim*) constructed a myth of himself as the pioneer republican. Jefferson told Madison:

I find the M de la Fayette so useful an auxiliary [in TJ's trade negotiations] that acknowledgements for his cooperation are always due (12.16.1786; Boyd 1950- 10: 602).

The *Marquis de La Fayette* is a most valuable *auxiliary to me*. His *zeal* is unbounded, & his *weight* with those in *power*, *great*. His *education* having been merely *military*, *commerce* was an unknown field to him. But his good sense enabling him to *comprehend* perfectly whatever is *explained to him*, his *agency* has been very *efficacious*. He has a great deal of *sound genius*, is well *remarked* by the King, & *rising in popularity*. He *has* nothing against *him*, but the *suspicion* of *republican principles*. I think he will one day *be of the ministry*. His foible is, *a canine appetite for popularity and fame*; but he will get *above* this. (1.30.1787; Peterson 1984, p. 885. Italicized passages sent in code.)

Jefferson was a remarkably undiplomatic diplomat. As the Assembly of Notables, the first step (as it turned out) on the road to revolution, prepared to assemble, TJ briefed Lafayette, who was of course to be a member:

I wish you success in your meeting. I should form better hopes of it if it were divided into two houses instead of seven. Keeping the good model of your neighboring country [i.e., Britain] before your eyes you may get on step by step towards a good constitution.... The king, who means so well, should be encouraged to repeat these assemblies. You see how we republicans are apt to preach when we get on politics (2.28.1787; Boyd 1950- 11: 186).

If intercepted by government spies, this would hardly imperil Jefferson's position. But he became less and less cautious.

## Jefferson and the US Constitution

Jefferson was in Paris, not in Philadelphia, in 1787. Nevertheless, as ‘Author ... of the Statute of Virginia for religious freedom’ (according to his self-written epitaph - Peterson 1984, pp. 706-7), he played an important, albeit indirect, role in the First Amendment Together with his equally indirect role in the DDHC, it is his main contribution to both constitutional design and political theory. Both episodes illustrate the elusiveness of Jefferson that every commentator discovers.

Madison and Jefferson had worked together in Virginia on the Virginia Declaration of Religious Freedom (Rakove 1990, pp. 6-14). Jefferson’s pride in it equalled Madison’s. As noted, it led him to complain that Condorcet’s *Esquisse* wrongly credited France, not Virginia, for pioneering religious freedom. As noted above, Adams’ 1780 Constitution of Massachusetts still recognised the role of the town church as guardian of public order and social control. (By 1820 Adams had changed his mind, but his attempts to disestablish the church in the MA constitutional convention failed – JA to TJ, Feb. 03 1821, in Cappon 1959, pp. 571-2). By contrast, no one church was dominant in revolutionary Virginia.

When Jefferson saw the Constitution as reported out of the convention at Philadelphia, he objected:

I will now add what I do not like. First the omission of a bill of rights providing clearly & without the aid of sophisms for freedom of religion, freedom of the press, protection against standing armies, restriction against monopolies, the eternal & unremitting force of the habeas corpus laws, and trials by jury in all matters of fact.... Let me add that a bill of rights is what the people are entitled to against every government on earth, general or particular, & what no just government should refuse, or rest on inferences. The second feature I dislike, and greatly dislike, is the abandonment in every instance of the necessity of rotation in office, and most particularly in the case of the President. Experience concurs with reason in concluding that the first magistrate will always be re-elected if the Constitution permits it. He is then an officer for life. (TJ to Madison, 12.20.1787, in Peterson 1984, p. 916).

Jefferson’s first objection – the absence of a Bill of Rights – was widely shared. It became clear to the Federalists that they would not get the required nine states to ratify unless they promised to consider adding a bill of rights in the first Congress (Riker 1996, pp. 203-28). Several reluctant ratifiers, including NH, MA, and VA, attached clauses for the bill that they would like to see added. A committee chaired by Madison in the first House considered the proposed clauses. Madison’s committee reported out 12 amendments, of which 10 were ratified and became the US Bill of Rights. The Establishment and Free Exercise clauses of the First Amendment were among those on Jefferson’s list that were ratified, and in substantially the words of the VA Declaration of Religious Freedom.

Jefferson’s second objection, to the absence of term limits especially for the Presidency, set him at odds with Lafayette. Lafayette was the president of the French chapter of the Society of the Cincinnati. This was a veterans’ organisation for Revolutionary War officers, whose president was George Washington. Jefferson and other republicans were deeply suspicious of the Society. They saw it as the nucleus of an American aristocracy, with Washington at its head set to become the first monarch

of the United States. They were even more alarmed when it was proposed that membership of the Society should be hereditary (Gottschalk 1950 pp. 54-64). As it turned out, however, Washington settled the issue in his own way by retiring voluntarily, to general surprise, after his second term in the Presidency.

## Jefferson and the French Revolution

While thus trying to influence his own country's constitution, Jefferson was drawn more and more into reforming that of the country to which he was accredited. He gradually became less and less cautious. He conducted an 'informal seminar on political theory' for Lafayette (Gottschalk 1950, p. 374). In December 1788, with a second Assembly of Notables due to work out the arrangements for the forthcoming Estates-General, TJ wrote to a fellow Virginian, 'All the world is occupied at present in framing, every one his own plan of a bill of rights' (TJ to James Currie, 12.20.1788, Boyd 1950- 14: 366). In this section, we compare four such declarations:

1. Jefferson's own, sent to Lafayette and to the Protestant pastor and politician Rabaut de S. Etienne on 3 June 1789;
2. that of Condorcet (for the complex provenance of which see McLean and Hewitt 1994, pp. 55-63);
3. the second of Lafayette's three efforts, composed in June 1789;
4. the *Déclaration des Droits de l'Homme et du Citoyen* as finally approved by the National Convention.

Table 3 attempts to collate the four declarations. The numbers of clauses are given when either the original is numbered or numbers can easily be assigned.

[Table 3 here]

In June 1789, Jefferson is still in his cautious phase as to content, though not as to behavior. On the day of his letters to Rabaut and Lafayette, we have a witness statement from the Framer Gouverneur Morris, who had arrived in Paris to negotiate with the French Farmers-General on behalf of the American tobacco monopoly. He did not share the republican optimism of Jefferson, whom he was later to follow as American Minister in Paris:

Go to Mr Jefferson's. Some political conversation. He seems to be out of Hope of anything being done to Purpose by the States General. This comes from having too sanguine Expectations of a downright republican Form of Government (Diary for June 03 1789 in Davenport 1939, i: 104)

However sanguine his expectations, Jefferson's draft for Rabaut and Lafayette addresses mostly issues in the original US Constitution, rather than the Bill of Rights. In June 1789 France does not yet have a constitution, still less a Bill of Rights.

Condorcet's Bill of Rights goes much further. It is probably a little earlier than Jefferson's, but more far-reaching. Condorcet had failed to gain election to the Estates-General, but his political views were moving rapidly to the left. He was the only thinker of the Enlightenment to suggest that women should have equal rights

with men, and it will be noted that he also includes very modern-sounding environmental rights in his list.

However, Condorcet was not only out of power, he was too radical for Jefferson's purpose. Jefferson did not believe that France, only just abandoning feudalism, was ready for a declaration of rights as thoroughgoing as he was pressing on the US ratifying states. Comparing Lafayette's first draft with one of Gem's, the latter clearly influenced by Condorcet, Jefferson told Madison (Boyd 1950- 14: 438-9, Jan. 12 1789) that Lafayette's declaration was 'adapted to the existing abuses'. By the end of June or the beginning of July 1789, Lafayette produced a second draft of his bill of rights. It contains some phrases which certainly arise from his seminars with Jefferson, such as the first part of clause 1 ('Nature has made men free and equal'). An extremely Jeffersonian clause is Lafayette's # 13:

As the progress of enlightenment, the introduction of abuses, and the rights of succeeding generations necessitate the revision of every human work, there must be provision for a constitutional convention.

Jefferson's most famous statement on the rights of succeeding generations is his letter to Madison, written just as he was leaving Paris on Sep. 6 1789. In it he proposes 'on this ground which I suppose to be self evident, "that the earth belongs in usufruct to the living", that the dead have neither powers nor rights over it'. As the probability that at least one of any pair of contractors has died reaches 50% between 18 and 19 years, Jefferson proposes that all contracts, including constitutional contracts, should be void after this time (Peterson 1984, pp. 959-64). This idea (itself derived from Condorcet – see McLean and Urken 1992<sup>13</sup>) did not appeal to Madison, after his year's labours preparing for the Constitutional Convention, attending it, and campaigning for the constitution. Nor did it appeal to the French convention. This clause of Lafayette's was not adopted.

Others are addressed to French conditions in unJeffersonian terms (such as the second part of clause 1, 'social distinctions may only be based on public utility'). Others again are very remote from Jefferson and seem to owe more to Rousseau, such as clause 6: 'The principle of all sovereignty resides imprescriptibly in the nation'.

Many hands worked on the *Déclaration des Droits de l'Homme et du Citoyen*. Lafayette opened the agenda by presenting a draft, based on his June draft but with minor changes following his further discussions with Jefferson. Several Bureaus of the National Assembly produced drafts and the final text was a melange of drafts from different bureaus. One member recorded that

After comparing the various plans of a Declaration of Rights with that of M de La Fayette, I observed that the latter is the text to which the others form merely a commentary (abbé Bounefoy, *Archives parlementaires*, 08.19.1789, quoted by Fauré 1990; my translation).

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<sup>13</sup> Also, it has to be said, an idea that must have attracted Jefferson personally, who was in chronic debt from the moment he took on the liabilities of his father-in-law's estate in 1778 until the day he died with liabilities hugely in excess of his assets. See Sloan 1995.

The most momentous difference is that the Declaration as adopted contains the Rousseauvian clause 6: ‘Statute law [Fr: *La Loi*] is the expression of the general will.’ This has been taken throughout French history until 1971 to mean that *La Loi*, expressing as it does the general will, is superior to any constitutional text, even the sacred Declaration of 1789. The National Assembly decided not to make the Declaration itself part of the Constitution. This may have been a blessing in disguise, in that all French constitutions until the Third Republic were shortlived. However, the 1789 Declaration was incorporated into the preamble of the Constitutions of both the 4<sup>th</sup> Republic (1946) and 5<sup>th</sup> Republic (1958 and still current). Jefferson’s tutorials for Lafayette continue to affect everyday life in France two centuries later.

Jefferson’s French hosts knew that a slaveholder was chiding them for their backwardness in adopting the rights of man – a slaveholder who thought that they were not ready for a declaration of rights as advanced as that of Virginia. The depths of Jefferson’s thoughts are in his letters, where his beautifully expressed contradictions are laid out. The man who wrote his wonderful valedictory letter of June 24, 1826 to Roger C. Weightman, Mayor of Washington DC, also wrote the wonderful phrases but nihilistic politics of the April 22, 1820 letter to John Holmes (Peterson 1984 pp. 1433-5 (Holmes); 1516-17 (Weightman)).

In the Holmes letter he described the proposal to ban slaveholding in the State of Missouri as ‘a fire bell in the night.... I considered it at once as the knell of the Union.... we have the wolf [of slavery] by the ears, and we can neither hold him, nor safely let him go. Justice is in one scale, and self-preservation in the other’. Jefferson never saw his way out of that dilemma. Whether or not he had children by Sally Hemings (the case is not proven, despite Foster’s (1998) misleading title<sup>14</sup>), he was certainly paralysed by the knowledge that slavery contradicted the principles of human rights, but he could not contemplate a State of Virginia without it.

Declining Weightman’s invitation to attend the 4 July celebrations in Washington DC on grounds of health, the dying Jefferson wrote:

May it [the Declaration of Independence] be to the world, what I believe it will be, (to some parts sooner, to others later, but finally to all,) the signal of arousing men to burst the chains under which monkish ignorance and superstition had persuaded them to bind themselves, and to assume the blessings and security of self-government. That form which we have substituted, restores the free right to the unbounded exercise of reason and freedom of opinion. All eyes are opened, or opening, to the rights of man. The general spread of the light of science has already laid open to every view the palpable truth, that the mass of mankind has not been born with saddles on their backs, nor a favored few booted and spurred, ready to ride them legitimately, by the grace of God.

In one of his best acts of literary detection, Douglass Adair (1974, pp. 192-202) showed that the image of ‘saddles on their backs’ comes from the dying speech of Col. Richard Rumbold, a former Cromwellian sentenced to death for rebellion against

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<sup>14</sup> Foster et al have proven that *a* Jefferson fathered Sally Hemings’ last child. Five Jeffersons with the marker Y-chromosome haplotype were alive when Eston Hemings was born. The case that TJ was the father is persuasive but not conclusive.

the Catholic King James II in 1685. This is Jefferson the opposition Whig, like so many of the American revolutionaries seeing the revolt against the British Crown as the country against the Court. But the rest of the imagery is distilled Enlightenment thought. ‘Monkish ignorance and superstition’ is pure Voltaire, probably mediated through Condorcet’s *Esquisse* (Condorcet 1795/2004). ‘All eyes are opened, or opening, to the rights of man’ recalls 1789 even more than 1776. Jefferson in Paris was not just a movie, but a seminal event in the history of human rights.

### ***Madison’s thought***

While Jefferson was enjoying Paris (and touring southern France to look at soils, vines, and architecture), Madison was diligently preparing for Philadelphia; sitting there; caucusing; recording the entire proceedings; disguising his disappointments; joining Hamilton in defending the results; and then hastily returning to Virginia to persuade the constitutional convention there to ratify the constitution, which it (perhaps unexpectedly) did on June 25, 1789 (Riker 1996, Table 15.2).

Here are some typical pieces of Madisonian economics and game theory.

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[T]he most common and durable source of faction has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society. *Federalist* #10

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In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself. (*Federalist* #51).

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Mr MADISON considered it as a primary object [of the article dealing with the Electoral College] to render an eventual<sup>15</sup> resort to any part of the Legislature improbable. He was apprehensive that the proposed alteration [viz. throwing the choice of a President, if no candidate had a majority in the Electoral College, into the House rather than the Senate] would turn the attention of the large States too much to the appointment of candidates, instead of aiming at an effectual appointment of the officer [i.e., the President], as the large States would predominate in the Legislature which would have the final choice out of the Candidates. (Speech at the Convention, Sep. 5, 1787, in Madison’s own report: Farrand 1966, 2:513.)

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He [Benjamin Franklin] then moved that the Constitution be signed by the members and offered the following as a convenient form viz. “Done in Convention by the unanimous consent of the States present the 17th of Sept. etc - In Witness whereof we have hereunto subscribed our names.” This ambiguous form had been drawn up by Mr G[ouverneur] M[orris] in order to gain the dissenting members, and put in the hands of Doc.r Franklin that it might have the better chance of success. (From Madison’s notes of

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i.e. “contingent”: French *éventuel*.

proceedings on the last day of the Convention: Farrand 1966, 2:643. Madison was not a heresthetician, but he recognized one when he saw one).

Of course, this is a dangerous way to do intellectual history. We read Madison and Jefferson because we find them intellectually congenial. But the past is another country; they do things differently there. If we read Madison without paying attention to context, we misread him.

Until Adair (1974, 2000), the genealogy of American revolutionary thought seemed perfectly clear. Locke's *Second Treatise of Government* was the seed. By Locke's formula,

Reason, which is that Law [of Nature], teaches all Mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his Life, Health, Liberty, or Possessions. (2nd Treatise, §6)

From this Locke derives his propositions that government depends on the consent of the governed, who may withdraw it. The Lockean ancestry of the Declaration of Independence could hardly be clearer.

Montesquieu amplified Locke's remarks on the separation of powers. As Locke repeatedly seeks authority in 'the judicious Hooker' even as he sets out an argument that undercuts Hooker, so did all sides in the American revolutionary debate appeal to Montesquieu's doctrine of separation of powers. Therefore the colonists' rebellion against George III fitted comfortably into an extant constitutional doctrine.

Adair (himself of Ulster-Scot origins) pointed out that it was not so simple. As noted above, American thinkers' knowledge of Locke was filtered through the Scottish Enlightenment, channelled by William Small and John Witherspoon. Witherspoon's lectures on moral philosophy, which we may assume that Madison attended, have been transcribed from student notes. Witherspoon expounded Reid's 'moral sense' or 'common sense' philosophy thus:

A sense of moral good and evil, is as really a principle of our nature, as either the gross external or reflex senses, and as truly distinct from both as they are from each other. This moral sense is precisely the same thing with what, in Scripture and common language, we call conscience (Witherspoon 1982, p.78).

Witherspoon seems to have transmitted the Scots' secular moral thought, and failed to transmit his (or anyone else's) Puritan fervor, to his star student Madison.

The dominant figures of the Scottish Enlightenment, the close friends David Hume and Adam Smith, dethrone both Locke's social contract and his Protestant theology. Hume shows that social contract reasoning is unsustainable. Both Hume and Smith offer the alternative account of an invisible hand - spontaneous social coordination. Though the phrase and the idea are always attributed to Smith, they are there in Hume as well. Although Witherspoon correctly described Hume as an 'infidel writer', Madison may have known Hume's game-theoretic argument that although two neighbours sharing a boggy meadow may be in an assurance game such that they

police one another's efforts to drain it, 'it is very difficult, and indeed impossible, that a thousand persons should agree in any such action' (Hume, *Treatise of Human Nature*, II, iii, 2, vii, 'Of the origin of government'). Adair has pointed to telling echoes of Hume in Madison.

The Scots also secularised Locke. Locke's egalitarianism derives from his Protestant theology, as §6 of the Second Treatise immediately goes on to make clear. The reason men are equal is that they are 'all the Workmanship of one Omnipotent, and infinitely wise Maker... they are his Property, whose Workmanship they are, made to last during his, not one another's Pleasure.' Remove that theology and the edifice risks collapse.

All the Scots moralists except Hume were 'country Whigs'. Whig politics had been forged in 17th century England, culminating in Locke's doctrine of the right to resist, and the deposition of King James II, to be replaced by William III, invited to the thrones of England and Scotland by Parliament. Most 18th-century British governments professed to support Whig principles. In the natural way, their opponents might all have claimed to be Tories. But after the Jacobite rebellions of 1715 and 1745, it was dangerous to proclaim oneself a Tory. Therefore, politicians identified themselves as 'Court' (supporters of the executive) or 'Country' (opponents of the Executive). We might now, in the shadow of Lipset and Rokkan (1967), prefer the terms 'center' and 'periphery'. 18th-century British politics were the politics of a nation-building core and a peripheral resistance. Scotland and the American colonies were both part of the peripheral resistance. Even loyal supporters of the union in both countries sometimes resented the way that unionists treated them. Therefore the American revolutionaries loved the Scots Enlightenment, and even Witherspoon, who hated Hutcheson's liberal religion and Hume's atheism, nevertheless transmitted their political theory to his star pupil.

Opposition Whig ideology created a myth of the independent yeoman farmer of Saxon England, crushed by the Norman yoke in 1066, who fought to regain his ancestral liberties in the English rebellion against Charles I. This myth fascinated Jefferson up to the Weightman letter. It made no impact on the more down-to-earth Madison. What he did draw from country ideology was an appreciation of politics as faction and of the likelihood that the core would exploit the periphery in its own interest. Hume, no country Whig but the most acute observer of contemporary Scottish politics, sharpened Madison's insights.

Jefferson sent numerous batches of books from Paris to Madison in 1785-6, as he was preparing for the Constitutional Convention. Norman Schofield has argued for some years now (latest in Schofield 2006, pp. 120-5) that Madison as well as Jefferson was influenced by Condorcet's probabilism. It is a nice idea, but not, I think, supported by the available documents. For instance, Jefferson sent Madison a copy of Condorcet's *Essai sur l'application de l'analyse* (Condorcet 1785) to pass on to Edmund Randolph, governor of Virginia. Madison had it for nine days before passing it on. It strains belief that even Madison can have taken in its lessons (from a book that was not destined for him) in that time. If, as I have just argued, Madison was a pioneer of game theory, I think he is a Scot rather than a Frenchman – and that he got it from the one Scot whom Jefferson disliked, namely David Hume.

If designers of constitutions since 1787 had read Madison as carefully as political scientists read him now, what would they have drawn from him? From *Federalist* 10 they would have drawn the inference that it is easier to protect liberty, and to ensure enlightened government, in a large state than in a small one. From *Federalist* 45-53, especially #51, they would have learned that some anti-majoritarian devices might protect liberty. One set of devices was vertical separation of powers between two houses of the legislature and the executive, all three popularly elected in a fashion (one of them directly, two indirectly). Some actions require more than a simple majority in each of the three, for instance amending the constitution, or overriding a presidential veto. Another set of devices was horizontal separation of powers between lower (state) and higher (federal) levels of government, each with its constitutionally protected sphere of authority. A third, expounded in the *Federalist* not by Madison (who by then was back in Virginia persuading his home state to ratify) but by Hamilton, was the duty of a supreme court to interpret the constitution.

## **Conclusion**

Both Jefferson and Madison were profoundly influenced by the thought of the Scottish Enlightenment. Jefferson was taught a more 'left-wing' version of Scottish Enlightenment thought than Madison, because Jefferson's teacher Small came from the Moderate tradition in the Church of Scotland, whereas Madison's teacher Witherspoon came from the Evangelical tradition. But Jefferson, unlike Madison, didn't like Hume, because TJ accepted the opposition Whig view of British history, which Hume's *History of England* did not. Hence, in one of his most alarming characteristics, Jefferson hailed the French Revolution as a new dawn of freedom and was singularly impervious to its death toll. His insouciant letters about Shays to Abigail Adams and William Smith ('The tree of liberty must be refreshed from time to time with the blood of patriots & tyrants. It is its natural manure' – quoted above) foreshadow a still more alarming letter of January 1793 to William Short, who had been his secretary in Paris. Secretary of State TJ chides Short for his hostility to the Jacobins:

In the struggle which was necessary, many guilty persons fell without the forms of trial, and with them some innocent. These I deplore as much as any body, & shall deplore some of them to the day of my death. But I deplore them as I should have done had they fallen in battle... Were there but an Adam & an Eve left in every country, & left free, it would be better than as it now is. (TJ to William Short Jan 3 1793 in Peterson 1984 p. 1004).

Madison would not have written that letter. Jefferson was the more brilliant writer (by far); Madison, the more careful thinker. When they built on their common Scots heritage, they largely agreed. That heritage produced Madison's numbers of *The Federalist* and the First Amendment. But Madison did not follow Jefferson's francophilia. On moving to Paris, TJ eagerly absorbed the latest French Enlightenment thought. Madison probably did not, to judge by his general silence and occasional dismissive remarks when TJ sent him the latest pamphlets from Paris. Despite Madison's use of probabilistic arguments in his numbers of *The Federalist*, I am not persuaded that Madison had read and understood the probabilistic thought of Condorcet before writing them.

Jefferson's stay in Paris produced American architecture and American wine. It could have led American thinkers to understand the revolutionary probabilism of French Enlightenment thought if anyone had understood Jefferson's transmission of it. We have found no evidence that anybody else in America did (Urken and McLean 2007). Its political legacy lay not in America but in France – with Jefferson's contribution to the Declaration of the Rights of Man & the Citizen. It is ironic that this represents Jefferson at his most Madisonian, not his most Jeffersonian.

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Table 1. Jefferson and Madison: early careers to 1789

Date	TJ	JM
1743	Born Shadwell, VA	
1751		Born King George County, VA
1757	death of father	
1762-4	Attends College of William & Mary. Taught by William Small and (later) George Wythe	
1767	Admitted to VA bar	
1768	Elected to VA House of Burgesses	
1769-72		Attends College of NJ, Princeton. Taught by Principal John Witherspoon
1770	Fire at Shadwell destroys his first library. Monticello under construction	
1772	Marriage to Martha Wayles Skelton: soon inherits her share of Wayles family assets (inc. slaves) and liabilities (to British traders). Ultimately, these liabilities are to bankrupt him.	
1774	VA House dissolved by British; reassembles as a convention. Elected to First Continental Congress	
1775	<i>A Summary View of the rights of British America</i>	
1776	Drafts Declaration of Independence, adopted on 4 July	Elected delegate to VA convention, which turns itself into General Assembly. First known meeting with TJ
1777	Drafts VA Statute for Religious Freedom	
1779-81	Governor of VA. Rescued by Lafayette during British raid. British free slaves from Monticello	Elected to Continental Congress till 1783
1782	Death of Martha Wayles Skelton. Plunged into depression; retires to Monticello	
1783	Elected delegate to Congress	
1784-9	Serves as Commissioner, then American Minister, to France	
1785		Re-elected to VA House of Delegates. Writes ‘Memorial and Remonstrance against Religious assessments’
1786	Shays’ Rebellion	
1787	Publishes <i>Notes on the State of Virginia</i> as propaganda to win	Notes on ancient and modern confederacies; ‘Vices of the Political System of

	British, French hearts and minds. Much drafted before he went to France	the US'. Main author of VA Plan. VA delegate to, and records proceedings of, Constitutional Convention. Accepts (as Hamilton's 3 <sup>rd</sup> choice) position as coauthor of <i>Federalist</i> .
1787-8	Sends JM his criticisms of draft Constitution, also sends Abigail Adams response to Shays ('I like a little rebellion now and then. It is like a storm in the atmosphere'.)	His numbers of <i>Federalist</i> appear. Elected to VA ratifying convention
1789		Elected to first House of Representatives; floor manager for Bill of Rights
1802	Reply to Danbury Baptists ('a wall of separation between Church and State').	

Table 2. Scottish Enlightenment positions on church and state

<b>Atheist</b>	<b>Deist ('Moderate')</b>	<b>Calvinist ('Popular')</b>
David Hume	Francis Hutcheson	John Witherspoon
	Adam Smith	John Adams (in 1776)
	Thomas Reid	
	William Small	
?Thomas Jefferson (in 1776)	Thomas Jefferson (in 1800)	
	James Madison	
	John Adams (in 1820)	

Table 3. Four Declarations of Rights, 1789

TJ draft	C draft	LaF 06/89 draft	Decn as adopted
<p>The States General shall assemble uncalled ... annually</p> <p>The States General alone shall levy money on the nation</p> <p>Laws shall be made by the States General only</p>		<p>(6) The principle of all sovereignty resides imprescriptibly in the nation.</p> <p>(8) The legislative power must be exercised essentially by deputies chosen in each district by free, regular, and frequent election.</p>	<p>(3) The source of all sovereignty lies essentially in the Nation.</p>
Habeas Corpus	Punishment after due process only	(5) No man may be subjected to any law not previously approved either by him or his representatives and correctly applied	[covered in Arts 6-8]
<p>Military subordinate to civil authority</p> <p>Printers liable to prosecution only for publishing false facts</p> <p>Abolish 'pecuniary privileges and exemptions'</p>	Military subject to civil legal procedures		
Honor old regime debts	<p>Death penalty for murder only</p> <p>No torture</p> <p>Fixed terms for judges</p> <p>Defendant to have right of peremptory juror challenge</p>	(1) Nature has made men free and equal; social distinctions may only be based on public utility	(1) All men are born and remain free and equal in their rights. Social distinctions may only be based on public utility

TJ draft	C draft	LaF 06/89 draft	Decn as adopted
	<p>No standing army All legal proceedings in public Freedom to practice any profession 'The legislature may not prohibit any action which is not contrary to the rights of others or of society'</p>	<p>(2) Every man is born with inalienable rights, including the right to property, the right to honor and life, the complete ownership of his person and products and to resist oppression</p> <p>(3) The only limits to the exercise of each man's natural rights are those which secure to society the enjoyment of the same rights.</p>	<p>(2) The final end of every political institution is the preservation of the natural and imprescriptible rights of man. Those rights are liberty, property, security, and resistance to oppression (4) The only limits to the exercise of each man's natural rights are those which secure to other members of society the enjoyment of the same rights. These limits may be fixed only by law.</p>
	<p>Everyone is free to follow whichever religion he sees fit.</p>	<p>(4) No man should be harassed for his religion, his opinions, nor for communicating his thoughts, providing they are not libelous</p>	<p>(10) No one may be persecuted for his opinions or creed, provided that their expression does not disturb the public order provided for by the law. (6) Statute law is the expression of the general will</p>
	<p>No conscription No right of fathers to punish wives, or</p>	<p>(7) The sole end of all government is the common good; the legislative, executive, and judicial powers must be distinct and defined; no body nor individual may have authority that does not emanate expressly from The Nation.</p>	

TJ draft	C draft	LaF 06/89 draft	Decn as adopted
	children over 16 Freedom of press, association, and religion Protection of public goods 'such as scenery, rivers and so on' No taking of property without compensation Women not to be disadvantaged by inheritance laws  ...and many, many others	(13) As the progress of enlightenment, the introduction of abuses, and the rights of succeeding generations necessitate the revision of every human work, there must be provision for a constitutional convention.	

Sources:

- Column 1. TJ to Rabaut de S. Etienne, 6.03.1789. Boyd 1950- , 15 : 165-8
- Column 2 Declaration of Rights 'par le Marquis de Condorcet, traduite en Anglois par le Docteur Gem avec l'original à coté (TJ's annotation). McLean and Hewitt 1994, pp. 255-70. Our translation and paraphrase of the French text.
- Column 3 Boyd 1950- ,15: 230-3. My translation
- Column 4 Finer 1979, pp. 269-71