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Part One

The Problem

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The Later Jefferson and the Problem of Natural Rights

THOMAS W. MERRILL

In his speeches in the 1850s arguing for the restriction of slavery in the territories, Abraham Lincoln wrapped himself in Thomas Jefferson's mantle, citing Jefferson's authority as author of the Declaration of Independence and as originator of the policy of prohibiting slavery in the territories. Yet this last claim must have struck informed contemporaries as somewhat misleading because Jefferson had changed his mind about slavery in the territories and had famously opposed the very line between free and slave territories Lincoln was campaigning to restore. For today's readers, informed by Lincoln's interpretation of the founding, Jefferson's change of heart on slavery in the territories must appear anomalous and painful.¹ The author of the most comprehensive study of Jefferson and slavery describes the episode as the "strange death of Jeffersonian liberalism."²

How could the author of the Declaration of Independence square his attachment to natural rights with his recommendation to expand slavery throughout the territories? Jefferson, however, does not regard the expansion of slavery as contradicting natural rights but uses the logic of natural rights to justify it. According to Jefferson's most famous statement on the Missouri Crisis, his letter to John Holmes of April 22, 1820, slavery presents a profound dilemma for American slave owners because justice for the enslaved people and the self-preservation of the slave owners are at odds. But because self-preservation is the first natural right, slavery presents a conflict between two legitimate rights. Because slave owners have a legitimate interest in avoiding rebellions, he argues, they are justified in seeking to extend slavery across the territories, thus diluting concentrations of rebellious slaves.

Jefferson's reaction to the Missouri Crisis is well known,³ and political theorists have offered innumerable treatments of Jefferson's natural rights doctrine. Yet rarely have scholars read Jefferson's reaction for what light it sheds on his understanding of natural rights. The status and meaning of Jefferson's natural rights doctrine has, of course, long produced both anxiety and defensiveness

among scholars of American political thought. Some scholars, such as Herbert Storing and the early Harry Jaffa, have seen Jefferson's natural rights doctrine as essentially egoistic, eventually leading to a weakening of the communal responsibility necessary to a healthy polity. In this view, rights precede and eventually trump duties in Jefferson's natural rights doctrine, and the egoism of the natural rights doctrine contribute to the lack of forceful action on the part of Jefferson and the founding generation generally on slavery. Yet other scholars of American political thought, such as Michael Zuckert (and sometimes the same scholars at different points in their careers, such as Jaffa) argue that there is nothing inherently destabilizing for the polity in Jefferson's natural rights doctrine. These scholars thus aim to vindicate Jefferson's natural rights doctrine, arguing that Jefferson's record on slavery stems not from his political theory but from his racism and personal hypocrisy, factors extrinsic to his political theory.⁴

This chapter uses Jefferson's reaction to the Missouri Compromise and related texts to think through what it is about Jefferson's natural rights doctrine that invites such divergent reactions of condemnation and exculpation. It does not offer a purely theoretical discussion of the merits and flaws of the natural rights doctrine in the abstract. Nor is it intended to shed new light on the historical facts of the case, which are well known. Instead, the chapter aims to elucidate the problematic but interesting phenomenon of Jefferson's words and deeds on slavery and natural rights as a way of getting at the underlying theoretical questions. I proceed on the hypothesis that the use of a political theory in particular circumstances and in response to the necessities of the moment may reveal more about how a given political actor thinks about a political theory than a discussion of the theory in the abstract does. I find that Jefferson's invocations of natural rights with regard to the Missouri Crisis reveal a tangled set of intentions too complex to be adequately captured by either the egoistic or the moral interpretations of Jefferson's doctrine. Although the egoistic interpretation is correct to point out that the slave owner's right to self-preservation trumps his duty to respect the rights to life and liberty of enslaved persons, that interpretation fails to do justice to Jefferson's attempt to defend the moral innocence of American slave owners in the face of real or anticipated moral criticism, an attempt visible both in the letters about the Missouri Crisis and in Jefferson's draft of the Declaration of Independence. Paradoxically, it seems to have been Jefferson's need to vindicate the moral guiltlessness of American slave owners that led him to radicalize the egoistic dimension of the natural rights doctrine.⁵ I begin with the puzzle of Jefferson's position on the Missouri Crisis, then widen the focus to show that Jefferson uses the natural

rights doctrine in a similar way in his draft of the Declaration, and conclude with some reflections on the meaning of Jefferson's natural rights doctrine.

JEFFERSON'S CHANGE OF HEART

In 1784 Jefferson, then a member of the Continental Congress, produced a report for the government of the western territories recently acquired by the new country. That report remarkably proposed that neither involuntary servitude nor slavery should exist under the temporary or the permanent governments that might be established in the new territories after 1800. Had Jefferson's recommendation been accepted and enforced, it would have prohibited slavery in all the western lands, not just those north of the Ohio. Jefferson's recommendation, however, fell short of passing the Continental Congress. One vote prevented the prohibition on slavery in the territories from passing. "The voice of a single individual," he wrote in 1786, "would have prevented this abominable crime from spreading itself over the country. Thus we see the fate of millions unborn hanging on the tongue of one man, and heaven was silent in that awful moment." Yet Jefferson looked forward to a time when this "crime" could be restrained: "It is to be hoped that [heaven] will not always be silent and that the friends of the rights of human nature will in the end prevail."⁶

Jefferson's failed attempt to bar slavery in the territories was, of course, the basis of what became the Northwest Ordinance of 1787, which, although not going as far as Jefferson's draft, did prohibit slavery north of the Ohio.⁷ And Jefferson's youthful position was in fact quite aggressively antislavery. Jefferson was, after all, the author of the Declaration of Independence, whose natural rights principles were, as everyone recognized, incompatible with slavery and whose implications for slavery in America would have been even more obvious had Jefferson's original draft been published. Jefferson had also attempted to end slavery in Virginia, proposing a scheme of gradual emancipation in the Virginia legislature in 1776. Although that scheme had been rejected by his fellow legislators, Jefferson discussed it in his *Notes on the State of Virginia* in one of the most outspoken discussions of the injustice of slavery of the time and a frank and painful treatment of the core dilemma of American slave owners.⁸

By the last decade of his life, however, Jefferson had changed his mind. By the time of the Missouri Crisis in 1819–1820, Jefferson no longer believed slavery could be restricted to the existing states by the power of the federal government, or indeed that it should be. Quite the contrary: in a series of letters in this period, some of which were intended for public distribution, Jefferson

argued strenuously that the expansion of slavery into the territories was the prudent course of action and that, in any event, Congress lacked the power to restrict it. In making such arguments, Jefferson did not speak for himself alone. The other prominent members of the Republican dynasty from Virginia, James Madison and James Monroe, concurred.⁹ This policy position became a defining commitment of Southern statesmen throughout the antebellum period, from Jefferson to John C. Calhoun to Jefferson Davis. To be sure, Jefferson had not changed his mind on the basic injustice of slavery, and he would have been horrified by the rejection of natural rights by Calhoun and others. He claimed, as he had always done, that slavery was both contrary to the natural rights of the slaves and a calamity for the slave owners, albeit one of which there was no easy way out. In the last decade of his life, Jefferson argued that diffusionism, or the extension of slavery throughout the territories, was the best way of ameliorating the evils of slavery and perhaps even the best way of ultimately ending the institution.¹⁰

Given the important role the disagreement about slavery in the territories played in antebellum politics, Jefferson's change of heart is an important turning point in the political history of the early republic. Certainly Jefferson's final position in favor of the expansion of slavery was well known to antebellum America and often cited by Southern statesmen in support of their own political positions.¹¹ Yet the timing and the meaning of Jefferson's change of heart is elusive because we have little direct evidence of when, precisely, the change occurred.¹² But the more important question is the meaning of his shift. How is it, after all, that the man who saw the extension of slavery to the territories as the spread of an "abominable crime" across the continent decided that spread was in fact the best thing to do? How could the author of the Declaration of Independence argue that natural rights were compatible with the expansion of slavery?

THE LETTER TO HOLMES

Jefferson gave his best-known answer to that question in his letter to John Holmes of April 22, 1820. The letter is famous for its unforgettable description of the situation of American slave owners as holding "the wolf by the ear"¹³ and is often read without reference to the political context or to Jefferson's intention in writing the letter, which he well knew would become public. The political context is the controversy over whether slavery would be allowed to spread into Missouri and the other territories, and Jefferson's intention was to

make the case that restricting the spread of slavery would be both imprudent and unconstitutional. In order to understand the full significance of the “wolf by the ear” image, then, we need to understand what Jefferson was trying to accomplish with the letter.

Holmes was a member of the House of Representatives from the Maine district of Massachusetts when the Missouri Crisis broke out in 1819.¹⁴ When James Tallmadge, representative from New York, proposed that Missouri, then a territory qualified to become a state, be admitted to the Union only if slavery were prohibited within its borders, slave state representatives fought back by asserting the right to carry their slaves wherever they wished in the territories. They also threatened to block Maine’s request to become a state. The compromise that resolved the crisis allowed Missouri to come into the Union as a slave state in exchange for Maine coming in as a free state and established the 36° 30’ latitude line as the division between potential free and slave states from the territories. As the representative from Maine and the man who would become Maine’s first senator in 1820, Holmes was at the center of the controversy. In the interest of having Maine become a state, Holmes sided with the slave states. Yet this position was unpopular with his largely antislavery constituency in Maine in his campaign for Senate in 1820. Caught between his constituency and his political bargain, Holmes needed help. As one scholar of the Missouri Crisis remarks: “It could be argued that nothing less than an endorsement from the author of the Declaration of Independence himself could have salvaged Holmes’s political career in Maine. Fortunately for him, he had exactly that.”¹⁵

Jefferson’s letter, written in response to a request from Holmes, was payback for an ally who had supported the Southern position and was suffering as a result. And because Jefferson had every reason to think Holmes would publicize the letter, the letter in effect speaks to Holmes’s constituents in particular and antislavery opinion in the North generally. The primary theme of the letter is the threat posed by the Missouri Compromise line to the Union, which Jefferson describes as the death knell of the Union. A geographical line corresponding to a moral and political principle, he writes, will be an unending source of rancor for the polity. The North and the South will come to blows, Jefferson predicts, tearing apart the America envisioned by the founding generation.

The letter to Holmes is often praised for its prescience. Yet Jefferson’s blame for the looming struggle between North and South is not evenhanded.¹⁶ In the controversy over slavery in the territories, Jefferson is firmly on the side of the South. That is why diffusionism is such a prominent theme in the letter and why Jefferson describes those pushing the nation toward a civil war as moved by “an abstract principle more likely to be effected by union than by scission.”

The abstract principle is moral opposition to slavery; it is Jefferson's own "self-evident truth" that all men are created equal. By heedlessly pressing the South on something the South considers a vital interest, the antislavery Northerners are threatening the Union. It is they who perpetuate "an act of suicide on themselves, and of treason against the hopes of the world."

For us, who tend to see antebellum America through a Lincolnian lens, Jefferson's argument might seem surprising and counterintuitive. His argument is this. Slavery is indeed a moral wrong, but the spread of slavery across the territories is the best means of weakening it under the circumstances. More importantly, congressional noninterference with slavery in the territories will reassure Southern slave owners that Congress will not try to emancipate the enslaved directly. "An abstinence" from restricting slavery in the territories, Jefferson remarks, "would remove the jealousy excited by the undertaking of Congress to regulate the condition of the different descriptions of men composing a State." For this is "the exclusive right of every state, which nothing in the Constitution has taken from them and given to the General Government." Lurking behind the controversy about Missouri is the far more dangerous question of slavery in the states. Jefferson implies that if Congress does restrict slavery in the territories, the slave states would have a legitimate reason to fear a later attempt to emancipate the enslaved where they already are. In that case, the slave states would almost certainly dissolve the Union rather than accept emancipation of the enslaved. Jefferson thus darkly predicts, or threatens, Southern secession as the likely outcome of Northern aggression over slavery in the territories.

It is here that the image of the "wolf by the ear" plays an important, even indispensable, role in Jefferson's argument. We Southerners, Jefferson suggests, never wanted to enslave these people and would get rid of them if we could. But the slave owners are in a terrible bind: "We have the wolf by the ear and can neither hold him, nor safely let him go. Justice is in one scale, and self-preservation in the other."¹⁷ Of course, because self-preservation is itself a natural right, what Jefferson means is that justice is on both sides. Natural rights confront natural rights. Jefferson never denies that the slaves would be justified in using violence to acquire their freedom. But the slave owners are under no obligation to free the enslaved if that would endanger their own self-preservation. Indeed, they are equally justified in doing whatever they must in order to secure their lives. Jefferson seems to treat the right to self-preservation as an absolute, as a trump that automatically outweighs other considerations. The conflict at the heart of American slavery is morally undecidable precisely because natural rights as Jefferson understands them are absolute.

The emotional anchor of the letter to Holmes is this existential conflict between master and slave. In effect Jefferson says to his Northern audience, you think you are choosing the moral course in attempting to restrict slavery. But you do not understand that slavery is a life-or-death issue for the South. If you do not allow slavery to expand, you lock us slave owners into an ever-closer entanglement with the wolf, a situation that only grows more dangerous as the slave population expands. If you go further and attempt to emancipate the existing slaves, you will confront us with the terrible choice between justice and self-preservation.¹⁸ Your actions will force us to dissolve the Union long before the tragic choice of justice versus self-preservation becomes a reality. Under this scenario, the actor might be the Southern states, but the responsible party would be the Northern states, who recklessly force the Southern states' hand.¹⁹

A QUESTION OF EXISTENCE

The letter to Holmes was not, of course, the only time Jefferson expressed his reaction to the Missouri Crisis. In a series of remarkable letters to John Adams, Albert Gallatin, Charles Pinckney, the Marquis de Lafayette, and others written around the same time, Jefferson makes the same argument in different ways.²⁰ These letters confirm the interpretation of the letter to Holmes proposed above and shed light on important aspects of Jefferson's position only alluded to in the public letter to the Maine senator. For a fuller understanding of that position, especially on the role played by the language and logic of natural rights, we turn briefly to these private letters on the Missouri Crisis.

The private letters are franker than the letter to Holmes about key aspects of Jefferson's view, including the existential threat to the South in any restriction of slavery in the territories, the possibility that the South will be compelled to secede from the Union, and the character of the Northern statesmen who advocate for restriction. Jefferson sketches his analysis of the Missouri Crisis in his letter to Gallatin of December 26, 1820:

[The Missouri question] served to throw dust in the eyes of the people and to fanatize them, while to the knowing ones it gave a geographical and preponderant line of the Potomac, throwing fourteen states to the North and East, and ten to the South and West. With these, therefore, it is merely a question of power; but with the geographical minority it is a question of existence. For if Congress once goes out of the Constitution to arrogate a right of regulating the condition of the inhabitants of the states, its majority may, and probably will, next declare that the condition of all men within the United

States shall be that of freedom; in which case all the whites south of the Potomac and Ohio must evacuate their states, and most fortunate those who can do it first.²¹

For the Northerners, the Missouri question is not moral at all, but only a means of exercising power over the slave states. But for the slave states the issue is an existential one. As Jefferson wrote to John Adams on January 22, 1821, “The real question is, Are our slaves to be presented with freedom and a dagger? For if Congress has a power to regulate the conditions of the inhabitants of the states, within the states, it will be but another exercise of power to declare that all shall be free.”²² The Southern states would sooner secede, Jefferson thinks, than face such a possibility. Were the Northern states to move decisively toward emancipation, he writes, “there would be a secession of the members south of the line [marked out by the Potomac and Ohio] and probably of the three Northwestern States, who, however inclined to the other side, would scarcely separate from those who would hold the Mississippi from its mouth to its source.”²³

The private letters make it clear that in Jefferson’s mind the antislavery leaders are cynics, whipping up the fanaticism of the Northern masses for advantage over their political opponents. Those leaders are, he remarks to Gallatin, old Federalists, trounced in politics, now trying to replace the old party divisions with “a new one of slave-holding and non-slave-holding States.”²⁴ The cynical few are manipulating the morally naïve many purely for the sake of increasing their power and the sectional power of the North. The painful irony, of course, is that the principle to which these cynics appeal is the natural rights doctrine of the Declaration of Independence itself. Yet, in Jefferson’s mind, the appearances are backward. It is the slave owners whose backs are against the wall, whose very existence is in question, and it is the allegedly antislavery leaders who are the Machiavellians, pursuing pure self-interest under the cover of moral principle. When he says they are committing “treason against the hopes of the world,” he means it literally.

Read with the letter to Holmes, these letters bring out a striking dimension of the role of the conflict of natural rights in Jefferson’s reaction to the Missouri Crisis. In all these letters Jefferson shows himself concerned to demonstrate that the moral blame for the current crisis belongs not to slave owners but to Northerners. Contra appearances, it is not the slave owners who are power-hungry amoralists, for they are compelled, by virtue of their terrible situation, to continue being slave owners and to seek to extend slavery. Rather, moralistic Northerners are the real cynics. Jefferson uses the natural rights doctrine, then, to deflect blame from the slave owners. They are tyrants only by necessity, but in truth they are innocent. Jefferson tells a morality tale with clear innocents

and clear villains; it is only an accident of fate that the innocents are compelled to exercise tyrannical power, whereas the tyranny of the villains is cloaked under the name of morality. One need not deny that the slave owners were in a genuine bind or that moralistic denunciations of the slave owners was a cheap way for Northerners to claim the moral high ground. But these truths should not distract us from the fact that Jefferson uses the natural rights doctrine to shift blame in ways that are quite dubious. The effect of Jefferson's appeal to the natural rights doctrine is to suggest that slave owners are not guilty for the ugly things they are compelled to do. The natural rights of some provide a ready excuse for the continued deprivation of the rights of others.

Jefferson's appeal to the natural rights doctrine in this context raises some disquieting questions. Is Jefferson's use of natural rights here merely personal, a sign of the dark and rather paranoid side of his personality? Or is there something in the doctrine of natural rights, as Jefferson understands it, that lends itself to this kind of use?

THE CONFLICT OF RIGHTS IN THE DECLARATION OF INDEPENDENCE

To address these questions, it is worth noting that the letter to Holmes was not the first time Jefferson had used the doctrine of natural rights in this way. To be sure, that letter was the first time Jefferson had made the case in public for the extension of slavery. But it was not the first time Jefferson had used the thought of an irreconcilable conflict of legitimate rights as a means of defending American slave owners from criticisms of injustice and hypocrisy. He had already done so, or at least tried to do so, in his draft of the Declaration of Independence, in a paragraph excised from the final version by the Continental Congress. That paragraph is well known, of course, for Jefferson's scathing denunciation of slavery as a violation of natural rights. Less often noticed is the fact that the paragraph portrays American slavery as a fundamental conflict of rights in just the way that the letter to Holmes does, and that the paragraph is also meant to deflect predictable criticism, also in a way very similar to the letter to Holmes. To see this, it helps to read the excised paragraph in the context of the argument of the Declaration as a whole.

As is well known, the structure of the Declaration is a syllogism of practical reason.²⁵ The assertion of natural rights at the beginning provides the major premise, the list of the crimes of the king of Great Britain form the minor premise, and the final declaration of independence is the conclusion.

The paragraph on slavery in Jefferson's draft has an important place in this structure. The crimes of George III are listed in ascending order from minor to major offenses. Thus the accusations rise from mere inactivity—refusing “his assent to laws the most wholesome and necessary”—to obstructionism—calling together “legislative bodies at places unusual, uncomfortable, and distant”—to the ominous—keeping standing armies in times of peace. As the list develops, the king comes to seem malign and conspiratorial. The final phase of the crescendo, both in the draft and in the final version, is the king's direct attacks on American life and property. The king and his agents have plundered the Americans' ships, ravaged their coasts, and burned their towns. Large armies of mercenaries bent on acts of “cruelty and perfidy” have been transported to America. American sailors have been impressed by the British navy and even compelled to become “executioners of their friends and brethren or to fall themselves by their own hands.” Moreover, the king has excited “the merciless Indian savages,” whose “known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions,” to attack Americans. There, with the royal attacks on the natural rights of life and liberty of the Americans, the published version of the list ends.

In Jefferson's draft, however, there is one more paragraph describing what he evidently sees as the king's crowning crime. The king has “waged cruel war on human nature itself, violating its most sacred rights of life and liberty in the persons of a distant people, who never offended him, captivating them and carrying them into slavery in another hemisphere or to incur miserable death on their transportation hither.” Nor has the king simply enslaved the Africans and left them in America. He has also resisted any attempts by the Americans to stop the slave trade, even “prostituting his negative” to do so. And so that “this assemblage of horrors might want no fact of distinguished die,” the king now makes matters worse. He or his agents are “exciting those very people to rise in arms among us, and to purchase that liberty of which he has deprived them, by murdering the people on whom he also obtruded them, thus paying off former crimes committed against the LIBERTIES of one people, with crimes which he urges them to commit against the LIVES of another.”²⁶ The king excites the enslaved people to assert their natural rights to liberty at the expense of the natural rights to life of the slave owners. The king's culminating crime is to set the rights of liberty and life in irreconcilable and apparently mortal conflict. In this respect the king's incitement of revolts seems to be a more fiendish version of what the British navy does to impressed sailors by forcing them to choose between executing their friends and killing themselves. By inciting revolts, the king forces American slave owners to choose between allowing themselves to

be killed and killing innocents attempting to assert their natural rights. In this respect the culminating crime of the king is different from those that precede it. Those earlier crimes are all things Americans have had done to them. In slavery, however, the king puts the Americans into a situation in which they are compelled to act like tyrants no matter their intentions. The crowning crime, it seems, is not to make Americans suffer but to compel them to make others suffer. He makes them act as he does. In this telling, Americans are innocent tyrants, slave owners through no intention of their own.

At the peak of the king's crimes in Jefferson's draft of the Declaration is the same thought so memorably expressed in the letter to Holmes. There is a fundamental conflict between the natural rights of enslaved people and the natural rights of the slave owner, a conflict irresolvable in terms of the doctrine of the Declaration. Indeed, the treatment of slavery in the excised paragraph forms a rather tragic counterpoint to the stirring words of the document's opening lines. Having confidently asserted the doctrine of natural rights at the beginning of the document, the paragraph on slavery reveals that doctrine's limits. To be sure, in order for Jefferson to present it as an irreconcilable, tragic conflict, he must cast all the responsibility for slavery's origins and continued existence on King George. Had the Americans chosen to enslave the people, the moral dilemma would not be as stark as Jefferson presents it because the Americans would be simply to blame.

In his autobiography, written in the 1820s, Jefferson described the decision to excise the paragraph about slavery as a victory of unrepentant slave owners from South Carolina and Georgia.²⁷ There is some truth to this description, but the reality was more complex. Many readers, from Jefferson's time to the present, have felt that the excised paragraph exaggerated both the guilt of the king and the innocence of the Americans for slavery.²⁸ Thus John Chester Miller remarks, "More aware than was Jefferson—who was obviously carried away by zeal for pillorying the king—of the dangers of propagandistic overkill, Congress wisely took the position that the monarch, already burdened by Jefferson with culpability for 'murder,' 'piratical warfare,' and inflicting 'miserable death,' could not be held accountable for all the evil extant in the British Empire."²⁹ One need not have been an advocate of slavery to have doubts about the wisdom of including Jefferson's paragraph.

Yet if the paragraph is overkill, the interesting question is why Jefferson felt the need for overkill in the first place. Part of the answer surely has to do with anticipated moral criticism of the American revolutionaries. It was, after all, only to be expected that when Americans justified their revolution from Great Britain, they would be charged with hypocrisy. As Samuel Johnson wrote in

1774, “How is it that we hear the loudest yelps for liberty from the drivers of Negroes?”³⁰ The excised paragraph is best read as a preemptive strike against such criticism. However implausible its argument as a historical matter, the intended rhetorical effect is clear: to deflect the predictable moral criticism of Americans for enslaving people back onto the king. The very implausibility of Jefferson’s claims in the excised paragraph suggests that we have here a sensitivity to moral criticism and a strong, perhaps not fully self-conscious, desire to assert and secure his own moral blamelessness with regard to slavery. As Joseph Ellis remarks, the excised paragraph was “less a clarion call to end slavery than an invitation to wash one’s hands of the matter.”³¹

Although written with quite different practical goals in mind, the excised paragraph and the letters about the Missouri Crisis nonetheless have definite similarities. Both analyze American slavery in terms of competing sets of legitimate natural rights, and both leave the reader with the disquieting sense that there is no morally acceptable solution to that conflict. It is difficult to deny that there is a genuine moral problem here, and most of the founding generation likely shared Jefferson’s view of the character of the problem. Yet there is something distinctive about the way Jefferson uses the conflict of rights that goes beyond the mere recognition of the problem. Whereas others might regard the problem as an unfortunate truth that must be worked around, there is in Jefferson a tone of despair and a sharp sense of the injustice of the slave owner’s plight. As Peter Onuf remarks, “The passionate, blood-soaked language of rage and betrayal that Jefferson’s colleagues excised from the Declaration—and that he restored in his *Autobiography* in 1821—was the same language that spilled out, seemingly beyond authorial control, in his despairing response to the Missouri crisis.”³² Whereas others might minimize the problem, Jefferson wallows in the existential conflict, making the conflict of rights his theme.³³

The interesting question is why. In both the draft of the Declaration and the later letters Jefferson is concerned to deflect real or anticipated moral criticism. In effect, he uses the doctrine of natural rights in both cases to admit that American slave owners have committed, are committing, and will commit some awful wrongs. But it is not their fault because they are compelled to do so in order to protect their own natural rights. In truth, the fault is elsewhere: with the king of Great Britain, who foisted slavery on the colonies, in the one case, and with the Northern politicians, who cynically manipulate antislavery sentiment to gain power over the South, in the other. In both cases Jefferson uses the doctrine of natural rights to turn moral criticism of American slave owners back on their enemies. If Jefferson had used the notion of a conflict of rights in this way only once, we might dismiss it as a coincidence. But the

fact that he did it more than once raises difficult questions. Is there something about the doctrine of natural rights itself that lends itself to this kind of use? And if so, what is it?

JEFFERSON'S NATURAL RIGHTS DOCTRINE

The status and meaning of Jefferson's natural rights doctrine have long been sources of both anxiety and defensiveness in scholars of American political thought. It sometimes seems as though the question of the ultimate worth of the American project can be reduced in the eyes of these scholars to the theoretical question of the viability of the natural rights doctrine itself. Thus in a classic essay on slavery and the moral foundations of the American republic, Herbert Storing writes that the problem with Jefferson and the other founders is not that they betrayed their principles. The problem lies in their principles themselves. Writing about the letter to Holmes, Storing concedes that only an "invincible naïveté" would deny that Jefferson had identified a genuine moral dilemma for the founding generation. Nonetheless, Storing argues, there is a "tendency under the Declaration of Independence for justice to be reduced to self-preservation, for self-preservation to be defined as self-interest, and for self-interest to be defined as what is convenient and achievable."³⁴ In this view there is an anarchic individualism implicit in the natural rights doctrine that will sooner or later undermine the political order itself. Yet such worries have provoked their own defensiveness among those who wish to affirm the stability and justice of the American project. Michael Zuckert, for example, argues that there is no organic or necessary connection between Jefferson's record on slavery and his natural rights doctrine. Zuckert tries to show how Jefferson's version of natural rights necessarily points to and is completed by a system of duties and mutually recognized rights. Jefferson's record on slavery, he says, is the result of Jefferson's racism and personal hypocrisy, factors essentially external to, and separable from, the natural rights doctrine itself.³⁵ Jefferson was guilty, Zuckert argues, but the natural rights doctrine was innocent.

Does our reading of Jefferson's treatment of natural rights and slavery in these texts shed any light on this moral drama of condemnation versus exculpation? The answer is complicated because neither the "egoistic" interpretation nor the "moral" interpretation does justice to the tangled reality of Jefferson's thought. On the one hand, both the letters about the Missouri Crisis and the draft of the Declaration show that Jefferson believed there was a fundamental conflict of equally legitimate natural rights in slavery, one that was, for the

foreseeable future, irreconcilable. And although he admitted (at least as a theoretical matter) that the doctrine of natural rights would justify enslaved people in attempting to rebel, he also believed that the same doctrine justified the slave owners in doing what they must to preserve themselves, regardless of the consequences for the enslaved. This means, contra the “moral” interpretation, that there is indeed a conflict between the rights of the individual and the common good, at least in this particular case. What else could it mean for Jefferson to assert that justice and self-preservation are at odds? On this point, the egoistic interpretation is more accurate about the actual consequences of Jefferson’s thought. The practical upshot of Jefferson’s use of the natural rights language is a kind of egoism and justification for actions that Jefferson himself, at other times in his career, thought were morally unacceptable, such as extending slavery across the territories.

A brief look at Zuckert’s recent defense and rearticulation of Jefferson’s natural rights doctrine helps us understand why. Unlike some defenders of Jefferson’s political theory, Zuckert does not claim that the natural rights theory is really a natural law theory. He admits that the core of Jeffersonian morality is self-concern in the form of an assertion of natural rights, and he emphasizes that, whereas human beings originally or naturally assert rights, they do not naturally recognize others’ legitimate claims. Nonetheless, Zuckert claims that there is a clear path from the original rights assertions, which he calls “proto-rights,” to mutually recognized, fully moral rights, which he calls “rights-in-the-proper-sense.” Because the “proto-rights” cannot be secure without a scheme of mutual recognition, Zuckert argues, they point beyond themselves toward “rights-in-the-proper-sense.” Their natural deficiency points toward completion in “a system of mutual recognition” that is necessarily a “system of natural duties correlative to natural rights.”³⁶

Zuckert’s argument is a plausible account of how Jefferson thought about rights and duties under nonextreme circumstances. But the key point here is that, in both Jefferson’s draft of the Declaration and the letters about the Missouri Crisis, slavery makes the extreme case normal. It reverses the development that Zuckert traces from “proto-rights” to “rights-in-the-proper-sense” and stands as a permanent bar to Americans making the transition to “rights-in-the-proper-sense” completely. Put differently, slavery shows that “proto-rights” are the inalienable core of “rights-in-the-proper-sense.” This need not mean that the egoism of Jefferson’s natural rights doctrine is necessarily in conflict with the interests and rights of others. There is no reason to think that the natural rights doctrine as Jefferson understood it would counsel choosing the institution of slavery if it did not already exist. But matters are different

if it does already exist and today's slave owners have merely inherited it. It is precisely because American slavery is, for Jefferson, an historical accident, not a choice, that slavery presents an especially problematic example of the conflict of natural rights.

The "egoistic" interpretation is therefore more right than wrong in arguing that there was a tendency in Jefferson's natural rights doctrine toward reducing justice to self-interest. Yet seeing Jefferson as simply egoistic does not do justice to the full phenomenon revealed in these texts either. Neither the draft of the Declaration nor the letters about Missouri reveal a cold calculator shrewdly gauging his self-interest. They reveal a man struck to the quick by criticism of American slave owners, a man passionately concerned to defend himself and his fellows against the charge of hypocrisy. Jefferson does emphasize the "egoistic" dimension of natural rights, but he does so in an effort to turn the moral tables on his opponents. The very weakness and implausibility of Jefferson's arguments, which his colleagues in the Continental Congress seem to have recognized, suggests that we have here a deeply rooted psychological conflict. There is defensiveness and even self-righteousness in Jefferson that cannot be reduced to mere egoism and is hard to explain on the basis of Jefferson's own natural rights doctrine. The "egoistic" reading of Jefferson thus needs to be supplemented by attention to this dimension of Jefferson's character and his arguments.

Was there something about Jefferson's version of the natural rights doctrine that lent itself to these results? On the one hand, one would not want to say that the natural rights doctrine by itself was the cause of Jefferson's tendency to reduce justice to self-interest. There were other statesmen who, although starting from the same basic premises as Jefferson, did not emphasize the necessities imposed on Americans by the conflict of rights. Even if one accepted the reality of a profound moral dilemma in American slavery, one can easily imagine a different practical course of action in the light of that reality. Nonetheless, trying to pin the blame for Jefferson's record on slavery on allegedly external factors (racism, hypocrisy) avoids facing up to the deeper entanglement between that record and the natural rights doctrine.

It is more accurate to say that the doctrine of natural rights was a necessary but not sufficient cause of those uses. Put differently, even if Jefferson misused and subtly perverted the natural rights doctrine, there must be something in the doctrine that lent itself to that misuse. It is not, perhaps, surprising that a doctrine that begins with the assertion of an indefeasible natural right to preserve oneself should lend itself to being used as an excuse for otherwise problematic actions. It might be precisely the absolute character of natural rights as

Jefferson understands them that lends itself, not so much to a straightforward selfishness, but to an unmoderated moralism. To be sure, the fate of Jeffersonian liberalism was mediated by powerful historical contingencies. Without the historical accident of slavery in the early republic or the distinctive personality of Jefferson himself, the natural rights doctrine might not have been radicalized in this particular way. Nonetheless, that radicalization reveals a genuine possibility implicit in the natural rights doctrine. There is, it seems, a kind of absolutism or moralism in the natural rights doctrine as Jefferson understands it that can serve as an excuse not to face up to all the consequences of one's actions.

THE "STRANGE DEATH OF JEFFERSONIAN LIBERALISM"

Many have said that the problem of slavery revealed the inherent limitations of the natural rights doctrine. A doctrine of the natural right of each individual to preserve him- or herself, it might be said, cannot provide a persuasive argument for why that individual should risk his or her life or sacrifice significant interests for the sake of someone else's rights. Having motivated the Americans to throw off foreign tyranny, the doctrine of natural rights could not move them to put an end to their own tyrannizing. This analysis is a familiar one. As the letter to Holmes reveals, it seems to have been Jefferson's own. Slavery revealed the implicit egoism of the natural rights doctrine. Yet our reading of these texts suggests that it may not be the most important criticism to be made of Jefferson and his understanding of natural rights. After all, it is very much an open question whether any political theory could have resolved this dilemma in an easy or acceptable fashion. It behooves us to remember there was a real problem inherent in American slavery. Nonetheless, recognizing the gravity of the problem by no means clinches Jefferson's innocence. Even if a problem is intractable or merely very difficult, how a person handles it makes a difference. One could, for example, resolve not to make matters worse.

The truth is that Jefferson did make it worse. Even while he remarked on the injustice and imprudence of slavery, Jefferson also pursued a political agenda that strengthened slavery and contributed to the political disposition that would come to characterize the antebellum South after his death. Think here not simply about his position on extending slavery to the territories but of his defense of states' rights and local government, his opposition to "consolidated" government, and above all his support for agriculture as opposed to manufactures. From early on, Jefferson believed that agriculture was more

conducive to free and self-governing citizens than manufacturing and cities were. But the predominantly agricultural part of the nation was also the part most deeply entangled in slavery, and the most important consequence of supporting agriculture was strengthening slavery.³⁷ By the time of the Missouri Crisis, after the invention of the cotton gin and after the Louisiana Purchase, it was clear or should have been clear that, far from withering away, slavery was getting stronger and expanding, in part because of the preference for agriculture of Jefferson's own party. In any event, it would not have taken great insight to see that Jefferson's policies and his own doctrine of natural rights were in deep tension; nor is it surprising that, in the decade after his death, Jefferson's political heirs would explicitly affirm agriculture, states' rights, and slavery and reject the doctrine of natural rights. As Robert Shalhope writes, "If . . . Jefferson's antislavery actions contributed to the creation of the moral posture that eventually propelled the North into war, it must also be recognized that the Virginian helped to create the ideological underpinning of the southern proslavery stance that made the war inevitable."³⁸ Some scholars even think that Jefferson's letter to Holmes set an important precedent for the tactic of later Southern statesmen in dealing with slavery in the territories: threaten to secede unless their demands were met. Jefferson is surely not responsible for the actions and beliefs of those who came later, but neither is he wholly innocent. It is that tension, even contradiction, between the main commitments of Jefferson's statesmanship, far more than any merely personal hypocrisy, that was Jefferson's main practical legacy to antebellum America. It is no wonder, then, that Miller calls the Missouri Crisis the "strange death of Jeffersonian liberalism."³⁹

The case of the later Jefferson is thus more complex and disquieting than either the "egoistic" or the "hypocritical" interpretations allow. On the political level, Jefferson exhibits grand self-contradiction and blindness to the ways in which some of his political commitments undermine his other commitments. In light of the developments that occurred in the last decade of Jefferson's life and after, it is hard not to wonder, How could he have missed all this? This question is not easy to answer. Human motivation is always a tangled web. But perhaps part of the story is visible in the letter to Holmes itself. There is a bitter moralism in Jefferson's letter as he tries to turn the criticism of slavery back onto the Northerners themselves. You say we slave owners are immoral? He in effect says, in reality, you are forcing us to contemplate secession by making it likely we will face the existential choice between justice and self-preservation. Jefferson thus appeals to natural rights in order to defend himself and other slave owners, even while entrenching slavery in the American polity ever more

firmly. He fails to see, it seems, that his appeal to natural rights makes it inevitable that his own political coalition will collapse. Is it not likely that Jefferson's strong desire to vindicate his own moral innocence blinded him to the predictable effects of his actions? Is it not Jefferson's moralism, and not any mere egoism, that accounts for both the emotional force of the letter to Holmes and his apparent inability to face up to the meaning of his actions?

Our reading of the letters about the Missouri Crisis and the draft of the Declaration has attempted to do justice to the curious intertwining of self-interest and angry, even self-righteous, defensiveness in Jefferson's thought. Paradoxically, Jefferson seems to have been led to emphasize the existence of an irreconcilable conflict of rights—and so the primacy of an “egoistic” concern for self-preservation—out of a deeper desire for moral vindication. If slavery could be defined as an unavoidable conflict of equally legitimate natural rights, then Jefferson could claim that he and other slave owners were not to blame. Despite the terrible actions they were compelled to do, they were, at the end of the day, innocent. To think that Jefferson's natural rights doctrine unleashed egoism is troubling. Yet more disturbing, perhaps, is the thought that it did so because that doctrine was a vehicle for an angry moralism.

NOTES

1. Those who defend the founders' record on slavery along Lincolnian lines sometimes overlook Jefferson's change of heart on this topic. See Thomas G. West, *Vindicating the Founders: Race, Sex, Class, and Gender in Origins of America* (Lanham, MD: Rowman and Littlefield, 1997), 23. I dedicate this essay to the memory of Walter Berns, who saw both the necessity of and the paradoxes within the natural rights doctrine.

2. John Chester Miller, *The Wolf by the Ears: Thomas Jefferson and Slavery* (Charlottesville: University of Virginia Press, 1991).

3. See *ibid.*; Paul Finkelman, *Slavery and the Founders: Race and Liberty in the Age of Jefferson*, 2nd ed. (New York: M.E. Sharpe, 2001).

4. For the first view, see Herbert Storing, “Slavery and the Moral Foundations of America,” in *Toward a More Perfect Union*, ed. Joseph M. Bessette (Washington, DC: American Enterprise Institute Press, 1995), 142–144; and Harry Jaffa, *The Crisis of the House Divided: An Interpretation of the Issues in the Lincoln-Douglas Debates* (Chicago: University of Chicago Press, 1959). For the second view, see Michael Zuckert, *The Natural Rights Republic: Studies in the Foundation of the American Republic* (Notre Dame, IN: University of Notre Dame Press, 1996), and Zuckert, “Response,” in *Thomas Jefferson and the Politics of Nature*, ed. Thomas S. Engeman (Notre Dame, IN: University of Notre Dame Press, 2000), 191–210, along with Jaffa's revised position in *A New Birth of Freedom: Abraham Lincoln and the Coming of the Civil War* (Lanham, MD: Rowman and Littlefield, 2000).

5. Charles Griswold makes a similar argument about Jefferson's moral theory, but he characterizes the tension in Jefferson's thought differently than I do. He sees Jefferson's moral theory as a synthesis of epicureanism and moral sense theory and argues that the pressure of slavery exposed the incoherence of that synthesis. See Griswold, "Rights and Wrongs: Jefferson, Slavery, and Philosophical Quandaries," in *A Culture of Rights: The Bill of Rights in Philosophy, Politics, and Law—1791 and 1991*, ed. Michael J. Lacey and Knud Haakonssen (Cambridge, UK: Cambridge University Press, 1991), 144–214.

6. See "Jefferson's Observations on Demeunier's Manuscript," June 22, 1786, in *Papers of Thomas Jefferson*, vol. 10, ed. Julian P. Boyd (Princeton, NJ: Princeton University Press, 1954), 58.

7. Donald L. Robinson points out that although the Northwest Ordinance prohibited slavery above the Ohio River, the Southwest Ordinance of 1790 failed to prohibit slavery south of the Ohio. Robinson, *Slavery in the Structure of American Politics, 1765–1820* (New York: Harcourt Brace Jovanovich, 1971), 385–386.

8. Thomas Jefferson, *Notes on the State of Virginia*, in Jefferson, *Life and Selected Writings*, ed. Adrienne Koch and William Peden (New York: Modern Library), 237–243, 257–258.

9. For Madison's opposition to the Missouri Compromise and support of diffusionism, see James Madison to Robert Walsh, November 27, 1819, in *Papers of James Madison: Retirement Series*, vol. 1: 1817–1820, ed. David Mattern, J. C. A. Stagg, Mary Parke Johnson, and Anne Mandeville Colony (Charlottesville: University of Virginia Press, 2009), 553–558. For discussion, see Drew McCoy, *The Last of the Fathers: James Madison and the Republican Legacy* (Cambridge, UK: Cambridge University Press, 1989), 260–276; Walter Berns, "The Constitution and the Migration of Slaves," in Berns, *In Defense of Liberal Democracy* (Chicago: Gateway Editions, 1984), 199–230, esp. 214–230.

10. Miller, *Wolf by the Ears*, chaps. 24–26.

11. John Calhoun read the entire letter to Holmes on the floor of the Senate in 1848. Cited in *Union and Liberty: The Political Philosophy of John C. Calhoun*, ed. Ross Lence (Indianapolis, IN: Liberty Fund, 1992), 551–553.

12. On diffusionism, see Lacy Ford, "Reconfiguring the Old South: 'Solving' the Problem of Slavery," *Journal of American History* (June 2008): 95–122.

13. Jefferson's famous phrase is often misquoted as "wolf by the ears," although Jefferson actually wrote "wolf by the ear." See <http://memory.loc.gov/master/mss/mtj/mtj1/051/1200/1238.jpg>. Quotations in this section are from Thomas Jefferson to John Holmes, April 22, 1820, in Jefferson, *Life and Selected Writings*, 637–638.

14. See Robinson, *Slavery in the Structure of American Politics*, chap. 10; Robert Pierce Forbes, *The Missouri Compromise and Its Aftermath: Slavery and the Meaning of America* (Chapel Hill: University of North Carolina Press, 2007).

15. Forbes, *Missouri Compromise and Aftermath*, 103.

16. Peter Onuf and Brian Steele emphasize Jefferson's fears about the preservation of the nation rather than slavery. Onuf, *Jefferson's Empire: The Language of American Nationhood* (Charlottesville: University of Virginia Press, 2000), chap. 4; Steele, *Thomas Jefferson and American Nationhood* (Cambridge, UK: Cambridge University Press, 2012), 168, 179. Steele reads Jefferson as articulating a Lincoln-like recognition of

national guilt for slavery. Stewart Leibiger, however, persuasively argues that Jefferson conveys a barely veiled threat that the South will secede if slavery is not allowed to extend throughout the territories. Leibiger, “Thomas Jefferson and the Missouri Crisis: An Alternative Interpretation,” *Journal of the Early Republic* 17, no. 1 (1997): 121–130.

17. Jefferson alludes to the slave rebellion in Haiti and Gabriel’s Rebellion in Virginia.

18. Similar arguments were made in the congressional debates about Missouri: “Calling attention to blacks in the galleries, a Virginian shouted that Northerners were stirring up insurrection by their careless remarks about the immorality of slavery.” Robinson, *Slavery in the Structure of American Politics*, 411–412.

19. Noting differences between Jefferson’s letters to Northerners and Southerners, Leibiger suggests that Jefferson’s despair at the Missouri Crisis was exaggerated for effect. Jefferson was, he argues, trying to coerce a compromise by frightening his audience, thus anticipating “Southern pro-slavery intransigence” throughout the antebellum period. Leibiger, “Thomas Jefferson and the Missouri Crisis,” 130.

20. See *Works of Thomas Jefferson*, vol. 12, ed. Paul Leicester Ford (New York: Putnam, 1905), 164–166, 179–181, 185–189, 189–191; *The Adams-Jefferson Letters: The Complete Correspondence between Thomas Jefferson and John and Abigail Adams*, ed. Lester K. Born (Chapel Hill: University of North Carolina Press, 1959), 570.

21. *Works of Thomas Jefferson*, vol. 12, 187–188.

22. *Adams-Jefferson Letters*, 570.

23. *Works of Thomas Jefferson*, vol. 12, 188.

24. *Ibid.*, 187.

25. Quotations from the Declaration of Independence and Jefferson’s draft in this and the next paragraph are from Jefferson, *Life and Selected Writings*, 23–29.

26. Lord Dunmore proclaimed in November 1775 that all slaves joining the British forces would be set free. For Jefferson’s reaction, see Miller, *Wolf by the Ears*, 10–11.

27. Jefferson, *Life and Selected Writings*, 23.

28. Pauline Maier, *American Scripture: Making the Declaration of Independence* (New York: Knopf, 1997), 146–147; Joseph Ellis, *American Sphinx: The Character of Thomas Jefferson* (New York: Vintage, 1996), 60; Onuf, *Jefferson’s Empire*, 139.

29. Miller, *Wolf by the Ears*, 9.

30. Cited in *ibid.*, 8.

31. Ellis, *American Sphinx*, 61.

32. Onuf, *Jefferson’s Empire*, 141.

33. For example, James Madison’s letter about the Missouri Crisis to Robert Walsh, has a quite different tone from Thomas Jefferson’s letter to John Holmes. Madison focuses on (perhaps dubious) constitutional arguments against congressional authority to restrict slavery in the territories, rather than the existential threat of slave rebellion. Unlike Jefferson’s letter to Holmes, Madison’s letter does not come across as a threat of secession. See Madison to Walsh, November 27, 1819.

34. Storing, “Slavery and the Moral Foundations of America,” 143.

35. Zuckert, “Response,” 191–210.

36. Zuckert, *Natural Rights Republic*, 73–77; the passage quoted is on 74.

37. See Paul Rahe, *Republics Ancient and Modern*, vol. 3: *Inventions of Prudence*:

Constituting the American Regime (Chapel Hill: University of North Carolina Press, 1994), 203, 205.

38. Robert Shalhope, "Thomas Jefferson's Republicanism and Antebellum Southern Thought," *Journal of Southern History* 42, no. 4 (1976): 529–556. Walter Berns remarks: "One cannot help wondering what the course of American history might have been if Madison and Jefferson had resolutely and publicly maintained their early hopes that Congress could do something about the evils of slavery and that it would 'countenance the abolition' of the slave trade and adopt regulations forbidding the introduction of slaves 'into the new States to be formed out of the Western Territory.' Instead they chose to act in ways that inspired men such as John C. Calhoun." Berns, "Constitution and Migration of Slaves," 229.

39. Miller, *Wolf by the Ears*, 232. Of course, Jefferson's problematic conception of natural rights does not necessarily clinch the "guilt" of the natural rights doctrine either. The Continental Congress, after all, chose not to include the paragraph on slavery, and its members might have done so for good reasons, despite Jefferson's accusation that they caved in to the proslavery contingent.