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Republican Constitutionalism in Thomas Jefferson's *Notes on the State of Virginia*

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The unusual form and content of Thomas Jefferson's Notes on the State of Virginia has obscured its contribution to the development of republican constitutional theory. We propose an interpretation of the Notes taken as a unified whole, demonstrating how attention to its coherent literary structure and Enlightenment methodology prepares readers for the political reforms and the vision of republican constitutionalism presented therein. We also argue that a careful study of the publication history of the Notes shows Jefferson's intention to print and distribute the work in America at a critical period during the debates over the proposed Constitution of 1787. The success of his effort to influence the deliberations may be seen in the impact of Jefferson's vision of republican constitutions in the Notes on James Madison's contributions to The Federalist.

Thomas Jefferson was absent from America on diplomatic assignment in France during the Constitutional Convention and ratification debates. This fact has led to the common assumption that Jefferson had little impact on political affairs in America in the critical period from 1786 to 1788, particularly the Convention and the debates over the proposed Constitution (Cunningham 1987, 96, 116–17; Malone 1951, 87, 162). We argue here that Jefferson sought to influence events through the publication of his only book, *Notes on the State of Virginia*. Written and revised from 1780 to 1785, Jefferson's *Notes* contained his vision for republican constitutionalism in America and thus served as the means to convey that vision to the public through its publication, a decision taken when news reached him in Paris that the Constitutional Convention would convene in the summer of 1787. An examination of the book's publication history—as well as of its literary structure and Enlightenment methodology, two keys to understanding the purpose of the work as a whole—reveals the author's effort to contribute to the upcoming debates through the dissemination of the *Notes*.

The impact of Jefferson's *Notes* has been neglected for two reasons. First, there is confusion regarding the publication history of the book. Second, there is a tendency to read the work as merely expressive of an eclectic intellect and therefore to dismiss its contents as a collection of diverse materials without a unified literary or political purpose. We argue that Jefferson published the first edition of the *Notes* for public distribution in America in 1787 in order to present its contents to a wider audience; that the work exhibits a coherent literary structure and Enlightenment methodology essential to its purpose; and that a grasp of both its structure and its method prepares readers for the vision of republican constitutionalism at the heart of the work. Finally, we contend that the impact and significance of Jefferson's vision of republican constitutions may best be gauged by revisiting the rhetorical efforts of James Madison who sought to confront and refute this view of constitutions in his papers for *The Federalist*, arguably the most influential of the three great works of American political thought published in this critical period.¹

¹Although the influence of Jefferson on the debates through the *Notes* is widely ignored, the impact of John Adams, who was also outside America, through the publication in 1787 of the first volume of *A Defence of the Constitutions of Government of the United States* has been noted (Wood 1969, 567–87). It has long been thought that Jefferson maintained a “detached perspective” on political events at the time in America, and that, unlike Adams or Madison, he was really “never animated” by “reasoning about constitutional structure” (Ellis 1996, 116, 120).

To understand why Jefferson was so eager to have his *Notes* distributed in America at the time of the Convention, and why Madison was compelled to engage in a very public debate with the *Notes* at this critical moment, we must recover the vision of republican constitutionalism that Jefferson sought to promulgate through the work. One of the most revealing aspects of the *Notes*, we argue, is its serious engagement with two prominent sources of conventional authority which exercised influence over Americans in the late eighteenth century: the Bible and Enlightenment science. Jefferson's political reforms and vision for republican constitutions are embedded within his detailed treatment of these two dominant influences. Throughout the work, Jefferson draws on familiar narratives from the Old Testament, while simultaneously undermining the obedience to authority upon which it is predicated. He also develops a science of politics based on a methodology derived from Enlightenment science or natural philosophy properly understood. This method becomes a model for securing progress in human knowledge through observation, inquiry, scrutiny, experimentation, and correction—a model Jefferson refines and democratizes in the first half of the *Notes*, then adapts in the second half to the task of constitutional and legislative reform, in order to ground American politics upon a firm republican foundation.

Jefferson's *Notes* thus offers readers a sustained and yet subtle critique of traditional forms of authority: religious, scientific, and political. Just as flawed or obscurant accounts of the natural world by revealed religion or science must be confronted by reason and overturned when in error, according to Jefferson, so too must the authority of governing legislation and institutions be subjected to scrutiny. Political as well as natural science gradually improves with experience, reason, and revision, and republican governments must be free to advance "hand in hand with the progress of the human mind." Constitutions above all, he insists, must not be hallowed, or held "with sanctimonious reverence" and deemed "too sacred to be touched." Jefferson, in the *Notes*, conceives of a republican constitution as a work in progress, part of an ongoing experiment in self-government, and his constitutional vision demands resistance to the authority and veneration which Madison strongly advocated for the Constitution of 1787 in *The Federalist*—and which has shaped American public opinion ever since.²

²Thomas Jefferson [hereafter: TJ] to Kercheval (12 July 1816), in Jefferson 1984 [hereafter: *TJW*], 1401. References herein to the *Notes* are by query and page numbers, according to the edition of the text printed in *TJW*, 123–325.

The Publication History of Jefferson's *Notes*

Notes on the State of Virginia was written, expanded, and revised by Jefferson between 1780 and 1783 and has been a source of confusion and dispute since its first appearance. From its first circulation in manuscript and then through various printed editions in his lifetime, Jefferson's *Notes* was celebrated as an American *tour de force* of literary and scientific erudition. But it was also castigated by Jefferson's political and religious opponents for its apparent flaws in reasoning and unorthodox views. In addition to its unusual form and content, the publication history of this enigmatic work has created peculiar interpretive difficulties (Mansfield 1971, 30–31; Tucker 2008, 1–5; Zuckert 1996, 57–58, 87–89).

The *Notes* was initially composed as a reply to a questionnaire circulated in October 1780 to delegates at the Continental Congress by a French diplomat, François Marbois, which was passed on to Jefferson as Governor of Virginia. But the substance of the *Notes* transcends this request for basic information about founding charters, natural resources, and inhabitants of the state. Jefferson chose to rearrange and expand the original queries to meet his own priorities, producing replies that greatly exceeded Marbois' expectations, and distributed copies of the manuscript in its early stages to a few trusted friends with requests that it not be circulated, ostensibly due to its unfinished state. Nevertheless, he also inquired into the suitability of submitting his *Notes* as a "proper tribute" to the American Philosophical Society, after his induction to the Society in 1780, thereby clearly signaling his rather high opinion of its contents and his view that it would contribute, in accordance with the Society's mission, to the promotion of "useful knowledge" in America.³

Jefferson worked steadily to revise and expand the *Notes* up until his departure for France in July 1784. Before setting sail, he wanted copies made of the manuscript which had now "swelled to nearly treble bulk," but the steep cost of doing so dissuaded him. Soon after arriving in Paris, where printing costs were much less prohibitive, he had 200 copies printed at his own expense for private distribution, most of which he sent to America, many for distribution to the students at the College of William and Mary—a

³TJ to Thompson (20 Dec. 1781), and reply (9 Mar. 1782), in Jefferson 1950- [hereafter: *PTJ*], VI: 142–43, 163–64. See Green (1984, 6).

proposal warmly endorsed by its President.⁴ Jefferson distributed “so many of them” in Paris that reviews soon appeared in several science journals, and it became a topic for salon discussions. As for its American audience, Madison thought the *Notes* deserved to be published, yet he cautioned against doing so, lest its “strictures on slavery and on the constitution of Virginia” give offense to some readers—a concern Jefferson himself had considered, but rejected. For he hoped the *Notes* would educate a “rising generation” of leading citizens and, through them, accomplish “great reformatations” in Virginia, and beyond: “the two great objects I have in view,” he stated, are “the emancipation of their slaves, and the settlement of their constitution on a firmer and more permanent basis.” While steadfast in his intention, Jefferson was cautiously biding his time.⁵

When news reached him in Paris that a convention of delegates would soon meet to discuss reforms to the Articles of Confederation, Jefferson seized the occasion. For over a year, he had been working on the translation for a French edition but had been rebuffing persistent requests from John Stockdale, a reputable printer in London, to publish the *Notes* in English. In January 1787, with a letter from Madison in hand confirming that a convention would meet that summer in Philadelphia, Jefferson moved quickly to publish the *Notes* on a large scale for public consumption. He wrote to Stockdale immediately with his decision to authorize publication, hastening the process by sending along the complete manuscript with a successive letter dictating terms of a contract. He stipulated that his text of the manuscript not be altered in any way, and that 400 (of 500) copies be shipped to America for public sales: 200 each to booksellers in Philadelphia and Richmond. He later suggested selling copies in Boston, New York, and Baltimore. Due to an unforeseeable delay, the publication process stretched from weeks into months, and this first public edition of the *Notes* did not appear in America while the Convention was in session. However, pirated (unbound) copies from the stalled inventory in London circulated in Philadelphia throughout the summer, together with notices for a

forthcoming American edition; excerpts from the book were also being published in newspapers in several states. By mid-September, unaware the Convention had adjourned, Jefferson shipped over 50 copies of this 1787 edition of the *Notes* to Madison—for further distribution to Wythe, Mason, Randolph, and Washington (among others), with instructions to sell the remainder to the public.⁶

Jefferson's rhetorical effort to distance himself from repercussions for this decision in letters to America at that time, and then much later in life when writing his memoirs, must be read in light of his actions. The “true history” of its publication does not bear out the long-held assumption that Jefferson was literally compelled to publish the *Notes* before an unauthorized translation or edition appeared. Though he often spoke with caution and modesty about the *Notes* in writing to Madison (before its publication in 1787) and to posterity, Jefferson was in fact determined to see the work disseminated to a broader audience than merely a private circle of friends. Despite his dissembling public rhetoric to the contrary, he took great measures to insure that the *Notes* would be published, both in Paris and London, under his strict supervision—and at precisely the moment its distribution in America would have significant political impact.⁷

A failure to note the circumstances surrounding Jefferson's decision to publish the *Notes* for public distribution at strategic places in America only partly explains why the book and its relation to the constitutional debates in 1787–88 have been neglected. The standard scholarly account of its contents tends to be misleadingly dismissive, usually

⁴This was the 1785 Paris edition of the *Notes*. See TJ to Chastellux (16 Jan. 1784), in *TJW*, 799; TJ to James Madison [hereafter: JM] (25 May 1784, 11 May 1785), in *PTJ*, VII: 288–89, VIII: 147–48; Rev. Madison to TJ (28 Mar., 28 Dec. 1786), in *PTJ*, IX: 357, X: 644. Jefferson requested an “Estimate for Printing” from one publisher for as many as 1500 copies (*PTJ*, X: 317, 325).

⁵TJ to Chastellux (7 June 1785) and Monroe (17 June 1785), in *TJW*, 798–99, 804; TJ to JM (1 Sept. 1785), in *TJW*, 822; JM to TJ (15 Nov. 1785, 22 Jan. 1786), in Jefferson and Madison 1995 [hereafter: *RL*], I: 392, 401; TJ to JM (8 Feb. 1786), in *TJW*, 849.

⁶JM to TJ (4 Dec. 1786), in *PTJ*, X: 574–78; TJ to Stockdale (1, 27 Feb., 10 Sept. 1787), with replies (13 Feb., 31 Aug. 1787), in *PTJ*, XI: 107–08, 143, XII: 73, 115–16; Barlow to TJ (15 June 1787), in *PTJ*, XI: 473; TJ to Wythe, Donald, and Madison (16–17 Sept. 1787), in *PTJ*, XII: 127–38. The 1787 London edition published by Stockdale was printed but not bound by March or April; Jefferson had bound copies in hand by August: TJ to Stockdale (14 Aug. 1787), in *PTJ*, XII: 35. Booksellers in Philadelphia and Richmond solicited subscriptions for an American edition, the first known of which was based on the London edition and printed in Philadelphia on January 23, 1788: Donald to TJ (15 Dec. 1787), in *PTJ*, XII: 428n. See Malone (1951, 497, 505–06).

⁷Jefferson collaborated closely with his French translator, agreeing to reorder its contents for that edition to avoid censorship, yet satisfy philosophical interests of his audience: Morellet to TJ (Dec. 1785), TJ to Dumas (2 Feb. 1786), in *PTJ*, IX: 133, 243–44; *TJW*, 124; “Errors in Translation of Notes,” in *PTJ*, XI: 37n. See Barker (2004); Medlin (1978); Wilson (2004). Jefferson's brief comment on the publication of the *Notes* in his “Autobiography” (*TJW*, 55–56) is often misread, when viewed through the rhetoric of his private correspondence. On reading Jefferson, see Zuckert (1996, 87–89).

speaking of it as a work lacking in structure or a compilation of assorted memoranda, rather than a deliberate composition embedded with political theory. On this reading, the *Notes* seems a haphazard, if at times inspired, collection of memoranda, loosely bundled together in response to a slate of questions seeking mundane information about the state of Virginia. This view, as we argue in the next section, could not be further from the truth.

Literary Structure and Enlightenment Methodology

Readers of Jefferson's *Notes* who study selections or excerpts (on race, slavery, agrarianism, or geography, for example) have only a partial impression of its contents. Read with attention to its coherent governing structure, the *Notes* comes to light as a comprehensive statement on both natural and political science. It is a definitive articulation of Jefferson's design for constructing a genuinely republican political order. One principal lesson to be learned by citizens of a republic is that consent to its laws must emerge from rational assent, not blind obedience to authority. To resist the human tendency to venerate tradition and ascribe to preceding generations "a wisdom more than human," Jefferson prompts his readers to question authoritative frameworks claiming to transmit knowledge about the natural world around us and how to govern ourselves under its laws. A full account of the literary structure of Jefferson's *Notes* would go beyond our scope here, but two overarching themes or organizing principles must be noted—for they run from beginning to end, binding together the work as a whole, and frame Jefferson's vision of republican constitutionalism. Both themes address a powerful authority that he seeks to displace or correct in order to unveil a new political science. The structure and methodology of the *Notes*, in other words, show Jefferson's concerted effort to overthrow authoritative claims of religion and of science that obscure and distort nature, thereby impeding inquiry into nature and its laws as a foundation for republican government.

The first theme is a sustained treatment of the Bible as an authoritative basis for thinking about natural and political phenomena. References to the Old Testament recur throughout the *Notes*. Jefferson describes, in the first half of the *Notes*, the natural wonders and physical attributes of his country and then turns in its second half to the political state of Virginia—doing so in a manner that seems to parallel the accounts of Creation and of Exodus. The structure of the *Notes* thus reflects

its affinities with these key Biblical narratives: in the beginning, Jefferson calls forth Virginia from the vast American wilderness (Query I); separates land and water (Queries II–V); offers an account of mineral, plant, and animal life (Queries VI–VII), as well as of the native inhabitants (Queries VIII–XI), in the new world; conducts a journey of liberation, refounding Virginia through a new political covenant (Query XIII), statutes (Query XIV), and educational tabernacle (Query XV), followed by reforms intended to secure political, moral, and economic liberty in a republic (Queries XVI–XXII); and concludes with a legal history of Virginia down to his own day (Query XXIII). But despite his use of these Biblical narratives, Jefferson supplants the authority of the Old Testament itself which, in his view, conceals nature within the dogmatic faith of revealed religion, thereby obstructing any serious effort to ascertain a natural rather than divine basis for human government.

When read as parts of a sustained literary motif rather than isolated instances, such passages reveal an intention to grapple directly with the most widely read and cited book in America at that time (Alter 2010, 1–7; Lutz 1984, 192; see Hatzenbuehler 2006, 79–87).⁸ Jefferson's use of the Bible in this regard, while perhaps surprising to modern readers, is not unusual. It is crucial for us to recall that the "history with which the largest number of Americans were familiar was that recounted in the Bible"—a text more frequently cited and quoted than texts by Hume, Blackstone, Montesquieu, or Bolingbroke. Indeed, "almost every literate American . . . could follow and understand biblical references when applied in a political context" (McDonald 1994, 68–72). For authors, orators, and their audiences in colonial America, the Bible was also a "vehicle for moral, social, and political commentary precisely because it was a well-known and often cited"—and the Old Testament, or Hebrew Bible, much more so than the New, was a treasure chest to be mined for political lessons and guidance. Biblical parodies, for example, which made use of Biblical stories and allusions to construct texts that went so far as to challenge the faith that the Bible teaches, were among the most popular works being published in colonial America (Alter 2010, 2–3; Colbourn 1965, 19–20; Mulford 1987, 11–37). Such works loosely veiled

⁸Jefferson's revision of the Old Testament here anticipates his effort to edit the New Testament, the ethical value of which he sought to improve by omitting references to miracles or the super-natural, thus creating "a new basis for morality to replace the traditional spiritual sanctions of Christianity" by "substituting the God of nature for the God of revelation" (Sheridan 1983, 8, 26). See TJ to Carr (10 Aug. 1787), in *TJW*, 900–06; Tessitore (2003, 137–43).

their political critiques in carefully contrived Biblical rhetoric. But nonparodic appropriations of illustrative narratives from the Old Testament were prevalent too, especially (but not only) from the pulpit.⁹

The interpretation of the recent past, present, and future “in terms of biblical hermeneutics” resonated throughout American political culture, and in the crucible of the Revolution the range of archetypes from the Hebrew Bible—*mutatis mutandis*—were being redeployed in “highly original” ways (Nelson 2010, 52–53; Perl-Rosenthal 2009; Shalev 2009; Shklar 1998, 127–45). Oratorical and visual comparisons of the Revolution with the Israelites’ flight from Egypt were commonplace, with rhetoric condemning both the English king and Parliament as an obstinate “Pharaoh Britain.” Jefferson and Benjamin Franklin both proposed to the Continental Congress in August 1776 that the “Great Seal” for the United States depict scenes from Exodus. Franklin preferred Moses, wielding an uplifted rod and commanding the Red Sea to close and destroy Pharaoh. Jefferson omitted Moses from his scene entirely, thinking it more fitting to represent the founding of America by depicting only “the children of Israel in the wilderness, led by a cloud by day, and a pillar of fire by night”—a journey to freedom guided by the observation of natural phenomena.¹⁰

It is striking that these statesmen, not otherwise known for their piety or personal devotion to religion, thought it salutary to employ Biblical images for political purposes and thus to clothe such a prominent symbol of the new order with recognizable visual rhetoric. Jefferson also adopted this rhetorical approach in the *Notes*, using Biblical references to frame constitutional and political reforms for the sake of republican self-government and a new birth of freedom in America. Like the revolutionary Tom Paine, whose pamphlet *Common Sense* (1776) spoke of the Israelites under the Mosaic constitution as “a kind of republic,” Jefferson adapted Old Testament paradigms to his own purposes in order to turn the attention of his Bible-steeped readers away from traditional religious authority towards a more rational engagement with nature. His deliberate reworking of Genesis and Exodus narratives enabled Jefferson to clear the ground and prepare the way for his introduction of

a mode of inquiry and way of life more conducive to self-government on republican principles.¹¹

The second ordering theme of the *Notes* reflects the influence of the French Enlightenment, and especially the *Encyclopédie* which Jefferson first acquired and read while composing his work (see Hatzenbuehler 2006, 70–79). His study of that monumental, multivolume tome, with its *avant-garde* plan and systematic method for classifying and presenting knowledge, suggested to Jefferson a means to order his *Notes* as well as an end far beyond the limited aims of Marbois’ questionnaire. In content and form, Jefferson took care to transmit a plan for collecting and cataloguing knowledge of his “country”—that is, Virginia and America. In doing so, he took aim at theories of prominent Enlightenment scientists whom he criticized for allowing their political and moral prejudices to distort their conclusions and corrupting natural philosophy. To liberate the progress of the natural sciences from what he called “wretched philosophy,” by articulating the demands of a “cautious” natural philosophy, Jefferson argued against the authoritative theories of Old World luminaries like Comte de Buffon and Abbé Raynal, whose specious theories about species degeneracy in America had been extended to human beings, thus calling into question human equality and the foundation of republican self-government in natural law and rights (*Notes*, VI, 168, 190).¹²

Just as revealed religion obscured nature from reasonable inquiry, the “celebrated” scientists like Buffon and Raynal who “cherished error,” conspired to both disfigure natural philosophy and disgrace nature—creating an “afflicting picture, indeed, which for the honor of human nature, I am glad to believe has no original” (*Notes*, VI, 183). Coloring their prejudiced conclusions with “vivid imagination” and “bewitching language,” these scientists clothed their errors in the veil of authority and thus forestalled scrutiny of nature itself (*Notes*, VI, 189–91).¹³ Jefferson advised restraint in promulgating such conclusions, insisting that “ignorance is preferable to error; and he is less remote from the truth who believes nothing, than he who

¹¹See Sheldon (2000); Tucker (2008, 24–28, 122); Zuckert (1996, 57–66).

¹²See Cillerai (2006); Tucker (2008, 131–35); Zuckert (1996, 56–87); cf. Ceaser (1997, 19–65) and Ceaser (2000).

¹³To believe such conclusions regarding New World degeneracy, Jefferson argues, we must deny what experience teaches about the natural world and embrace miracles that transgress natural laws imposed on creatures by “their Maker” (*Notes*, VI, 169)—laws which must apply equally to human beings: “Human nature is the same on every side of the Atlantic” (*Notes*, XIII, 246; see VI, 170). Cf. Kass (2003, 9: “there is no Biblical Hebrew word for ‘nature’”).

⁹See Nicholas Street, “The American States Acting over the Part of the Children of Israel in the Wilderness and Thereby Impending Their Entrance into Canaan’s Rest” (New Haven, CT, 1777), reprinted in Cherry (1998, 67–81); Samuel Langdon, “The Republic of the Israelites as an Example to the American States” (Exeter, NH, 1788), reprinted in Sandoz (1998, 941–67).

¹⁰Ford (1906, 689–91, 20 Aug. 1776); Cherry (1998, 61–66). See Tucker (2008, 122).

believes what is wrong” (*Notes*, VI, 156, 177). He refused to accept unexamined precepts of apparent authorities and encouraged republican citizens to throw off the shackles of obedience imposed by the dictates of famous European scientists.

In his quarrel with the “wretched philosophy” practiced by Old World scientists, Jefferson proposes an alternative natural philosophy consistent with Enlightenment and republican principles. The “patient pursuit of facts, and cautious combination and comparison of them,” understood as the progressive and cumulative work of human kind, is what secures the advancement of knowledge. In a note to his text that ingeniously subverts the Biblical teaching regarding Adam’s Curse (to toil the earth as the wages of sin), he declares that the proper activity of natural philosophy “is the drudgery to which man is subjected by his Maker, if he wishes to attain sure knowledge” (*Notes*, VI, 192). Jefferson thus sees the enterprise of natural philosophy and advances in science in Enlightenment terms of reason and progress, a process requiring the participation of generations, while demanding that individuals think for themselves rather than acquiesce to authority—in effect, democratizing the scientific revolution (see Bonwick 2006, 182; Green 1984, 13; Tucker 2008, 19–35, 91).

Jefferson teaches in and through the *Notes* that traditional forms of authority, either Biblical or scientific, must yield to human reason. Reason, free inquiry, and experimentation are the only “effectual agents against error” and thus the true foundation of natural science and political science; for wherever they are “indulged,” in science or politics, “error has fled before them” (*Notes*, XVII, 285–86). Truth advances, error recedes as opinions about nature or politics are subjected to scrutiny and their defects exposed: “Our only appeal . . . is to experience,” but this must always be tested (*Notes*, VI, 170). Jefferson was no philosophic idealist with respect to political affairs; he knew the prospects for republican politics would depend on an adherence to a prudential method for achieving progress (Tucker 2008, 63–69).¹⁴ The two organizing principles of literary structure and Enlightenment methodology help burst the chains of convention that threaten to restrain the exercise of natural reason and the progress of republican government. Taken as a whole then, the *Notes* aims to loosen the grip of reason-obstructing forms of authority that hold sway over the mind, in order to free the citizens of Virginia and America to establish a republican form of government on principles “de-

rived from natural right and natural reason” (*Notes*, VIII, 211).¹⁵

In the second half of the *Notes*, Jefferson builds on the ground cleared in his earlier queries, applying the methods of natural philosophy to political science. His resistance to Biblical authority also continues with the adaptation of the Exodus narrative into a story of American emancipation. This liberation journey leads readers towards the institution of a republican government that lays its foundation firmly on natural principles. But this founding will not be sacred. Jefferson’s natural philosophy informs his political inquiries and guides his proposals for gradual, yet comprehensive political reform as well as his thoughts on drafting and revising republican constitutions.

Drafting and Reforming Constitutions

This survey of the structural contours of Jefferson’s *Notes* indicates the methodology and philosophical foundation of the work as a whole. To see the governing structure of the work adds layers of meaning for those interested in any particular aspect of the *Notes*, especially for readers interested in the vision of republican constitutionalism at its core as a work of political thought—a matter of urgent interest to his American audience at the time of its publication. After modeling the proper method for inquiring into natural laws, yet before turning to proposals for reforming political laws in light of experience and reason, Jefferson undertakes a radical examination of constitutions as the ground of political authority. By situating his political science within the context of his view of natural philosophy, readers are made more keenly aware of the subtle way Jefferson, as author, introduces what was (and is) a contentious issue: constitutional revision. Before we turn to examine the content of his vision for republican constitutions, as it is presented in Query XIII, it is important to note the circumstances surrounding the composition of the *Notes*, and the structure or arrangement of the work’s actual chapters or queries within which this political argument about republican constitutions is embedded.

Jefferson first began to work on the *Notes* in earnest after his second term as Governor of Virginia had ended, and while the state was under assault from British invasions. While the dire military and political circumstances did not permit an immediate response

¹⁴See TJ to Jones (31 Mar. 1801), cited in Tucker (2008, 65); Ceaser (2006, 83–89).

¹⁵See Zuckert (1996, 56–87, 210–27); TJ to Rush (23 Sept. 1800), in *TJW*, 1082.

to Marbois' queries, he devoted time to the task of preparing his *Notes*, working diligently to revise, reorganize, and expand the manuscript during his "retirement" from public life. The manuscript took shape in the midst of a war defending the American experiment in independence and self-government, when the institutions of the Commonwealth and Jefferson's actions in office were under assault.¹⁶ Soon after the end of his term, the faction in the House of Delegates which had accused Jefferson of neglecting his duties as Governor proposed the appointment of a "dictator" to defend the state—an extreme measure denounced in the *Notes* as treason, an instrument of tyranny incompatible with republican principles (*Notes*, XIII, 253–54). It was precisely during this turmoil that the isolated Jefferson turned his attention to composing his *Notes* on the "state" of Virginia, in which he sought an answer to the urgent question of how to establish a republican political order capable of perpetuating itself even in a crisis without abandoning its defining principles.

One of the most pressing aims in the *Notes* was to reform the Virginia constitution, but the overarching structure of the work compels readers to turn to political and constitutional reform only after nature itself has been examined and discussed. Whereas the questionnaire from Marbois opened by asking about charters and constitutions, only incidentally mentioning natural features of the state, Jefferson significantly rearranged the order of the queries. He postponed his discussion of political and legal forms in Virginia until the second half of the *Notes*, after his study of its natural environs and inhabitants. As a few scholars have noted (see Mansfield 1971, 31; Tucker 2008, 8–11, 15), by examining the structure of the queries reworked according to Jefferson's order, we see that the central query (Query XII) divides the book into two sections, reflecting the dual focus of the inquiries therein: "Nature" (Queries I–XI) and "the laws" (Queries XIII–XXIII).¹⁷

Query I, with its double account of Virginia's origins (first describing the boundaries of Virginia

according to its natural features, then turning to the negotiations that determined its political boundaries), mirrors the dual Creation accounts in the Old Testament (*Genesis* 1:1–2:4, 2:5–11:9) and anticipates the structure of the *Notes* itself, which studies nature before politics. Jefferson turns with Query XII from the suprarational foundations of Biblical authority and the corrupt theories of Old World science, examined and refuted in the first half of the *Notes*, to a new science of politics in the second half that rests firmly upon principles of nature clearly and distinctly perceived by rational scrutiny and experiment. This refounding of political science, modeled on an enlightened natural philosophy, prompts a reformation of the constitutional framework and statutory laws (Queries XIII–XIV), as well as of education, morals, and the economy (Queries XV–XXII)—a gradual political process which, taken together, charts a course for Virginia and America to secure republican liberty for the new "chosen people of God" (*Notes*, XIX, 290). Jefferson thus articulates key political reforms intended to replace a flawed government instituted in the turbulent wake of a revolutionary war with a new order animated by republican principles.

In the first query after his turn from nature to the laws, Jefferson scrutinizes the fundamental law of Virginia, its 1776 constitution. Forged under intense pressure, that constitution—"the first of the States" and "the first of the nations of the earth" written by an assembly of free citizens—was in many respects a deeply flawed document. It was "formed when we were new and unexperienced in the science of government," wrote Jefferson. "No wonder that time and trial have discovered very capital defects in it" (*Notes*, XIII, 243).¹⁸ His draft for a Virginia constitution, written in May 1776, while he was absent from the state as a delegate to the second Continental Congress, arrived too late to have any serious effect upon the document drafted and approved by the special convention of delegates back in Virginia.¹⁹ Yet Jefferson continued to think of constitution-drafting as "work of the most interesting nature and such as every individual would wish to have a voice in."²⁰ His desire

¹⁶An inquiry by the Virginia General Assembly into his conduct as Governor led to a formal "Resolution of Thanks" (12 Dec. 1781) that fully vindicated Jefferson. He sent a draft of his replies to Marbois one week later: TJ to Marbois (20 Dec. 1781 and 24 Mar. 1782, with replies, 29 Jan. and 22 Apr. 1782), in *PTJ*, VI: 141–42, 149–50, 171–72, 177–78.

¹⁷Jefferson alludes to this duality in the query: "There are other places at which . . . the laws have said there shall be towns; but Nature has said there shall not" (*Notes*, XII, 233–34). See TJ to Randolph (6 July 1787): "I wrote some Notes in answer to the enquiries of Mr. de Marbois as to the natural and political state of Virginia." On the order of Marbois' inquiries: *PTJ*, IV: 166–67.

¹⁸See TJ to Cartwright (5 June 1824), in *TJW*, 1492; Mayer (1994, 55–69).

¹⁹This draft was sent in June 1776 and differed considerably from the document adopted by the convention on June 29. George Wythe reported to Jefferson (July 27) the late arrival of his draft and encouraged him to work to reform the new constitution upon his return. See *RL*, I: 50–52.

²⁰TJ to Nelson (16 May 1776), in *PTJ*, I: 292. The preceding year, he had copied out by hand and annotated Benjamin Franklin's draft for the Articles of Confederation.

to revise the Virginia constitution and correct its defects in accord with republican principles led Jefferson to decline a second term in Congress and a diplomatic appointment. He returned to take his seat in the state legislature in October 1776. With Madison's help, Jefferson drafted legislation and introduced reforms which were written with an "eye to reason, and the good of those for whose government it was framed" (*TJW*, 37).²¹ This work occupied him until June 1779 when Jefferson was elected the second Governor of Virginia. While his efforts at reform were constantly frustrated by the entrenched conservatives in the Virginia assembly, these initiatives provided Madison with a substantial legislative agenda afterwards pursued with greater success.²²

Later, in 1782, when the Virginians debated the need for a special convention to amend their constitution, Jefferson revised his draft for a constitution that might receive "amendments which time and trial have suggested, and be rendered permanent by a power superior to that of the ordinary legislature."²³ He sent Madison—then in Congress and faced with the task of revising the defective Articles of Confederation—his revised draft, suggesting that it might "serve as a basis for your amendment, or may suggest amendments to a better groundwork."²⁴ By the time he wrote and revised the *Notes*, therefore, Jefferson had spent many years studying and drafting constitutions (Bailey 2007, 10–11). As much as the document appended to it, the *Notes* reflected his considered thoughts on the subject. Many of his ambitious proposals were incorporated into the second half of the *Notes* which, beginning with Query XIII, focused almost exclusively on republican legislation. Readers should not be surprised to discover that Jefferson embedded his thoughts on republican constitutions here, for during its composition political affairs were inevitably drawing his attention back to the task of constitution writing. Its relevance to critical events unfolding in 1787 should not be underestimated.

²¹See TJ, "Autobiography," in *TJW*, 32–46; *RL*, I: 48–56.

²²See Peterson (1970, 97–165). Jefferson's "Bill for Establishing Religious Freedom"—proposed in 1776 and passed in his absence in 1786—was appended to the 1787 London edition of the *Notes*.

²³TJ, Draft of a Constitution for Virginia, in *RL*, I: 252–60. See Wood (1969, 306–10, 318–19).

²⁴TJ to JM (17 June 1783), in *RL*, I: 252. Madison seems not to have sent his "Observations" on that draft to Jefferson himself: *PTJ*, VI: 316; *RL*, I: 555–562. See Mayer (1994, 301); Peterson (1987, 12). Jefferson carried this draft to France and published it as an appendix to the 1785 and the 1787 editions of the *Notes*.

Jefferson's proposed constitution for Virginia in 1776, and even more so his revised draft of 1783, would have set the framework of state government squarely upon a republican foundation, one unprecedented in its democratic elements, beginning with a proposal for popular approval of the fundamental law which had been put into effect without being ratified by the people.²⁵ His revised draft opened with a grant of "powers" by the people to delegates explicitly authorized "to form a constitution," included a republican guarantee clause, and concluded with an article for convening a special "Convention" when two of the three branches of government concurred in the need to alter the fundamental law or correct breaches of it. For Jefferson, the legitimate authority of a republican constitution rests upon popular foundations and continual public approval. He envisioned a radical role for the people in maintaining and when necessary correcting their constitution with a provision for obtaining their consent to changes in successive conventions—a provision that Madison felt compelled to refute publicly in his own contributions on the subject in *The Federalist*.

The Turn to Political Science: Jefferson's Vision of Republican Constitutionalism

Having laid out in the first half of the *Notes* reasonable grounds for calling into question two powerful and competing sources of authority in his time, Jefferson saw the need to articulate for his readers a vision of constitutions that establishes the people in a republic as authoritative. Query XIII marks a new beginning in the *Notes* in which Jefferson begins his direct engagement with the laws. In the second half of the work he introduces a primer for republican citizenship and invites readers to consider the fundamental law, or constitution, in a republic as a framework subject to continual improvement and revision—not merely amendment—by the people. We turn now from a focus on Biblical narratives and natural philosophy to

²⁵Jefferson proposed broader suffrage, land grants for citizens, a more democratic apportionment of representation in the legislature, equal inheritance rights for women, measures to reform entail and appropriation of lands, a bill of "rights public and private" (right to bear arms, religious freedom, free press, trial by jury, prohibitions on standing armies and importing slaves) and an amendment process based on popular consent—all absent from the 1776 Virginia constitution. See Anderson (1916, 750–54); Bailey (2007, 28–29); Mayer (1994, 56–58); Peterson (1970, 99–107); Peterson (1987).

an elaboration of the political science that emerges in Jefferson's discussion of the political state of Virginia.

Query XIII opens with an historical account of an evolving political authority in Virginia, moving from monarchical grants and charters for a new colony to nascent republican government. The account is selective, an observation supported by the more exhaustive list of documents in the last query of the *Notes*. In this abridged chronicle of the development of British tyranny, Jefferson marks ten moments in which political authority was first granted to Virginians in royal letters-patent issued by Queen Elizabeth and King James, authorizing colonial institutions of self-government, but which were later contested or revoked. This account ends with an "epitome" of injustices committed by King George III that "evinced a fixed design" to nullify the "rights, natural, conventional and chartered" of Virginians, thus justifying the Revolution (*Notes*, XIII, 242). He depicts Virginians as chafing under the yoke of a capricious and oppressive master who tempts them into complacency with assurances of political liberty at one moment, only to tyrannically deny them that promised freedom later. In effect, Jefferson here shows that even a constitutional government can become corrupt and treat rights arbitrarily, under the veil of legal forms and the rule of law.

Once his American chronicle in Query XIII arrives at an "appeal to arms" and declaration of "independent States . . . confederated together in one great republic," Jefferson turns attention to the establishment of Virginia as a free state, with its fundamental law or constitution, which was soon found out by "time and trial" to be defective (*Notes*, XIII, 243). In the remainder of the query, his objections to the 1776 Virginia constitution are distilled down to nine explicitly numbered items, and an unnumbered tenth (*Notes*, XIII, 243–55).²⁶ These ten critiques expose serious flaws in the constitution threatening its republican character, while simultaneously articulating principles to which all republican constitutions should adhere. When read together as inquiries or lessons rather than merely criticisms, these passages transmit a republican education—a Jeffersonian primer that is intended to supplant the reliance of citizens on conventional authorities, or a providential deity, and to guide a free people toward the establishment of a

new political order grounded more firmly upon republican principles, "the world's best hope" for self-government.²⁷

The ten inquiries or questions raised by Jefferson are: Is representation necessary? What kind of representation is required? What kind of legislature is sufficiently representative? How are the powers of government (legislative, executive, judicial) to be properly distributed and separated? How will the legislative body be controlled? Are future generations bound by legislation of that body? Is the authority of a "constitution" nominal or supported by powers? Does sovereignty rest ultimately in a constitution or in the people, and is the constitution subject to repeal, revision, or amendment by the people? Should a minority of one (monarchy) or a few (aristocracy or oligarchy) be allowed to frustrate the will of the majority in assembly? Is any form of government good, other than republican? This list of inquiries, with their attendant reflections and responses by Jefferson, transmits a republican education for American citizens. The flow of reasoning through the critiques exhibits an experience-based, incremental, progressive methodology, consistent with the pursuit of scientific knowledge modeled in his natural philosophy. Jefferson moves gradually from reasonable observations and scrutiny towards first principles. An attentive reader discerns in reading through these inquiries the foundational precepts and political imperatives which, according to Jefferson, are essential to republican self-government. The order and trajectory of the inquiries transform this list of objections and replies into a political primer for republican citizens and statesmen.

Jefferson's first critique revives the iconic rallying cry of the Revolution (against taxation without representation), a republican principle self-evident to Americans and the one critique for which he provides no further elaboration. The critique itself exposes the illicit desire of a few to covet for themselves the political franchise or right to vote that belongs, by republican principle, to their fellow citizens and tax-paying neighbors. In the second critique, he challenges the false weight of the respective shares exercised by those represented. This accusation is quantitatively supported by his inclusion of a table showing recent empirical data demonstrating an unequal concentration of representatives from Virginia's older, aristocratic eastern counties, as opposed to its newer western counties. Third, Jefferson censures the fact that the houses of the Virginia legislature have been so

²⁶The fifth numbered critique adduces three additional numbered parts. The last, and tenth, critique is unnumbered, since "it would be wrong to count . . . what is only the error of particular persons." This last—condemning the creation in a crisis of a "dictator"—is crucial, for it reveals the violence that can be done to republics by a tyrannical faction working within a flawed constitution.

²⁷For a fuller account of Jeffersonian civic education, see Yarbrough (1998).

constituted as to allow the wealthy to steal influence in the Senate and the Assembly, thus rendering them homogeneous. In the fourth critique—that “the powers of government, legislative, executive, and judiciary, result to the same body”—he calls direct attention to the need for effective barriers to be erected between powers to prevent a violation of boundaries sacred to republican principles, and hence natural. Jefferson here cites history and natural philosophy in support. He objects in the fifth critique to the fact that the constitution did not originate from a convention expressly authorized by the people to frame its fundamental law and so could be legally altered or abolished by an ordinary act of the legislative body without the people’s consent. In the first four critiques, in other words, Jefferson surveys the operating principles of republican government; the fifth critique prepares the way for his extended meditation on the nature of constitutions and on constitutional government.

Jefferson’s sixth critique rejects the claim that any ordinance, even one born of war-time necessity, implicitly binds future generations—especially not beyond the duration of the conflict. His concern here with origins and the debt one generation is obliged to pay to the preceding one reminds of Jefferson’s later iconoclastic “usufruct” letter, in which he rejected that conventional wisdom which demands that ancestors be honored, and instead proposed a democratic politics of “perpetual” renewal.²⁸ The following two critiques reflect on the authority attributed to names and upholding institutional rituals. Jefferson declares his republican faith, by confessing that for republican citizens “the magic supposed to be in the word *constitution*” must be expelled, and the name itself not held sacred; and that the people always retain the right to “rebel” against “forms of government” to which they have hitherto acquiesced. Neither a constitution nor government should be considered above human reason, or beyond scrutiny and improvement. The penultimate critique—“That the assembly exercises a power of determining the Quorum of their own body which may legislate for us”—points to the fundamental rule governing republics. Majority rule is “the natural law of every assembly” under republican government.²⁹ When an assembly has the authority to fix its own quorum at a number less than a real

majority, Jefferson warns, “an oligarchy or monarchy [might] be substituted under forms supposed to be regular.” Misled by a foreign precedent in this crucial respect, the Virginians transgressed against republican principles: the House of Delegates had mistakenly recast itself in the image of a false god, the British Parliament, which determined its own quorum. In sum, the last four critiques illuminate the limits of government under republican constitutions, where legitimate authority always rests on popular consent. Such commonly cited sources of authority—such as necessity, *raison d’état*, tacit consent, nominal or legal formalism, or historical precedent—are rejected as insufficient grounds for establishing a true republic.

With his final critique of the Virginia constitution in Query XIII, Jefferson finally arrives at the essential demand of any form of government consistent with natural right. This principle, set down last in the order of critiques, unveils the fundamental imperative in a republican primer. This foundational precept—that “the state shall be governed as a commonwealth”—emerges as a declaration of self-evident truth, expressed at the end of his passage denouncing anti-republican efforts by political factions to “save” the state of Virginia by transferring absolute authority to an appointed “dictator” during a crisis. The tenth critique, the key-stone in his defense of republican constitutionalism, articulates the first principle of good government to readers who have been working their way up to it by unassisted natural reason. It is the fundamental law that must be obeyed, the ground upon which all the other republican laws are established and judged: We shall have no other form of government before a republic.

Even such devotion to republicanism, according to Jefferson, cannot be accepted on faith or enforced by providence; the mere statement of a republican imperative, like a guarantee clause written into a constitution (as in the case of Virginia), does not suffice. Preserving the republican form of government instead depends, as his vision of natural philosophy does, upon the exercise of reason by vigilant citizens, who apprehend principles through observation, experience, and scrutiny (Davy 1993, 588; Ferguson 1980, 384–90). Jefferson’s prime command—from which the others, upon reflection, can be seen in a decisive sense to follow—does not rest on an assertion of absolute authority, or compel blind obedience beyond the grasp of human reason. It derives its force from the logical train of argument to which it is the conclusion, an argument that carries the minds of readers inductively through his objections to the flawed Virginia constitution towards republican constitutionalism rooted in natural law and right reason. Reason, not reverence, according to Jefferson,

²⁸TJ to JM (6 Sept. 1789); Shklar (1998, 138–43, 174–75). See Saxonhouse (2006, 51–53).

²⁹TJ, “A Manual of Parliamentary Practice,” XLI (1801). See TJ to Breckenridge (29 Jan. 1800), in *TJW*, 1074; TJ to von Humboldt (13 June 1817); TJ, “Inaugural Address” (4 Mar. 1801): “the will of the majority is in all cases to prevail, [but] that will to be rightful must be reasonable.”

teaches the way to recognize and fulfill that first or primary republican command.³⁰

Jefferson's vision of republican constitutionalism, it must be recalled, surfaces only after he has modeled for his readers in the first half of the *Notes* a natural philosophy that both anticipates and informs his political philosophy and facilitates the discovery of republican principles of self-government. His republican primer reflects the methodology at work in his natural philosophy; the authority of tradition yields to reflection and choice, and insight is gained from reflection on political experience rather than chance, history books, or providential decrees. Following the sequence of critiques, this republican primer ascends incrementally from reasonable experience to self-evident truth, in order to establish a new political covenant; that is, from aspects of government accessible to human reason, to republican principles that secure a natural foundation for good government and the pursuit of justice. This movement is essential to the education of citizens on republican grounds that need not appeal to authority, even the authority of a constitution, but to reason and experience. Readers first discern commands related to the basic observation of political injustices, such as a lack of representation for tax-paying citizens, an unequal basis of representation in the legislative bodies, and a lack of differentiation between the two houses. From this beginning, other precepts proceed toward the conclusion based on reason, not authority, that republican government is the best means to insure justice in accordance with the dictates of human reason and a firm grasp of natural right.

Query XIII ends with a call to arms—for constitutional reform: "Our situation is indeed perilous, and I hope my countrymen will be sensible of it, and will apply, at a proper season, the proper remedy; which is a convention to fix the constitution, to amend its defects" (*Notes*, XIII, 255). What then follows, in Query XIV, are statutory reforms which descend from universals to particulars, including most notably three of Jefferson's signature legislative efforts, progressive steps to secure republican liberty—his bills for establishing religious freedom, emancipating slaves, and the diffusion of knowledge "more generally through the

mass of the people" (*Notes*, XIV, 263–75). Consistent with his articulation of principles, Jefferson puts his republican faith in the hands of the citizens themselves as "ultimate guardians of their own liberty" (*Notes*, XIV, 274; see Tucker 2008). He also undertakes a plan for popular education, proposing to put "into the hands of youth," books—including his *Notes*—which would both improve their capacity to think reasonably and "impress their minds with useful facts and good principles." The people are "the only safe depositories" of republican government, he declares, but "to render them safe their minds must be improved" (*Notes*, XIV, 273–74). While the first half of the *Notes* seeks to democratize the activities of the scientific revolution, the political focus of the second half endorses democratic republics. Jefferson's primer in Query XIII urges his readers as citizens to reflect critically on the practice and precepts of republican government.

Debating Conventions and Republican Constitutions

Through a sustained reflection on the laws and constitutions of republics in Query XIII, Jefferson approaches the task of civic education and regime-formation in a manner that lowers expectations for and dependence upon constitutions, placing primary importance instead on the discovery by self-governing citizens of right constitutional principles grounded in nature, not in obedience to conventional or traditional authority. Such an education, however, requires a mild detachment from particular constitutional arrangements as definitive—an important insight given the early American political experience with a wide variety of republican constitutional forms.³¹ The 1770s and 1780s are heralded as an age of constitution making. Jefferson, throughout his long career, wrote of the American constitutional essays as stages in our ongoing "experiment" in republican self-government.³² Constitutions should not be authoritative decrees, perpetually binding and past improvement, any more than theories of natural science should exercise an unquestioned authority over the human mind beyond

³⁰The sequence of principles articulated in his inquiries bears comparison with the commandments that govern the people of Israel (*Exodus* 20:1–17). On the attempt to reconcile the absolute authority upon which "the tables of the Hebrew constitution" rest with republican principles of consent and natural rights, see Samuel Cooper, "Sermon on the Day of the Commencement of the Constitution" (Boston, MA, 1780), reprinted in Sandoz (1998, 627–56). Jefferson rejected such syncretism and the sanctification of any republican constitution as a sacred text, even a divine one apparently consistent with natural right and human reason.

³¹On the variety of state constitutions and Jefferson's impact on the debates over periodic revision, see Mayer (1994, 295–319); Fritz (1994, 957–60, 971–75); Scalia (1999); Dinan (2000, 645–55); Dinan (2006, 29–63).

³²On the rhetoric of political experimentation: TJ, "First Inaugural" (4 Mar. 1801); letters to Stuart (23 Dec. 1791), Lafayette (16 June 1792), Adams (28 Feb. 1796), Priestly (19 June 1802), Hall (6 July 1802), Van der Kemp (22 Mar. 1816), Kercheval (12 July 1816), Adams (12 Sept. 1821), and Weightman (24 June 1826). See also, Peterson (1988); Mayer (1994, 89–118, 296, 300).

scrutiny, as Jefferson argues in the first half of the *Notes* with his methodical assault on Enlightenment philosophies that falsely claimed to demonstrate the natural degeneracy, and hence subordination, of the New World to the Old.

As with the progress of the natural sciences, Jefferson considers political science and the study of republican constitutionalism to be constantly evolving as the field of human knowledge expands. Just as scientists are advised to prefer cautious skepticism over dogmatic certainty and to challenge the dictates of seeming authorities; so too, Jeffersonian constitutionalism promotes a fundamental iconoclasm that rejects as un-republican an investment of authority that impairs the continual application of evolving political science to constitutional matters. Thus his draft for a republican constitution was not incorporated in the body of the *Notes*, but appended to the *H* as a proposal for consideration based on his own experience and examination, a model for others to adopt or change according to the light of their own reason and experience—a thought experiment recorded for posterity. His commentary on republican principles, in his critiques of Query XIII and in his draft constitution, models an experiment in constitution making to be consulted or used as a guide, but without demanding obedience or imitation.³³ The arguments embedded in this republican primer, and expanded in the later queries, are intended to exhort contemplation and prompt action, teaching readers to approach republican politics from the cautious perspective of natural science or natural philosophy, and eliciting both skepticism regarding conventional authority and a devotion to the progress of knowledge. Constitutional reflection and revision becomes the ceaseless duty of republican statesmen and citizens, not the work of a glorified legislator or monolithic founder.

This view of republican constitutionalism Madison keenly perceived and was determined to refute publicly in a series of papers published in 1788 from January 11 (*Federalist* 37) to February 6 (*Federalist* 51), a sequence that appeared in print at the same time that the first American edition of Jefferson's *Notes* was in circulation.³⁴ That Madison was responding to Jefferson in

³³Jefferson confessed that his proposed constitution required arguments in defense—such as those in the *Notes*—and the approval of the people, if it was to be legitimate (*RL*, I: 252).

³⁴Our purpose here is limited to examining the inter-textual dialogue between Jefferson's *Notes* and Madison's *Papers* in this critical period of constitution formation. It must be noted that their quarrel appeared in a highly public arena, at a time when the republican experiment in self-government was itself at risk. See *RL*, I: 435–54; Banning (1993, 27–55); Sloan (1993); Yarborough (1998, 102–52). References hereafter to *The Federalist* are by paper and page numbers.

The Federalist will be obvious to readers of that work: he names Jefferson once (*Fed.* 48, 318) and then cites him as “the author” of the *Notes* (*Fed.* 49, 321).³⁵ He quotes from Query XIII in *Federalist* 48—a rare instance in which a contemporary author is cited by Publius, even identifying “Mr. Jefferson” as the “authority” supporting his view that the legislative power necessarily predominates in a republican form of government (*Fed.* 48, 315–19).³⁶ Madison then revisits Jefferson's *Notes* in *Federalist* 49, opening that paper with a firm critique of a proposal in the draft constitution for Virginia appended to Jefferson's book. He refers to a special provision empowering two branches of the government to summon a constitutional convention to alter the fundamental charter, if and when violations of the principle of separation occur. Madison at this point raises a series of “insuperable objections” to this special provision, and therewith to the political philosophy which underlies it (*Fed.* 49, 322).³⁷

Madison here cuts to the heart of Jeffersonian constitutionalism articulated in Query XIII, and indeed in the *Notes* as a whole. He warns that the direct intervention of the people should be reserved for “extraordinary occasions,” given “the danger of disturbing the public tranquility by interesting too strongly the public passions,” and that the result of such conventions in fact would be the encroachment of the legislative power on other branches. Above all, frequent alterations in the form of government would “deprive the government of that veneration which time bestows on everything, and without which perhaps the wisest and freest government would not possess the requisite stability” (*Fed.* 49, 321–25). Only in “a nation of philosophers,” Madison insists, is “the voice of an enlightened reason” alone sufficient to cultivate the proper disposition of respect and obedience in citizens,

³⁵Madison was not alone in engaging Jefferson's *Notes*. Noah Webster (as “Giles Hickory”) published a series of papers in New York (*American Magazine*, Dec. 1787–Feb. 1788) defending the Constitution, citing and reprinting at length passages from the 1787 edition of the *Notes*: Bailyn (1993, I: 671, II: 304–15). See Bailey (2007, 72); Wood (1969, 376–83).

³⁶See Bailey (2007, 116). Whereas Jefferson, in the *Notes*, assigns constitutional powers in order to erect effective barriers against incursion by other departments, Madison proposes to combat tyranny by connecting and blending departments—contrary to the “maxim” of strict separation.

³⁷Madison now cites “the author” of the *Notes* as a potential opponent of the Constitution; although the provision in question was not written as an objection to the 1787 Constitution, Madison treats it as such. Praising Jefferson's “fervent attachment to republican government,” he restricts his critique of Jefferson's appended constitution to this one point, but states that only “some” of the provisions therein are “founded on sound political principles” (*Fed.* 49, 326).

especially in the absence of constitutional “veneration” and “reverence for the laws” which are the bulwarks of conventional political authority: “[I]n every other nation, the most rational government will not find it a superfluous advantage to have the prejudices of the community on its side” (*Fed.* 49, 323).³⁸ For Madison, “the genius of republican liberty,” desirable in the abstract, must be tempered by a practical concern for energy and stability in government,³⁹ virtues strengthened by “veneration” of the Constitution and “reverence” for laws. Madison opened the series advising that the Constitution be judged on its merits, since “a faultless plan was not to be expected” from practical-minded delegates, but it seems “Providence” smiled on their deliberations and its issue (*Fed.* 37, 223–24; see Zuckert 1996, 238–39). The series ends by invoking veneration for the Constitution once ratified.

The precise terms of Madison’s objection point to a quarrel with Jefferson over the nature of republican constitutions, on theoretical and practical grounds. But the disagreement here made explicit, actually begins much earlier in this series of papers. Madison opens *Federalist* 37 by prompting his readers to deliberate prudently about the limits of conventions and constitutions, not philosophically, like an “ingenious theorist . . . in his closet.” “The real wonder,” he remarks, “is that so many difficulties should have been surmounted” in forging the proposed Constitution; indeed, a “man of pious reflection” should “perceive in it a finger of that Almighty hand which has been so frequently and signally extended to our relief in the critical stages of the revolution” (*Fed.* 37, 228). In his strikingly philosophical “reflections” on the futility of discovering theoretical solutions to the contentious political problems confronted by the Convention, Madison rejects Jefferson’s vision of a political science rooted in the progressive methodology of natural philosophy. The imperfection of “the institutions of man,” unlike more perfect “works of nature,” discloses “the necessity of moderating still further our expectations and hopes from the efforts of human sagacity” (*Fed.* 37, 222–27). Philosophical speculation must yield to a political prudence which dictates that a new and permanent foundation be laid down and written in stone, as it were. To judge from the “lessons” of history

³⁸See *RL*, I: 501; see also, Mayer (1994, 130–31, 300–01); Tessitore (2003, 134).

³⁹Alexander Hamilton too may have had Jefferson in mind as one of the “enlightened well-wishers” of the proposed Constitution who mistakenly held—as Jefferson did in the *Notes*—that a “vigorous Executive” is inconsistent with republican government, despite the testimony of history (*Fed.* 70, 447). See Bailey (2007, 7–8, 71).

and experience, which “teach” and “admonish” us to regard the fruits of speculative imagination as “hazardous,” Madison denounces the kind of “experiments” in constitution making proposed by Jefferson as “great imprudence” and folly (*Fed.* 38, 231).

Instead, Madison argues, the work of the Convention, while by no means perfect, should be preserved, because the preservation of a limited good is worth more than the quixotic pursuit of an ideal order. Cataloguing the contradictory complaints made against the Constitution which would be amplified in a second convention, Madison concludes by stating that the Constitution, if adopted, even with its flaws, would prove to be *the best possible* and perpetual—to a degree unimaginable for a founding document not drafted by a legendary or divine figure: “Were the experiment [of successive conventions] to be seriously made, though it required some effort to view it seriously even in fiction, I leave it to be decided . . . whether the Constitution, now before the public, would not stand as fair a chance for immortality . . . if it were not to be immediately adopted, and were to continue in force, not until a BETTER, but until ANOTHER should be agreed upon by this new assembly of lawgivers” (*Fed.* 38, 235–36). The limited success of revising a few original state constitutions notwithstanding, Madison cautioned readers that such “experiments are of too ticklish a nature to be unnecessarily multiplied”—especially at the federal level (*Fed.* 49, 323; see Rakove 2006).

In his view, further constitutional *experimentation* would run the risk of destroying what the Convention had achieved in a providential moment; it would also undermine the prospects for both stability and veneration, by tinkering endlessly with constitutional forms in the hope of attaining an elusive perfection. Given the discordant interests of the states, what the delegates had accomplished in Philadelphia was, in Madison’s own words, nothing less than “a miracle.”⁴⁰ The imperfect nature of the Constitution of course demanded an *amendment* process, but given his grave doubts about the limited success of the first Convention, Madison resisted the view that republican constitutions be open to *continual revision*, stressing in his correspondence with Jefferson the necessity to secure the Constitution against “the hazardous experiment” of other conventions.⁴¹ At a second convention, he worried, debates would be agitated by “the feverish state of

⁴⁰JM to TJ (24 Oct. 1787), in *RL*, I: 496.

⁴¹JM to TJ (19 Mar. 1787 and 12 Dec. 1788). See Levinson (1990, 2451–52). Madison’s draft of the amendment process omitted the convention method entirely. See Diamond (1981, 116).

the public mind” and destroy the work of the first convention—precisely the effect which the enemies of the Constitution intended.⁴²

The argument continues in later papers, where it triggers a direct reference to Jefferson, citing not the *Notes*, but the Declaration of Independence. In defending the irregular exercise of authority by the Convention in drafting a new Constitution, Madison maintains that “forms ought to give way to substance” because “a rigid adherence” to forms would “render nominal and nugatory the transcendent and precious right of the people to ‘abolish or alter their governments as to them shall seem most likely to effect their safety and happiness.’” Such alterations must be “instituted by some *informal and unauthorized propositions*” put forward by “patriotic and respectable citizens” (*Fed.* 40, 253). If philosophy cannot provide “substance” or guidance in securing “forms” or ends, then concessions must be made. The natural rights to equality and self-government are rendered subordinate to more prudential calculations regarding self-interest. Every attempt “to institute new Government” embodies forms and principles, but must take care to secure with relative success its safety and preservation—an end that Madison as well as Jefferson recognized was compatible with nonrepublican political orders (*Fed.* 43, 283).⁴³

Conclusion

Madison’s arguments in his *Federalist* papers take Jefferson to task for the insufficiency of the philosophical approach to conventional authority and political science proposed in his *Notes*. Contemporary readers should follow his lead in studying Jefferson’s *Notes* with an appropriate seriousness, for Madison was among the first to grasp the significance of the political thought embedded therein—especially its con-

⁴²JM to TJ (21 Sept. 1788), in *RL*, I: 552; see JM to Turberville (2 Nov. 1788). Jefferson thought “another Convention” should be called to adopt “improvements”: TJ to Carmichael (15 Dec. 1787), in *PTJ*, XII: 426. Madison, however, rejected all calls for a second convention during the ratification debates: “The Constitution requires an adoption *in toto*, and *for ever*” (JM to Hamilton, 20 July 1788).

⁴³See Zuckert (1996, 238–39). To his own question (“on what principle the Confederation . . . can be superseded without the unanimous consent of the parties to it”), Madison answers: “. . . by recurring to the absolute necessity of the case; to the great principle of self-preservation; to the transcendent law of nature and of nature’s God, which declares that the safety and happiness of society are the objects at which all political institutions aim, and to which all such institutions must be sacrificed.” Madison’s explicit use of the Declaration compels the author of the *Notes* to testify against himself.

stitutional theory. Their disagreement over conventions and the nature of constitutions might have remained a private debate between these two friends, had Jefferson not decided suddenly to publish the *Notes* and to make them available to the public at such a decisive political moment. Once his views on the republican character of constitutions had been brought before the public, Madison must have determined that a direct engagement with the absent Jefferson—as well as an open refutation of his views on republican constitutions—could not be avoided.

Jefferson’s sanguine reliance on natural philosophy as a guide to politics, from Madison’s perspective, risked ignoring practical necessities and lacked the requisite sense of urgency which Madison sensed were threatening the chance for preserving republican government in America. Moreover, such skeptical rationalism towards all forms of conventional authority would forestall any useful recourse to “the prejudices of the community” about, for example, a providential God, effectively dispersing the aura of divine authority which Madison thought would help induce the patriotic devotion of citizens to the Constitution over time. In direct contrast to Jefferson, whose philosophical detachment would seem to preclude such an appeal, Madison is obliged to restore “the Almighty”⁴⁴ in support for the new Constitution which he argues must be endowed with an authoritative veneer through veneration and reverence. Reason alone will not suffice, according to Madison; auxiliary precautions and prudential measures must be taken, even in an enlightened age (*Fed.* 51, 331–32). Without attaching the passions as well as self-interest of the people to the Constitution through veneration, the cause of republican self-government, Madison believed, would founder on successive attempts at reform.

In the end, Madison argues, for the people to be faithfully attached to the Constitution, and for it to rule and govern the people properly, that founding document must be perceived as perpetually binding.⁴⁵ For

⁴⁴*Fed.* 37, 227–28 (the only two times this phrase is used). Jefferson too refers in the *Notes* to “the Almighty”—a God intervening in human history—to make more appealing an argument for emancipation demonstrated by reason, yet still insufficient to persuade some readers to act contrary to their own entrenched interests: *Notes*, XVIII, 289; XIX, 290; see Tucker (2008, 114–15, 121–23).

⁴⁵This debate between a progressive vision of “the philosophical Legislator” in Jefferson’s *Notes* and practical concerns of “the ordinary Politician” in Madison’s *Papers* anticipates their dispute in private correspondence over the “binding” character of constitutions and first principles: TJ to JM (6 Sept. 1789 and 9 Jan. 1790), and JM to TJ (4 Feb. 1790), in *RL*, I: 631–36, 648, 650–53. Jefferson’s mind never changed: TJ to Cartwright (5 June 1824), in *TJW*, 1493–94.

Jefferson, on the other hand, republican constitutions should always be viewed as works-in-progress, progressive studies in republican political science, advancing “the experiment in self-government” through observation, experience, scrutiny, and the proposal of reasonable reforms which gradually bring a constitution more fully into accord with republican principles. The only way to make such a constitution “immortal” once enacted, Jefferson wrote later in life, would be through successive amendment *and revisions* that “make it keep pace with the advance of the age in science and experience.”⁴⁶

The proposed 1787 Constitution captures, for Madison, what is in essence a providential founding moment which must be made permanent through ratification, because, in his view, it is as good as any people might hope to achieve.⁴⁷ This founding moment, which had been achieved by “an Assembly of demi-gods” (to use Jefferson’s ironic phrase for the Convention),⁴⁸ had to be made permanent—so that, with time, the Constitution would become *venerated* and *revered*, and ultimately elevated in authority above and beyond the powers even of individual states with their own republican constitutions (*Fed.* 43, 277–81).⁴⁹ In other words, the supremacy of federal power, grounded in the Constitution, must be announced to both citizens and states; as if to say, in the idiom of Biblical rhetoric which Madison himself employed at times: ‘You shall have no other God before me.’ The ratification of the Constitution was eventually accepted by Jefferson as a legitimate political fact, one he welcomed, although he continued to have doubts about key provisions in it. His concerns however did not preclude his future collaboration with Madison or his attachment to the Constitution in the decades to come. But given his radical faith in the people and in

⁴⁶TJ to Garnett (14 Feb. 1824), cited in Mayer (1994, 312).

⁴⁷Madison’s thinking about constitutional theory and the trust in a republican people advocated by Jefferson may have shifted. See JM to James Monroe (19 Mar. 1786); Dahl (2005, 443, 446); cf. Levinson (1990, 2452n20), citing a letter (27 June 1823) in which Madison continued to resist the call for conventions that he believed would “lessen a salutary veneration” of the Constitution.

⁴⁸TJ to Adams (30 Aug. 1787), in *TJW*, 908–09.

⁴⁹One of the “miscellaneous powers” under the 1787 Constitution, according to Madison, is the “constitutional authority” invested in the federal government to “insist” that the states preserve inviolate their republican constitutions; and, if necessary by force, to protect states against regime-change caused by external invasion, domestic faction (“experiments”), or insurrection. Thus the states retain the right to alter their republican forms of government, but not abolish them. Of the ten powers reviewed, this last power points to the logical extreme that the argument for constitutional veneration imposes upon citizens of the ratifying states: *Fed.* 43, 282–84.

republican constitutionalism as an on-going experiment in self-government, the original Madisonian argument for veneration and reverence of the Constitution was a political imperative that Jefferson was loath to abide:⁵⁰

Some men look at constitutions with sanctimonious reverence, and deem them like the arc of the covenant, too sacred to be touched. . . . [But] laws and institutions must go hand in hand with the progress of the human mind. . . . Where is our republicanism to be found? Not in our constitution certainly, but merely in the spirit of our people.

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- ⁵⁰TJ to Kercheval (12 July 1816), in *TJW*, 1395–1403, 1401, esp. 1397. See “Epitaph,” and TJ to Weightman (24 June 1826), in *TJW*, 706 and 1517.

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