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The Origins of the Pursuit of Happiness

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THE ORIGINS OF THE PURSUIT OF HAPPINESS

CARLI N. CONKLIN*

ABSTRACT

Scholars have long struggled to define the meaning of the phrase “the pursuit of happiness” in the Declaration of Independence. The most common understandings suggest either that the phrase is a direct substitution for John Locke’s conception of property or that the phrase is a rhetorical flourish that conveys no substantive meaning. Yet, property and the pursuit of happiness were listed as distinct—not synonymous—rights in eighteenth-century writings. Furthermore, the very inclusion of “the pursuit of happiness” as one of only three unalienable rights enumerated in the Declaration suggests that the drafters must have meant something substantive when they included the phrase in the text.

This Article seeks to define the meaning of “the pursuit of happiness” within its eighteenth-century legal context by exploring the placement and meaning of the phrase within two of the eighteenth century’s most important legal texts: William Blackstone’s Commentaries on the Laws of England (1765–1769) and the Declaration of Independence (1776). Ultimately, this article concludes that “the pursuit of happiness”—which was understood to be both a public duty and a private right—evoked an Enlightenment understanding of the first principles of law by which the natural world is governed, the idea that those first principles were discoverable by humans, and the belief that to pursue a life lived in accordance with those principles was to pursue a life of virtue, with the end result of happiness, best defined in the Greek sense of eudaimonia or human flourishing.

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INTRODUCTION

“We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness”

—The Declaration of Independence, 1776

From 1823 forward, the phrase “pursuit of happiness” from the *Declaration of Independence* appeared in ninety-four United States Supreme Court cases. The pursuit of happiness was used by litigants to argue for everything from the right to privacy to the right to pursue one’s chosen occupation, and it was invoked by the Court to uphold the same. The most recent edition of *Black’s Law Dictionary* cites to that case law as it defines the pursuit of happiness as the “constitutional right to pursue any lawful business or activity . . . that might yield the highest enjoyment, increase one’s prosperity, or allow the development of one’s faculties.”¹ While this definition reflects how the pursuit of happiness has been cited in Supreme Court case law from the 1820s forward, it does not tell us how the phrase was understood in its historical context.

Historians have long struggled to define the pursuit of happiness as an unalienable right. Most accounts begin in 1690 with John Locke’s *Two Treatises of Government*.² In *The Second Treatise*, Locke lists the natural rights of “life, liberty, and estate,” with “estate” being what we today would call “property.”³ In 1776, in the *Declaration of Independence*, Thomas Jefferson lists the unalienable rights of “life, liberty, and the pursuit of happiness.”⁴ Locke’s work was widely popular among the

1. BLACK’S LAW DICTIONARY 783 (9th ed. 2009).

2. JOHN LOCKE, TWO TREATISES OF GOVERNMENT: IN THE FORMER, THE FALSE PRINCIPLES AND FOUNDATION OF SIR ROBERT FILMER, AND HIS FOLLOWERS, ARE DETECTED AND OVERTHROWN: THE LATTER, IS AN ESSAY CONCERNING THE ORIGINAL, EXTENT, AND END, OF CIVIL GOVERNMENT (new corrected ed., vol. V 1823) (1689).

3. Locke defined “property” in this narrower sense as that which man “mixed his labour with, and joined to it something that is his own, and thereby makes it his property” and, as will be discussed later, in the broader sense of man’s natural right to “life, liberty, and estate.” See JOHN LOCKE, THE SECOND TREATISE OF GOVERNMENT, *Chapter V: Of Property* § 27, and *Chapter VII: Of Political or Civil Society* § 87, in THE SELECTED POLITICAL WRITINGS OF JOHN LOCKE 28, 53 (Paul E. Sigmund ed., 2005).

4. *The Declaration of Independence*. Unless stated otherwise, the text of the *Declaration* to which I will refer is the draft created by Thomas Jefferson and edited by the Continental Congress. It is included, with changes marked, in PAULINE MAIER, AMERICAN SCRIPTURE: MAKING THE DECLARATION OF INDEPENDENCE 235–41 (1997). The signed, parchment paper version, which is on display in the National Archives, varies only in capitalization and punctuation (such as “Life, Liberty, and the Pursuit of Happiness” instead of the original version’s “life, liberty & the pursuit of

Founders, in general, and with Jefferson, in particular.⁵ The traditional explanation for “pursuit of happiness” draws on these connections and holds that, when writing the *Declaration*, Jefferson deliberately mirrored Locke’s listing of unalienable rights, but with one exception: Jefferson omitted Locke’s unalienable right of property and included instead the unalienable right of “the pursuit of happiness.”

From there, the historical accounts attempt to make sense of the reasons Jefferson would replace property with the pursuit of happiness. The most persistent explanation offered is that Jefferson was uncomfortable enough with slavery to want to avoid perpetuating a property ownership in slaves by including an unalienable right to property in the *Declaration*.⁶ Yet, even if this explanation is true, it is not complete. Jefferson’s discomfort with slavery may explain why he would omit property from Locke’s original listing, but does not explain why Jefferson would insert “pursuit of happiness” in its place.

In attempting to explain the substitution, historians have taken two approaches. The first approach argues that the substitution has substantive meaning. Historians adopting this approach have argued that “pursuit of happiness” invokes a synonymous right to property;⁷ the happiness to be

happiness”) and some spelling (such as “unalienable rights” instead of the original version’s “inalienable rights”) from the version approved by the Continental Congress. See CARL BECKER, *THE DECLARATION OF INDEPENDENCE: A STUDY IN THE HISTORY OF POLITICAL IDEAS* 184–85 (1922).

5. Paul E. Sigmund, *Preface* to *THE SELECTED POLITICAL WRITINGS OF JOHN LOCKE* xi, xxiv (Paul E. Sigmund ed., 2005).

6. William B. Scott argues that Jefferson likely “amended Locke’s phrase to the ‘pursuit of Happiness,’” as a result of Jefferson’s own “serious doubts concerning the moral justification of certain forms of property.” Scott suggests that Jefferson inserted pursuit of happiness “in an effort to restore the old moral content to the concept of individual property. . . .” Scott is summarizing Jefferson’s concerns about newer forms of property ownership, generally, in contrast to Locke’s “natural property.” WILLIAM B. SCOTT, *IN PURSUIT OF HAPPINESS: AMERICAN CONCEPTIONS OF PROPERTY FROM THE SEVENTEENTH TO THE TWENTIETH CENTURY* 41–42 (1977). In 1775, Jefferson wrote against Great Britain’s treatment of the colonists, a treatment that he compared to enslavement, and expressed incredulity that “the divine Author of our existence intended a part of the human race to hold an absolute property in, and an unbounded power over others” *A DECLARATION BY THE REPRESENTATIVES OF THE UNITED COLONIES OF NORTH-AMERICA, NOW MET IN CONGRESS AT PHILADELPHIA, SETTING FORTH THE CAUSES AND NECESSITY OF THEIR TAKING UP ARMS* (1775), available at http://avalon.law.yale.edu/18th_century/arms.asp (last visited May 4, 2015). For a vigorous argument that Jefferson’s concerns about property ownership did *not* extend to property ownership in slaves and that rhetoric such as that quoted above was for political purposes only, see Paul Finkelman, *Jefferson and Slavery: “Treason Against the Hopes of the World”*, in *JEFFERSONIAN LEGACIES* 181 (Peter S. Onuf ed., 1993). For a contrasting discussion of Jefferson’s views on slavery, see Lucia C. Stanton, *“Those Who Labor For My Happiness”: Thomas Jefferson and His Slaves*, in *JEFFERSONIAN LEGACIES* 147 (Peter S. Onuf ed., 1993).

7. William B. Scott suggests that Jefferson intended to emphasize “Locke’s idealized ‘natural property.’” SCOTT, *supra* note 6, at 41–42.

found in the acquisition of material comfort;⁸ the happiness to be found in family life;⁹ or the Scottish Enlightenment idea of public virtue.¹⁰ But each of these definitions has its difficulties. The first two definitions articulate various forms of property ownership, but eighteenth-century rights theorists articulated “property” and the “pursuit of happiness” as distinct—not synonymous—rights.¹¹ The third definition of happiness as family life was a concept that did not develop until the nineteenth century, making its application to the *Declaration* anachronistic. Finally, the idea of happiness as public virtue, while more in keeping with eighteenth-century understandings of happiness, omits the placement of the phrase in the *Declaration* not as a public duty, but as an individual and unalienable right.

The second, and more common, approach to defining the pursuit of happiness has been to conclude that it is a substitution for property that has no substantive meaning—or, at least, not one that is presently discernable. This understanding is best articulated by historian Carl Becker’s description of the phrase as a “glittering generality;”¹² it sounds pretty and appealing, but it is either too general or too individualized to have any practical, substantive meaning. This line of thinking suggests that Thomas Jefferson inserted the pursuit of happiness into the *Declaration* not in an attempt to list any substantive unalienable right, but instead as an instrument of rhetoric, and it is as an instrument of rhetoric that the phrase does its work. It adds rhythm and beauty to Jefferson’s listing of unalienable rights, and if the pursuit of happiness does anything more in the *Declaration*, it is only to add a sense of undefined idealism to the listing of unalienable rights the *Declaration* contains.

The pursuit of happiness as a glittering generality is the definition that has most taken hold, and it makes sense within a common twenty-first century understanding of happiness as “feeling good.” Within this context, the unalienable right to the pursuit of happiness suggests a potentially

8. JOHN E. CROWLEY, *THE INVENTION OF COMFORT: SENSIBILITIES & DESIGN IN EARLY MODERN BRITAIN & EARLY AMERICA* 200 (2001).

9. *See generally* JAN LEWIS, *THE PURSUIT OF HAPPINESS: FAMILY AND VALUES IN JEFFERSON’S VIRGINIA* (1983). Lewis also argues that this understanding of the pursuit of happiness did not develop until the nineteenth century and would be anachronistic if applied to the *Declaration*.

10. *See generally* GARRY WILLS, *INVENTING AMERICA: JEFFERSON’S DECLARATION OF INDEPENDENCE* (1978).

11. For example, the *Virginia Declaration of Rights*, which Jefferson had with him as he drafted the *Declaration of Independence*, lists the inherent rights of “the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.” See the full text at http://avalon.law.yale.edu/18th_century/virginia.asp (last visited May 1, 2015).

12. BECKER, *supra* note 4, at 201–02. *See also* MAIER, *supra* note 4, at 125.

unmitigated right to pursue that which would make one feel good. But this understanding is at odds with what we know of Jefferson as a meticulous and deliberate writer and proponent of the rights and duties of man. Why would Jefferson include a phrase as glib, and as seemingly overly generalized, as the pursuit of happiness in a document that was, in all other respects, a serious and quite particular declaration of man's natural and political rights?

This question becomes more complex when examined in connection with the introductory portion of William Blackstone's, *Commentaries on the Laws of England*.¹³ In Part I of his Introduction, Blackstone argues that the law of nature, and of nature's God, contain the fundamental principles by which the entire natural world—including animals and humans—is to be governed.¹⁴ Next, he argues that the pursuit of happiness is the primary method by which men can know and then apply the law of nature as it pertains to humans:¹⁵ men can readily “discover . . . what the law of nature directs in every circumstance of life; by considering, what method will tend the most effectually to our own substantial happiness.”¹⁶ Happiness in this sense is synonymous with the Greek concept of *eudaimonia*; it evokes a sense of well being or a state of flourishing that is the result of living a fit or virtuous life.¹⁷ Rather than being “fleeting or temporal,” such happiness is “real” and “substantial.”¹⁸ It is real in that it is “not fictitious; not imaginary; [but] true; genuine.”¹⁹ It is substantial in that it pertains to the substance or essence of what it means to be fully human.²⁰ Thus, for Blackstone, to pursue happiness was to pursue a fit or rightly ordered life; one that was in harmony with the law of nature as it pertains to man.

Knowing of Jefferson's antipathy for Blackstone (Jefferson famously referred to Blackstone as a “honeyed” Tory and viewed Blackstone's *Commentaries* as overly simplistic in comparison with the works of Lord

13. Unless stated otherwise, the version of Blackstone's *Commentaries* utilized for this work is a reprint of the original, first edition that was published in Oxford from 1765–1769. See WILLIAM BLACKSTONE, *COMMENTARIES ON THE LAWS OF ENGLAND* (William S. Hein & Co. 1992) (1765).

14. BLACKSTONE, *supra* note 13, at 38–39, 42.

15. *Id.* at 38–43.

16. *Id.* at 41.

17. “Fit” refers to an ancient and medieval concept of “rightness” or being “rightly ordered.” In the manner used above, a human is to be “rightly ordered” to the law of God as it pertains to humans. In other words, man is to live in harmony with human nature.

18. BLACKSTONE, *supra* note 13, at 41.

19. “Real” is a synonym for “substantial,” which is defined as “real; actually existing.” SAMUEL JOHNSON, *A DICTIONARY OF THE ENGLISH LANGUAGE* 1645 (1755), “real,” *available at* <http://johnsonsdictionaryonline.com/> (last visited May 09, 2015) [hereinafter JOHNSON'S DICTIONARY].

20. “Substance” is defined as “the essential part.” JOHNSON'S DICTIONARY, *supra* note 19, at 1972. “Essential” refers to the essential nature of a thing.

Coke),²¹ it does not seem, at first glance, that Jefferson would have shared Blackstone's understanding of the pursuit of happiness when he included the phrase in the *Declaration*. Yet, the framing of the phrase in both works suggests otherwise. Blackstone's discussion of the pursuit of happiness was both preceded by, and informed by, his discussion of the laws of nature and of nature's God, a framing of the phrase that was mirrored in the *Declaration*.²² Furthermore, the weightiness of Blackstone's definition of pursuit of happiness resonates with the weightiness of the *Declaration* as a text.

This article seeks to determine the eighteenth-century legal meaning of the phrase "pursuit of happiness" by undertaking two parallel investigations. First, the article will investigate Blackstone's use of the phrase "pursuit of happiness" and the work it performs in his *Commentaries on the Laws of England*. Second, the article will investigate Jefferson's use of the phrase "pursuit of happiness" and the work it performs in the *Declaration of Independence*. Each investigation seeks to set aside twenty-first century understandings of "happiness" and "pursuit of happiness" and, instead, adopts an historical methodology that focuses on understanding historical actors and ideas in their own context.²³ In fact, a close investigation of the pursuit of happiness in historical context suggests that, instead of being a mere substitution for Locke's property or a glittering generality, the pursuit of happiness in the *Declaration* has a clear and distinct meaning, and it is the same meaning as outlined by Blackstone when he included a discussion and definition of the phrase in his *Commentaries on the Laws of England*.

21. Letter from Jefferson to Madison (Feb. 17, 1826), in *THE LIFE AND SELECTED WRITINGS OF THOMAS JEFFERSON* 726 (Adrienne Koch & William Peden eds., 1944) (discussed in Gerald T. Dunne, *American Blackstone*, WASH. U. L.Q. 321, 326 (1963)).

22. See generally BLACKSTONE, *supra* note 13, at 38–43. Where the *Declaration* uses the phrase, "the laws of nature and of nature's God" Blackstone uses, "the law of nature and the law of revelation," which he later summarizes as "the law of nature, and the law of God." BLACKSTONE, *supra* note 13, at 39, 42–43. The laws of nature refers to scientific laws that govern the natural world. See COHEN, *SCIENCE AND THE FOUNDING FATHERS*, *infra* note 49. Cohen argues that this is distinct from the law (singular) of nature, which is the natural law, but Blackstone and the Founders seemed to view both the laws of nature and the laws of nature's God as being part of (and a reflection of) the natural law. The "law of revelation" is the law of God as revealed through the Holy Scriptures. BLACKSTONE, *supra* note 13, at 42.

23. G. Edward White, *Recovering the World of the Marshall Court*, 33 J. MARSHALL L. REV. 781, 819–20 (1999–2000). To that extent, this article focuses specifically on the legal meaning of the phrase "pursuit of happiness," as understood by the authors of these texts. For a broad intellectual history of the idea of happiness in Western thought, see generally DARRIN M. MCMAHON, *HAPPINESS: A HISTORY* (2005).

An investigation into the historical context of each document does not reveal a specific reference proving that Jefferson intended to evoke Blackstone's understanding of the pursuit of happiness when he included the phrase in the *Declaration*. It does not reveal a reference to Blackstone's pursuit of happiness in early drafts of the *Declaration*, in the edits that followed, or in Jefferson's or John Adams' later reflections on the text. Instead, this investigation reveals something even more compelling: each of the four key strands of thought that were prevalent at the Founding—English law and legal theory; the history and philosophy of Classical Antiquity; Christianity; and the Scottish Enlightenment's focus on Newtonian Science—had, at their core, the same understanding of epistemology or ways of knowing that Blackstone voiced when he defined the pursuit of happiness in the introductory portion of his *Commentaries*. The pursuit of happiness, as used in both works, refers to man's ability to know the law of nature and of nature's God as it pertains to man, and man's unalienable right to then choose to pursue a life of virtue or, in other words, a life lived in harmony with those natural law principles. The result would be *eudaimonia* or man's own real and substantial happiness.

This article will proceed in three parts. Part I will explore the pursuit of happiness as used by Blackstone in his *Commentaries on the Laws of England*. First, it will outline Blackstone's definition of the pursuit of happiness and the placement and purpose of the phrase in the *Commentaries*. Specifically, it will describe Blackstone's inclusion of pursuit of happiness in his *Commentaries* as a science of jurisprudence by which his students could know and then rightly apply the first principles of the Common Law in their future work as lawyers, judges, jurors, or members of Parliament ("MPs"). Second, it will demonstrate that Blackstone was not alone in defining the pursuit of happiness in this way, but was simply articulating an understanding of the pursuit of happiness that was common among the Latitudinarian Anglican theologians and Scottish Common Sense philosophers of his day. Part I will conclude with an exploration of Blackstone's goal of improving and perfecting the English Common Law and the emphasis he placed on the jurisprudence of the pursuit of happiness as a means to that end.

Part II will explore the pursuit of happiness as it was used in the *Declaration of Independence*. First, it will describe the placement of the phrase in the *Declaration* and its lack of alteration throughout the drafting of that document. Second, it will explore the intellectual backdrop of the *Declaration*, with an emphasis on four key strands of thought that were prevalent during the Founding Era: English law and legal theory; the history and philosophy of Classical Antiquity; Christianity; and the

Scottish Enlightenment's focus on Newtonian Science. It will explore the ways in which Jefferson, Adams, and Franklin—the drafters of the *Declaration*—intermingled these strands in their own political, natural, and moral philosophies. Next, it will demonstrate that the pursuit of happiness is defined at the place where the four strands converge, which is in an understanding of the natural world governed by first principles, most frequently described in the Founding Era as “fundamental principles” or “the laws of nature and of nature’s God.” Part II will conclude with a discussion of how Jefferson, Adams, and Franklin ultimately understood the pursuit of happiness within the Greek concept of *eudaimonia*, the well-being or human flourishing that results from the pursuit of a virtuous or rightly ordered life.

While Parts I and II provide evidence that Blackstone and the Founders understood the pursuit of happiness to have the same Enlightenment Era meaning, Part III will explore how that meaning had two distinct applications in the *Commentaries* and the *Declaration*. First, it will highlight Blackstone’s and the Founders’ shared definition of the pursuit of happiness. Second, it will explore their dual applications of the phrase as a private right and a public duty. It will begin by describing the private right use of the phrase, as exemplified by the Founders’ inclusion of the pursuit of happiness—the right to choose to live in harmony with the law of nature as it pertains to man—as one of the individual and unalienable rights listed in the *Declaration*. Then, it will discuss the public duty application of the phrase, exemplified by Blackstone’s belief that the pursuit of happiness as a science of jurisprudence would enable future lawyers, judges, jurors, and MPs to conduct their legal work in harmony with the first principles of the English Common Law—and his insistence that future lawmakers had a duty to determine and apply the law within that framework. Finally, it will explore the ways in which the private right and public duty applications of the pursuit of happiness were articulated not only in the *Commentaries* and the *Declaration*, but in other writings by Blackstone and the Founders as well.

I. THE PURSUIT OF HAPPINESS IN BLACKSTONE’S *COMMENTARIES ON THE LAWS OF ENGLAND*

... [God] has so intimately connected, **so inseparably interwoven the laws of eternal justice with the happiness of each individual**, that the latter cannot be attained but by observing the former; and, if the former be punctually obeyed, it cannot but induce the latter. In consequence of which **mutual connection of justice and human**

felicity, he has not perplexed the law of nature with a multitude of abstracted rules and precepts, referring merely to the **fitness or unfitness** of things, as some have vainly surmised; **but has graciously reduced the rule of obedience to this one paternal precept, “that man should pursue his own happiness.” This is the foundation of what we call ethics, or natural law.**²⁴

—William Blackstone, *Commentaries on the Laws of England* (1765–1769).

A. *Placement and Purpose: A New Science of Jurisprudence*

On October 25, 1758, what would later become the Introduction to Blackstone’s *Commentaries on the Laws of England* was read aloud at the beginning of the Vinerian lectures on English law at Oxford.²⁵ As was made clear in his first Vinerian lecture, Blackstone had a vision for reforming English legal education. The key question that informed his task was the question of the knowledge and structure of the law itself. Was the English law, as Blackstone contemporary Sir William Jones asked in 1781, “merely an unconnected series of decrees and ordinances,” or was it “a *Science*” that should “claim an exalted rank in the empire of *reason* . . . founded on principle”?²⁶ If the former, the English law was suitable for study in its particulars but perhaps had no larger significance. If the latter, then the English law should be viewed as an interrelated “great system of jurisprudence, like that of the Universe,” which “had to consist ‘of many subordinate systems,’ all ‘connected by nice links and beautiful dependencies’ and each ‘reducible to a few plain *elements*.”²⁷ In other words, if the English law was but a series of oral or written positive law pronouncements disconnected from any larger principles or underlying foundations, then the only thing that could be expected of English legal education was experience in the law through the apprenticeship system, which was already occurring at the Inns of Court.²⁸ If, on the other hand, the English law was “a great system of jurisprudence” which had been

24. BLACKSTONE, *supra* note 13, at 40–41 (emphasis added).

25. *Id.* at 3. This series of lectures provided the foundation for Blackstone’s four-volume work entitled, *Commentaries on the Laws of England*, which was published between 1765–1769. DAVID LIEBERMAN, *THE PROVINCE OF LEGISLATION DETERMINED: LEGAL THEORY IN EIGHTEENTH-CENTURY BRITAIN* 31 (1989).

26. LIEBERMAN, *supra* note 25, at 34.

27. *Id.* at 34. Lieberman is citing WILLIAM JONES, *AN ESSAY ON THE LAW OF BAILMENTS* 123 (1781) and WYNNE, *EUNOMUS*, I, 6–7 and II, 52–7.

28. BLACKSTONE, *supra* note 13, at 32.

built on a natural law foundation, and if the existing positive law had been formed on the basis of these larger principles, then English legal education ought to begin with the study of law as a science and a system.

In his *Commentaries*, Blackstone argued well for the law as a science or body of knowledge governed by a system of interrelated principles:

[Law is] a science, which distinguishes the criterions of right and wrong; which teaches to establish the one, and prevent, punish, or redress the other; which employs in it's [sic] theory the noblest faculties of the soul, and exerts in it's [sic] practice the cardinal virtues of the heart; a science, which is universal in it's [sic] use and extent, accommodated to each individual, yet comprehending the whole community; that a science like this should have ever been deemed unnecessary to be studied in an [sic] university, is matter of astonishment and concern. Surely, if it were not before an object of academical knowledge, it was high time to make it one; and to those who can doubt the propriety of it's [sic] reception among us (if any such there be) we may return an answer in their own way; that ethics are confessedly a branch of academical learning, and Aristotle *himself has said*, speaking of the laws of his own country, that jurisprudence or the knowledge of those laws is the principal and most perfect branch of ethics.²⁹

As seen in the passage above, the system of law envisioned by Blackstone was a system in the Latin sense of the word: a *systema*, or a “scheme which unites many things in order.”³⁰ The Common Law, as it had developed over centuries, was, to Blackstone, an ordered assemblage of principles and doctrines.³¹ The several parts of the Common Law created one system, which then could be studied as a science. Blackstone lamented that the laws and constitution of England were not included in the general course of university study at Oxford and Cambridge, as the Roman Civil Code was on the Continent, and he sought to prompt his fellow Englishmen to obtain “a competent knowledge in that science, which is to be the guardian of his natural rights and the rule of his civil conduct.”³²

29. *Id.* at 27 (italics in original). Blackstone's use of italics in his reference to Aristotle suggests that he includes the philosopher's argument as a way to address counterarguments by those who uphold Aristotle's teachings, but would disagree with Blackstone on the study of law. It is a shrewd use of Aristotle, and a good demonstration of the fact that Blackstone disagreed with Aristotle's methods, but not his overall purpose.

30. “System” in JOHNSON'S DICTIONARY, *supra* note 19, at 2011.

31. See BLACKSTONE, *supra* note 13.

32. BLACKSTONE, *supra* note 13, at 4.

Since such study was new to mid-eighteenth century English university students, Blackstone felt the burden of defending his position, and therefore wrote the Introduction to his *Commentaries* as an apologetic for the study of the English Common Law, the ramifications of neglecting such study, and the need to provide English law as a course of study for all English university students.³³ He believed that “a competent knowledge” of the laws of England should be “the proper accomplishment of every gentleman and scholar.”³⁴

Blackstone’s emphasis on both the layperson and the aspiring lawyer understanding the law was instrumental to his ultimate goal of English law reform. Blackstone believed that all university students, not only aspiring lawyers who would later train at the Inns of Court, should have an acquaintance with the law, to the extent possible given their varying conditions, fortunes, and degrees of leisure.³⁵ In an attempt to make a legal education compelling to university students who did not aspire to careers in law, Blackstone appealed to their interests. He stated that gentlemen should seek learning in the law in order to better understand the law of property (which governed their own concerns), to serve properly on a jury, and to carry out “legal and effectual justice” in the role of a magistrate.³⁶ He especially emphasized such education for future MPs. Parliament had the ability to pass statutes that would affirm, disaffirm, or alter the Common Law. Therefore, Blackstone ascribed to MPs especially a high sense of duty in improving and preserving the laws of England, describing their role as follows:

They are the guardians of the English constitution; the makers, repealers [sic], and interpreters of the English laws; delegated to watch, to check, and to avert every dangerous innovation, to propose, to adopt, and to cherish any solid and well-weighed improvement; bound by every tie of nature, of honour, and of religion, to transmit that constitution and those laws to their posterity, amended if possible, at least without any derogation.³⁷

Blackstone also appealed to university students by laying a challenge before them. He argued that “the science of legislation” was “the noblest and most difficult of any” of the sciences, and that the Common Law of

33. *Id.* at 6.

34. *Id.* at 5–6.

35. *Id.* at 7–9.

36. *Id.*

37. *Id.* at 9.

England had suffered from “the defective education” of the English lawmakers: “it’s [sic] symmetry has been destroyed, it’s [sic] proportions distorted, and it’s [sic] majestic simplicity exchanged for specious embellishments and fantastic novelties.”³⁸ In fact, Blackstone agreed with Sir Edward Coke that it was Parliament’s uneducated alterations to the Common Law that had led to “almost all the perplexed questions, almost all the niceties, intricacies, and delays” of the English Common Law system in the first place.³⁹ Since the majority of MPs had attended Cambridge or Oxford in the mid-eighteenth century,⁴⁰ it would be particularly effective for future MPs to be trained in law at the university level.

If Blackstone was hard on the gentlemen who might one day serve as lawmakers in Parliament, he was even more so on the members of the nobility who might one day become judges. Blackstone believed that judges, more than MPs, had the power to guide the development of the Common Law, for good or for ill. The decisions of superior judges, Blackstone argued, were “final, decisive, irrevocable: no appeal, no correction, not even a review can be had”⁴¹ Blackstone believed the nobility had been granted entry into the position of judge because they alone had the means to obtain the education in law necessary for proper fulfillment of the judicial role.⁴² He did not mince words in his charge to the nobility regarding their duty to obtain a legal education, which would then enable them to judge rightly: “ignorance of the laws of the land hath ever been esteemed dishonourable, in those who are entrusted by their country to maintain, to administer, and to amend them.”⁴³ Blackstone’s charge to his students shows how strongly he believed in his first means of law reform, which was the inclusion of an education in English Common Law at the university level. Blackstone’s second means of reform was to include in that education an instruction in a particularly English science of jurisprudence: the pursuit of happiness.

38. BLACKSTONE, *supra* note 13, at 9–10.

39. *Id.* at 10–11. Lieberman has argued well for this guiding purpose behind the *Commentaries*. See LIEBERMAN, *supra* note 25, at 34.

40. ROBERT ANDERSON, BRITISH UNIVERSITIES PAST AND PRESENT 22 (2006). Anderson cites JOHN GASCOIGNE, CAMBRIDGE IN THE AGE OF THE ENLIGHTENMENT: SCIENCE, RELIGION AND POLITICS FROM THE RESTORATION TO THE FRENCH REVOLUTION 19 (1989); JOHN CANNON, ARISTOCRATIC CENTURY: THE PEERAGE OF EIGHTEENTH-CENTURY ENGLAND 47 (1984); and THE HISTORY OF THE UNIVERSITY OF OXFORD, VI, NINETEENTH-CENTURY OXFORD, pt. 1 478–79 (M. G. Brock & M. C. Curthoys eds., 1997).

41. BLACKSTONE, *supra* note 13, at 11.

42. *Id.* at 12.

43. *Id.* at 13.

When Blackstone began his law lectures, future lawyers had long been gaining experience with the body of English law in the existing apprenticeship system at the Inns of Court. Blackstone decried the way in which apprenticeship urged future lawyers to place practice before theory, and thus to begin “at the wrong end.”⁴⁴ He expressed great concern for the future of a lawyer trained in this manner:

[I]f he be uninstructed in the elements and first principles upon which the rule of practice is founded, the least variation from established precedents will totally distract and bewilder him: *ita lex scripta est* is the utmost his knowledge will arrive at; he must never aspire to form, and seldom expect to comprehend, any arguments drawn *a priori*, from the spirit of the laws and the natural foundations of justice.⁴⁵

To remedy this lack, Blackstone argued that a university level education in English jurisprudence—an education in how to know and apply the first principles of the law—must precede apprenticeship at the Inns of Court.

Blackstone’s articulation of the pursuit of happiness as a science of jurisprudence was influenced by his belief that the English law was a coherent system based on fundamental principles that could be known by man. The fact that the law as it existed at the time of the *Commentaries* was, in some ways, out of sync with those fundamental principles, in no way invalidated either the existence of those principles or the natural coherency of the law. Neither did it preclude future lawmakers and judges from being able to rightly discern and apply those principles in the English Common Law system. Instead, the existing inconsistencies in the law provided support for Blackstone’s argument that the study of English law, as a system, needed to be coupled with an English science of jurisprudence. If errors and confusion had made their way into the English law, this was to be expected due both to the reception of the Roman civil and canon law and to the unnecessary complexity of the Scholastic method of jurisprudence that had prevailed in Roman law instruction in the English universities. Blackstone argued for a more simple science of jurisprudence, emphasizing that principles of law could be discovered even without “a chain of metaphysical disquisitions” or “the due exertion

44. *Id.* at 32.

45. *Id.*

of right reason.”⁴⁶ That simpler science of jurisprudence was the pursuit of happiness:

For [the Creator] has so intimately connected, so inseparably interwoven the laws of eternal justice with the happiness of each individual, that the latter cannot be attained but by observing the former; and, if the former be punctually obeyed, it can not but induce the latter. In consequence of which mutual connection of justice and human felicity, **He has not perplexed the law of nature with a multitude of abstracted rules and precepts, referring merely to the fitness or unfitness of things, as some have vainly surmised;** but has graciously reduced the rule of obedience to this one paternal precept, **“that man should pursue his own happiness.”** This is the foundation of what we call ethics, or natural law.⁴⁷

In Book One of his *Commentaries*, Blackstone argued strongly for the pursuit of happiness as the primary method of English jurisprudence. He believed that, due to its simplicity, the pursuit of happiness was the best method of knowing the foundational principles from which man-made law could be deduced. Blackstone began his jurisprudential discussion with this definition of law:

Law, in it’s [sic] most general and comprehensive sense, signifies a rule of action; and is applied indiscriminately to all kinds of action, whether animate, or inanimate, rational or irrational. Thus we say, the laws of motion, of gravitation, of optics, or mechanics, as well as the laws of nature and of nations. And it is that rule of action, which is prescribed by some superior, and which the inferior is bound to obey.⁴⁸

Sir Isaac Newton described these rules of action or principles that governed the natural world as “laws of nature”⁴⁹ and Blackstone adopted this same phrasing in his *Commentaries*. Blackstone added to it the law of

46. *Id.* at 40.

47. *Id.* at 40–41 (emphasis added). Blackstone’s lectures were famously ridiculed by his former student, Jeremy Bentham, who advocated for a more utilitarian view of happiness. Interestingly enough, Bentham and John Lind later wrote a harshly worded rebuttal of the *Declaration of Independence* entitled, AN ANSWER TO THE DECLARATION OF THE AMERICAN CONGRESS (London 1776).

48. BLACKSTONE, *supra* note 13, at 38 (emphasis added).

49. I. BERNARD COHEN, SCIENCE AND THE FOUNDING FATHERS: SCIENCE IN THE POLITICAL THOUGHT OF JEFFERSON, FRANKLIN, ADAMS AND MADISON 114–121 (1995) [hereinafter SCIENCE AND THE FOUNDING FATHERS].

revelation, with the understanding that the first principles or rules of action that governed the natural world could be revealed to man either as he studied the laws of nature revealed in the natural world or as he studied the Scripture revealed to man by nature's God.⁵⁰ Both phrases indicated first principles or laws by which the natural world is governed.⁵¹ According to Blackstone, "when the supreme being formed the universe, and created matter out of nothing, he impressed certain principles upon that matter, from which it can never depart, and without which it would cease to be."⁵²

To Blackstone, this law of nature that governed plants, animals, and inanimate matter in the created world was no different from the law of nature that governed mankind. Man, just like the rest of creation, "must necessarily be subject to the laws of his creator, for he is entirely a dependent being."⁵³ Blackstone believed that, because man "depends absolutely upon his maker for every thing, it [was] necessary that he should in all points conform to his maker's will," which was summed up in "the law of nature."⁵⁴ Yet, at the same time, Blackstone clearly separated man from the rest of creation, based upon man's unique, God-given ability "to think" and "to will."⁵⁵ Blackstone believed that God gave man the ability to think and to will because He intended that man regulate his own behavior in accordance with the natural law; God wanted humans to use their "reason and freewill" to discern the "immutable laws of human nature, whereby [human] freewill is in some degree regulated and restrained."⁵⁶ Blackstone's discussion here is fascinating because, by his very definition, he acknowledged an inherent and immutable limitation on human free will that he also saw reflected in the laws God set in place to govern the natural world. Just as God established "certain rules" to govern "the principle of mobility" in matter, so too did he establish "immutable laws" to govern human free will.⁵⁷ In each case, the former "regulated and restrained" the latter. Thus, Blackstone's view of human free will was not without limitation. Instead, it was the bounded freedom of a life of virtue,

50. BLACKSTONE, *supra* note 13, at 38–42.

51. *Id.*

52. *Id.* at 38.

53. *Id.* at 39.

54. *Id.*

55. *Id.*

56. BLACKSTONE, *supra* note 13, at 39–40.

57. *Id.* at 39–40.

within which he believed man would flourish and experience, in the Greek language, “*eudaimonia*” or, in the English, “well being.”⁵⁸

Blackstone’s discussion of man’s reason and free will in relation to the natural law served as a foundation for his discussion of the English Common Law as a whole. Just as the laws of nature preceded the creation of plants and animals, and were intended to regulate and restrain them, so too had the law of human nature “existed in the nature of things antecedent to any positive precept.”⁵⁹ The natural law laid down by the Creator not only was antecedent to positive law, but also was intended to regulate and restrain it. If men or countries were to flourish, they would do so by setting rules of action for their own conduct that fell within the boundary lines of God’s natural law.

Thus, to Blackstone, the natural law was a set of principles, set in place by God, with which the positive law should not conflict. If man acted, in his free will, against the law of nature, he would fail to flourish as a human. Similarly, if a government passed laws through its legislators, or handed down judicial decisions through its judges, that were repugnant to the natural law principles set in place by God, that government, too, would fail to thrive. Blackstone saw this rule of action as the key deficiency of the English Common Law of his day: English judges and MPs had wandered from the first principles of the English Common Law, and the law had become inconsistent and corrupted as a result. Therefore, English lawmakers needed to be trained, not only in the content or system of the law, but also in the science of jurisprudence, or in the skills and knowledge necessary to know and apply first principles, to bring English Common Law back into harmony with the laws of nature and of nature’s God. In fact, in a rare nod to the Roman Civil Law, Blackstone argued that even Justinian had recognized these first principles when he structured his *Institutes* around three of the main “eternal, immutable laws of good and evil, to which the creator himself in all his dispensations conforms; and which he has enabled human reason to discover.”⁶⁰ Blackstone wanted to see God’s immutable laws elucidated in the study of the English Common Law as well.⁶¹

58. Aristotle defines *eudaimonia* as follows: “the good of man is an activity of the soul in conformity with excellence or virtue, and if there are several virtues, in conformity with the best and most complete.” Quoted in WILLIAM J. PRIOR, VIRTUE AND KNOWLEDGE: AN INTRODUCTION TO ANCIENT GREEK ETHICS 154 (1991). For a discussion of the Greek concept of *eudaimonia* and how it differs from current English language conceptions of happiness, see *id.* at 148–55.

59. BLACKSTONE, *supra* note 13, at 40.

60. *Id.*

61. *Id.* at 36. In his work *The Structure of Blackstone’s Commentaries*, Alan Watson has argued

B. *An Enlightenment Epistemology*

Blackstone was not alone in his understanding of the English law as a science based on first principles. But in arguing for the pursuit of happiness as a science of jurisprudence, Blackstone was arguing for a method of jurisprudence that was particularly rooted in the Enlightenment ideas of his day, as expressed by the Latitudinarian Anglicans and Scottish Common Sense Philosophers.⁶²

1. *Anglican Theology: The Latitudinarian School*

In the two centuries following Henry VIII's withdrawal of England from the authority of the Roman Catholic Church, England experienced ongoing turmoil in terms of its public and private religious identity, with accompanying purges—Anglican, Catholic, and Dissident—of the universities.⁶³ The idea of an English church, separate from Rome (and needing to be increasingly and continually separated from Rome) is an idea Blackstone furthers at various points within his *Commentaries*. Blackstone's discussion here is fairly polemical, but nevertheless reflective of the rhetoric of his times. Blackstone, a committed Anglican, attended the public sermons of the prominent Anglican clergymen of his day, where he heard the combination of philosophy, politics, and theology that had been a hallmark of English Anglicanism since the sixteenth century.⁶⁴ That post-Reformation England saw continual transitions between rulers who were more or less friendly to Catholics, Protestants, and Dissenters meant that these ideas had political consequences. Blackstone weaves together theology, philosophy, and science throughout the Introduction to his *Commentaries*, and, although he engages in a broadly Protestant polemic against the Roman Catholic Church, his ideas are not broadly Protestant, or even broadly Anglican, but instead

for the structural influence of Justinian's *Institutes* on Blackstone's *Commentaries*. Although I disagree with his larger conclusions, I do think Blackstone agreed with Justinian's focus on immutable principles. See Alan Watson, *The Structure of Blackstone's Commentaries*, 97 YALE L.J. 795 (1987–1988).

62. Blackstone's work reflected the earlier work of Christopher St. German while also expressing more Anglican and Scottish Enlightenment views.

63. ANDERSON, *supra* note 40, at 5.

64. DAVID A. LOCKMILLER, SIR WILLIAM BLACKSTONE 70 n.43 (1938) (citing WILLIAM CONNOR SYDNEY, ENGLAND AND THE ENGLISH IN THE EIGHTEENTH CENTURY: CHAPTERS IN THE SOCIAL HISTORY OF THE TIMES (2d ed. 1891)). For an excellent article that explores this interrelationship while also exploring the historiography, see James R. Jacob & Margaret C. Jacob, *The Anglican Origins of Modern Science: The Metaphysical Foundations of the Whig Constitution*, 71 ISIS 251 (1980).

specifically reflective of the ideas of those Anglicans known as “Latitudinarians,” and the preaching of this group’s most prominent eighteenth century bishop, Joseph Butler.⁶⁵

In 1776, Bishop Joseph Butler published a compilation of fifteen sermons that he had preached while serving as Bishop of Rolls Chapel, one of England’s most prominent and publicly-attended Anglican churches.⁶⁶ Butler’s sermons reflected the key ideas of the English Enlightenment, particularly as they were expressed by Latitudinarian Anglicans in the eighteenth century. Butler, and the larger group of Latitudinarians of which he was a part, tended to focus on the essential doctrines of Christianity.⁶⁷ To discover those doctrines, the Latitudinarians argued for a Newtonian epistemology. This epistemology was summarized by John Tillotson, Archbishop of Canterbury, who argued that God has “commanded us nothing in the gospel that is either unsuitable to our reason or prejudicial to our interest . . . nothing but what is easy to be understood, and as easy to be practiced by an honest and willing mind.”⁶⁸ They believed that the essential doctrines could be discovered through inductive reasoning applied to a “two books” theology—the book of revelation (the Holy Scriptures) and the book of nature⁶⁹—and that man’s own self-love, or the pursuit of his own real and substantial happiness, was the truest guide to that study.

Latitudinarians like Joseph Butler were widely popular in England and the colonies in the 1700s.⁷⁰ The place where Butler’s preaching is most reflected in Blackstone’s *Commentaries* is in Blackstone’s use of the phrase pursuit of happiness.⁷¹ Like Butler,⁷² Blackstone argued that man

65. Dr. Alan Charles Kors, *The Pursuit of Happiness*, Address at the Lehrman American Studies Institute of Princeton University (June 16, 2010). I attended Dr. Kors’ talk on Bishop Butler’s understanding of pursuit of happiness in the midst of conducting my research. I am indebted to Dr. Kors for pointing me to Bishop Butler and for the time he spent talking with me about my own conclusions regarding Blackstone’s and the Founders’ understandings of pursuit of happiness. The ideas shared in Kors’ lecture have provided a framework for the following discussion of Butler’s understanding of the pursuit of happiness.

66. THE WORKS OF BISHOP BUTLER 4 (David E. White ed., 2006); ERNEST CAMPBELL MOSSNER, BISHOP BUTLER AND THE AGE OF REASON: A STUDY IN THE HISTORY OF THOUGHT 3 (1971); W.A. SPOONER, BISHOP BUTLER 12 (1901).

67. HENRY F. MAY, THE ENLIGHTENMENT IN AMERICA, 17 (reprt. 1979).

68. *Id.* at 17. May is quoting from Tillotson, “The Precepts of Christianity not Grievous,” in *Works* (10 v., London, 1737), xiv.

69. Raymond D. Tumbleson, “Reason and Religion”: *The Science of Anglicanism*, 57 J. OF THE HISTORY OF IDEAS 131, 134 (1996) [hereinafter *Reason and Religion*].

70. MAY, *supra* note 67, at 17.

71. Butler and Blackstone were drawing on a shared learned culture comprised of ideas that, in many cases, hearkened back to antiquity. For example, Blackstone’s discussion of pursuit of happiness

can learn about God's design for human nature by studying "the constitution and frame of humanity."⁷³ Like Butler,⁷⁴ Blackstone argued that from the study of our nature, we could induce the purpose God has for humans, and that purpose is for humans to live in harmony with "the laws of eternal justice," which is accomplished through the pursuit of man's "real" and "substantial happiness."⁷⁵ And, like Butler,⁷⁶ Blackstone argued that humans may choose not to live in harmony with that design, but that, by man's unique combination of "reason and freewill,"⁷⁷ that choice would be based on knowledge and free will, not ignorance or determinism.⁷⁸ In this way, both Butler and Blackstone carried out Sir Isaac Newton's charge "that the most simple laws of nature are observed in the structure of a great part of the Universe, that the philosophy ought there to begin. . . ."⁷⁹

Drawing on the epistemological notions of Butler and the Latitudinarian Anglicans, Blackstone argues for the pursuit of happiness as a science of jurisprudence that forges a middle way between what he deemed to be the Catholics' excessive focus on reason and the Enthusiasts' excessive focus on conscience. The Latitudinarians had "an almost obsessive concern for design, order, and harmony as the primary manifestations of God's role in the universe,"⁸⁰ and it would not be a stretch to say that Blackstone did as well. He viewed the pursuit of happiness as a way to restore beauty and order to the Common Law.

In considering some of the key ideas of both Butler and the Latitudinarians, we can see that, in defining and promoting the pursuit of happiness, or one's own "self-love" as a jurisprudential science, Blackstone is speaking a language that is meaningful to his contemporaries. It is a language that affirms the Latitudinarian focus on

reflects that of Butler, and both men are voicing ideas previously expressed in John Locke's *AN ESSAY CONCERNING HUMAN UNDERSTANDING* (1691) and the philosophy of classical antiquity.

72. Kors, *supra* note 65.

73. BLACKSTONE, *supra* note 13, at 40.

74. Kors, *supra* note 65.

75. BLACKSTONE, *supra* note 13, at 40–41.

76. Kors, *supra* note 65.

77. BLACKSTONE, *supra* note 13, at 39.

78. Kors, *supra* note 65. Blackstone describes both animals and inanimate matter as "governed by laws" that are "fixed and invariable." BLACKSTONE, *supra* note 13, at 38. Similarly, "[m]an, considered as a creature, must necessarily be subject to the laws of his creator, for he is entirely a dependent being." BLACKSTONE, *supra* note 13, at 39. Where man differs from animals and inanimate matter is in his "reason and freewill," and he "is commanded to make use of those faculties in the general regulation of his behaviour." BLACKSTONE, *supra* note 13, at 39.

79. Jacob & Jacob, *supra* note 64, at 264.

80. *Id.* at 258.

individual free will⁸¹ and the ability of the layperson to induce first principles through study of the two books: nature and revelation. It is a language that turns away from the deductive, syllogistic reasoning of the Scholastics and turns toward the inductive, experience-based reasoning that was so appealing to the Latitudinarian Anglicans of Blackstone's day. Men like Butler and Blackstone did not view science, religion, philosophy, and law as distinct categories, but as "natural science," "natural religion," "natural philosophy," and "natural law"—four interrelated ways of exploring and learning about the natural order of the world as God had created it. According to Blackstone, the English system of law and science of jurisprudence were capable of being perfected because they were, and increasingly could be, in harmony with and reflective of, the beauty of the natural order. In making epistemological arguments based on an inductive study of nature and in appealing to the outcomes of harmony, beauty, and order, Butler and Blackstone reflected not only the philosophy of seventeenth and eighteenth century Latitudinarian Anglicans, but also the philosophy of the Scottish Enlightenment's Common Sense School.

2. *Scottish Philosophy: The Common Sense School*

Blackstone's emphasis on "our own self-love" as a "prompter to enquire after and pursue the rule of right" evokes epistemological notions present in the Scottish Enlightenment. Blackstone is arguing for pursuit of happiness as a simple and effective science of jurisprudence, or way of knowing "what we call ethics, or natural law."⁸² Blackstone believed that this law could be discovered not only through reason, but also through every man's understanding of his own "real and substantial happiness." The pursuit of happiness, for Blackstone, was not one's effort to experience a state of being happy, as we would consider it in twenty-first century terms, but, instead, a method by which man could become most fully human. In this context, Blackstone's "real" and "substantial" happiness was real in that it was "not fictitious; not imaginary; true; genuine."⁸³ It was substantial in that it pertained to the substance or essence of what it meant to be fully human⁸⁴ and, therefore, to be happy; it was, from the Latin *substantia*, "literally, that which stands under," or that

81. Jacob & Jacob, *supra* note 64, at 258.

82. BLACKSTONE, *supra* note 13, at 39–41.

83. See "Real" in JOHNSON'S DICTIONARY, *supra* note 19, at 1645. "Real" is a synonym for "Substantial," which is defined as "real; actually existing."

84. "Substance" is defined as "the essential part." JOHNSON'S DICTIONARY, *supra* note 19, at 1972.

which lies beneath.⁸⁵ Thus, to Blackstone, to pursue one's happiness was to pursue the essential character which lay underneath or, in other words, to pursue the natural law principles that pertained to humans, and, therefore, to understand the principles that should form both the foundation and boundary lines for all legitimate human law.

To discover these principles, the Scholastics had adopted a deductive legal science built on "syllogistic, 'geometric' reasoning."⁸⁶ In contrast, the Common Sense school of philosophy was marked by "empirical observation and careful inductive reasoning" by men who "believed that they could discover natural legal principles just as Newton had discovered the laws of nature."⁸⁷ When Blackstone describes the English law as a system and a science, the science he is referring to is reflective of the Common Sense school of the Scottish Enlightenment, a school that would have been very familiar to Latitudinarian Anglicans like Butler and Blackstone. In fact, both Butler and Blackstone discuss epistemology in ways that reflect the writings of Thomas Reid, a key thinker of the Scottish Enlightenment Common Sense school, whose writings were in opposition to the skepticism of fellow Scottish Enlightenment thinker David Hume.⁸⁸ Where Hume argued that there are no innate ideas and that, instead, our constantly fluctuating perceptions form our understanding of the natural world, Reid argued for self-evident "First Principles" that form the basis for the advancement of knowledge.⁸⁹ In both natural and moral philosophy, these first principles were discovered by induction through observation.⁹⁰ This type of philosophy was not only a foundation for knowledge about the natural world; it also "could serve as a foundation for moral knowledge as well. . . . Just as our eyes enabled us to see objects

85. *Substance and Substantial*, in WEBSTER'S NEW UNIVERSAL UNABRIDGED DICTIONARY 1897 (1996). This same definition appears in the etymology for "Substance" (circa 1330) in the Oxford English Dictionary. "Substance, n." in the OXFORD ENGLISH DICTIONARY, *Online Edition*, <http://www.oed.com/view/Entry/193042?redirectedFrom=substance> (accessed Oct. 14, 2012).

86. Charles L. Barzun, *Common Sense and Legal Science*, 90 VA. L. REV. 1051, 1054 (2004). Barzun argues for the development of inductive legal science in early America. As demonstrated in the discussion that follows, the same common sense legal science he sees in the Scottish Enlightenment's Common Sense School and nineteenth-century early America is reflected in Blackstone's *Commentaries*. Later, I will demonstrate that this understanding of legal science was present in pursuit of happiness in the *Declaration of Independence*, as well.

87. *Id.* at 1055.

88. *Id.* at 1062–65; see also ALEXANDER BROADIE, *A HISTORY OF SCOTTISH PHILOSOPHY* 246–51 (2009).

89. Barzun, *supra* note 86, at 1062–63, 1065.

90. *Id.* at 1065.

and our ears enabled us to hear sounds, so too our moral sense enabled us to distinguish between right and wrong, virtue and vice.”⁹¹

The work that Reid sees as being possible through moral sense is the same type of work Blackstone expects pursuit of happiness to do. It explains why Blackstone believes that the Holy Scriptures can be a check on pursuit of happiness: both the Scriptures and the moral sense that works itself out through pursuit of happiness are means of identifying first principles of right and wrong. Thus, whether it is inductive reading of Scripture or inductive reading of the natural world, a man’s moral sense guides him in the pursuit of happiness. It is not pure reason, and it is not just a feeling. It is a “common intuition”⁹² woven into the fabric of man by the Creator God.

Reid argued that it was possible, but not necessary, to cultivate this moral sense through education.⁹³ He also argued that man’s errors in moral philosophy did not indicate that first principles of right and wrong did not exist.⁹⁴ Blackstone echoed both of these ideas. First, as discussed above, Blackstone argued for education of university students in the English Common Law. Blackstone echoed the second of these ideas when he argued for pursuit of happiness as a science of jurisprudence by which every man could identify the first principles of the Common Law and then use those principles to correct the Common Law’s man-made errors, leading to its improvement and perfection over time.⁹⁵

C. Improvement and Perfection of the Common Law

When Blackstone talked about reforming the Common Law, he used two terms: “improvement” and “perfection.” To his eighteenth-century readers, both would be indicative of the idea that, through experience and observation, law makers could induce first principles that then could be referred to in order to “improve” the Common Law over time. As the Common Law was improved, it would become more perfect; in other words, it would increasingly reflect the order, beauty, and harmony of the

91. *Id.* at 1066.

92. *Id.*

93. *Id.*

94. *Id.* at 1066–67.

95. This “Enlightenment idea of progress through time, toward ever higher stages of civilization” was held by Thomas Jefferson, as well. Peter S. Onuf, *Ancients, Moderns, and the Progress of Mankind: Thomas Jefferson’s Classical World*, in THOMAS JEFFERSON, THE CLASSICAL WORLD, AND EARLY AMERICA 35, 36 (Peter S. Onuf & Nicholas P. Cole eds., 2011).

natural law. Blackstone articulated the improvement and perfection of the Common Law in terms of history and architecture.

1. History: An Ancient, English Common Law

Blackstone viewed his own work in teaching the laws of England in terms of revival, tracing the Common Law back to the Christian kings of England's Anglo-Saxon period.⁹⁶ A search for first founders was popular during the Enlightenment; following Henry VIII's break from the Roman Catholic Church and the establishment of the Church of England came a corresponding focus on England's distinct past, with an emphasis on the Anglo-Saxon period and King Alfred as a "symbol of freedom."⁹⁷

According to both Blackstone and his predecessor, Sir Edward Coke, King Alfred was "the *legume Anglicanarum conditor* of the early Common Law, while King Edward the Confessor is considered the *restitutor* thereof . . . Alfred founded the Common Law and the Confessor restored it . . ."⁹⁸ In seeking to revive an ancient past for the English Common Law, Blackstone did well to choose Edward and Alfred as his models. According to popular histories of the time, King Edward had combined the disparate Anglo-Saxon law codes into one coherent and cohesive law;⁹⁹ as an Anglo-Saxon king, Edward provided an identifiable person behind the theoretical argument of an ancient English Common Law.¹⁰⁰ Although Edward is important to Blackstone, his importance primarily comes from reinstituting that Common Law which King Alfred had previously founded. Blackstone believed that King Alfred's law code contained "many of the *principal maxims of the Common Law*."¹⁰¹ With Alfred's focus on training in literacy and learning, his study of the Latin language, and his emphasis on reform and renaissance,¹⁰² Alfred made an ideal ancient founder for the English Common Law.

96. See generally BLACKSTONE, *supra* note 13.

97. THE ANGLO-SAXONS 241-42 (James Campbell ed., 1991); DAVID HORSPOOL, KING ALFRED: BURNT CAKES AND OTHER LEGENDS 171 (Harvard Univ. Press 2006). Although, Horspool points out, others saw Alfred as "a paragon of unquestionable royal authority." HORSPOOL, at 171; THE ANGLO-SAXONS, at 241-42.

98. KURT VON S. KYNELL, SAXON AND MEDIEVAL ANTECEDENTS OF THE ENGLISH COMMON LAW 213 (2000).

99. FRANK BARLOW, EDWARD THE CONFESSOR 178 (1970).

100. For an argument that Edward's work in law is more legend than history, see THEODORE F.T. PLUCKNETT, A CONCISE HISTORY OF THE COMMON LAW 256 (5th ed. 1956).

101. KYNELL, *supra* note 98, at 212.

102. ALFRED THE GREAT: ASSER'S *LIFE OF KING ALFRED* AND OTHER CONTEMPORARY SOURCES 92, 99, 107 (Simon Keynes & Michael Lapidge trans., 1983). For a discussion of Alfred's program of

As part of his program for literacy and learning, Alfred argued for the “pursuit of wisdom” as “a wise man’s option” and “a ruler’s duty.”¹⁰³ Alfred’s biographer, Asser, compares Alfred to King Solomon, with the understanding that each man “sought wisdom from God.”¹⁰⁴ Wisdom is defined as “. . . knowledge of what is true or right coupled with just judgment as to action; sagacity, discernment, or insight.”¹⁰⁵ Its contemporary meaning hails from the word’s Saxon roots, where it was defined as “sapience; the power of judging rightly.”¹⁰⁶ In other words, to pursue wisdom is first to be able to *know* what is true and right, and then to be able to *apply* that knowledge to its best (right or most fit) use. Alfred believed that man’s ability to reason, the pursuit of wisdom, and the proper development of the law were intertwined. Reason, the essential characteristic of a human being, was what allowed a man to engage in the pursuit of wisdom, which is the right or fit application of knowledge. If a ruler understood how to rightly know and then apply the content of the law, then the law would develop justly. Conversely, if a ruler was not able either to rightly know the law or to rightly apply it, then the law that developed would be unjust.

Alfred believed that faulty reasoning stemmed from lack of learning, and he therefore promoted literacy and learning in his realm, going so far as to order his judges either “to learn to read or quit office.”¹⁰⁷ Alfred then included revelation, the divine law as revealed by God in the Holy Scriptures, as a “way of knowing,” describing the revelation as “Mosaic Law” (a term synonymous with the law of the Old Testament) and “Christ as True Wisdom” (a phrase synonymous with both “the Law of Christ” and the teachings of the New Testament).

literacy and how Alfred may have intended it to help forge a common, English identity, see HORSPOOL, *supra* note 97, at 179–80.

103. THE ANGLO-SAXONS, *supra* note 97, at 156. David Horspool supports this connection, claiming that “[t]o Alfred a personal interest in wisdom was a facet of true Christian kingship.” HORSPOOL, *supra* note 97, at 128.

104. HORSPOOL, *supra* note 97, at 131.

105. WEBSTER’S NEW UNIVERSAL UNABRIDGED DICTIONARY, *supra* note 85, at 2181. Samuel Johnson traces the word “wisdom” back to Saxon roots, defining it as “Sapience; the power of judging rightly.” JOHNSON’S DICTIONARY, *supra* note 19, at 2285. The OXFORD ENGLISH DICTIONARY defines wisdom as the “capacity of judging rightly in matters relating to life and conduct” and dates it to Old Saxon, as early as 888. The Oxford English Dictionary also defines wisdom as “one of the manifestations of the divine nature in Jesus Christ.” “wisdom, n” in OXFORD ENGLISH DICTIONARY, *supra* note 85, <http://www.oed.com/view/Entry/229491?rskey=CpNCo8&result=1&isAdvanced=false> (last visited Oct. 14, 2012).

106. *Id.*

107. THE ANGLO-SAXONS, *supra* note 97, at 156.

Alfred's discussion of the pursuit of wisdom is remarkably similar to Blackstone's discussion of the role to be played by the pursuit of happiness in English law reform. Alfred, like Blackstone, viewed both revelation and the pursuit of wisdom (what Blackstone described as the pursuit of happiness) as jurisprudential frameworks that could remedy the defects that resulted from faulty reasoning on topics of law. Blackstone believed that remedying these defects was necessary in order to improve and perfect the ancient English Common Law, a process he analogized to restoring a poorly-remodeled house to its original foundation and plan.

2. *Architecture: "Solid foundations" and "An Extensive Plan"*

Blackstone's views on the improvement and perfection of the Common Law reflect not only his understanding of King Alfred as the ancient founder of the Common Law, but also Blackstone's description of the Common Law itself as a house, whose structure had been altered and whose ancient and true foundation had been obscured by faulty additions over time. According to Blackstone, these faulty additions needed to be removed so that the order, harmony, and beauty of the original blueprint could be revealed and so that the new builders could rely upon the true foundation in making additions for the future.¹⁰⁸ Blackstone stated that England's "admirable system of laws" had been "built upon the soundest foundations, and approved by the experience of ages"¹⁰⁹ but that the English law had been corrupted over time. He argued that "it's [sic] symmetry has been destroyed, it's [sic] proportions distorted, and it's [sic] majestic simplicity exchanged for specious embellishments and fantastic novelties."¹¹⁰

Blackstone ascribed to future lawyers, judges, jurors, and MPs a high sense of duty in improving and perfecting the laws of England and urged them to do so by recovering the ancient foundations of the Common Law and the foundational principles that should guide its development.¹¹¹ The idea of perfection or improvement had its roots in the science and religion of the English Enlightenment. The philosophes of the Enlightenment

108. For an excellent discussion of architecture in Blackstone's *Commentaries*, as well as his other works, see Carol Matthews, *A 'Model of the Old House': Architecture in Blackstone's Life and Commentaries*, in *BLACKSTONE AND HIS COMMENTARIES: BIOGRAPHY, LAW, HISTORY* 15–34 (Wilfrid Prest ed., 2009) and WILFRID PREST, *WILLIAM BLACKSTONE: LAW AND LETTERS IN THE EIGHTEENTH CENTURY*, 44–48, 67–68, 77–79 (2008).

109. BLACKSTONE, *supra* note 13, at 5.

110. *Id.* at 10.

111. *Id.* at 35.

looked to England and saw that “progress in one sphere generated progress in others;” they believed “that England was rich, happy, and free” and “that these characteristics depended upon and reinforced one another.”¹¹² John Gordon, archdeacon of Lincoln, argued that “the world is . . . in a state of general improvement,”¹¹³ with the result “[t]hat mankind at present is *wiser, happier, and better* than it ever was before.”¹¹⁴

Blackstone believed that the improvement of the Common Law had begun with King Alfred, stating that Alfred’s “mighty genius prompted him to undertake a great and necessary work . . . no less than to new model the Constitution; to rebuild it on a plan that should endure for ages; and, out of its old discordant materials, which were heaped upon each other in rude irregularity, to form one uniform and well-connected whole.”¹¹⁵ Indeed, Blackstone described the “two books” from which first principles could be induced in architectural terms: “*Upon these two foundations*, the law of nature and the law of revelation, depend all human laws; that is to say, no human laws should be suffered to contradict these.”¹¹⁶

Blackstone’s choice of the architectural term “foundation” here is telling. A foundation is both the underlying building surface and the guide for the structure of the building—it both provides stability for the structure and directs its form. It is in light of this metaphor that Blackstone alternately talks about the principles upon which the Common Law should be built and the principles that should direct the development (and improvement and perfection) of the Common Law.

Historian Carol Matthews has compiled Blackstone’s architectural views of the Common Law as they developed over time, and they are worth reproducing in full here.¹¹⁷ In 1746, Blackstone described the Common Law as a building in need of improvement:

‘I have sometimes thought that the Common Law, as it stood in Littleton’s Days, resembled a regular Edifice: where the Apartments were properly disposed, leading one into another without Confusion; where every part was subservient to the whole, all uniting in one beautiful Symmetry: & every Room had its distinct

112. PETER GAY, *THE ENLIGHTENMENT: AN INTERPRETATION, VOLUME II: THE SCIENCE OF FREEDOM* 24–25 (1969) [hereinafter GAY, *THE ENLIGHTENMENT II*].

113. Ronald S. Crane, *Anglican Apologetics and the Idea of Progress, 1699–1745 (Concluded)*, 31 *MODERN PHILOLOGY* 349, 379 (1934).

114. *Id.* at 379.

115. BLACKSTONE, *supra* note 13, at 403–04.

116. *Id.* at 42 (emphasis added).

117. Matthews, *supra* note 108, at 15–34.

Office allotted to it. But as it is now, swol'n, shrunk, curtailed, enlarged, altered & mangled by various & contradictory Statutes &c; it resembles the same Edifice, with many of its most useful Parts pulled down, with preposterous Additions in other Places, of different Materials & coarse Workmanship according to the Whim, or Prejudice, or private Convenience of the Builders. By which means the Communication of the Parts is destroyed, & their Harmony quite annihilated; & now it remains a huge, irregular Pile, with many noble Apartments, though awkwardly put together, & some of them of no visible Use at present. But if one desires to know why they were built, to what End or Use, how they communicated with the rest & the like; he must necessarily carry in his Head the Model of the old House, which will be the only Clue to guide him through this new Labyrinth.¹¹⁸

Blackstone used the same analogy, in a modified version, in 1758 in his first Vinerian lecture, where he stated that the Common Law:

‘has fared like other venerable edifices of antiquity, which rash and unexperienced workmen have ventured to new-dress and refine, with all the rage of modern improvement. Hence frequently its symmetry has been destroyed, its proportions distorted, and its majestic simplicity exchanged for specious embellishments and fantastic novelties.’¹¹⁹

Seven years later, Blackstone once more invokes the architectural metaphor in Volume Four of his *Commentaries*.¹²⁰

‘It hath been the endeavour of these commentaries, however the execution may have succeeded, **to examine [the common law’s] solid foundations, to mark out its extensive plan**, to explain the use and distribution of its parts, and from the harmonious concurrence of those several parts to demonstrate the elegant proportion of the whole. We have taken occasion to admire at every turn the **noble monuments of ancient simplicity**, and the more curious refinements of modern art. Nor have its faults been concealed from view; for faults it has, lest we should be tempted to think it of more than human structure: **defects**, chiefly arising from

118. *Id.* at 29 (quoting Blackstone, *Letters*, 4).

119. *Id.* at 29–30 (quoting Blackstone, *Commentaries* vol 1, p. 10 (‘Introduction’); first published as *A Discourse on the Study of the Law* (Oxford 1758)).

120. *Id.* at 30 (citing Blackstone, *Commentaries* vol 4, p. 436).

the decays of time, **or the rage of unskilful [sic] improvements** in later ages. **To sustain, to repair, to beautify this noble pile, is a charge entrusted principally to the nobility, and such gentlemen of the kingdom, as are delegated by their country to parliament. The protection of THE LIBERTY OF BRITAIN is a duty which they owe to themselves,** who enjoy it; to their ancestors, who transmitted it down; and to their posterity, who will claim at their hands, this the best birthright, the noblest inheritance of mankind.’¹²¹

In his final architectural metaphor, we see Blackstone’s belief in the Common Law’s “ancient simplicity,” which he believed to be manifest in the Founding of King Alfred and the Restoration of King Edward. We see his acknowledgement of the “defects” that occurred in the law over time, some of which he attributes to “unskilful [sic] improvements.” We see Blackstone’s desire to educate his students, so that they can make the skillful improvements necessary “[t]o sustain, to repair, to beautify this noble pile” should they one day serve in Parliament. We see Blackstone’s charge to these students to protect and then, through transmission to their posterity, preserve the “LIBERTY of BRITAIN,” which preservation would lead to the perfection of the Common Law.

In his first architectural analogy, Blackstone argued that in order to understand the various rooms of the Common Law as it then stood, “to know why they were built, to what End or Use, how they communicated with the rest & the like; *he must necessarily carry in his Head the Model of the old House*, which will be the only Clue to guide him through this new Labyrinth.”¹²² In his final metaphor, he explained that his goal for his *Commentaries* was to “examine [the common law’s] solid foundations” and then “mark out its extensive plan.”¹²³ With that model in mind, Blackstone could then “explain the use and distribution of [the Common Law’s] parts, and from the harmonious concurrence of those several parts to demonstrate the elegant proportion of the whole.”

In these two phrases, we see a distillation of Blackstone’s two-part goal for legal reform in England. As evidenced by the latter phrase, he sought to provide his students with an education in the content of the English Common Law, including a discussion of its different parts, and how they related to one another to create a whole. As evidenced by the former

121. *Id.* at 30 (emphasis added) (citing Blackstone, *Commentaries* vol 4, p. 436).

122. *Id.* at 29 (emphasis added) (citing Blackstone, *Letters*, 4).

123. *Id.* at 30 (emphasis added) (citing Blackstone, *Commentaries* vol 4, p. 436).

phrase, Blackstone also sought to provide his students with an education in the science of jurisprudence that would enable them to “examine [the Common Law’s] solid foundations,” which were the law of nature and the law of revelation, and “mark out its extensive plan.” The science of jurisprudence that Blackstone believed was best suited to that task was the pursuit of happiness.

According to Blackstone, the pursuit of happiness reflected the ancient wisdom of Anglo-Saxon King Alfred and the moral philosophy of the Latitudinarian Anglicans. It embraced the Common Sense philosophy of the Scottish Enlightenment and, in so doing, avoided the undue complexities of the Scholastics and the undue emotionalism of the Enthusiasts. It provided a means by which the layperson, no less than the skilled lawyer, could induce from revelation and the law of nature those principles that formed the foundation and framework of the Common Law. If the Common Law was a house, and Blackstone regularly described it as such, the pursuit of happiness was its cornerstone. The question that then remains is to what degree, if any, Blackstone’s definition of the pursuit of happiness is reflected in the Founders’¹²⁴ use of the phrase.

II. THE PURSUIT OF HAPPINESS IN THE *DECLARATION OF INDEPENDENCE*

A. *Textual Context: Placement and Drafting*

1. *Placement*

The pursuit of happiness is located at the beginning of the *Declaration*, in a two-paragraph summary of the ends of government. Key passages have been highlighted in bold:

When in the course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another, and **to assume** among the powers of the earth **the separate and equal station to which the laws of nature and of**

124. I have chosen to discuss the authorship of the *Declaration* in terms of “the Founders” for two reasons. First, I wanted to place the authorship of the *Declaration* in its larger context. Although Thomas Jefferson drafted the *Declaration*, the language of the *Declaration* was debated, altered, and finally approved by John Adams, Benjamin Franklin, and the Founders present at the Continental Congress. The meaning of any part of the *Declaration* may have begun with what Jefferson intended, but ultimately depended upon what the other Founders understood that language to mean as they debated, altered, and finally approved it at the Continental Congress. Second, I have referred to these men as Founders (as opposed to Framers) because they, through the *Declaration*, founded the new United States of America while the men who gathered to create the Articles of Confederation and, later, the Constitution of the United States, framed its government.

nature's god entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation. **We hold these truths to be self evident; that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness: that to secure these rights, governments are instituted among men**, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying it's foundation on such principles, and organising it's powers in such form as to them shall seem most likely to effect their **safety and happiness**.¹²⁵

As shown above, the *Declaration* begins by assuming that “the laws of nature and of nature's god” entitle humans to a certain type of earthly government, one that will “secure” the unalienable rights with which men are “endowed by their creator,” including “life, liberty & the pursuit of happiness.” When a specific government fails to operate according to these principles, when it “becomes destructive of these ends,” then it is “necessary” for the governed to separate and to “assume” the “separate & equal station to which the laws of nature and of nature's god entitle them.” Thus, according to the *Declaration*, man's unalienable right to “the pursuit of happiness” is to be protected immediately by man's earthly government and is to be protected indefinitely by “the laws of nature and of nature's god.”

As discussed previously, in his work, *Commentaries on the Laws of England*, English jurist William Blackstone defines the pursuit of happiness as a means by which man could know the law of nature as it pertains to humans. If man pursued his happiness, he could not help but live in harmony with the law of nature. Similarly, if man sought to live in harmony with the law nature, he could not help but achieve happiness:

For [the Creator] has so intimately connected, so inseparably interwoven the laws of eternal justice with the happiness of each individual, that the latter cannot be attained but by observing the former; and, if the former be punctually obeyed, it cannot but induce the latter. In consequence of which mutual connection of justice and human felicity, he has not perplexed the law of nature

125. *The Declaration of Independence*, as included in MAIER, *supra* note 4, at 236.

with a multitude of abstracted rules and precepts, referring merely to the fitness or unfitness of things, as some have vainly surmised; but has graciously reduced the rule of obedience to this one paternal precept, “that man should pursue his own happiness.” This is the foundation of what we call ethics, or natural law.¹²⁶

The parallels between this portion of Blackstone’s *Commentaries* and the *Declaration of Independence* are significant. Both assume that “the law of nature and of nature’s God” is a governing order that both precedes and prescribes the authority of human government. Both place “pursuit of happiness” within a larger discussion of “the law of nature and of nature’s God.” Both assume “pursuit of happiness” to be a right given to man by his Creator. However, where Blackstone specifically defines “pursuit of happiness,” the *Declaration* does not. What does this phrase mean within the context of the *Declaration*? Is Blackstone’s understanding of pursuit of happiness reflected in the Founders’ understanding of the phrase?

2. Drafting

The creation of the *Declaration of Independence* provides much insight into its context. It is common to discuss the *Declaration* as Thomas Jefferson’s original document, and, indeed, he did create the original draft. But we go astray if we consider the original intent of Jefferson, as opposed to the original meaning of the *Declaration* to all who drafted and approved it, including the Committee of Five, and the Continental Congress. In fact, given both John Adams’s and Thomas Jefferson’s claims that they did not intend for the *Declaration* to promote any new ideas,¹²⁷ it would make the most sense to study the structure and language of the *Declaration* in terms of the prevalent ideas of the time.

When the Continental Congress determined it was time to draft a document to declare independence from Great Britain, it appointed a Committee of Five to complete the task.¹²⁸ This committee included Thomas Jefferson, John Adams, Benjamin Franklin, Roger Sherman, and Robert Livingston. After some discussion, it was agreed that Jefferson be the one to draft the document.¹²⁹

126. BLACKSTONE, *supra* note 13, at 40–41.

127. See BECKER, *supra* note 4, at 177, 207–09.

128. For the following account of the *Declaration*’s drafting, see BECKER, *supra* note 4, at 135–93 and JOHN HAZELTON, *THE DECLARATION OF INDEPENDENCE: ITS HISTORY 141–93* (1906).

129. John Adams later claimed that Jefferson encouraged Adams to write it, but then Adams convinced Jefferson to draft it. Jefferson claimed that the Committee of Five appointed him to write it.

Once Jefferson had completed his initial draft, he sent it to John Adams and Benjamin Franklin for suggestions. Jefferson's selection of reviewers here is interesting, given Adams's study of English law and his devout love of the classics and Christianity, and Franklin's adherence to the scientific ideals and Common Sense philosophy of the Enlightenment.

Adams and Franklin made few changes, and those they did make were merely in wording. Neither of the men edited the phrase "pursuit of happiness," or its inclusion as an unalienable right. After incorporating the changes from Adams and Franklin, Jefferson submitted the draft to the Committee of Five. By the time the draft made it through the Committee of Five, twenty-six alterations had been made.¹³⁰ Twenty-three of the changes were "in phraseology" and were made by Adams, Franklin, and Jefferson himself.¹³¹ The other three changes consisted of a three-paragraph addition to Jefferson's list of grievances against the King, before the draft was given to the Committee of Five.¹³² Yet, no one on the Committee edited the phrase "pursuit of happiness," or its inclusion as an unalienable right.

From here, the Committee of Five submitted a draft to the Continental Congress. The Continental Congress made many changes to the document; Jefferson viewed them as "depredations."¹³³ Jefferson became so low during the editing process, that Franklin was moved to tell Jefferson a joke in order to cheer him up.¹³⁴ The changes made by the Continental Congress ranged from the grammatical (such as "neglected utterly" to "utterly neglected" in the second grievance against the King)¹³⁵ to the monumental (such as the Congress's deletion of the entire passage whereby Jefferson charges King George III with responsibility for human slavery in the American colonies).¹³⁶ The record of changes made in the Continental Congress suggests that every word and phrase of the *Declaration* was carefully considered. However, even here, we see no editing of the phrase "pursuit of happiness" and no changes made to its inclusion or placement in the *Declaration*.

BECKER, *supra* note 4, at 135–36.

130. *Id.* at 157, 160–66.

131. *Id.*

132. *Id.*

133. The best versions for noting the differences between Jefferson's draft and the version as it existed after the Congressional revisions are located in WILLS, *supra* note 10, at 374–79; BECKER, *supra* note 4, at 174–84, and MAIER, *supra* note 4, at 235–41. For the final copy as recorded on parchment paper, see BECKER, *supra* note 4, at 185–93.

134. BECKER, *supra* note 4, at 207–09.

135. *Id.* at 177.

136. *Id.* at 185–93.

What are we to make of the fact that the phrase “pursuit of happiness” was not edited at all, either by Jefferson, Adams, or Franklin, within the Committee of Five, or within the Continental Congress as a whole? The lack of editing here would seem to suggest one of two things: either the phrase “pursuit of happiness” really was a “glittering generality” with a non-substantive meaning to which no one would object, or the phrase “pursuit of happiness” had a substantive meaning that was both understood by and agreeable to the wide variety of individuals involved in the *Declaration’s* drafting. The answer can be found by exploring the ideas of the *Declaration* in their historical context.

B. “No New Ideas”: Four Strands of Founding Era Thought

What did the *Declaration* mean at the time of the Founding? When asked about the drafting of the *Declaration*, both John Adams and Thomas Jefferson stated that it contained no new ideas. Adams stated that “there is not an idea in it, but what had been hackney’d in Congress for two years before”¹³⁷ while Jefferson claimed, “I did not consider it as any part of my charge to invent new ideas altogether & to offer no sentiment which had ever been expressed before.”¹³⁸ What, then, counted as old ideas at the time of the *Declaration*?

Four key strands of thought influenced the men of the Founding Era: English law and legal theory; the history and philosophy of Classical Antiquity; Christianity; and the Scottish Enlightenment’s emphasis on Newtonian Science. Further study leads to two conclusions: (1) the Founders did not separate these strands of thought into distinct categories, but intermingled them¹³⁹ in what they understood to be an intellectually

137. Adams’s full quotation is as follows: “There is not an idea in it, but what had been hackney’d in Congress for two years before. The substance of it is contained in the Declaration of rights . . . Indeed, the essence of it is contained in a pamphlet . . . composed by James Otis . . .” HAZELTON, *supra* note 128, at 143. Hazelton is quoting John Adams.

138. The full quote from Jefferson is included in Jefferson’s August 30, 1823 letter to James Madison. Jefferson agreed in part and disagreed in part with Adams, stating: “Pickering’s observations, and Mr Adams’s in addition, ‘that it contained no new ideas, that it is a common place compilation, it’s sentiments hacknied in Congress for two years before, and it’s essence contained in Otis’s pamphlet,’ may all be true. of that I am not to be the judge. Rich. H. Lee charged it as copied from Locke’s treatise on government. Otis’s pamphlet I never saw, & whether I had gathered my ideas from reading or reflection I do not know. I know only that I turned to neither book or pamphlet while writing it. I did not consider it as any part of my charge to invent new ideas altogether & to offer no sentiment which had ever been expressed before.” *Id.* at 144–45. Hazelton is quoting Jefferson.

139. Carl Richard argues well for an intermingling of these ideas at the Founding. See CARL J. RICHARD, *THE FOUNDERS AND THE CLASSICS: GREECE, ROME, AND THE AMERICAN ENLIGHTENMENT* (1994). Richard’s work provides a jumping-off point for my exploration of key ideas that influenced Jefferson, Adams, and Franklin, in general, and their thinking on the pursuit of happiness, in particular.

coherent fashion, and (2) each of these strands of thought included a core thesis that was in harmony with Blackstone's understanding of the pursuit of happiness. The four strands are as follows:

1. *English Law and Legal Theory*

Blackstone's *Commentaries* comprised the most comprehensive compilation of English law in its day. When Blackstone began his *Commentaries* with a discussion of the law of nature and of nature's God as the immutable legal principles upon which the entire English Common Law is premised,¹⁴⁰ he did so within a larger eighteenth-century understanding of natural laws that were to guide the actions of governments and men.¹⁴¹

In England, that understanding built on seventeenth-century constitutional struggles between Lord Coke and Parliament, on the one hand, and the Stuart Monarchs, the other.¹⁴² These battles resulted in the English Civil War of 1642–1649 and culminated with the execution of King Charles I for Treason in 1649. The constitutional battles revived with the return of the Stuart Monarchy in 1660 and were resolved only through the Glorious Revolution of 1688, which established Parliamentary supremacy and produced the English Bill of Rights in 1689.¹⁴³

The colonists looked back to the struggles between Parliament and the King in seventeenth-century England as a time in comparison with their own struggles with England.¹⁴⁴ From the 1760s forward, the colonists had been petitioning Britain in terms of their fundamental rights, as understood

Where Richard emphasizes the intermingling of the four strands, I argue for a point of convergence that cuts across all four strands and is instrumental to understanding both the pursuit of happiness and the *Declaration*, as a whole. Bernard Bailyn similarly discusses Founding Era ideas as “a blend of ideas and beliefs” (BERNARD BAILYN, *THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION* v (enlarged ed. 2012)) while Gordon Wood uses like terms to argue for “a general pattern of beliefs about the social process—a set of common assumptions about history, society, and politics that connected and made significant seemingly discrete and unrelated ideas.” GORDON WOOD, *THE CREATION OF THE AMERICAN REPUBLIC: 1776–1787* viii (1969).

140. See BLACKSTONE, *supra* note 13.

141. BECKER, *supra* note 4, at 26–27.

142. This description of seventeenth-century English history is promulgated by Blackstone and the Founders; it is how they viewed their legal history, and how they used it as evidence to support their advocacy for changes in law. Many historians today have different ideas about the causes and consequences of the events described here.

143. KERMIT L. HALL ET AL., *AMERICAN LEGAL HISTORY: CASES AND MATERIALS* 7–8 (2d ed. 1996).

144. James C. Spalding, *Loyalist as Royalist, Patriot as Puritan: The American Revolution as a Repetition of the English Civil Wars*, 45 *CHURCH HISTORY* 329, 329–30 (1976).

in English law and legal theory.¹⁴⁵ John Adams committed this history to text in his written summary of James Otis' 1761 speech against the Writs of Assistance:

In short, [Otis] asserted these rights [of life, liberty, and property] to be derived only from nature and the Author of nature; that they were inherent, inalienable, and indefeasible These principles and these rights were wrought into the English constitution as fundamental laws. And under this head he went back to the old Saxon laws and to Magna Carta . . . to the position of rights and the Bill of Rights and the [Glorious] revolution.¹⁴⁶

These comparisons involved not only theory, but also practice, as constitutional struggles in England tended to have their colonial counterparts. Thus, *The Trial of the Seven Bishops in England* (1688) was followed by *The Trial of John Peter Zenger* in the colonies (1735).¹⁴⁷ Both cases challenged the law of seditious libel as understood in English legal precedent, and both outcomes contradicted that precedent by setting new parameters for the relationship between the people and the governmental authorities. The colonial *Writs of Assistance Case* (1761), at which John “Adams saw the ‘birth of the child Independence,’” raised questions about the constitutionality of colonial statutes, and their relationship to English law.¹⁴⁸ James Otis relied upon Lord Coke’s views and the English legal precedent in *Bonham’s Case* (1610) to argue against the Writs, claiming that, “when an act of Parliament is against common right or reason . . . the Common Law will . . . adjudge such act to be void.”¹⁴⁹ He referred to former constitutional struggles in England by claiming that the exercise of arbitrary power “in former periods of history cost one king of England his head and another his throne.”¹⁵⁰ Otis stated that the Writs were “the worst instrument of arbitrary power, the most destructive of English liberty and the fundamental principles of law, that ever was found in an English law-book.”¹⁵¹

145. This history is summarized well in HALL ET AL., *supra* note 143 and in STEPHEN B. PRESSER & JAMIL S. ZAINALDIN, *LAW AND JURISPRUDENCE IN AMERICAN HISTORY* (5th ed. 2003).

146. James Otis, *Against Writs of Assistance* (February 1761), NATIONAL HUMANITIES INSTITUTE, available at <http://www.nhinet.org/ccs/docs/writs.htm> (last visited May 4, 2015). The portion included above is the portion of Otis’s speech that was summarized in the notes of John Adams.

147. HALL ET AL., *supra* note 143, at 6–7, 27–29.

148. PRESSER & ZAINALDIN, *supra* note 145, at 68.

149. *Id.*

150. Otis, *supra* note 146.

151. *Id.*

As these cases demonstrate, the colonists viewed the English law as their law, and they felt free to oppose English law on English grounds, claiming that the English law was a law of liberty, as opposed to a law of tyranny or slavery. They claimed that the English law, itself, was bound by a higher law, often articulated by the Founders, like Otis, in language similar to that of Blackstone, as the fundamental principles of law. In his *Commentaries*, Blackstone confirmed this hierarchy of law, but qualified it, saying, “but if the Parliament will positively enact a thing to be done which is unreasonable, I know of no power that can control it.”¹⁵² While Blackstone’s views on this matter were dominant in England,¹⁵³ many of the American colonists disagreed. As Jefferson later stated to James Madison, the Founders held to Lord Coke’s, not Blackstone’s, construction of the relationship between the English law and the higher law.¹⁵⁴ This disagreement regarding the corrective role of the higher law in relationship to Parliament was one “which colonial resistance would only confirm.”¹⁵⁵

The English Common Law was received in the American colonies throughout the eighteenth-century,¹⁵⁶ and, even as the colonists moved toward independence, they continued to describe their rights in terms of English law. John Adams summarized some of the key claims of James Otis’ February 1761 speech against the Writs of Assistance as follows: “He asserted that our ancestors, as British subjects, and we their descendants, as British subjects, were entitled to all those rights by the British constitution as well as by the law of nature”¹⁵⁷ In his later essay, entitled “The Rights of the British Colonies,” James Otis reiterated his Writs of Assistance argument by claiming that the law of God was a higher authority than Parliament; if a law of Parliament contradicted the higher authority, then that law of Parliament was void.¹⁵⁸ Jefferson asserted similar views in “A Summary View of the Rights of British America.”¹⁵⁹ Both authors framed their arguments in terms of English law.

152. PRESSER & ZAINALDIN, *supra* note 145, at 69; LAW, LIBERTY, AND PARLIAMENT: SELECTED ESSAYS ON THE WRITINGS OF SIR EDWARD COKE 176–77 (Allen D. Boyer ed., 2004) [hereinafter LAW, LIBERTY, AND PARLIAMENT].

153. PRESSER & ZAINALDIN, *supra* note 145, at 69.

154. LAW, LIBERTY, AND PARLIAMENT, *supra* note 152, at 66.

155. PRESSER & ZAINALDIN, *supra* note 145, at 69.

156. HALL ET AL., *supra* note 143, at 23–24.

157. Otis, *supra* note 146. The portion here is from John Adams’ summary of Otis’ speech.

158. HALL ET AL., *supra* note 143, at 60–61.

159. THOMAS JEFFERSON: WRITINGS, 103–22 (Merrill D. Peterson ed., 16th ed. 1984).

Like Otis, Jefferson made the higher law argument, stating that the “God who gave us life gave us liberty at the same time”¹⁶⁰

The English, too, viewed their relationship with the colonies in terms of English law, claiming in the 1766 *Declaratory Act* that both Parliament and the Crown ruled colonies.¹⁶¹ The colonists responded with the 1774 *Declaration & Resolves of the Continental Congress*, claiming their entitlement to all English rights, including “life, liberty, and property,”¹⁶² as well as the Common Law of England and the law of the English statutes.¹⁶³ These rights were summarized in George Mason’s 1776 *Virginia Declaration of Rights*, already written when the Continental Congress met to debate and then declare their independence from England.¹⁶⁴ As discussed previously, Mason summarized the colonists’ rights as follows:

That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and **possessing property, and pursuing and obtaining happiness** and safety.¹⁶⁵

Given this extensive reliance on English law and legal theory in the Founding Era, the question then becomes, what impact did English legal theory have on the *Declaration*?

Jefferson, the original drafter of the *Declaration*, was a self-directed student of English history¹⁶⁶ and had studied English law extensively in his training as a lawyer, focusing on Lord Coke’s *Institutes* and later encountering Blackstone’s *Commentaries*.¹⁶⁷ When Jefferson actually sat down to write the *Declaration*, he had two documents with him: his draft constitution of Virginia and a draft of George Mason’s *Virginia Declaration of Rights* (1776).¹⁶⁸ Jefferson’s possession of Mason’s work is particularly significant in that, as shown above, Mason’s listing of unalienable rights included not only life, liberty, and the pursuit of

160. *Id.* at 122.

161. HALL ET AL., *supra* note 143, at 63–64.

162. *Id.* at 64.

163. *Id.*

164. *Id.* at 69–70.

165. *Id.* at 69 (emphasis added).

166. MAIER, *supra* note 4.

167. MERRILL D. PETERSON, THOMAS JEFFERSON AND THE NEW NATION: A BIOGRAPHY 16–19 (1970).

168. MAIER, *supra* note 4, at 125–26.

happiness, but also property. Mason's listing suggests that far from omitting property and inserting pursuit of happiness in its place, Jefferson was following in a tradition that viewed property and pursuit of happiness as two distinct rights.

Pauline Maier, in her 1997 work *American Scripture: Making the Declaration of Independence*, claims that with these two documents in mind, Jefferson's draft of the *Declaration*, and, indeed, the *Declaration* as a final product, should be seen not primarily as a philosophical document, but as "one that concerned the fundamental authority of government."¹⁶⁹ In part, she is right. As both Jefferson and Adams claimed, the *Declaration* was not intended to lay out new ideas. The *Declaration*'s structure shows it was intended to make a case for the colonies to separate from rule by England and to assume their "separate & equal station" as "free & independent states."¹⁷⁰ As Maier argues, these are issues of the fundamental authority of government.

Yet, the language the Founders used to make their case is extremely philosophical, and the philosophy that language embodies is, at least in part, that of the English Common Law. Thus, the interesting irony of the *Declaration* is that the colonists declared their independence from England, but did so in firm reliance and understanding of both the English law and the higher law principles which provided the scope and framework for the English Common Law system. Only by understanding this larger English legal context, a context distilled and then distributed throughout the colonies in Blackstone's *Commentaries*,¹⁷¹ can we understand both the context and the content of the *Declaration*.

2. *History and Philosophy of Classical Antiquity*

A second strand of thought that influenced the Founders was their knowledge of Classical Antiquity. The Founders were deeply steeped in the history and philosophy of Classical Antiquity;¹⁷² such training in the

169. MAIER, *supra* note 4, at 126.

170. WILLS, *supra* note 10, at 374, 379.

171. The *Commentaries* were published from 1765–1769 and an American edition was published as early as 1772. By the time of the *Declaration*, "nearly twenty-five hundred copies" of Blackstone's *Commentaries* were circulating in the American colonies, a circulation that is believed to have "rivaled that in England." Julius S. Waterman, *Thomas Jefferson and Blackstone's Commentaries*, in *ESSAYS IN THE HISTORY OF EARLY AMERICAN LAW* 451–54 (David H. Flaherty ed., 1969).

172. The Founders were especially familiar with the writings of Cicero, Marcus Aurelius, and Epictetus on Stoicism; the writings of Plutarch and Polybius on history; and Joseph Addison's *Cato* (demonstrating an interplay between Classical Antiquity, Christianity, and English legal theory). See generally RICHARD, *supra* note 139.

classics was common among educated men of the time.¹⁷³ They saw the ancient Roman Republic as the ideal form of government and they were especially familiar with the speeches and writings of the Roman philosopher and statesman-orator, Cicero.

Cicero served as a model for the Founders not only in his promotion of mixed government, but also because he consistently (some would say incessantly) spoke out against what he perceived to be tyranny and the coming downfall of the Roman Republic. He characterized his own fight for the preservation of Rome in terms of glory.¹⁷⁴ Cicero argued that men could be motivated to live lives of merit in the face of “toil and danger” because of the “praise and glory” that would be their reward: “If you take that away, gentlemen, what incentive do we have, in life’s brief and transitory career, to involve ourselves in great undertakings?”¹⁷⁵

The Founders frequently characterized their own work in Cicero’s terms of great undertakings that would be difficult and involve sacrifice, but would lead to glory.¹⁷⁶ In a reflection of Cicero’s emphasis on glory, Jefferson believed one’s public life would be judged by future historians, and that one ought to conduct oneself so as to gain esteem in that valuation.¹⁷⁷ Further, the Founders consistently looked to ancient history for men like Cicero who could be “models of personal behavior, social practice, and government form.”¹⁷⁸ For example, Thomas Jefferson saw much to admire in Tacitus’ combination of moral and historical judgment.¹⁷⁹ George Washington sought to emulate Cato as he addressed his troops.¹⁸⁰ John Adams attempted to fashion himself after Cicero¹⁸¹ as an orator-statesman who used an inductive method to determine those principles of government which would most lead toward liberty and away from tyranny. In an 1809 letter to Benjamin Rush, John Adams claimed that, of the men from antiquity who could have served as his model, “I chose to confine myself to Cicero.”¹⁸² And, indeed, he had. Adams chose

173. PETER GAY, *THE ENLIGHTENMENT: AN INTERPRETATION, THE RISE OF MODERN PAGANISM* 39 (1967) [hereinafter GAY, *THE ENLIGHTENMENT I*].

174. Marcus Tullius Cicero, *Pro Archia* (*For Archias*), in *CICERO: DEFENCE SPEECHES* 110 (D. H. Berry trans., 2000).

175. *Id.* at 120.

176. *FAME AND THE FOUNDING FATHERS: ESSAYS BY DOUGLASS ADAIR* 17–29 (Trevor Colbourn ed., 1998) [hereinafter *FAME*].

177. RICHARD, *supra* note 139, at 54.

178. *Id.* at 53.

179. *Id.* at 53–54.

180. *Id.* at 59–61, 63.

181. *Id.*

182. James M. Farrell, “*Syren Tully*” and the Young John Adams, 87 *THE CLASSICAL JOURNAL* 373 (1992) [hereinafter Farrell, *Syren Tully*].

Cicero for his model early on and held fast to him throughout his lifetime.¹⁸³

The Founders looked to ancient history for models of excellence in political and public life; they modeled their own lives on ancient standards, and they evaluated the public virtues and political lives of others according to those same standards.¹⁸⁴ Ancient philosophers like Cicero, Marcus Aurelius, and Epictetus were important to the Founders also due to their emphasis on Stoicism.¹⁸⁵

Stoic philosophy emphasized “exceptionless laws” that governed the universe. Additionally, Stoic philosophy emphasized the notion that “[h]umans should live in accordance with human nature, which is, for them, to live in accordance with human reason,” and the idea that “virtue is sufficient for happiness;” virtue was defined as “the skill of putting other things to their correct use.”¹⁸⁶ The Stoic, Chrysippus, summarized it as follows:

Our natures are part of the nature of the universe. Therefore, the goal becomes ‘to live following nature’, that is, according to one’s own nature and that of the universe, doing nothing which is forbidden by the common law (*nomos ho koinos*), which is right reason [*orthos logos*], penetrating all things¹⁸⁷

For a Stoic, to live the good life or the life of virtue was to live in harmony with *logos*, a form of “universal reason . . . that organizes and directs” the natural world¹⁸⁸ and which was discernable by man through “right reason.”¹⁸⁹

183. *Id.* at 373, 376.

184. For evaluation based on ancient standards, see RICHARD, *supra* note 139, at 53–83.

185. For more on Marcus Aurelius and Epictetus as followers of Stoicism, see SUSAN SUAVÉ MEYER, *ANCIENT ETHICS: A CRITICAL INTRODUCTION* 134 (2008) and PRIOR, *supra* note 58, at 208.

186. For an overview of these key aspects of Stoicism, see *Stoicism*, in *THE OXFORD CLASSICAL DICTIONARY* 1446 (Simon Hornblower & Anthony Spawforth eds., 3rd ed. 2003). Aristotle believed that to be happy was to live well, and that this was the ultimate end goal of man: “. . . for both the common run of people and cultivated men call [this “ultimate end of all human activity”] happiness, and understand by ‘being happy’ the same as ‘living well’ and ‘doing well.’” PRIOR, *supra* note 58, at 149. The Greek word for this conception of happiness is *eudaimonia*, which is to be distinguished from English understandings of happiness: “. . . the English word ‘happiness’ suggests a state of psychological contentment, pleasure or joy and, though this subjective component is not absent from the Greek *eudaimonia*, it is not its primary connotation. . . . [Aristotle states that] people understand by *eudaimonia* ‘living well’ and ‘doing well.’” *Id.* at 149–50.

187. MEYER, *supra* note 185, at 140.

188. RAYMOND J. DEVETTERE, *INTRODUCTION TO VIRTUE ETHICS: INSIGHTS OF THE ANCIENT GREEKS* 126–27 (2002).

189. RICHARD, *supra* note 139, at 170, 217–18. To live virtuously was to live in accord with the natural law: there is a “prescriptive force of the divine reason that all human beings must follow if they

The Founders encountered Stoic philosophy not only through Cicero, but also through later Stoics such as Marcus Aurelius and the slave-turned-philosopher, Epictetus, who was a particular favorite of Jefferson.¹⁹⁰ Stoicism was one key line of thought from Classical Antiquity that was reflected in the *Declaration*. A second key line of thought from Classical Antiquity that was reflected in the *Declaration* was the ancient view of slavery.

Slavery was a broader and more fluid concept in the ancient world than in the British colonies in North America. In antiquity, slavery was the antithesis of freedom and could occur through a variety of means, indebtedness and warfare being the greatest two. The ancient Greeks and Romans believed an enslaved man was, by the very fact of his enslavement, unable to live a virtuous, or rightly ordered, life. Slavery was contrary to nature; while a free man could choose to live in harmony with his human nature, a slave did not have that choice.¹⁹¹ For Epictetus, who had been born a slave,¹⁹² to live in harmony with nature was both the goal of one's life and "the virtue of the happy man."¹⁹³

The Founders consistently employed the classical understanding of slavery as the antithesis to liberty in their struggles with Britain. The *Declaration* asserted that the tyranny of the British government threatened man's unalienable rights. These included the colonists' unalienable right to life, which was self-preservation—the first law of nature.¹⁹⁴ Liberty, in the ancient world, was defined as "the freedoms of the ordinary citizen," including "freedom opposed both to the state of slavery and to domination by the powerful,"¹⁹⁵ and, finally, the pursuit of happiness. Tyranny is a threat to the pursuit of happiness when both tyranny and the pursuit of

are to achieve excellence and happiness." MEYER, *supra* note 185, at 140. The Stoic notion of virtue comports well with Aristotle's understanding of happiness (*eudaimonia*) as "living well." PRIOR, *supra* note 58, at 149–50.

190. "Marcus Aurelius' *Meditations* and Epictetus' *Discourses* and *Manual* . . . were more practically oriented than their predecessors: their major contribution to Stoicism lay in presenting its moral philosophy in popular form, rather than in developing its metaphysics and epistemology." PRIOR, *supra* note 58, at 208. Both Marcus Aurelius and Epictetus furthered "the reorientation toward practical ethics." GAY, *THE ENLIGHTENMENT I*, *supra* note 173, at 165. For Jefferson's appreciation of Epictetus, see Peter S. Onuf, *Ancients, Moderns, and the Progress of Mankind*, in THOMAS JEFFERSON, *THE CLASSICAL WORLD, AND EARLY AMERICA* 35 (Peter S. Onuf & Nicholas P. Cole eds., 2011).

191. MEYER, *supra* note 185, at 171–73.

192. PRIOR, *supra* note 58, at 208.

193. MEYER, *supra* note 185, at 175.

194. "The first law of nature was self-preservation." PETER S. ONUF, *JEFFERSON'S EMPIRE: THE LANGUAGE OF AMERICAN NATIONHOOD* 94 (2000).

195. *Libertas*, in *THE OXFORD CLASSICAL DICTIONARY*, *supra* note 186, at 854. See also the discussion of "classical Latin *libertāt-*, *libertās*" in the etymology of liberty in the *OXFORD ENGLISH DICTIONARY*, *supra* note 85 ("liberty, n.1". OED Online. Sept. 2012).

happiness are understood in a classical sense. In the classical sense, to pursue happiness is to pursue virtue—to pursue a life that is rightly-ordered in relation to the first principles, “the law of nature and of nature’s God.” And, in the classical sense, this pursuit was not possible among those who were enslaved.

In his “original Rough draught” of the *Declaration*, Jefferson’s list of grievances against the King culminated with a virulent passage against slavery.¹⁹⁶ The charge of slavery was the high point of Jefferson’s argument.¹⁹⁷ This change makes sense when viewed within the overall structure of the *Declaration*. Jefferson’s basic argument is that King George III has become a tyrant, and therefore “is unfit to be the ruler of a free people.”¹⁹⁸ The colonists believed they were enslaved by this tyranny and therefore no longer able to exercise their unalienable rights of life, liberty, and the pursuit of happiness. As a result, the colonists had the right to dissolve their government and return to their “separate & equal station” in the universe,¹⁹⁹ where they would no longer be “degrade[ed],” “dehumanize[ed],” and “robbed . . . of their virtue.”²⁰⁰ Instead, the colonists once more would be at liberty, governed by the law of nature and nature’s God, free from the rule of tyranny, and fully able to exercise their unalienable rights.

3. Christianity

The third strand of thought that influenced the Founders in the Revolutionary Era is Christianity. The Founders continually invoked the

196. That passage contained the following charges: “[the King] has waged cruel war against human nature itself, violating it’s [sic] most sacred rights of life & liberty in the persons of a distant people who never offended him, captivating & carrying them into slavery in another hemisphere, or to incur miserable death in their transportation thither. this piratical warfare, the opprobrium of *infidel* powers, is the warfare of the CHRISTIAN king of Great Britain. determined to keep open a market where MEN should be bought & sold, he has prostituted his negative for suppressing every legislative attempt to prohibit or to restrain this execrable commerce: and that this assemblage of horrors might want no fact of distinguished die, he is now 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 upon 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.” Thomas Jefferson, *Original Rough Draft of the Declaration of Independence*, 1 THE PAPERS OF THOMAS JEFFERSON (1760–1776) 423–428 (1950), available at <http://jeffersonpapers.princeton.edu/selected-documents/jefferson%E2%80%99s-%E2%80%9COriginal-rough-draught%E2%80%9D-declaration-independence> (last visited May 4, 2015).

197. MAIER, *supra* note 4, at 121.

198. The *Declaration* as included in WILLS, *supra* note 10, at 377.

199. WILLS, *supra* note 10, at 374

200. RICHARD, *supra* note 139, at 120.

Christian God, specifically, or a theistic God, more generally, in their Founding Era judicial arguments and opinions, petitions, and declarations of rights.²⁰¹ Furthermore, regardless of the personal, religious faith of any one Founder, the ideas of Christianity formed a pervasive part of the worldview of the Founding Era. For example, Lord Coke and Sir William Blackstone both believed Christianity to be the foundation of the English Common Law; they discussed it as a fact.²⁰² Although later repudiated by Jefferson, this belief in the Christian underpinnings of the Common Law was widely held by many of the colonists in British North America at the time of the Founding.²⁰³

The *Declaration* begins with a discussion of “the laws of nature and of nature’s god” and of a Creator who endows individuals with “certain inalienable rights.”²⁰⁴ The *Declaration’s* Creator is in the image of a divine clockmaker, who establishes laws to govern his creation. The clockmaker analogy is in keeping both with the English deists’ description of a “God who had endowed the world at the beginning of time with ethical laws that every individual can discover for himself through the use of his unaided reason . . .”²⁰⁵ and Blackstone’s description of the specifically Christian God, who created natural laws to govern his creation.²⁰⁶ Although the *Declaration’s* references to God may appear to reflect a more general theism, seemingly general terms such as “Almighty God” and “Providence” were specific names for the Christian God, as included in the doctrinal teachings of the eighteenth-century Presbyterian and Anglican churches in America.²⁰⁷

The *Declaration* refers to Christianity in other areas as well. In language edited in by the Continental Congress, the Founders appeal to “the supreme judge of the world for the rectitude of our intentions.”²⁰⁸

201. See listing of court cases, petitions, and declarations of rights in PRESSER & ZAINALDIN, *supra* note 145; see generally HALLET AL., *supra* note 143.

202. RICHARD, *supra* note 139, at 173.

203. *Id.* at 173–75.

204. WILLS, *supra* note 10, at 374.

205. GAY, THE ENLIGHTENMENT I, *supra* note 173, at 374–75.

206. BLACKSTONE, *supra* note 13, at 38.

207. See *Westminster Confession*, in THE CONSTITUTION AND STANDARDS OF THE ASSOCIATE-REFORMED CHURCH IN NORTH AMERICA (1799) [hereinafter *Westminster Confession*]; ARTICLES OF THE CHRISTIAN RELIGION (1648); and THE BOOK OF COMMON PRAYER (1559 and 1662 versions). Specifically, Christian language at the Founding was also drawn from the OLD TESTAMENT (especially the persistent narrative of slavery in the history of the Israelites) and the NEW TESTAMENT (especially the *Gospel of St. John*, which the Founders were required to translate from the original Greek for college entrance exams).

208. WILLS, *supra* note 10, at 379.

“Supreme Judge” is a name attributed to the Christian God.²⁰⁹ “Rectitude” means rightness, and again invokes the idea of a correct order of things, the idea of a fit relationship to one’s world. The Continental Congress also added an appeal to “the protection of divine providence.”²¹⁰ This language reflects the Stoic conception of providence as “first cause” and also is seen in the Christian conception of Providence as the means by which God upholds all things and where God, himself, is defined as “the first cause.”²¹¹

To what extent were the Founders familiar with these Christian teachings? Although personal religious belief is difficult to determine, evidence demonstrates that the Founders were, at the very least, steeped in Christianity in an intellectual, academic sense. As part of their college entrance requirements, the Founders were required to know Greek, so that they could study the New Testament in its original language.²¹² The New Testament is replete with language demonstrating a harmony not only between the Christian God and the providential first cause of Stoic philosophy, but also between the Christian God and the Creator as described in the *Declaration*. For example, in the book of Colossians, St. Paul describes a Creator who, like the Creator in the *Declaration*, governs the universe through the law of nature:

[Christ] is the image of the invisible God, the firstborn of every creature. For by him were all things created, that are in heaven, and that are in earth, visible and invisible, whether they be thrones, or dominions, or principalities or powers: all things were created by him, and for him: and he is before all things, and by him all things consist.²¹³

209. *Westminster Confession*, *supra* note 207, at 19. The Westminster Assembly was called by Parliament and met at Westminster Abbey in London from 1643–1648 to create the Westminster Confession of Faith. *Westminster Confession*, *Preface*, 3 (1646–1649). Their work culminated in the Westminster Confession of Faith. *Id.* I chose the Westminster Confession for two reasons. First, it was created in London at the time of the English constitutional struggles, a time period that the Founders continually compared with their own. Second, it was largely adopted by the Presbyterian Church, and a large number of Founders were schooled by Scottish Presbyterian tutors, or at the Presbyterian College of New Jersey. The College of New Jersey graduated “ten cabinet officers, thirty-nine congressmen, twenty-one senators, twelve governors, thirty judges (including three Supreme Court justices), and fifty state legislators” under the leadership of President John Witherspoon. RICHARD, *supra* note 139, at 20.

210. WILLS, *supra* note 10, at 379.

211. *Westminster Confession*, *supra* note 207, at ch. 5.

212. RICHARD, *supra* note 139, at 19.

213. *Colossians* 1:15–17 (King James).

This natural law understanding of how the Christian God created and ordered the world is evident throughout the New Testament. For example, in the book of Romans, St. Paul claims that “since the creation of the world [God’s] invisible attributes—His eternal power and divine nature—have been clearly seen, being understood through what has been made”²¹⁴ Thus, the creation itself testifies to the qualities of the Creator God, an idea that later formed the basis for the “nature” book of “two book” theology.

Perhaps the most prominent passage connecting Christianity and classical notions of a Creator occurs in the Gospel of St. John, which was included in translation requirements for entrance into King’s College (now Columbia University), the College of New Jersey (now Princeton), and Brown University.²¹⁵ St. John begins his gospel account with these words:

In the beginning was the Word, and the Word was with God, and the Word was God. He Was with God in the beginning. Through him all things were made; without him nothing was made that has been made. In him was life, and that life was the light of men.²¹⁶

In this passage, “the Word” is an English translation of the Greek term *logos*, “the governing power behind all things.”²¹⁷ St. John uses “the Word” as a synonym for Christ, thereby equating Christ with the Greek concept of *logos*: the first mover behind all of creation.

The early Christians believed that Christ was “the governing power behind all things” not only in the created world, but also among mankind. Following his discussion of the principles of God made known in the created order in Romans 1, St. Paul proclaims that the law of God is written on the heart of man and that man’s conscience bears witness to this fact.²¹⁸ These passages demonstrate what St. Paul so eloquently proclaimed to a group of Stoic and Epicurean philosophers when he met with them in Athens. The Greek philosophers saw his words as a “new teaching,” but St. Paul proclaimed that his teachings were very old:

214. *Romans* 1:20.

215. RICHARD, *supra* note 139, at 19. Alexander Hamilton and John Jay went to King’s College, which was Anglican. When Jay entered in 1760, he was required to “translate the first ten chapters of John into Latin.” RICHARD, *supra* note 139, at 19. At the time of John Adams’s entrance, Harvard required the ability to “parse ordinary Greek, as in the New Testament.” The Presbyterian College of New Jersey schooled a disproportionate number of the Founders, and required translation of “the Greek gospels” for entrance. *Id.*

216. *John* 1:1–4.

217. Commentary on John 1:1–17 included in HEBREW-GREEK KEY WORD STUDY BIBLE: NEW INTERNATIONAL VERSION 1238 (Spiros Zodhiates ed., 1996).

218. *Romans* 2:15b.

“[W]hat you worship as something unknown” St. Paul proclaimed, “I am going to proclaim to you.”²¹⁹ St. Paul then defined the Christian God in Greek philosophical and intellectual terms, making a case that the Stoic first mover, or *logos*, is actually the Christian God:

The God who made the world and everything in it is the Lord of heaven and earth . . . he himself gives men life and breath and everything else . . . he determined the times set for them and the exact places where they should live. God did this so that men would seek him and perhaps reach out for him and find him, though he is not far from each one of us. For in him we live and move and have our being.’ As some of your own poets have said, ‘We are his offspring.’²²⁰

Early Christians such as St. John and St. Paul equated the Stoic *logos* with the Christian God. English legal theorists followed this trend as they interpreted the English law through a combination of classical Stoicism and Christianity.²²¹ Despite the variety of their religious beliefs, it was not unusual for the Founders to follow this trend and view classical virtue through a Christian lens, as well.²²² Thus, in the 1760s, Samuel Adams described the constitution of England as “founded ‘On the Law of God and the Law of Nature,’ as interpreted by Cicero, the Stoics, and James Otis.”²²³ James Otis, as we saw earlier, adopted Lord Coke’s view that the Common Law of England was governed by the higher law of God. His intermingling of law, philosophy, and theology is evident in his speech against the Writs of Assistance. Otis states that man, outside of society and in a state of nature, was “subject to no law but the law written on his heart,” a combination of Locke on the state of nature and St. Paul’s description of the law of God written on the heart of man.²²⁴ In language reflective of eighteenth-century Anglicanism and the Scottish Enlightenment, Otis stated that the law written on the heart of man was “revealed to him by his Maker, in the constitution of his nature and the inspiration of his understanding and his conscience.”²²⁵ With this idea that there were interrelated lines of thought in the eighteenth-century that were

219. *Acts* 17:16–23.

220. *Acts* 17:24–28.

221. RICHARD, *supra* note 139, at 5, 173, 174.

222. *Id.* at 7.

223. *Id.* at 175.

224. Otis, *supra* note 146. The portion here is from John Adams’ notes on Otis’ speech. The “law written on his heart” is taken from The Holy Bible, Romans 2:15b.

225. Otis, *supra* note 146. The portion here is from John Adams’ notes on Otis’ speech.

then combined in the *Declaration*, Jefferson agreed, stating of the *Declaration* that “[a]ll its authority rests, then, on the harmonizing sentiments of the day”²²⁶

4. *The Scottish Enlightenment’s Focus on Newtonian Science*

In addition to English law and legal theory, the history and philosophy of Classical Antiquity, and Christianity, the fourth key strand of thought influential in the Founding Era was the Scottish Enlightenment’s focus on Newtonian science.²²⁷ Much has been written on the moral philosophy of the Scottish Enlightenment and its impact on the Founding.²²⁸ The Founders imbibed the Scottish Enlightenment philosophy of an ordered universe from their Scottish grammar school tutors and through their college educations under men like the College of New Jersey’s President, John Witherspoon. The Founders did not see in the Scottish Enlightenment ideas that they had never before encountered; they saw in the Scottish Enlightenment ideas with which they were already intimately familiar.²²⁹ From their grammar school days under Scottish tutors through their college studies of the classics, the New Testament, and moral and political philosophy, the Founders had become familiar with a combination of English liberty, Classical history and philosophy, and Christianity that they did not believe to be inconsistent. The Founders saw one tradition of liberty, tracing from antiquity to England to America, and it was a tradition that combined both classical and Common Law understandings of that term.²³⁰ Thus, the Scottish Enlightenment revitalized ideas already held by the Founders.

Perhaps the most significant contribution of the Scottish Enlightenment to Founding Era thought came through the Scottish Enlightenment’s Common Sense school, which harmonized philosophy and Newtonian science. As discussed previously, the Common Sense school held to the idea that one could induce first principles through observation of nature,

226. RICHARD, *supra* note 139, at 175.

227. See Garry Wills on the pursuit of happiness and public virtue (WILLS, *supra* note 10) and Isaac Kramnick’s essay differentiating Scottish Enlightenment thinking from “Lockean liberalism or neo-classical republicanism.” Isaac Kramnick, *in* THE BLACKWELL ENCYCLOPEDIA OF THE AMERICAN REVOLUTION 90 (Jack P. Greene & J.R. Pole eds., 1991).

228. In addition to WILLS, *supra* note 10, see Jan Lewis, *Happiness*, *in* THE BLACKWELL ENCYCLOPEDIA OF THE AMERICAN REVOLUTION 643–45 (Jack P. Greene & J.R. Pole eds., 1991) and Kramnick, *supra* note 227, at 90.

229. RICHARD, *supra* note 139, at 182.

230. See generally RICHARD, *supra* note 139.

an epistemology or way of knowing that mirrored the previous work of English scientist Sir Isaac Newton.

Newton made use of the scientific method to explore the natural world and, in 1687, he published his work on the history of science, *Mathematical Principles of Natural Philosophy*.²³¹ That Jefferson thought much of Newton's methods and conclusions is demonstrated in his inclusion of Newton in his "noble trinity" of great men: Francis Bacon, Sir Isaac Newton, and John Locke.²³² In fact, each of these three thinkers spoke in ways that reflected the Scottish Enlightenment's "Common Sense" method of induction from first principles.

Newton believed the laws of nature could be determined through observation, and that such observations ought to be the starting point of philosophy.²³³ His method was inquiry, guided by reason,²³⁴ and his object was "the discovery of the natural order of things."²³⁵ Newton believed that there was an order to the created world and that happiness consisted in living in accordance with that order,²³⁶ a belief that is in tandem with the classical and Christian understanding of the law of nature and of nature's god. Indeed, Newton was a lifelong scholar of both the classics and the Bible, convinced of a harmony between science and religion.²³⁷ Newton saw the wisdom of God as he studied the natural world, and the principles

231. I. BERNARD COHEN & RICHARD S. WESTFALL, *Newton* xiii (1995).

232. PETERSON, *supra* note 167, at 386. *See also* GAY, *THE ENLIGHTENMENT II*, *supra* note 112, at 559–60. In his esteem of Bacon, Newton, and Locke, Jefferson was not alone. Bacon, Newton, and Locke have been described as "patron saints" of the Enlightenment. GAY, *THE ENLIGHTENMENT I*, *supra* note 173, at 11–12. Like Newton, Bacon called for a "more perfect use of reason in the investigation of Nature." Tumbleson, *Reason and Religion*, *supra* note 69, at 134. Locke argued for man's ability to "discover" the law of nature, which he described as "law enacted by a superior power and implanted in our hearts" and as "the decree of the divine will discernible by the light of nature and indicating what is and what is not in conformity with rational nature, and for this very reason commanding or prohibiting" (JOHN LOCKE, *ESSAYS ON THE LAW OF NATURE* 111 (Wolfgang von Leyden ed., Oxford Univ. Press 2002) (1663–1664)). Locke argued that "The Law of Nature stands as an Eternal Rule to all Men, legislators as well as others." (RICHARD, *supra* note 139, at 174) and that "God had harmonized the physical and the moral worlds such that the true and knowable causes of True and Enduring human happiness are identical to virtue." *See* Kors, "The Pursuit of Happiness," *supra* note 65. Thus, in pursuing happiness, one could gain knowledge of the self-evident principles that formed "the most simple laws of nature" (Jacob & Jacob, *supra* note 64, at 264) that would lead to virtue, or a human life that was rightly ordered within the natural law. Locke's argument reflects not only his understanding of the interrelationship of reason and revelation, but also his "decisive repudiation" of the Scholastics in favor of a Common Sense epistemology. GAY, *THE ENLIGHTENMENT I*, *supra* note 173, at 320–21.

233. Jacob & Jacob, *supra* note 64, at 264.

234. PETERSON, *supra* note 167, at 47.

235. *Id.*

236. *Id.* at 48.

237. COHEN & WESTFALL, *supra* note 231, at 360.

he discovered in his scientific explorations led him to look on Creation with a sense of awe.²³⁸

Newton is best known for his contributions to science and mathematics. He has not been fully recognized for the manner in which his scientific theories of an ordered universe provided a model that “exalted a divine Creator [and] gave assurance that the laws of nature were universal, harmonious, and beneficent.”²³⁹ Jefferson had Newton’s portrait on display in his study²⁴⁰ and, in keeping with Newton’s philosophy, Jefferson believed that “all things work by the laws of Nature and Nature’s God.”²⁴¹ Jefferson believed that Newton’s “empirical science” was adaptable not only to the physical sciences, but also “in all fields, the moral and social together with the physical.”²⁴² Men like John Adams applied Newton’s science to the study of political science, as well.²⁴³ The Founders believed that, just as there existed laws of nature to direct the natural world, so did there exist laws of nature to direct proper governance. Both John Adams and James Madison believed that good government could be secured by determining the principles that would encourage government to operate as it was intended to operate. Both men conducted intensive historical studies of governments in order to identify these principles and apply them to the new government of the United States.²⁴⁴

C. *Intermingling of the Four Strands*

As the philosophes of the English Enlightenment surveyed the struggles between the American colonies and England in the years leading up to and following to the American Revolution, they did so with hope that the “practical science” of freedom “might be realized” in America.²⁴⁵ As they observed the American Revolution and the Founding of the new

238. *Id.* at 358–60.

239. PETERSON, *supra* note 167, at 47.

240. GAY, THE ENLIGHTENMENT II, *supra* note 112, at 129–30.

241. WILLS, *supra* note 10, at 365–66.

242. PETERSON, *supra* note 167, at 47.

243. For a discussion of John Adams’s application of Newton’s scientific methods to the field of political science, see John E. Paynter, *The Rhetorical Design of John Adams’s “Defence of the Constitutions of . . . America”*, 58 THE REVIEW OF POLITICS 531 (1996).

244. John Adams compiled key principles of governance in *A Defence of the Constitutions of the United States* (see ADAMS, *infra* note 282) while James Madison’s study of the principles of government are contained in his “Notes on Ancient and Modern Confederacies” and “Vices of the Political System of the United States.” FAME, *supra* note 176, at 158–60, 191–92. See also COHEN, SCIENCE AND THE FOUNDING FATHERS, *supra* note 49, at 227–30, 237–38, 257–62.

245. GAY, THE ENLIGHTENMENT II, *supra* note 112, at 555.

American republic from across the Atlantic, the European Enlightenment thinkers began to describe America as “the hope of the human race” and “its model.”²⁴⁶ They applauded American practicality and, especially, what they perceived to be the full embodiment of liberty on American soil.²⁴⁷ To the Europeans who looked on, America was the new ideal in liberty and the best example yet of “the program of enlightenment in practice.”²⁴⁸

That key figures of the Enlightenment would feel such hope and joy at the progress of the American colonies—now the new United States—is the flip side of the American Enlightenment’s own mid-eighteenth century reverence for its French and English counterparts.²⁴⁹ Americans adapted Enlightenment thinking to their own situation.²⁵⁰ As a result, when the Americans ultimately decided to split from England, they did so with an understanding that they were furthering, not hindering, the great English tradition of liberty.

In arguing for their cause, the Founders intermingled in their rhetoric the key intellectual strands of the European Enlightenment.²⁵¹ The Founders believed that ancient law and philosophy were expressed within the English Common Law and would be perfected by the new United States. They understood Christianity as the foundation of the Common Law and the fulfillment of ancient ideals, as seen in St. John’s claim in the New Testament Gospel of John that Christ is *logos*, the first-mover of Stoicism, and St. Paul’s claim in the book of Acts that the Christian God fulfills the pagan philosophy and religion of the ancient world.²⁵² Men like Jefferson, Adams, Franklin, and their contemporaries “invoked heroes of antique and modern times . . . with the ease of educated men knowing that they have an educated audience.”²⁵³ Perhaps the most intriguing example of this intermingling of ideas is to be found in Joseph Addison’s popular

246. *Id.* at 556.

247. *Id.* at 555–58.

248. *Id.* at 558.

249. *Id.* at 558–59.

250. *Id.*

251. RICHARD, *supra* note 139, at 81–83; GAY, THE ENLIGHTENMENT II, *supra* note 112, at 561. Richard demonstrates the intermingling of these four ideas at the Founding. My work differs by focusing on the point where these ideas converge, and then by exploring what this point of convergence tells us about the structure, purpose, and meaning of the *Declaration of Independence*, generally, and the pursuit of happiness, more specifically.

252. For John’s description of Christ as Logos, see Commentary on John 1: 1–17 in THE HEBREW-GREEK KEY WORD STUDY BIBLE, *supra* note 217, at 1238. For Paul’s claims in Acts, see *Acts* 17:16–28.

253. GAY, THE ENLIGHTENMENT II, *supra* note 112, at 562–63.

eighteenth-century play, *Cato*, which intertwined Christianity, classical history and philosophy, and English legal theory.²⁵⁴

Like so many of his contemporaries, Addison believed that he could know his present day more fully if he studied the ancient past, as embodied in the classics.²⁵⁵ His play is based on the life of Marcus Portius Cato, a virtuous leader in the Roman Republic whose life was chronicled in Plutarch's *Moral Lives*, a favorite read of the Founders. However, the play *Cato* differed from its Plutarchian roots in that it mixed elements of Christianity and Classical Antiquity in a way that assumed their interrelationship and their applicability to the colonists' struggle against England. In Cato's struggle against the corrupt tyranny of Julius Caesar (one of the Founders' chief classical villains) the Founders saw their own struggle against the corrupt tyranny of King George III.²⁵⁶ The play was immensely popular in the Revolutionary Era, and George Washington even ordered a production of it at Valley Forge to motivate his troops to fight to overthrow English tyranny.²⁵⁷ In Addison's *Cato*, the Founders' philosophical intermingling of Christianity, Classical Antiquity, and English legal theory found practical expression.²⁵⁸

Like Addison's *Cato*, Blackstone's *Commentaries*, the key colonial text on English law,²⁵⁹ also embodied Christianity, Classical Antiquity, and English history and legal theory. Blackstone's *Commentaries* had its roots in England and was a response to Rome. It began with a conception of natural law that was both Stoic and Christian. While Founders like James Wilson disagreed with Blackstone's belief that Parliament remained a supreme authority over the colonies,²⁶⁰ they did not throw him out as a whole. Instead, they disagreed with Blackstone on that point, and used his own words to show that he was wrong, stating that the authority of

254. For a description of *Cato* and its impact on George Washington and the Founders, see RICHARD, *supra* note 139, at 57–60.

255. GAY, *THE ENLIGHTENMENT I*, *supra* note 173, at 41.

256. RICHARD, *supra* note 139, at 57–58.

257. *Id.* at 58.

258. *Id.* at 57–58.; FAME, *supra* note 176, at 17, 404.

259. “The Commentaries served as the principal means of the colonists’ information as to the state of English law in general.” Waterman, *supra* note 171, at 454, citing THEODORE F. T. PLUCKNETT, *A CONCISE HISTORY OF THE COMMON LAW* 207 (1929). The commentaries “became at once the standard authority upon law in every American court, and especially in the great number of small courts of original common-law jurisdiction. . . . The effect was, that upon all questions, of private law at least, this work stood for the law itself throughout the country, and at least for a generation to come exercised an influence upon the jurisprudence of the new nation, which no other work has enjoyed, and to which no other work can possibly now obtain.” Waterman, *supra* note 171, at 454, citing 1 Hammond “Blackstone” (1890) p. ix.

260. BECKER, *supra* note 4, at 107.

Parliament was inferior to that of the higher law because, in the words of Blackstone, the colonists were first and foremost obliged to obey “the law of nature [which] is superior in obligation to any other.”²⁶¹

The Founders also looked to English history for the story of their own origins.²⁶² They revered King Alfred and what they believed to be a “golden age” of Saxon liberty.²⁶³ During the American Revolution, colonists upheld King Alfred as the symbol of the liberty for which they fought, going so far as to rename the leading American warship in Alfred’s name.²⁶⁴

The men who drafted the *Declaration* blended these four strands of thought in their personal philosophies, as well.²⁶⁵ Thomas Jefferson drew up the first draft of the *Declaration* and then sent it to John Adams and Benjamin Franklin for review. Jefferson had made a careful study of English law.²⁶⁶ However, he was no fan of William Blackstone, labeling him a “honeyed” Tory and preferring the works of Lord Coke, which he believed to be more challenging.²⁶⁷ Yet, he “was European to the bone,” drawing ideas from both England and France.²⁶⁸ Jefferson read Anglo-Saxon history and law codes enthusiastically, looking to Anglo-Saxon precedents for his views on religious freedom and governance.²⁶⁹ In contemplating the Great Seal of the United States, Jefferson went so far as to suggest that it should bear the portraits of “the first Anglo-Saxon kings, ‘from whom we claim the honor of being descended, and whose political principles and form of government we have assumed.’”²⁷⁰ Like Blackstone, Jefferson looked to the Anglo-Saxon legal principles as a foundation and advocated for a “restitution of the ancient Saxon laws.”²⁷¹

Jefferson also was a skilled classicist, both self-taught and trained by the Reverend James Maury, where he read in the original Greek and

261. *Id.* at 109.

262. TREVOR COLBOURN, *THE LAMP OF EXPERIENCE: WHIG HISTORY AND THE INTELLECTUAL ORIGINS OF THE AMERICAN REVOLUTION* 227 (1998).

263. *Id.* at 227.

264. HORSPOOL, *supra* note 97, at 170.

265. The following discussion builds upon a brief intellectual history of John Adams, Benjamin Franklin, and Thomas Jefferson in RICHARD, *supra* note 139, at 169–95.

266. MAIER, *supra* note 4, at 125.

267. PETERSON, *supra* note 167, at 15–18.

268. GAY, *THE ENLIGHTENMENT II*, *supra* note 112, at 559.

269. HORSPOOL, *supra* note 97, at 170; COLBOURN, *supra* note 262, at 208–09. Colbourn is quoting Letter from John Adams to Abigail Adams (Aug. 14, 1776), in *FAMILIAR LETTERS OF JOHN ADAMS* 211 (Charles Francis Adams ed., 1876).

270. HORSPOOL, *supra* note 97, at 170.

271. *Id.*

Latin,²⁷² and by George Wythe at The College of William and Mary.²⁷³ Jefferson greatly admired the Stoic philosopher Epictetus and was a proponent of the scientific ideals of the Scottish Enlightenment, perhaps due to his studies under William Small, who taught Jefferson math and science, including Newtonian scientific theory and the mathematical order of the universe.²⁷⁴ Jefferson included both Wythe and Small among the three contemporary men who had had the greatest influence on him (Peyton Randolph being the third).²⁷⁵ Jefferson's views on Christianity seem to have changed over his lifetime and were enigmatic, at best,²⁷⁶ but he remained consistent in his admiration of Christ as a moral teacher.

John Adams used explicitly Christian language in his writings and was a skilled classicist and English constitutional scholar.²⁷⁷ In his early years, Adams consciously adopted Cicero's own philosophy of service in the study and practice of law,²⁷⁸ which he articulated as "to procure Redress of Wrongs, the Advancement of Right, to assert and maintain Liberty and Virtue, to discourage and abolish Tyranny and Vice."²⁷⁹

In later years, Adams combined political theories from English law and classical thought and inductive science from the Scottish Enlightenment in his exploration of the principles of government. He relied upon Enlightenment thinkers in his arguments.²⁸⁰ Adams, like his fellow Englishmen before him, believed in a westward movement of empire—from Greece and Rome, to France and Great Britain; and he distinguished himself from his former countrymen with his belief that this westward empire, and the liberty it embodied, would be received, and perfected in, the new United States.²⁸¹ Through *A Defence*, he argued that a modified Roman Republican mixed government structure provided the best model upon which to base that perfection.²⁸² "'Liberty,' he said, 'depends upon

272. GAY, THE ENLIGHTENMENT I, *supra* note 173, at 55.

273. PETERSON, *supra* note 167, at 13; RICHARD, *supra* note 139, at 22, 36.

274. RICHARD, *supra* note 139, at 181.

275. PETERSON, *supra* note 167, at 15.

276. RICHARD, *supra* note 139, at 188–94.

277. *Id.* at 30–31, 194, 132–33.

278. Farrell, *Syren Tully*, *supra* note 182, at 378, 388.

279. *Id.* at 388.

280. GAY, THE ENLIGHTENMENT II, *supra* note 112, at 559.

281. RICHARD, *supra* note 139, at 78.

282. See especially Adams's discussion of mixed government and its perfection as it moves from Rome to Great Britain to the constitutions of the new United States in Letter XXX of John Adams, *A Defence of the Constitutions of the United States* (Da Capo Press reprint ed.) (1787–88), available at http://www.constitution.org/jadams/ja1_00.htm. (last visited May 4, 2015).

an exact Ballance, a nice Counterpoise of all the Powers of the state. . . . The best Governments of the World have been mixed.”²⁸³

With this in mind, Adams considered how the corruptions of the English constitution could be improved and perfected by applying elements from “[t]he best Governments of the World” in the new United States. In an early form of political science, Adams applied Newtonian principles of empirical study to his search for the natural principles or laws of good governments.²⁸⁴ He used history as a laboratory, looking to past experience for evidence that he could apply to new experiments.²⁸⁵ In so doing, he made use of the ancient rhetorical device of induction, one of the key rhetorical strategies outlined by Cicero in *De Inventione*, the Scottish Enlightenment’s focus on inductive reasoning, and the Stoic and Christian ideal of finding natural principles, known as “exceptionless laws” or the “law of nature and of nature’s God” that govern the natural order of things.²⁸⁶

Benjamin Franklin is perhaps the most interesting. He developed a reputation first as a scientist and then as a philosophe.²⁸⁷ He studied Joseph Addison’s *Spectator* and Newtonian science.²⁸⁸ He corresponded heavily with the scientists of the Scottish Enlightenment²⁸⁹ and is well-known for his scientific experiments and inventions. He was not trained in English law, but, prior to the *Declaration*, conducted a significant study of “all that had been written, pro and con, about the respective rights and prerogatives of British and colonial legislatures.”²⁹⁰ While Franklin and Adams disagreed on the best form of government, Franklin shared Adam’s methodology; prior to the Constitutional Convention, Franklin hosted “the Society for Political Enquires,” which met weekly to study the science of

283. JOHN ADAMS, *Notes for an Oration at Braintree*, in *DIARY AND AUTOBIOGRAPHY* 2:57–60 (1772), quoted in GORDON S. WOOD, *THE AMERICANIZATION OF BENJAMIN FRANKLIN* 165 (2004).

284. For a discussion of John Adams’s application of Newton’s scientific methods to the field of political science, see Paynter, *supra* note 243.

285. Paynter, *supra* note 243, at 558.

286. For induction, see Kennedy, 136; MARCUS TULLIUS CICERO, *DE INVENTIONE* 31–32 (Charles Duke Yonge trans., George Bell & Sons 1888), available at <http://www.classicpersuasion.org/pw/cicero/dnindex.htm> (last visited May 4, 2015). For natural principles, see Marcus Tullius Cicero, *In Defence of Titus Annius Milo*, in *SELECTED POLITICAL SPEECHES OF CICERO* 215–78, 266 (Michael Grant trans., 1969); CICERO, *On the State*, in *ON GOVERNMENT* 172–74, 183 (Michael Grant trans., 1993). For more on the Stoic idea of natural principles or exceptionless laws, *Stoicism*, in *THE OXFORD CLASSICAL DICTIONARY*, *supra* note 186, at 1446.

287. GAY, *THE ENLIGHTENMENT* I, *supra* note 173, at 14. For David Hume’s appreciation of Franklin, see GAY, *THE ENLIGHTENMENT* II, *supra* note 112, at 558–59.

288. GAY, *THE ENLIGHTENMENT* II, *supra* note 112, at 559.

289. WILLS, *supra* note 10, at 99–100.

290. BECKER, *supra* note 4, at 101.

political life.²⁹¹ Franklin's influence in the natural and political sciences were evident in the years leading up to the American Revolution. He visited France repeatedly, and the French so admired Franklin as a scientist and a philosophe that they elected him, in 1772, to the French Royal Academy of Science.²⁹²

Although Franklin only received two years of formal education, he was a voracious reader across many genres, including Plutarch's *Lives* and Joseph Addison's *Spectator* papers, which Franklin saw as "a tool for self-improvement."²⁹³ He taught himself to read in several languages, including Latin and French.²⁹⁴ Franklin was adamantly opposed to classical education, but enjoyed reading the classical authors in translation,²⁹⁵ and voiced his intention to include "a Latin motto, which carries a charm in it to the Vulgar, and the Learned admire the pleasure of construing" in each edition of his newspaper, the *New England Courant*.²⁹⁶

Franklin may not have believed in the divinity of Christ, but he supported Christ's moral teachings.²⁹⁷ In his *Autobiography*, he included a discussion of his earlier call for a "united Party for Virtue" and his proposed creed for such a party gives us some insight into his religious beliefs:

the belief that there was 'one God' who 'governs the World by his Providence'; that the way to serve God was to do good to man; that 'the Soul is immortal'; and 'that God would certainly reward Virtue and punish Vice either here or hereafter.'²⁹⁸

When asked about his religious views in 1790, Franklin answered in language similar to the Creed he had proposed earlier when he stated "he believed

'in One God, Creator of the Universe. That He governs it by his Providence. That he ought to be worshipped. That the most acceptable Service we can render to him, is doing Good to his other

291. WOOD, *supra* note 283, at 164–66, 215–16.

292. *Id.* at 172 (citing ALFRED OWEN ALDRIDGE, *FRANKLIN AND HIS FRENCH CONTEMPORARIES* 26 (1957)).

293. *Id.* at 18–19.

294. *Id.* at 56.

295. RICHARD, *supra* note 139, at 196–98, 203–04.

296. GAY, *THE ENLIGHTENMENT I*, *supra* note 173, at 40.

297. RICHARD, *supra* note 139, at 194.

298. WOOD, *supra* note 283, at 225 (quoting *THE AUTOBIOGRAPHY OF BENJAMIN FRANKLIN* 161–62 (Leonard Labaree et al. eds., 1964)).

Children. That the Soul of Man is immortal, and will be treated with Justice in another Life respecting its Conduct in this.”²⁹⁹

Franklin’s views of Jesus mirrored those of Jefferson, and he stated that he “believed Jesus’s ‘System of Morals and his Religion as he left them to us, the best the World ever saw, or is likely to see.’”³⁰⁰

Despite the variance within and between the philosophies of these three men (and there are many), not one of these men altered the pursuit of happiness as an unalienable right when they edited the initial draft of the *Declaration*. This lack of editing suggests not only that the Founders intermingled these four strands in their Founding Era thought, but also that these four strands specifically converged in such a way as to give meaning to the phrase “pursuit of happiness”—a meaning that was obvious and acceptable to all three of them. It is William Blackstone’s discussion of the phrase “pursuit of happiness” that best fits this definition.

D. Convergence of the Four Strands: the Pursuit of Happiness

Blackstone was the most widely-read English jurist in the Revolutionary Era.³⁰¹ It follows that Blackstone’s ideas would inform the colonists’ *Declaration*, the foundation of which was English law. And, indeed, it does.³⁰² But the *Declaration* is best understood as Blackstone

299. WOOD, *supra* note 283, at 229 (quoting Franklin’s response to Ezra Stiles’ letter of March 1790).

300. *Id.*

301. Waterman, *supra* note 171, at 451–57.

302. “Paradoxically, those same Commentaries furnished to the American Colonies a most effective weapon in their revolution against the mother country. . . . The philosophy of the Declaration of Independence usually is ascribed to Locke and Paine. But it appears to me that one may clearly trace the influence of Blackstone’s Commentaries on the mind of Jefferson, in the affirmations of the Declaration that all men are born with certain unalienable rights. . . . The counts in the indictment of George the Third, contained in the Declaration of Independence, in the main are sustained by Blackstone’s description of the rights of Englishmen and the principles of the British Constitution. . . . Little did the Great Commentator realize when he read his lectures to a polite and scholarly audience at Oxford of the weapon he unwittingly was forging for the Colonists in North America.” Waterman, *supra* note 171, at 455–56 (quoting Wickersham *Presentation Address of Blackstone Memorial* 10 A.B.A. Jour. 576–78 (1924)). As Waterman points out, it seems that the colonists were influenced by “‘the law of nature’ and ‘natural rights’ . . . concepts which were so current at the time” and while they agreed with Blackstone’s statement of “a fundamental law of nature which is superior to human law,” they strongly disagreed with Blackstone that such rights could be “subject to the supreme power which Blackstone said existed in every government.” Waterman, *supra* note 171, at 479, 478 (citing Haines, “Revival of Natural Law Concepts” 54, 56 (1930) and Wilson “Works” 206 (Vol. III, 1804)). The former ideas are Whiggish in nature; the latter are Tory. Indeed, later in life, Jefferson decried Blackstone as a Tory and took pains to emphasize that it was Coke on Littleton, and not the “honied Mansfieldism of Blackstone” that “was the universal elementary book of law students, and a sounder whig never wrote, nor of profounder learning in the orthodox doctrines of the British constitution, or in

mediated by the Founders' understandings not only of English law and legal theory, but also of the Classics, and of Christianity, and of Newtonian science. The most fascinating thing about these four strands of thought is not where they diverge, but where they converge. If we remove the first mover in each strand of thought (nature for the Newtonian scientists; God for Christianity; God and the King for the English Common Law; and *logos* for the Stoics), all four strands of thought posit a world governed by laws of nature in which to live rightly or virtuously is to live in accordance with that law. And, in each line of thought, to live in accordance with the law of nature is to be happy, as understood in the Greek sense of *eudaimonia*, translated to the English as flourishing or well-being.

Thus, all four lines of thought are in harmony with Jefferson's use of pursuit of happiness and Blackstone's explanation of that phrase in his *Commentaries*. Jefferson may not have looked to Blackstone to define the phrase pursuit of happiness, but Blackstone seems to have best articulated the phrase's meaning as it was widely-understood within the four ideological strands present at the time of the Founding. The convergence of these four strands meant that Founders with very different personal and political philosophies nevertheless could affirm the language of the *Declaration* because the language chosen reflected the commonalities among the four strands.

Looking at the pursuit of happiness in its historical context tells us quite a bit about the meaning of the phrase. It also tells us quite a bit about Founding Era thought. In contrast to recent historiography asserting that the *Declaration* reflects either a single ideological strand or several, distinct ideological strands, one of which clearly trumps,³⁰³ this study suggests that the Founders drew from a variety of intellectual inspirations, combining them in ways that are sometimes incoherent to us. This incoherency, as we see it today, may lead us to determine that the Founders saw incoherency as well.

However, a contextual study of the pursuit of happiness reveals that the Founders saw a convergence of ideas that conveyed substantive meaning. When these ideas are explored together, they reveal what Jefferson described as the "harmonization of the ideas of the day," as embodied in

what were called English liberties." Letter from Thomas Jefferson to James Madison (1826) included in Waterman, *supra* note 171, at 459 (quoting from a letter in THOMAS JEFFERSON, *The Works of Thomas Jefferson* 456 (Paul Leicester Ford ed., 1930)).

303. See generally BAILY, *supra* note 139; Lewis, *supra* note 228; RICHARD, *supra* note 139; SCOTT, *supra* note 6; WILLS, *supra* note 10.

eighteenth-century thinking about English law and legal theory; Christianity; the history and philosophy of Classical Antiquity; and the Scottish Enlightenment's focus on Newtonian Science. Studying the pursuit of happiness in context suggests that Blackstone and the Founders agreed on much about the nature of law and jurisprudence, even as they disagreed about the right of a people to overthrow a government that they believe has become tyrannical. The Founders viewed happiness as *eudaimonia* and the pursuit of happiness as both a private right and a public duty.

III. THE PURSUIT OF HAPPINESS: A PRIVATE RIGHT AND A PUBLIC DUTY

A. *Blackstone and the Founders: A Single Definition*

Eighteenth-century dictionaries state that to be happy is to be lucky or fortunate, or to be in a state of felicity.³⁰⁴ The former meaning stems from a fourteenth-century meaning of the word, with the root word "hap" meaning "by chance or accident."³⁰⁵ The latter meaning demonstrates how the meaning of "happy" changed over time so that, by the eighteenth century, its primary definition came to mean "a state of felicity" or "very glad" or "pleased and content."³⁰⁶ By the early 1700s, the definition also came to include the synonym "blessed" defined as "to wish success to;" "to consecrate to God;" and "to make happy."³⁰⁷

At first glance, it would seem that the idea of happiness as felicity supports the notion of the pursuit of happiness as the unalienable right to do that which makes one feel good. But happiness as it was used in the natural, moral, and legal philosophy of the eighteenth-century embodied not only an understanding of "happy" as very glad, pleased, and content, but also an understanding of that which had the capability of making one very glad, pleased, and content in the truest sense of the words. Enlightenment thinkers contrasted "fleeting and temporal" happiness with

304. JOHN KERSEY, *Happy*, A NEW ENGLISH DICTIONARY (1702) (Eighteenth Century Collections Online). "Happy" in JOHNSON'S DICTIONARY, *supra* note 19, at 965; JAMES BUCHANAN, *Happy*, A NEW ENGLISH DICTIONARY (1769) (Eighteenth Century Collections Online); JOHN WALKER, *Happy*, A CRITICAL PRONOUNCING DICTIONARY AND EXPOSITOR OF THE ENGLISH LANGUAGE (1797) (Eighteenth Century Collections Online); CALEB ALEXANDER, *Happy*, THE COLUMBIAN DICTIONARY OF THE ENGLISH LANGUAGE (1800) (Eighteenth Century Collections Online).

305. DOUGLAS HARPER, *Happy*, ONLINE ETYMOLOGY DICTIONARY, <http://www.etymonline.com/index.php?term=hap> (last visited May 4, 2015).

306. *Id.*

307. KERSEY, *supra* note 304, "happy" and "to bless," defined as "to make happy"; BUCHANAN, *supra* note 304, "happy" and "bless."

“real and substantial” happiness, and borrowed from ancient thinkers to argue that true happiness—real and substantial happiness—came from living a life of virtue, a life that was fit or rightly-ordered in relation to the natural law. In other words, Enlightenment thinkers understood true happiness in the ancient sense of *eudaimonia*, or human flourishing, which was to be achieved through a life of virtue, and which had both private (pertaining to an individual person) and public (pertaining to the community) applications.

B. The Commentaries and the Declaration: Dual Applications

The pursuit of happiness is first discussed in Blackstone’s *Commentaries* in its individual application—it is the way of knowing the law of nature that the Creator has built into each man, and it is by each man’s free will that he then can choose to live in harmony with that law. The *Declaration* also discusses the pursuit of happiness in its individual application when it lists the pursuit of happiness among man’s unalienable rights—those rights that are so important that we obtain them simply by being human and that are so essential to our humanity that we cannot alienate them from our persons. In its inclusion of the pursuit of happiness as one of the unalienable rights bestowed upon man by his Creator, the *Declaration* emphasizes the individual-right application of the phrase.

While the *Declaration*’s emphasis is on the pursuit of happiness as an individual, unalienable right, this is not to say that the *Declaration* is void of the public duty implications of the phrase. The Founders argued, in language that is remarkably reflective of Blackstone’s architectural analogies, that when a government ceases to protect man’s unalienable rights,

it is the Right of the People to alter or abolish it, and to institute new Government, **laying its Foundation on such Principles**, and organizing its Powers **in such Form**, as to them shall seem most likely to affect their **Safety and Happiness**.

With this passage they led into King George III’s “train of abuses,” describing him as “a Tyrant . . . unfit to be the ruler of a free people.” To be unfit was to be the opposite of virtuous; it was to be no longer capable of affecting the safety and happiness of the people.

The Founders argued for separation from England because King George III was no longer fit to govern a free people, so it is perhaps ironic that the idea of instructing future lawmakers in principles of good or fit government was a focal point of the Introduction to Blackstone’s

Commentaries. Blackstone's understanding of the pursuit of happiness as an individual route to one's public duty to improve and perfect the Common Law was articulated in his *Commentaries*, but it was first expressed in this portion of his poem, "The Lawyer's Farewell to His Muse," which Blackstone wrote as he began his legal studies:³⁰⁸

In furs and coifs around me stand;
 With sounds uncouth and accents dry
 That **grate the soul of harmony,**
 Each **pedant sage** unlocks his store
 Of mystic, dark, discordant lore;
 And points with tott'ring hand the ways
 That lead me to the thorny maze. (ll. 49-57)³⁰⁹

First, Blackstone describes the study of law as something that "grate[s] the soul of harmony" and is handed down by "pedant sages." While "sage" is a complimentary term, referring to "a philosopher; a man of gravity and wisdom,"³¹⁰ the addition of "pedant" alters the definition completely, and shows Blackstone's impatience with law teachers, pedants who were "[men] vain of low knowledge."³¹¹ To remedy this lack, Blackstone urged those studying the law to pursue that which is fit and rightly-ordered, or, as he described it, "one great end."³¹²

In that pure spring the bottom view
Clear, deep, and regularly true,
 And other doctrines thence imbibe
 Than lurk within the sordid scribe;
Observe how parts with parts unite
In one harmonious rule of right;

308. PREST, *supra* note 108, at 58.

309. *Id.* at 59 (emphasis added).

310. "Sage" in JOHNSON'S DICTIONARY, *supra* note 19, at 1740.

311. "Pedant" in JOHNSON'S DICTIONARY, *supra* note 19, at 1471. In his dictionary, Samuel Johnson specifically tied pedantry back to university education, including with his definition of pedantry this quotation from Jonathan Swift: "From the universities the young nobility are sent for fear of contracting any airs of pedantry by a college education." "Pedantry" in JOHNSON'S DICTIONARY, *supra* note 19, at 1472.

312. PREST, *supra* note 108, at 59.

See countless **wheels** distinctly tend
 By various laws **to one great end**;
 While mighty **Alfred's** piercing soul
 Pervades, and regulates the whole.

These lines foreshadow the Common Sense methodology that Blackstone would adopt in undertaking that quest. A view that is “clear, deep, and regularly true” indicates that which can be readily observed, and truths that can be known through observation. The idea of parts uniting “in one harmonious rule of right” is a foreshadowing of his Newtonian understanding that all human law ought to be in harmony with that one rule of right ordained in God by man, which is the pursuit of happiness. Blackstone evokes Newton again with the scientific imagery of “countless wheels,” an image that calls to mind the Creator God who designs the world as a clockmaker designs a clock, an analogy which Blackstone later includes in his *Commentaries*. He refers to the whole of these parts together as “one great end.” Finally, Blackstone already is looking to King Alfred as his ancient Anglo-Saxon predecessor, the one whose “soul,” which sought wisdom above all, “pervades, and regulates the whole” with “the whole” presumably being the whole of the English Common Law.³¹³

Blackstone argued for the pursuit of happiness as a science of jurisprudence that would help man discern the “one harmonious rule of right.” Just as individuals could determine the law of nature as it pertains to man by consulting what makes them truly and substantially happy, so, too, could judges, jurors, and MPs use that same science of jurisprudence to fulfill their public duty, which was to improve the Common Law, perfecting it as the foundation of a good or fit government.

That the Founders agreed is evidenced by their own writings. The Founders affirmed the pursuit of happiness as an individual, unalienable right in the *Declaration*. They also appealed to the necessity of a happy (fit, virtuous) form of government, as well as a government that would affect the happiness of the people, a theme they had previously articulated in the *Resolutions of the Continental Congress* (1765), the *Declaration and Resolves of the First Continental Congress* (1774), the *Virginia Declaration of Rights* (1776), and *Lee's Resolutions* (calling for a Declaration of Independence) (1776).

313. *Id.* at 59–60 (emphasis added).

The Founders wove together themes of happiness as a private right and a public duty in their individual writings, as well. For example, Benjamin Franklin stated “[t]he desire of happiness in general is so natural to us that all the world are in pursuit of it” and although men may attempt to achieve happiness in different ways, the reality is that “[i]t is impossible ever to enjoy ourselves rightly if our conduct be not such as to preserve the harmony and order of our faculties and the original frame and constitution of our minds; all true happiness, as all that is truly beautiful, can only result from order.”³¹⁴ Therefore, according to Franklin, if we pursue happiness through passion instead of reason, we achieve only an “inferior” and “imperfect” happiness, because “[t]here is no happiness then but in a virtuous and self-approving conduct.”³¹⁵ Indeed, Franklin argued “the Science of Virtue is of more worth, and of more consequence to [man’s] Happiness than all the rest [of the sciences] put together.”³¹⁶ Furthermore, Franklin stated, “I believe [God] is pleased and delights in the Happiness of those he has created; and since without Virtue Man can have no Happiness in this World, I firmly believe he delights to see me Virtuous, because he is pleas’d when he sees me Happy.”³¹⁷

Franklin tied this private happiness to public happiness when he wrote that the improvement of “private character” would assist the development of “all happiness both public and domestic” and that “most necessary to increase the Happiness of a Country . . . is the promoting of Knowledge and Virtue.”³¹⁸ As he said in a Sept 17, 1787 speech before the Constitutional Convention: “Much of the Strength and Efficiency [sic] of any Government in procuring and securing Happiness to the People depends on Opinion, on the general Opinion of the Goodness of that Government as well as of the Wisdom and Integrity of its Governors.”³¹⁹

John Adams held similar views, affirming in a 1763 letter to the Boston Gazette, that “truth and virtue, as the means of present and future

314. Benjamin Franklin, II THE WORKS OF BENJAMIN FRANKLIN 7–8 (John Bigelow ed., 1904), available at <http://oll.libertyfund.org/title/2454/231483> (last visited May 4, 2015).

315. FRANKLIN, *supra* note 314, at 8, 10.

316. Benjamin Franklin, *A Man of Sense*, in 2 THE PAPERS OF BENJAMIN FRANKLIN (Leonard Labaree ed., 1960) (1735), available at <http://franklinpapers.org/franklin/framedVolumes.jsp> (last visited May 4, 2015) [hereinafter FRANKLIN PAPERS].

317. Benjamin Franklin, *Articles of Belief and Acts of Religion*, in 1 FRANKLIN PAPERS (Nov. 20, 1728), *supra* note 316.

318. Benjamin Franklin, *Autobiography*, Part 7, in FRANKLIN PAPERS (1771), *supra* note 316; Joseph Breintnall, *Library Company to John Penn in* FRANKLIN PAPERS (May 31, 1735), *supra* note 316.

319. Benjamin Franklin, *Speech in the Convention on the Constitution* (unpublished) (Sept. 17, 1787), in FRANKLIN PAPERS, *supra* note 316.

happiness, are confessed to be the only objects that deserve to be pursued”³²⁰ Adams claimed to study “magistracy and legislation . . . as means and instruments of human happiness,” concluding that, “. . . the liberty, the unalienable, indefeasible rights of men, the honor and dignity of human nature, the grandeur and glory of the public, and the universal happiness of individuals, was never so skilfully [sic] and successfully consulted, as in that most excellent monument of human art, the *common law* of *England*.”³²¹ In a 1775 letter to his wife, Adams argued for education in the public virtues of “Benevolence, Charity, Capacity and Industry,” stating that the same virtues that made for a happy private life would make for a happy public life, as well.³²²

In his March 4, 1797 Inaugural Address in the City of Philadelphia, Adams continued these themes, arguing that the propagation of “knowledge, virtue, and religion among all classes of the people” would further “not only . . . the happiness of life in all its stages and classes, and of society in all its forms, but [also] as the only means of preserving our Constitution”³²³ Adams emphasized the connection between the frame of government and the happiness of the people in his Fourth Annual Message on November 22, 1800, proclaiming, “[m]ay this territory be the residence of virtue and happiness[,]” before going on to encourage the House of Representatives to continue in their “labors to promote the general happiness.”³²⁴

Jefferson voiced similar connections between virtue and happiness, and between private and public happiness in his own writings. In his *Summary View of the Rights of British America*, Jefferson stated that the colonists came to America and created “new societies, under such laws and regulations as to them shall seem most likely to promote public

320. 1 John Adams, “U” to the Boston Gazette (Aug. 29, 1763), in PAPERS OF JOHN ADAMS 76–81 (Robert Taylor ed., 1977), available at <http://founders.archives.gov/documents/Adams/06-01-02-0045-0007> (last visited May 4, 2015) [hereinafter THE ADAMS PAPERS].

321. 1 John Adams, “U” to the Boston Gazette (Sept. 5, 1763), in PAPERS OF JOHN ADAMS 76-81 (Robert Taylor ed., 1977), available at <http://founders.archives.gov/documents/Adams/06-01-02-0045-0009> (last visited May 4, 2015).

322. John Adams, Letter from John Adams to Abigail Adams (Oct. 29, 1775), ADAMS FAMILY PAPERS: AN ELECTRONIC ARCHIVE, http://www.masshist.org/digitaladams/archive/doc?id=L17751029ja&bc=%2Fdigitaladams%2Farchive%2Fbrow%2Fletters_1774_1777.php (last visited May 4, 2015).

323. John Adams, *Inaugural Address in the City of Philadelphia* (Mar. 4, 1797), available at http://www.gutenberg.org/files/925/925-h/925-h.htm#link2H_4_0003 (last visited May 4, 2015).

324. John Adams, Letter from John Adams to United States Congress (Nov. 22, 1800), in THE ADAMS PAPERS, *supra* note 320, available at <http://founders.archives.gov/documents/Adams/99-02-02-4691> (last visited May 4, 2015).

happiness.”³²⁵ Jefferson revisited themes of private and public happiness throughout his Presidential Inaugural Addresses and Annual Messages to Congress,³²⁶ discussing the “true principles” of the Constitution and urging a combination of “action” and “sentiment” that would be “auspicious to [the people’s] happiness and safety”³²⁷ and emphasizing the legislature’s role in “lay[ing] the foundations of public happiness in wholesome laws”³²⁸

Jefferson evidenced similar themes in his private writings. In 1770, he stated that it was the “indispensable duty of every virtuous member of society to prevent the ruin, and promote the happiness, of his country, by every lawful means”³²⁹ Jefferson wrote to John Adams in 1794, closing with “wishes of every degree of happiness to you both public and private”³³⁰ and in 1796 sending to Adams a wish “that your administration may be filled with glory and happiness to yourself and advantage to us”³³¹ In his *Notes on the Doctrine of Epicurus*, Jefferson writes that happiness is the aim of life, and virtue the foundation of happiness,³³² a theme he articulated in an 1814 letter to philosopher and

325. Thomas Jefferson, *A Summary View of the Rights of British America*, in THE JEFFERSON PAPERS, available at http://avalon.law.yale.edu/18th_century/jeffsumm.asp (last visited May 4, 2015).

326. See also Thomas Jefferson, *First Inaugural Address* (Mar. 4, 1801), in THE JEFFERSON PAPERS, available at http://avalon.law.yale.edu/19th_century/jefinau1.asp (last visited May 4, 2015); Thomas Jefferson, *Third Annual Message to Congress* (Oct. 17, 1803), in THE JEFFERSON PAPERS, available at http://avalon.law.yale.edu/19th_century/jeffmes3.asp (last visited May 4, 2015); and Thomas Jefferson, *Eighth Annual Message to Congress* (Nov. 8, 1808), in THE JEFFERSON PAPERS, available at http://avalon.law.yale.edu/19th_century/jeffmes8.asp (last visited May 4, 2015).

327. Thomas Jefferson, *Second Annual Message to Congress* (Dec. 15, 1802), in THE JEFFERSON PAPERS, available at http://avalon.law.yale.edu/19th_century/jeffmes2.asp (last visited May 4, 2015).

328. Thomas Jefferson, *Second Inaugural Address* (Mar. 4, 1805), in THE JEFFERSON PAPERS, available at http://avalon.law.yale.edu/19th_century/jefinau2.asp (last visited May 4, 2015).

329. Thomas Jefferson, *Virginia Nonimportation Resolutions* (June 22, 1770), in THE JEFFERSON PAPERS, available at <http://founders.archives.gov/documents/Jefferson/01-01-02-0032> (last visited May 4, 2015).

330. Thomas Jefferson, Letter from Thomas Jefferson to John Adams (Apr. 25, 1794), in THE JEFFERSON PAPERS, available at <http://founders.archives.gov/documents/Jefferson/01-28-02-0055> (last visited May 4, 2015).

331. Thomas Jefferson, Letter from Thomas Jefferson To John Adams (Dec. 28, 1796), in THE JEFFERSON PAPERS, available at <http://founders.archives.gov/documents/Jefferson/01-29-02-0190-0002> (last visited May 4, 2015).

332. Thomas Jefferson, *Notes on the Doctrine of Epicurus* (ca. 1799), in THE JEFFERSON PAPERS, available at <http://founders.archives.gov/documents/Jefferson/01-31-02-0241> (last visited May 4, 2015).

scientist Jose Correa da Serra, stating that it was “the order of nature to be that individual happiness shall be inseparable from the practice of virtue”³³³

CONCLUSION: THE PURSUIT OF HAPPINESS IN HISTORICAL CONTEXT

The preceding discussion shows that, far from being a “glittering generality” or a direct substitution for property, the pursuit of happiness is a phrase that had a distinct meaning to those who included that phrase in two of the eighteenth-century’s most influential legal documents: William Blackstone’s *Commentaries on the Laws of England* (1765–1769) and the *Declaration of Independence* (1776). That distinct meaning included a belief in first principles by which the created world is governed, the idea that these first principles were discoverable by man, and the belief that to pursue a life lived in accordance with those principles was to pursue a life of virtue, with the end result of happiness, best defined in the Greek sense of *eudaimonia* or human flourishing. The pursuit of happiness is a phrase full of substance from Blackstone (and before) to the Founders (and beyond). It was part of an English and Scottish Enlightenment understanding of epistemology and jurisprudence.³³⁴ It found its way into eighteenth-century English sermons and colonial era speeches and writings on political tyranny. It had meaning to those who wrote and spoke the phrase in eighteenth-century English and American legal contexts, and it had meaning to its listeners.

The first recorded reference to the pursuit of happiness in a U.S. Supreme Court case does not occur until 1823,³³⁵ but what is perhaps more interesting than this articulation of the phrase nearly 50 years after the signing of the *Declaration* is the Court’s articulation of first principles of law in earlier decisions. For example, in *Fletcher v. Peck* (1795), the U.S.

333. Thomas Jefferson, Letter from Thomas Jefferson to Jose Correa da Serra (Apr. 19, 1814), in THE JEFFERSON PAPERS, available at <http://founders.archives.gov/documents/Jefferson/03-07-02-0216>.

334. Indeed, in a discussion of innate principles, Locke himself defines the pursuit of happiness in terms that are strikingly consistent with Blackstone’s definition. “For, God having, by an inseparable connexion [sic], joined virtue and public happiness together, and made the practice thereof necessary to the preservation of society, and visibly beneficial to all with whom the virtuous man has to do; it is no wonder that every one should not only allow, but recommend and magnify those rules to others, from whose observance of them he is sure to reap advantage to himself[.]” LOCKE, AN ESSAY CONCERNING HUMAN UNDERSTANDING, *supra* note 71, at Book 1, Chapter 3, Section 6 (1691). If the Founders had intended to include in the *Declaration* a phrase that could serve as a substantive or non-substantive substitution for Locke’s unalienable right to property, the pursuit of happiness would have been an awfully odd phrase for them to have selected.

335. *Green v. Biddle*, 21 U.S. 1, 63 (1823).

Supreme Court based its decision on “certain great principles of justice, whose authority is universally acknowledged” with the concurring opinion citing to “general principle . . . the reason and nature of things.”³³⁶ In *Terrett v. Taylor* (1815), the court based its holding on “the principles of natural justice, upon the fundamental laws of every free government.”³³⁷ A full understanding of the meaning of the pursuit of happiness in its historical context suggests that these phrases, too, are not glittering generalities, but, instead, were intended to be articulations of the substantive legal principles that Blackstone and the Founders believed the pursuit of happiness could enable man to find.

If the phrase “pursuit of happiness” seems empty, or too general, to us today, it is not because we, as a people, have lost the desire to pursue that which makes us happy, but because the most common contemporary understanding of the word “happy” aligns today with what the eighteenth-century philosophers would have called a “fleeting and temporal” happiness versus a “real and substantial” happiness. The first is a happiness rooted in disposition, circumstance, and temperament; it is a temporary feeling of psychological pleasure. The second is happiness as *eudaimonia*—well-being or human flourishing. It includes a sense of psychological pleasure or “feeling good” but does so in a “real” or “substantial” sense. It is “real” in that it is genuine and true. It is substantial in that it pertains to the substance or essence of what it means to be fully human.³³⁸

The pursuit of happiness in this sense perhaps might include, as previous scholars have argued, the ownership of property, either in John Locke’s narrower view of property as that which results from the application of man’s labor or his broader view of property as consisting of man’s life, liberty, and estate. It could include the Founders’ understanding of property ownership as a precondition for the freeing of man’s will, and therefore his ability to choose a life of virtue.³³⁹ The pursuit of happiness could include the fulfillment to be found in private family life or the duty to live out a life of virtue in the public realm. And the end result of such a pursuit could be, in the words of *Black’s Law Dictionary*, “the highest enjoyment, [the] increase [of] one’s prosperity, or

336. G. EDWARD WHITE, *THE OLIVER WENDELL HOLMES DEVISE: HISTORY OF THE SUPREME COURT OF THE UNITED STATES, VOLUMES III–IV THE MARSHALL COURT AND CULTURAL CHANGE 1815–35*, 604–05 (1988) (citing *Fletcher v. Peck*, 10 U.S. 87, 133, 143 (1795)).

337. WHITE, *supra* note 336, at 608–09 (citing *Terrett v. Taylor*, 13 U.S. 43, 52 (1815)).

338. “Substance” is defined as “the essential part.” JOHNSON’S DICTIONARY, *supra* note 20.

339. WHITE, *supra* note 336, at 2.

. . . the development of one's faculties."³⁴⁰ But not one of these elements fully defines happiness or its pursuit in an eighteenth-century legal context; they are, instead, only pieces of the larger whole.

To recapture the eighteenth-century legal meaning of the phrase "pursuit of happiness" is to limit the definition of the pursuit of happiness to one great thing—the pursuit of *eudaimonia*, or human flourishing. It is to evoke a private right to pursue a life lived in accordance with the laws of nature and a public duty to govern in harmony with those laws. As contained in Blackstone's *Commentaries* and the *Declaration of Independence*, the pursuit of happiness is not a legal guarantee that one will obtain happiness, even when happiness is defined within its eighteenth-century context. It is instead, an articulation of the idea that as humans we were created to live, at liberty, with the unalienable right to engage in the pursuit.

340. BLACK'S LAW DICTIONARY, *supra* note 1, at 783.