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John M. Kang

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APPEAL TO HEAVEN: ON THE RELIGIOUS ORIGINS OF THE CONSTITUTIONAL RIGHT OF REVOLUTION

John M. Kang*

“An Appeal to Heaven.”

—Slogan appended to several American navy schooners in 1775, as they prepared for battle against the British Empire.¹

When the government seeks to “enslave, or destroy” the people, the latter “have no other remedy in this . . . but to *appeal to Heaven*.”

—John Locke, English philosopher (1691).²

INTRODUCTION

The logic of democracy entails that people possess the right to alter or abolish their government. For Americans, this premise is more than philosophy; it is their history. And no document more famously articulated the rights of the people than did the Declaration of Independence. Read the key passage: “[W]henever any Form of Government becomes destructive of these ends [that is, the unalienable rights of life, liberty and the pursuit of happiness], it is the Right of the People to alter or to abolish it, and to institute new Government”³ Here was presented the right of a people to destroy and create government as they saw fit. But the people depicted in the Declaration invoked something morally higher than themselves to justify the right: God. The Declaration explained: “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”⁴ Should government destroy these God-given rights, people may, with God’s blessing, alter or abolish it.⁵

* Associate Professor of Law, St. Thomas University (Florida). B.A., University of California, Berkeley; J.D., University of California, Los Angeles; M.A., Ph.D., University of Michigan. For comments, I thank Lauren Gilbert and Bob Mensel. John Kaminsky at the Wisconsin Historical Society kindly provided me an advanced copy of an index for the *Ratification of the Constitution: A Documentary*. This Article is for Cameron “Peek” Kang, with faith.

¹ PATRICIA U. BONOMI, UNDER THE COPE OF HEAVEN: RELIGION, SOCIETY, AND POLITICS IN COLONIAL AMERICA 215–16 (1986).

² JOHN LOCKE, TWO TREATISES OF GOVERNMENT 379 (Peter Laslett ed., Cambridge Univ. Press 1988) (1690).

³ THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

⁴ *Id.*

⁵ The passage below presents the proposition that the Declaration sought out God’s approval in overthrowing British rule:

In articulating this view, the Declaration was not alone. The Committee of Correspondence, on behalf of aggrieved Bostonians, drafted a document in 1772 that protested British rule.⁶ Their complaints drew on the principle that “the right to freedom being the gift of God Almighty, it is not in the power of Man to alienate this gift, and voluntarily become a slave.”⁷ In a similar vein, the 1776 Pennsylvania Constitution stated that government ought “to enable the individuals who compose it to enjoy their natural rights and the other blessings which the author of existence has bestowed upon man.”⁸ Whenever government reneges on this pledge, “the people have a right, by common consent, to change it.”⁹ The 1777 Vermont Constitution contained identical language.¹⁰ Connecticut’s 1776 Constitution announced: “The People of this State, being by the Providence of God, free and independent, have the sole and exclusive Right of governing themselves”¹¹ Massachusetts’s 1780 Declaration of Rights acknowledged “with grateful hearts, the goodness of the Great Legislature of the Universe” for “His Providence” in affording the Americans an opportunity to abolish British rule and to create a new government of the people in “solemn compact with each other.”¹²

This Article explores the religious origins of the right to alter or abolish government.¹³ I show in Part I that the right was widely accepted among the American colonies as expressed through their constitutions and, later, the Federal Constitution. In Part II, I usher the reader back in time and across the Atlantic to seventeenth century England. There, I introduce two men who would have abhorred everything about American constitutional democracy—King James I and the faithful philosopher Sir Robert Filmer. Both men, prominent in their respective domains of authority, devoted themselves to the governing axiom that kings were bequeathed a right by God to absolute rule. Part III sketches the seventeenth century arguments of two other Englishmen, also prominent—the philosophers John Locke and Algernon Sidney—who challenged

[T]he United States of America, . . . appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown

Id. at para. 32 (emphasis omitted).

⁶ THE RIGHTS OF THE COLONISTS AND A LIST OF INFRINGEMENTS AND VIOLATIONS OF RIGHTS (1772), *reprinted in* 1 BERNARD SCHWARTZ, THE BILL OF RIGHTS: A DOCUMENTARY HISTORY 200 (1971) [hereinafter BILL OF RIGHTS].

⁷ *Id.* at 202.

⁸ PA. CONST. of 1776, pmbl.

⁹ *Id.*

¹⁰ VT. CONST. of 1777, pmbl.

¹¹ CONN. CONST. of 1776, pmbl.

¹² MASS. CONST. of 1780, pmbl.

¹³ I do not mean to suggest that the right to alter or abolish government lacks secular origins.

James and Filmer. Locke and Sidney argued that God had never sanctioned the divine right of kings and instead had justified the people's right to overthrow tyrants.

The arguments of Locke and Sidney, as I show in subsequent sections, influenced the American clergy who supported war against Britain and the right of revolution in general. Indeed, the development of this connection will occupy me for the remainder of the Article, but, in Part IV, I take a brief respite to summarize the historical circumstances that severely hampered governmental control over religion in colonial America and thus provided partially autonomous spaces for people to reflect on religion, including in ways that would inform their right to alter or abolish government. I illustrate in Part V how several prominent American clergymen, following Locke and Sidney, rejected as impossible the divine and supposedly infallible status of rulers. God, the clergy insisted, was the only one who could claim such infallibility; the clergy warned that rulers would do well to devote themselves to the people's well-being, not the former's aggrandizement. In Part VI, I argue that, again echoing Locke and Sidney, a prominent group of American clergymen insisted that, contrary to the antidemocratic jeers of monarchists, God had given people the capacity for reason which enabled them to make meaningful decisions about their political future. I conclude by illustrating how the Federal and state constitutions following the American Revolution sought to protect conditions for the faithful to contemplate the religious meaning of the right to alter or abolish government.

Before I launch into my arguments, a proviso must be tendered. I do not claim that most of the clergy during the Revolution conscripted religion as a democratic banner, let alone participated in the war on any level.¹⁴ In this respect, most of the clergymen resembled the scores of colonists who remained outwardly indifferent to the Revolution.¹⁵ But not all of the American clergy were so silent, and it is this group whose views I wish to bring to the fore. These views, I argue, help us to come to terms with the religious background of the right to alter or abolish government that informs the Declaration of Independence as well as the state and Federal constitutions.

I. THE STATE AND FEDERAL CONSTITUTIONS RECOGNIZE THE RIGHT TO ALTER OR ABOLISH GOVERNMENT

A. The State Constitutions and the Federal Constitution

Before the Constitutional Convention in 1787, nearly all of the thirteen colonies had adopted constitutions announcing the right of a people to alter or abolish their governments.¹⁶ And by "governments," the state constitutions meant both state and

¹⁴ JON BUTLER, *AWASH IN A SEA OF FAITH: CHRISTIANIZING THE AMERICAN PEOPLE* 194–95 (1990).

¹⁵ *See id.* at 202–03.

¹⁶ *See* Bernard Schwartz, *Commentary to the United States Constitution*, in 1 *BILL OF RIGHTS*, *supra* note 6, at 435.

federal. Usually, the right of self-determination was attached to the state constitutions by way of a declaration of rights, precursors to the first eight amendments to the U.S. Constitution, or, as they are sometimes called, the Bill of Rights.¹⁷

Consider the Virginia Declaration of Rights, which was appended to the 1776 Virginia Constitution:

[G]overnment is . . . instituted for the common benefit, protection and security of the people, nation or community . . . and that when *any* government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, unalienable, and infeasible right, to *reform, alter, or abolish it*, in such manner as shall be judged most conducive to the public weal.¹⁸

Notice how the people's right to "alter or abolish" government applied to "*any* government," state or federal. Indeed, the right, according to the Virginia Constitution, was broad enough to permit Virginians—even before the Declaration of Independence—to throw off British rule as well: "[T]he government of this country, as formerly exercised under the crown of Great Britain, is totally dissolved. . . . We therefore, the Delegates and Representatives of the good people of Virginia, having maturely considered the premises, . . . do ordain and declare the future form of government of Virginia"¹⁹

The 1780 Massachusetts Constitution was no less insistent about the right of the people to create and destroy any government. Its Preamble read:

The end of the institution . . . of government, is to secure the existence of the body-politic; to protect it; and to furnish the individuals who compose it, with the power of enjoying, in safety and tranquility, their natural rights, and the blessings of life: And *whenever* these great objects are not obtained, the people have a right to *alter the government*, and to take measures necessary for their safety, prosperity and happiness.²⁰

The people, we are told, have a right to "alter the government" *whenever* it fails to live up to its purpose. We may thus infer that the citizens of Massachusetts had asserted a right to alter or abolish not just the state government, but the federal government too.

Other examples are available. The 1777 New York Constitution quoted promiscuously from the Declaration of Independence:

¹⁷ See *Adamson v. California*, 332 U.S. 46, 63–64 (1947).

¹⁸ VA. DECLARATION OF RIGHTS of 1776, § III (emphasis added).

¹⁹ VA. CONST. of 1776, pmbl. (emphasis omitted).

²⁰ MASS. CONST. of 1781, pmbl. (emphasis added).

[G]overnments 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 its foundation on such principles . . . as to them shall seem most likely to effect their safety and happiness.²¹

New Yorkers did not exempt the federal government from being altered or abolished; note the reference to “*any* form of government.” North Carolina manifested similar views. First, its 1776 Constitution pronounced that “all government under the said King within the said Colonies hath ceased, and a total Dissolution of Government in many of them hath taken Place.”²² Next, its Declaration of Rights identified what had replaced the king: “[A]ll Political Power is vested in, and derived from, the People only.”²³ If *all* political power belonged to the people, the people presumably could use it against *any* government—federal or state. Look also to Delaware’s and Maryland’s declarations of rights, both passed in 1776. Both contained the following identical language in their first sections: “[A]ll Government of Right originates from the People, is founded in Compact only, and instituted solely for the Good of the Whole.”²⁴ The people, then, may alter or abolish *any* government, federal or state, if it irredeemably hurts the “good of the whole.” Analogous conclusions can be drawn from the 1777 Georgia Constitution which stated that it was made for the people, “from whom *all* power originates, and for whose benefit *all* government is intended.”²⁵ Ditto for New Hampshire’s 1783 Bill of Rights, which began by declaring that “[a]ll Men are born equally free and independent; therefore, *all* government of right originates from the people, is founded in consent, and instituted for the general good.”²⁶

The 1776 Pennsylvania Constitution affirmed that “all government,” and hence also the federal government, “ought to be instituted . . . for the security and protection of the community as such, and to enable the individuals who compose it to enjoy their natural rights.”²⁷ “[W]henever these great ends of government are not obtained,” the Pennsylvania Constitution continued, “the people have a right, by common consent, to change it”²⁸ Vermont’s 1777 Constitution also announced that “*all* government,” thus including the federal government, “ought to be instituted and supported for the security and protection of the community as such, and to enable the individuals

²¹ N.Y. CONST. of 1777, pmbl. (emphasis added).

²² N.C. CONST. of 1776, pmbl.

²³ N.C. DECLARATION OF RIGHTS of 1776, § 1.

²⁴ DEL. DECLARATION OF RIGHTS AND FUNDAMENTAL RULES of 1776, § 1 (emphasis added); MD. DECLARATION OF RIGHTS of 1776, § 1.

²⁵ GA. CONST. of 1777, pmbl. (emphasis added).

²⁶ N.H. CONST. of 1783, pt. I, art. I (emphasis added).

²⁷ PA. CONST. of 1776, pmbl.

²⁸ *Id.*

who compose it to enjoy their natural rights.”²⁹ Vermont’s Constitution admonished: “[W]henever those great ends of government are not obtained, the people have a right by common consent to change it”³⁰

Connecticut’s 1776 Declaration of Rights began with this preface:

The People of this State, being by the Providence of God, free and independent, have the sole and exclusive Right of governing themselves as a free, sovereign, and independent State; and having from their Ancestors derived a free and excellent Constitution of Government whereby the Legislature depends on the free and annual Election of the People, they have the best Security for the Preservation of their civil and religious Rights and Liberties.³¹

The people of Connecticut must be understood as reserving a right to alter or abolish *any* government. For they are said to have the “sole and exclusive Right of governing themselves.”³²

Given such language by Connecticut and the other states, it would have been unthinkable for the Constitution’s framers, who would convene in Philadelphia in 1787, to have expected the people to support the Constitution unless the people saw it as preserving their right to alter or abolish any government, including the federal government. What evidence do we have that the Constitution protected this right? Most obviously, there is the Constitution’s Preamble, which made clear who held political authority:

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.³³

Neither king nor parliament but “We the People” established the Constitution, for “ourselves” and “our” posterity.

James Madison, conventionally regarded as the Constitution’s architect,³⁴ declared that “the people are the only legitimate fountain of power,” and that “it is from them that the constitutional charter, under which the several branches of government hold

²⁹ VT. CONST. of 1777, pmbl. (emphasis added).

³⁰ *Id.* (emphasis added).

³¹ CONN. CONST. of 1776, pmbl.

³² *Id.*

³³ U.S. CONST. pmbl.

³⁴ FORREST McDONALD, *NOVUS ORDO SECLORUM: THE INTELLECTUAL ORIGINS OF THE CONSTITUTION* 205 (1985).

their power, is derived.”³⁵ Another important framer, Alexander Hamilton, was annoyed by those who clamored for a bill of rights against governmental abuse. The Preamble, Hamilton defended, signified that “the people surrender nothing; and as they retain every thing, they have no need of particular reservations.”³⁶ He reassured that the Preamble “is a better recognition of popular rights, than volumes of those aphorisms, . . . which would sound much better in a treatise of ethics, than in a constitution of government.”³⁷ Noah Webster, the constitutional framer and dictionary author, announced to the public that “[t]he powers vested in Congress are little more than *nominal*; nay *real* power cannot be vested in them, nor in any body, but in the *people*.”³⁸ “The source of power,” proclaimed Webster, “is in the *people* of this country, and cannot for ages, and probably never will, be removed.”³⁹

The Preamble did more than locate authority in the people. It also stated that the people had created the Constitution for defined purposes in justice, liberty, common defense, and more. Should the government be unable or unwilling to realize these ends, the people, by inference, would be entitled to modify, resist, or dissolve it. After all, if “We the People” . . . “do ordain and establish this Constitution,” as the Preamble stated,⁴⁰ it was only because, as the Declaration of Independence previously had announced, “We, the People” *did* “[a]bsolve[] . . . all Allegiance to the British Crown.”⁴¹ Worth reading here is Hamilton’s *Federalist* 78, which held that the “fundamental principle of republican government” in the Constitution “admits the right of the people to *alter or abolish* the established constitution whenever they find it inconsistent with their happiness.”⁴²

By 1791, after ardent insistence by the state ratification conventions,⁴³ two crucial amendments amplified the people’s right of revolution. The Ninth Amendment states: “The enumeration in the Constitution, of certain rights, shall not be construed to deny

³⁵ THE FEDERALIST NO. 49, at 261 (James Madison) (George W. Carey & James McClellan eds., 2001).

³⁶ THE FEDERALIST NO. 84 (Alexander Hamilton), *supra* note 35, at 445.

³⁷ *Id.*

³⁸ NOAH WEBSTER, AN EXAMINATION INTO THE LEADING PRINCIPLES OF THE FEDERAL CONSTITUTION (1787), *reprinted in* FRIENDS OF THE CONSTITUTION: WRITINGS OF THE “OTHER” FEDERALISTS 1787–1788, at 398 (Colleen A. Sheehan & Gary L. McDowell eds., 1998) [hereinafter *FRIENDS*].

³⁹ *Id.*

⁴⁰ U.S. CONST. pmb. (emphasis added).

⁴¹ THE DECLARATION OF INDEPENDENCE para. 52 (U.S. 1776).

⁴² THE FEDERALIST NO. 78 (Alexander Hamilton), *supra* note 35, at 406 (emphasis added). Worth reading also is Madison’s *Federalist* 39. He argues that the Constitution should guarantee that the government is “strictly republican.” THE FEDERALIST NO. 39 (James Madison), *supra* note 35, at 194. For “[i]t is evident that no other form would be reconcileable with the genius of the people of America; with the fundamental principles of the revolution; or with that honourable determination which animates every votary of freedom, to rest all our political experiments on the capacity of mankind for self-government.” *Id.*

⁴³ *See infra* Part I.B.

or disparage others *retained by the people*.”⁴⁴ The Tenth Amendment follows with these words: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, *or to the people*.”⁴⁵ Even prior to these amendments, we should remember that Article V gave to people the right to amend the Constitution and, hence, to alter or abolish their government.⁴⁶

Putting aside for now the Constitution’s text, let’s examine what the people, in whose name it was written, thought about it. When the framers finished their work in 1787, the Federal Constitution was simply a proposal. The people had to decide whether to adopt it. From 1787 to 1790, the people in the original thirteen states sent delegates with instructions to represent their interests in state ratification conventions.⁴⁷ I will show that the people, acting through their delegates, either accepted the Constitution as recognizing their right to alter or abolish government or proposed amendments demanding more explicit recognition of such a right.

B. State Ratification Conventions

After the Constitution was made publicly available, state ratification conventions urged Congress to amend the Constitution in a manner that more clearly recognized a right to alter or abolish government. Those states that refrained from proposing amendments generally did so because they had construed the Constitution as already protective of such a right.

Consider the amendments proposed by the North Carolina convention in 1789. First, the delegates wanted acknowledgement that “there are certain natural rights of which men, when they form a social compact, cannot deprive or divest their posterity, among which are the enjoyment of life, and liberty.”⁴⁸ Second, unsatisfied with the Preamble, North Carolina requested more explicit language that “all power is naturally vested in, and consequently derived from the people; that magistrates therefore are their trustees, and agents, and at all times amenable to them.”⁴⁹ Third, North Carolina insisted that “[g]overnment ought to be instituted for the common benefit . . . of the people” and, defiantly, it ridiculed “the doctrine of non-resistance against arbitrary power and oppression” as “absurd, slavish, and destructive to the good and happiness of mankind.”⁵⁰

⁴⁴ U.S. CONST. amend. IX (emphasis added).

⁴⁵ U.S. CONST. amend. X (emphasis added).

⁴⁶ U.S. CONST. art. V.

⁴⁷ See *infra* Part I.B.

⁴⁸ Ratification of the Constitution by the State of North Carolina (Nov. 21, 1789), in 2 DOCUMENTARY HISTORY OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA, 1786–1870, at 266 (1998) [hereinafter DOCUMENTARY HISTORY OF THE CONSTITUTION].

⁴⁹ *Id.*

⁵⁰ *Id.* at 266–67.

The Maryland ratification convention in 1788 bade a similar message to Congress. Maryland requested Congress to include in the Constitution “that all persons intrusted with the legislative or executive powers of government are the trustees and servants of the public; and, as such, accountable for their conduct.”⁵¹ Next, Maryland alerted Congress that “[w]herefore, whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought to, reform the old, or establish a new government.”⁵² And for good measure, Maryland, like North Carolina, wanted acknowledgement by the Constitution that “[t]he doctrine of non-resistance against arbitrary power and oppression is absurd, slavish, and destructive of the good and happiness of mankind.”⁵³

Virginia’s ratification convention adopted almost identical language.⁵⁴ Prior to their state’s ratification, those Virginians endorsing the Constitution often argued that under its terms, the people possess the authority to create and destroy their government. Several of these arguments were authored, as was common, under pseudonyms. “Americanus” declared in the *Virginia Independent Chronicle* that “all power originally resides in the people . . . [and] that the people have an indefeasible right to institute, amend, or annihilate governments, when it seemeth good unto them.”⁵⁵ Also urging ratification in the *Chronicle* was “The State Soldier”:

Men in power may usurp authorities under any constitution—and those they govern may oppose their tyranny: For although it be wrong to refuse the legal currency of one’s country, yet there can be no harm in rejecting base coin, since there is no state in the world which compels a man to take that which is under its own standard.⁵⁶

“An Impartial Citizen” claimed in the *Petersburg Virginia Gazette* that the Constitution would permit the people to “displace the usurpers, who would not be permitted to sit or act as Congress.”⁵⁷ “Either this would be the case,” he continued,

⁵¹ A Fragment of Facts, Disclosing the Conduct of the Maryland Convention, on the Adoption of the Federal Constitution, in 2 THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION 547, 553 (Jonathan Elliot ed., 2d ed., Ayer Co. 1987) (1888).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Ratification of the Constitution by the State of Virginia (June 26, 1788), in 2 DOCUMENTARY HISTORY OF THE CONSTITUTION, *supra* note 48, at 145.

⁵⁵ Americanus I, VA. INDEP. CHRON., Dec. 5, 1787, *reprinted in* 8 THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION: RATIFICATION OF THE CONSTITUTION BY THE STATES 200 (John P. Kaminski et al. eds., 1988) [hereinafter DOCUMENTARY HISTORY].

⁵⁶ The State Soldier I, VA. INDEP. CHRON., Jan. 16, 1788, *reprinted in* 8 DOCUMENTARY HISTORY, *supra* note 55, at 308.

⁵⁷ An Impartial Citizen VI, PETERSBURG VA. GAZETTE, Mar. 13, 1788, *reprinted in* 8

“or the Federal Union would be dissolved, and the powers of Congress would again devolve to the constituent States.”⁵⁸ Dubbed “The Society of Western Gentlemen,” a coterie of Virginia Antifederalists called for an amendment stating that “the best form of government, is that which will produce the greatest common good, . . . and when any government is found inadequate to these purposes, the people have a right to alter or abolish the same.”⁵⁹ George Mason, the eminent Antifederalist and drafter of the Virginia Declaration of Rights,⁶⁰ joined the chorus that the following words be included in the Constitution: “[T]hat the Doctrine of non-resistance against arbitrary Power and Oppression is absurd, slavish and destructive of the good and Happiness of Mankind.”⁶¹ George Nicholas, another Virginia delegate, remarked at the state convention: “If [the Congress] exceed[s] these [constitutional] powers, the Judiciary will declare it void. If not, the people will have a right to declare it void.”⁶²

Virginia’s governor, Edmund Randolph, asked Congress to amend the Constitution to read “that all authority not given, is retained by the people, and may be resumed when perverted to their oppression; and that no right can be cancelled, abridged, or restrained, by the Congress, or any officer of the United States.”⁶³ James Madison, now having to defend as a delegate the Constitution which he helped to write, told his fellow Virginians that Randolph’s proposal “correspond[s] precisely with my opinion.”⁶⁴ Specifically, Madison reiterated that “the powers granted by the proposed Constitution, are the gift of the people, and may be resumed by them when perverted to their oppression, and every power not granted thereby, remains with the people, and at their will.”⁶⁵ Later, Madison would propose in the U.S. House of Representatives that the Congress should add to the Preamble the following words: “That the people have an indubitable, unalienable, and indefeasible right to reform or change their Government, whenever it be found adverse or inadequate to the purposes of its institution.”⁶⁶ Professor Akhil Amar noted that “[n]ot a single representative quarreled

DOCUMENTARY HISTORY, *supra* note 55, at 497.

⁵⁸ *Id.*

⁵⁹ *The Society of Western Gentlemen Revise the Constitution*, VA. INDEP. CHRON., Apr. 30, 1788 & May 7, 1788 (Extra), reprinted in 9 DOCUMENTARY HISTORY, *supra* note 55, at 772–73.

⁶⁰ Bernard Schwartz, *Commentary to the Virginia Declaration of Rights*, in 1 BILL OF RIGHTS, *supra* note 6, at 231.

⁶¹ Letter from George Mason to John Lamb (June 9, 1788), in 9 DOCUMENTARY HISTORY, *supra* note 55, at 819.

⁶² George Nicholas, Remarks at the Virginia Constitutional Ratification Convention (June 16, 1788), in 10 DOCUMENTARY HISTORY, *supra* note 55, at 1326, 1327.

⁶³ Edmund Randolph, Governor of Virginia, Remarks at the Virginia Constitutional Ratification Convention (June 21, 1788), in 10 DOCUMENTARY HISTORY, *supra* note 55, at 1450, 1456.

⁶⁴ James Madison, Remarks at the Virginia Constitutional Ratification Convention (June 24, 1788), in 10 DOCUMENTARY HISTORY, *supra* note 55, at 1498, 1501.

⁶⁵ *Id.* at 1501–02.

⁶⁶ James Madison, Speech Introducing Proposed Constitutional Amendments (June 8, 1789), in THE AMERICAN REPUBLIC: PRIMARY SOURCES 332, 338 (Bruce Frohnen ed., 2002).

quarreled with Madison on the substance of this claim, although some considered any prefix superfluous.”⁶⁷

Rhode Island, the last state to ratify, also felt compelled to propose amendments to Congress. The delegates there requested that Congress include in the Constitution an acknowledgement of “certain natural rights, of which men when they form a social compact, cannot deprive or divest their posterity, among which are the enjoyment of Life and Liberty.”⁶⁸ So, too, the convention desired language to the effect that “all power is naturally vested in, and consequently derived from the People; that magistrates therefore are their trustees and agents, and at all times amenable to them.”⁶⁹ Lastly, the delegates requested an amendment that “the powers of government may be reassumed by the people, whensoever it shall become necessary to their happiness.”⁷⁰ Rhode Island’s proposals were nothing new to the delegates in New York, who had recommended something nearly identical to the former, two years prior.⁷¹

Massachusetts’s convention did not ask Congress to include an explicit right to resist unlawful government. But newspaper articles published at the time of the ratification convention in 1788 illustrated an understanding among Bay Staters that the Constitution had recognized the people’s right to alter or abolish government. Read how the *Salem Mercury* expressed its approval for the Constitution’s Preamble: “‘We the People,’ &c. is a complete declaration, that the People are the Source of Power—that they make the constitution—and that, whenever they find it incompatible with their interests, they have a right to abolish it.—Where, then, can be the mighty danger in adopting it?”⁷² The *Boston Gazette* yearned for a constitution in which the people could retain the powers to alter or abolish government:

Q. When ought a new government to be established?

A. When the old becomes impracticable, or dangerous to the rights of the people.

Q. Who ought to form a new constitution of government?

A. The people.

Q. From whom ought public persons to derive their authority to govern?

A. From the people whom they are to govern. . . .

Q. How is such a government to be obtained?

⁶⁷ AKHIL REED AMAR, *THE BILL OF RIGHTS: CREATION AND RECONSTRUCTION* 27 (1998).

⁶⁸ Ratification of the Constitution by the State of Rhode Island (May 29, 1790), in 2 DOCUMENTARY HISTORY OF THE CONSTITUTION, *supra* note 48, at 310, 311.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Ratification of the Constitution by the State of New York (July 26, 1788), in 2 DOCUMENTARY HISTORY OF THE CONSTITUTION, *supra* note 48, at 190–91.

⁷² Editorial, SALEM MERCURY, Jan. 8, 1788, *reprinted in* 5 DOCUMENTARY HISTORY, *supra* note 55, at 652.

A. By forming a constitution which regards men more than things, . . . and by delegating the powers of government so that *the people may always have it in their power to resume them, when abused, without tumult or confusion . . .*⁷³

Elsewhere in Massachusetts, the “Remarker” explained in *The Independent Chronicle* that the Constitution, if ratified, could not divest the people of their power because “no cause can operate to this effect,—because the *people*, are always both able and ready, to resist the encroachments of Supreme Power.”⁷⁴ The *Massachusetts Gazette* wrote that the Constitution “will now, probably, be submitted to the people to ratify or reject, who are the fountain of all power, to whom alone it of right belongs to make or unmake constitutions or forms of government, at their pleasure.”⁷⁵ Elbridge Gerry, a constitutional framer and, later, Vice President, was a member of Massachusetts’s ratification convention.⁷⁶ He urged Congress to include in the Constitution the rights of the people to resist their government. One of his pamphlets read that

the origin of all power is in the people, and that they have an incontestible right to check the creatures of their own creation, vested with certain powers to guard the life, liberty and property of the community: And if certain selected bodies of men, deputed on these principles, determine contrary to the wishes and expectations of their constituents, *the people have an undoubted right to reject their decisions . . .*⁷⁷

Delegates to Pennsylvania’s ratification convention in 1787 also voiced their belief that the people must possess the right to alter or abolish their government, and that the Constitution did not threaten such a right. Thomas Hartley spoke to his fellow delegates: “As soon as the independence of America was declared in the year 1776, from that instant all our natural rights were restored to us, and we were at liberty to adopt any form of government to which our views or our interest might incline us.”⁷⁸

⁷³ BOSTON GAZETTE, Nov. 19, 1787, *reprinted in* 4 DOCUMENTARY HISTORY, *supra* note 55, at 275 (emphasis added).

⁷⁴ Remarker, THE INDEP. CHRON., Dec. 27, 1787, *reprinted in* 5 DOCUMENTARY HISTORY, *supra* note 55, at 529.

⁷⁵ Editorial, MASS. GAZETTE, Oct. 30, 1787, *reprinted in* 5 DOCUMENTARY HISTORY, *supra* note 55, at 172.

⁷⁶ ENCYCLOPEDIA BRITANNICA, FOUNDING FATHERS: THE ESSENTIAL GUIDE TO THE MEN WHO MADE AMERICA 94–95 (2007).

⁷⁷ ELBRIDGE GERRY, OBSERVATIONS ON THE NEW CONSTITUTION AND THE FEDERAL AND STATE CONVENTIONS (1788), *reprinted in* 1 BILL OF RIGHTS, *supra* note 6, at 484 (emphasis added).

⁷⁸ Thomas Hartley, Remarks at the Pennsylvania Convention (Nov. 30, 1787), *in* 2 DOCUMENTARY HISTORY, *supra* note 55, at 430.

Then there was James Wilson, a future Supreme Court Justice, one of six men to sign both the Constitution and the Declaration, and, not least, the Preamble's author.⁷⁹ At the Pennsylvania ratification convention, Wilson, now serving as a delegate, attempted to quell those who complained of the framers' failure to include a bill of rights. He said that the Constitution was governed by the authority of the people as made evident in the Preamble's opening words, "We the People of the United States."⁸⁰ The Constitution, Wilson stressed, was "announced in *their* name—it receives its political existence from *their* authority: they ordain and establish."⁸¹ And, he added, "[t]hose who ordain and establish have the power, if they think proper, to repeal and annul."⁸² In short, for Wilson the Preamble meant that "the citizens of the United States may always say, WE reserve the right to do what we please."⁸³ After not so humbly invoking his authority as the only delegate to Pennsylvania's convention who was a framer,⁸⁴ Wilson delivered these words:

For, I insist, if there are errors in government the people have the right not only to correct and amend them, *but likewise totally to change and reject its form*; and under the operation of that right, the citizens of the United States can never be wretched beyond retrieve, unless they are wanting to themselves.⁸⁵

Another Pennsylvania delegate, John Smilie, urged that the Constitution include a bill of rights acknowledging the people's right to alter or abolish government:

[T]he supreme authority naturally rests in the people, but does it follow that therefore a declaration of rights would be superfluous? Because the people have a right to *alter and abolish* government,

⁷⁹ AKHIL REED AMAR, *AMERICA'S CONSTITUTION: A BIOGRAPHY* 7 (2005).

⁸⁰ James Wilson, Remarks of James Wilson in the Pennsylvania Convention to Ratify the Constitution of the United States (1787), in 1 *COLLECTED WORKS OF JAMES WILSON* 178, 193 (Kermit L. Hall & Mark David Hall eds., 2007) (emphasis omitted).

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.* at 196. Amar argued that the "[p]reamble-style ratification also broke new ground by establishing that the people's right to alter government did not require proof [as did the Declaration of Independence] of past tyranny." AMAR, *supra* note 79, at 12. This seems to be correct but the Constitution would also seem to require justification for political change. Most notably, the Preamble states that the Constitution is established to advance "Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty." U.S. CONST. pmbl. Accordingly, if you wished to change, resist, or dissolve the government through constitutional means, you would probably need to show that the government is thwarting one or more of these objectives.

⁸⁴ James Wilson, Speech to the Pennsylvania Convention, as reported by Alexander J. Dallas (Nov. 24, 1787), in 2 *DOCUMENTARY HISTORY*, *supra* note 55, at 340.

⁸⁵ *Id.* at 349 (emphasis added).

can it therefore be inferred that every step taken to secure that right would be superfluous and nugatory? The truth is that unless some criterion is established by which it could be easily and constitutionally ascertained how far our governors may proceed, and by which it might appear when they transgress their jurisdiction, this idea of *altering and abolishing government* is a mere sound without substance.⁸⁶

As these statements suggest, the people, either through their delegates or as articulated in their newspaper articles, believed that the Constitution recognized their rights to alter or abolish government, as first enunciated in the Declaration of Independence.

One might be inclined to believe that the right to alter or abolish government derives from secular philosophical sources in democratic theory or perhaps civic republicanism. I argue in the next section, however, that the right finds a significant strand of its genealogy in religion.

II. DIVINE RIGHT OF KINGS

Much of the colonial Americans' conception of the right to alter or abolish government began with ideas that would foment in seventeenth century England. For it was there that the intellectual predecessors to the American colonists would develop and sharpen their arguments against absolute monarchy.⁸⁷ Central to the attack on absolute monarchy was the attempt by some in civil society to reclaim from the king the political uses of religion. God, these critics argued, permitted and probably even urged the people to alter or abolish government when it threatened to oppress them.⁸⁸ These subversive uses of religion would influence, as I show later, how the American colonists would formulate the substance of the people's general right to alter or abolish government.⁸⁹

A. *King James I*

The divine right of kings—the idea that God bestowed political authority on the king—and the theory that the king wielded absolute sovereignty were not the same thing.⁹⁰ For example, the philosopher Thomas Hobbes argued provocatively in 1651 that a king could acquire absolute sovereignty through authorization by ordinary

⁸⁶ John Smilie, Remarks at the Pennsylvania Convention (Nov. 28, 1787), in 2 DOCUMENTARY HISTORY, *supra* note 55, at 385 (emphasis added).

⁸⁷ See Thomas G. West, *foreword* to ALGERNON SIDNEY, DISCOURSES CONCERNING GOVERNMENT, at xv (Thomas G. West ed., Liberty Fund 1996) (1698).

⁸⁸ See *infra* Section V.

⁸⁹ See *infra* Sections V & VI.

⁹⁰ GLENN BURGESS, ABSOLUTE MONARCHY AND THE STUART CONSTITUTION 96 (1996).

men.⁹¹ His was a minority view though, and in the early seventeenth century the divine right of kings had come to underwrite absolute sovereignty.⁹²

No more visible institutional spokesman for this union existed in seventeenth century England than King James I, the same James who commissioned the English translation of the Bible.⁹³ Having convened the Lords and Commons in his palace at Whitehall on March 21, 1609, James issued a majestic encomium, not to Parliament, of course, but to his office.⁹⁴ He solemnly announced that the “State of MONARCHIE is the supremest thing upon earth.”⁹⁵ “For Kings are not onely GODS Lieutenants upon earth, and sit upon GODS throne, but even by GOD himselfe they are called Gods.”⁹⁶ This stout confidence was sometimes prone to equivocation, as when James hinted that God would punish monarchs who offended Him,⁹⁷ and recent scholarship suggests that James introduced, if inadvertently, moral and perhaps even legal limits to his rule.⁹⁸ Be that as it may, James’s words, read straightforwardly, were adamant on his right to absolute rule by virtue of his godly status. The captive listeners at Whitehall should have been familiar with his pronouncements, for James had rehearsed them elsewhere. In his 1598 pamphlet titled *The Trew Law of Free Monarchies*, for instance, he turned to scripture to show that “Kings are called Gods by the propheticall King David, because they sit upon GOD his Throne in the earth, and have the count of their administration to give unto him.”⁹⁹

At Whitehall, James continued that “Kings are justly called Gods” because “they exercise a manner or resemblance of Divine power.”¹⁰⁰ God had the power, James explained, “to create, or destroy, make, or unmake at his pleasure, to give life, or send death, to judge all, and to bee judged nor accomptable to none: To raise low things, and to make high things low at his pleasure, and to God are both soule and body due.”¹⁰¹ “And the like power have Kings,” James concluded.¹⁰² Kings “make and

⁹¹ THOMAS HOBBS, *LEVIATHAN* 109–110, §§ 13, 15 (Edwin Curley ed., Hackett Publishing Co. 1994) (1651).

⁹² See BURGESS, *supra* note 90, at 96–102.

⁹³ ADAM NICOLSON, *GOD’S SECRETARIES: THE MAKING OF THE KING JAMES BIBLE* xi (2003).

⁹⁴ King James I, A Speech to the Lords and Commons of Parliament at White-Hall (Mar. 10, 1609), in KING JAMES VI AND I: *POLITICAL WRITINGS* 179, 181 (Johann P. Sommerville ed., 1994). I have modernized some of the spelling in this source.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ KING JAMES I, *THE TREW LAW OF FREE MONARCHIES: OR THE RECIPROCK AND MUTUALL DUTIE BETWIXT A FREE KING, AND HIS NATURAL SUBJECTS* (1598), *reprinted in* KING JAMES VI AND I: *POLITICAL WRITINGS*, *supra* note 94, at 62, 72.

⁹⁸ BURGESS, *supra* note 90, at 104–05 (noting that King James himself implied that, despite general discussion of absolute divine rights, a particular king is often limited by the laws of his particular kingdom, specifically in the areas of taxation and the rule of law).

⁹⁹ KING JAMES I, *supra* note 97, at 64.

¹⁰⁰ King James I, *supra* note 94, at 181.

¹⁰¹ *Id.*

¹⁰² *Id.*

unmake their subjects: they have power of raising, and casting downe: of life, and of death: Judges over all their subjects, and in all causes, and yet accomptable to none but God onely.”¹⁰³

Unsurprisingly, James next argued that the duties of subjects toward their king corresponded with the allegiance owed to God. So James insisted in the speech at Whitehall that to the king “is due both the affection of the soule, and the service of the body of his subjects.”¹⁰⁴ He summoned examples from the Bible, most notably Paul’s epistle to the Romans.¹⁰⁵ (Remember this—Paul’s epistle—for it will be the philosophical currency that will be tendered by advocates for divine right as well as, later, by the American colonists who will condemn everything that divine right stands for.) James stressed that Paul had ordered the Romans to obey the Emperor Nero “and serve for conscience sake,” even though the latter was a “bloody tyrant, an infamie to his aage, and a monster to the world, being also an idolatrous persecuter, as the King of *Babel* was.”¹⁰⁶ Was it not, therefore, nothing less than “shamelesse presumption,” James snorted, that some Christians in his seventeenth century England, openly critical of the king, should “claime to that unlawfull libertie, which God refused to his owne peculiar and chosen people?”¹⁰⁷ Paul, or so James claimed, insisted that the obedience of the people “ought to be to [the king], as to Gods Lieutenant in earth, obeying his commands in all things . . . acknowledging him a Judge set by GOD over them, having power to judge them, but to be judged onely by GOD, whom to onely hee must give count of his judgement.”¹⁰⁸ Even when the king appeared to do something “unlawfull,” James intoned that according to Paul, the people should respond “without resistance, but by sobbes and teares to God.”¹⁰⁹ Monarchs may misbehave, of course, but James told the people to leave punishment to God.¹¹⁰

That James could have found an audience for his megalomania might seem incredible today. Yet the instinct to embrace something like the divine right of kings is, explained Cambridge historian John Neville Figgis, “as old as history.”¹¹¹ As Professor Figgis observed, “[i]n some form the sanctity of kingship has been held from very early times.”¹¹² Most primitive tribes “seem to have thrown some sort of halo round the person of the chief,”¹¹³ and there existed “the intimate connection between kingship and priesthood.”¹¹⁴ The Middle Ages in Western Europe ushered

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Romans* 13.

¹⁰⁶ KING JAMES I, *supra* note 97, at 71–72 (emphasis omitted).

¹⁰⁷ *Id.* at 72.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* (James adds the Latin phrase, “Preces, & Lachryma sunt arma Ecclesie,” which translates, “prayers and tears are the weapons of the Church.”).

¹¹¹ JOHN NEVILLE FIGGIS, *THE DIVINE RIGHT OF KINGS* 17 (2d ed. 1914).

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

the widespread view that “all in authority, were the vicars of God, and that resistance to their commands was, in general, a damnable sin.”¹¹⁵

Certainly, in the early seventeenth century, James had public supporters. And several of them were England’s lawyers and judges. The distinguished jurist Sir Edward Coke proclaimed that “‘the kingdom of England is an absolute monarchy’ of which ‘the king is the only supreme governor,’ having been empowered ‘immediately of almighty God.’”¹¹⁶ Other lawyers chimed in. Henry Finch commented that “[c]arrying God’s stamp and mark among men, and being . . . a God upon earth, as God is a king in heaven,’ it followed that the English king had ‘a shadow of the excellencies that are in God.’”¹¹⁷ Edmund Plowden announced that “‘king is a name of continuance, which shall always endure as the head and governor of the people.’”¹¹⁸ For James Morrice, “the king was ‘supreme head and governor’ of the body politic of the kingdom, ‘adorned with princely rights and dignities.’”¹¹⁹ Sir Thomas Elyot, law clerk and future ambassador, likened the king to a “‘principal bee,’” a high compliment in a politically turbulent England where bees were praised for their love of collective order.¹²⁰ “‘God,’” Elyot explained, “‘having showed in [bees] unto men an express pattern of a perfect monarchy, the most natural and absolute form of government.’”¹²¹ Sir Thomas Smith, ambassador to France, privy councillor, and secretary of state, asserted in a bestselling book that the king was “the life, the head, the authority of all things done in England, though he might sometimes distribute his authority and power to lesser agencies within the state.”¹²²

The law gave force to these sentiments.¹²³ As historians Corinne Weston and Janelle Greenberg remarked:

To carry out his high responsibilities the king possessed certain royal prerogatives, which included making war and peace, coining money, appointing ministers and councillors, summoning

¹¹⁵ *Id.* at 19.

¹¹⁶ CORINNE COMSTOCK WESTON & JANELLE RENFROW GREENBERG, *SUBJECTS AND SOVEREIGNS: THE GRAND CONTROVERSY OVER LEGAL SOVEREIGNTY IN STUART ENGLAND* 8 (1981) (quoting *Caudrey’s Case*, (1591) 5 Co. Rep. 1a, 77 Eng. Rep. 1 (K.B.)).

¹¹⁷ *Id.* (quoting HENRY FINCH, *LAW, OR A DISCOURSE THEREOF* (1627)).

¹¹⁸ *Id.* (quoting *Hill v. Grange*, 1 Pl. Com. 164, 75 Eng. Rep. 253 (K.B.), *reprinted in* Edmund Plowden, *THE COMMENTARIES OR REPORTS* 178 (1816)).

¹¹⁹ *Id.* at 9 (quoting James Morrice, *A Reading of the Midle Temple full of excellent good discourse and learninge circa 21 Eliz R. (1578)*, *reprinted in* Edward T. Lampson, *The Royal Prerogative, 1485–1603* (1938) (unpublished Ph.D. dissertation, Harvard University)).

¹²⁰ *Id.* (quoting CHARLES BUTLER, *THE FEMINIE MONARCHIE: OR, A TEATISE CONCERNING BEES, AND THE DUE ORDERING OF THEM* 2–6 (1609)).

¹²¹ *Id.* (quoting SIR THOMAS ELYOT, *THE BOKE NAMED GOVERNOR* 7 (S.E. Lehmborg ed., 1962) (1531)).

¹²² *Id.* (quoting SIR THOMAS SMITH, *DE REPUBLICA ANGLORUM* 62–63 (L. Alston ed., 1906) (1583)).

¹²³ *See id.* at 10.

and dissolving parliament, and mitigating the rigor of the law and facilitating justice by means of the dispensing power and its corollary, the pardoning power.¹²⁴

In the authoritative words of Sir Edward Coke, “no act can bind the king from any prerogative which is sole and inseparable to his person, but that he may dispense with it by a *non obstante* [the operative words in a clause of dispensation].”¹²⁵ Other privileges flowed to the king. He could not be sued; petition was the only option for the aggrieved.¹²⁶ Tolls and tributes could not touch his property and chattels.¹²⁷ He could not be considered a joint tenant because no one was his equal, and he was immune from common recoveries.¹²⁸ The king, by contrast, could sue in any court and set the procedures therein.¹²⁹ All of this suggested that “[m]ost of Protestant England believed unquestioning obedience to the king was not only the old but the best way.”¹³⁰

Such was the support for King James, but no one rallied more prominently to his cause than did Sir Robert Filmer whom I discuss next.

B. Sir Robert Filmer

If not the first philosopher to laud King James’s brand of the divine right of kings,¹³¹ Filmer would assume a place in England and America as the most famous, or especially in the latter, the most infamous.¹³² Filmer made claims that would have met with cooing approval by James:

1. That there is no form of government but monarchy only.
2. That there is no monarchy, but paternal.
3. That there is no paternal monarchy, but absolute or arbitrary.
4. That there is no such thing as an aristocracy or democracy.

¹²⁴ *Id.* at 10–11.

¹²⁵ *Id.* at 11 (alteration in original) (quoting Case of Non Obstante, (1610) 12 Co. Rep. 18, 77 Eng. Rep. 1300 (K.B.)).

¹²⁶ *Id.* at 10.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.* The king, however, was not completely above the law. *See id.* at 12–13, 17 (explaining, for example, that “Royal grants were limited by law and regularly argued in the Law Courts,” and that the king could not “alter the nature of pleading”).

¹³⁰ West, *supra* note 87, at xvii.

¹³¹ Johann P. Sommerville, *Introduction* to ROBERT FILMER, *PATRIARCHA AND OTHER WRITINGS* ix, xvi–xvii (Johann P. Sommerville ed., Cambridge Univ. Press 1991) (1680) (arguing that Jean Bodin and Hadrian Saravia had predated and influenced Filmer’s understanding of the divine right of kings).

¹³² FIGGIS, *supra* note 111, at 148 (“[Filmer’s] work won great and deserved popularity as the ablest justification of the extreme royalist doctrine.”).

5. That there is no such form of government as a tyranny.
6. That the people are not born free by nature.¹³³

One of the statements—“That there is no such form of government as a tyranny”—verily may have caused even James to blush.

Filmer’s propositions hinged on a stylized reading of the Old Testament. God did not grant political liberty to all people, Filmer argued, but had reserved for Adam the right of lordship “over the whole world.”¹³⁴ His was a right that was “as large and ample as the absolutest dominion of any monarch which hath been since the creation.”¹³⁵ It was also a right that God supposedly rooted in patriarchy.¹³⁶ “To confirm this natural right of regal power,” Filmer announced, “we find in the decalogue that the law which enjoins obedience to kings is delivered in terms of ‘honour thy father’ [Exodus, xx, 12] as if all power were originally in the father.”¹³⁷ “[T]his subjection of children,” he added, “is the only fountain of all regal authority, by the ordination of God himself,”¹³⁸ and “the Scripture is not favourable to the liberty of the people.”¹³⁹

Does Filmer really expect us to believe that kings of his day inherited their patriarchy from an unbroken chain starting with Adam? Apparently so. He said flatly that “[t]here is, and always shall be continued to the end of the world, a natural right of a supreme father over every multitude, although, by the secret will of God, many at first do most unjustly obtain the exercise of it.”¹⁴⁰ If today people are ignorant of Adam’s heir, “[i]t is but the negligence or ignorance of the people to lose the knowledge of the true heir, for an heir there always is.”¹⁴¹ Filmer pledged that “[i]f Adam himself were still living, and now ready to die, it is certain that there is one man, and but one in the world, who is next heir, although the knowledge who should be that one man be quite lost.”¹⁴²

Filmer’s narrative awkwardly committed him to two impossible tasks of evidence. One, he would have had to chart a ludicrous genealogy stretching thousands of years from Adam to present-day kings. Two, he would have had to show that kings were in fact biological fathers of their subjects. Filmer knew that he could not do either,

¹³³ SIR ROBERT FILMER, *OBSERVATIONS UPON ARISTOTLES POLITIQUES TOUCHING FORMS OF GOVERNMENT TOGETHER WITH DIRECTIONS FOR OBEDIENCE TO GOVERNOURS IN DANGEROUS AND DOUBTFUL TIMES* (1652), *reprinted in* *PATRIARCHA AND OTHER WRITINGS*, *supra* note 131, at 281.

¹³⁴ SIR ROBERT FILMER, *PATRIARCHA* (1680), *reprinted in* *PATRIARCHA AND OTHER WRITINGS*, *supra* note 131, at 7.

¹³⁵ *Id.*

¹³⁶ *See id.* at 7–8.

¹³⁷ *Id.* at 11–12 (alteration in original).

¹³⁸ *Id.* at 7.

¹³⁹ *Id.* at 13.

¹⁴⁰ *Id.* at 11.

¹⁴¹ *Id.* at 10.

¹⁴² *Id.*

and opted lamely to invite the reader to accept that “all [kings] either are, *or are to be reputed as* the next heirs to those progenitors who were at first the natural parents of the whole people, and in their right succeed to the exercise of supreme jurisdiction.”¹⁴³ This clumsy corrective would seem to demolish, in effect, Filmer’s entire case for taking the story of Adam on its face.

If Filmer’s arguments seem unsatisfactory, they were no more plausible to his contemporary critics, John Locke and Algernon Sidney being the most eminent.

III. LOCKE AND SIDNEY CHALLENGE FILMER

The late seventeenth century English philosophers Locke and Sidney are now cherished as two of the greatest proponents for limited government, and in the eighteenth century they were among the most influential for the American leaders who would wage war against Britain.¹⁴⁴ Unfortunately for Filmer, Locke and Sidney would use their substantial talents to pummel his ideas. Both refuted the claim by Filmer and King James that God had given to kings a right of absolute dominion; both suggested instead that God had given to all peoples the right to alter or abolish government. In this sense, Locke and Sidney did not so much quash the basic idea of divine right as relocate it from the king to the people.¹⁴⁵ I will show in Parts V and VI that the avowedly religious arguments crafted by Locke and Sidney found expression among eighteenth century Americans who insisted on a right to alter or abolish government.

Writing a few years after Filmer’s *Patriarcha*, Sidney and Locke did not pull punches. Sidney trashed *Patriarcha* as “a heap of incongruities and contradictions,”¹⁴⁶ full of “big words and little sense,”¹⁴⁷ and Locke mocked it as “glib Nonsense put together in well sounding English.”¹⁴⁸ Both writers accused Filmer of failing to deliver a coherent narrative about the fabled devise of patriarchy from Adam to present day kings.¹⁴⁹ Even granting that Adam, and after the Flood, Noah, might have been mankind’s king, Sidney sighed that the rest of Filmer’s story unraveled of its own logic. Start with the premise that “the same law that gave to my father a power over

¹⁴³ *Id.* (first alteration added) (emphasis added).

¹⁴⁴ Professor Thomas West writes, “Thomas Jefferson regarded John Locke and Algernon Sidney as the two leading sources for the American understanding of the principles of political liberty and the rights of humanity.” West, *supra* note 87, at xv.

¹⁴⁵ Professor John Figgis argues that “most of the English writers on behalf of resistance [in the seventeenth century] assert for law and custom a claim to absolute authority by Divine Right.” FIGGIS, *supra* note 111, at 177–78. Thus, for Figgis, “all theories of government [in the seventeenth century] are theories of Divine Right.” *Id.* at 177.

¹⁴⁶ ALGERNON SIDNEY, DISCOURSES CONCERNING GOVERNMENT 191 (Thomas G. West ed., Liberty Fund 1996) (1698).

¹⁴⁷ *Id.* at 309.

¹⁴⁸ LOCKE, *supra* note 2, at 137–38 (emphasis omitted).

¹⁴⁹ *See id.*; SIDNEY, *supra* note 146, at 191–92.

me, gives me the like over my children; and if I had a thousand brothers, each of them would have the same over their children.”¹⁵⁰ If the power transmitted was absolute, the number of kings in four thousand years, Sidney quipped, would be “equal to the men that are in the world.”¹⁵¹ Besides, Filmer’s obtuse equation of authority with inheritance would beseech “the wise, to depend on the will of fools; the strong and valiant, to expect defence from the weak or cowardly; and all in general to receive justice from him, who neither knows nor cares for it.”¹⁵² Such results would not have been issued by a God “who disposes all things in wisdom and goodness, and appoints a due place for all.”¹⁵³

Locke was plainly vexed by Filmer’s blissfully naïve assumptions about inheritance:

I go on then to ask whether in the inheriting of this *Paternal Power*, this *Supreme Fatherhood*, The Grand-Son by a Daughter, hath a Right before a Nephew by a Brother? Whether the Grand-Son by the Eldest Son, being an Infant, before the Younger Son a Man and able? . . . [O]r any other Man, descended by a Male Line?¹⁵⁴

No matter, Locke could hardly believe that God would reward Adam with kingship after the latter’s profligacy plunged mankind into sin.¹⁵⁵ “[T]would be hard to imagine,” Locke retorted, “that God, in the same Breath, should make him *Universal Monarch* over all Mankind, and a day labourer for his Life; turn him out of *Paradise*, to till the Ground, and at the same time, advance him to a Throne, and all the Privileges and Ease of Absolute Power.”¹⁵⁶ What Filmer gave us, groaned Locke, was one dolt of a god.

This was just the beginning. Locke and Sidney, as I show in the next sections, used their attacks on Filmer as springboards for their defenses of people’s right to alter or abolish government.

A. Sidney: God’s Gift of Liberty to All

God, Sidney insisted, had not granted Adam the gift of global patriarchy, as Filmer claimed; God instead had given to *all* men the gift of individual liberty. “God in goodness and mercy to mankind, hath with an equal hand given to all the benefit of

¹⁵⁰ SIDNEY, *supra* note 146, at 22.

¹⁵¹ *Id.* at 29–30.

¹⁵² *Id.* at 23.

¹⁵³ *Id.*

¹⁵⁴ LOCKE, *supra* note 2, at 230.

¹⁵⁵ *Id.* at 172 (arguing that Adam’s role in man’s fall, although smaller than Eve’s, was nevertheless a disobedience to God and that Adam was punished with the need to “work for his living” accordingly).

¹⁵⁶ *Id.* (emphasis omitted) (citation omitted).

liberty, with some measure of understanding how to employ it”¹⁵⁷ Sometimes, Sidney dispatched a barebones definition of liberty as freedom from interference (“being only an exemption from the dominion of another”),¹⁵⁸ other times, liberty was a more substantive idea about self-direction (“a capacity of judging what is good”).¹⁵⁹ Either way, Sidney held that God did not cause “some to be born with crowns upon their heads, and all others with saddles upon their backs.”¹⁶⁰ God, in other words, would never have condoned Filmer’s thesis.

This didn’t mean that Sidney cheered for unfettered license. “No one man or family is able to provide that which is requisite for their convenience or security,” Sidney observed, “whilst everyone has an equal right to everything, and none acknowledges a superior to determine the controversies, that upon such occasions must continually arise.”¹⁶¹ Wanting such a superior, men willingly submit themselves to government.¹⁶² Yet the logic of liberty requires that men enter government only by consent because “every man is a king till he divest himself of his right, in consideration of something that he thinks better for him.”¹⁶³ In this way, Sidney’s account of God as the grantor of liberty served as the scaffold to prop up consent as the basis for political legitimacy.¹⁶⁴ As Sidney later stated, liberty is “the gift of God and nature, no otherwise to be restrained than by laws made with [the people’s] consent.”¹⁶⁵ Once established, the government’s leaders have “no other power but what is so conferred upon them by that multitude.”¹⁶⁶ The leaders must work only for “the publick good, for which they were instituted.”¹⁶⁷

¹⁵⁷ SIDNEY, *supra* note 146, at 20. Apparently lacking faith in the reader’s memory, Sidney repeatedly asserts that people’s liberty was bestowed by God. There is, Sidney writes, “that universal liberty which God hath given to mankind; and every man is a king till he divest himself of his right, in consideration of something that he thinks better for him.” *Id.* at 25. So, too, he states that there is a “principle of liberty in which God created us,” *id.* at 8; liberty is “a universal right conferred upon [men] by God and nature,” *id.* at 49; liberty is “the gift of God and nature,” *id.* at 130; liberty is “granted by God to all mankind,” *id.* at 189; liberty is “a gift bestowed by God upon his children and people,” *id.* at 335; and that God “gave [people] a law of liberty; and if they fell into the shame and misery that accompanies slavery, it was their own work,” *id.* at 337.

¹⁵⁸ *Id.* at 510.

¹⁵⁹ *Id.* at 20.

¹⁶⁰ *Id.* at 511.

¹⁶¹ *Id.* at 30.

¹⁶² *Id.* at 30–31 (stating that men do not yield their liberty unless by general consent, but because all men seek good, they choose to be governed in order to gain society).

¹⁶³ *Id.* at 25; *see also id.* at 49.

¹⁶⁴ Consent for Sidney “is the ground of all just governments; for violence or fraud can create no right; and the same consent gives the form to them all, how much soever they differ from each other.” *Id.* at 30–31.

¹⁶⁵ *Id.* at 130.

¹⁶⁶ *Id.* at 99; *see also id.* at 521.

¹⁶⁷ *Id.* at 49. The meaning of “publick good” is not entirely clear, but Sidney remarked: “If the publick safety be provided, liberty and propriety secured, justice administered, virtue

If government fails to honor its ends and mind its limits, those responsible, Sidney warned, “may be restrained or chastised.”¹⁶⁸ More radically, he counseled that “[i]f the multitude . . . do institute [government], the multitude may abrogate; and they themselves, or those who succeed in the same right, can only be the fit judges of the performance of the ends of the institution.”¹⁶⁹ And God, having given liberty to all, would approve of those who fight tyranny. “If the laws of God and men are therefore of no effect,” and “when the magistracy is left at liberty to break them,” Sidney declared, “sedition[s], tumults, and war[s]. . . are justified by the laws of God and man.”¹⁷⁰ (Sidney mischievously added that a prince who abused the people would be, in effect, rebelling against God, for God would never wish for people to live under tyranny.)¹⁷¹

Sidney’s turn to Christianity required him to negotiate the barbed briar that was Paul’s epistle to the Romans, a text eagerly enlisted by Filmer and King James to justify the divine right of kings:¹⁷²

¹Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God.

²Whosoever therefore resisteth the power, resisteth the ordinance of God: and they that resist shall receive to themselves damnation.

³For rulers are not a terror to good works, but to the evil. Wilt thou then not be afraid of the power? do that which is good, and thou shalt have praise of the same:

⁴For he is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain: for he is the minister of God, a revenger to execute wrath upon him that doeth evil.¹⁷³

Paul had indirectly called Emperor Nero the “minister of God,”¹⁷⁴ or so James claimed, even though Nero was a “bloody tyrant, an infamie to his aage, and a monster to the

encouraged, vice suppressed, and the true interest of the nation advanced, the ends of government are accomplished . . .” *Id.* at 444.

¹⁶⁸ *Id.* at 21.

¹⁶⁹ *Id.* When the government threatens the people’s liberty, there may exist “just grounds” for rebellion and “it may be neither a crime nor infamy to do it.” *Id.* at 520.

¹⁷⁰ *Id.* at 220.

¹⁷¹ *See id.* at 522.

¹⁷² FIGGIS, *supra* note 111, at 18–19 (arguing “that Kings and all in authority were vicars of God” and that Christianity strengthened “the notion that obedience was a divine command”).

¹⁷³ *Romans* 13:1–4.

¹⁷⁴ KING JAMES I, A MEDITATION UPON THE 27, 28, 29 VERSES OF THE XXVII CHAPTER OF SAINT MATTHEW. OR, A PATERNE FOR A KINGS INAUGURATION, *in* KING JAMES VI AND I, POLITICAL WRITINGS, *supra* note 94, at 241.

world, being also an idolatrous persecutor.”¹⁷⁵ James exclaimed that Paul implored people to “*obey and serve for conscience sake*” even such a monster.¹⁷⁶ Filmer nodded in agreement: “Saint Peter and Saint Paul, the two chief of the apostles, writ their epistles at such time” when Emperor Nero terrorized the people.¹⁷⁷ Still, Paul directed the people to obey their monarch, Filmer noted with satisfaction.¹⁷⁸

An irritated Sidney demanded, “[b]ut what if there be no monarch in the place?”¹⁷⁹ “Had the Apostle spoken in vain,” Sidney asked, “if the liberty of the Romans had not been overthrown by the fraud and violence of Caesar?”¹⁸⁰ Or, suppose, “God [had] no minister amongst them till law and justice was overthrown, the best part of the people destroy’d by the fury of a corrupt mercenary soldiery, and the world subdued under the tyranny of the worst monsters that it had ever produced?”¹⁸¹ Under such calamity, would God “patronize no governors or governments but such as these?”¹⁸² Sidney indignantly posed: “Does God uphold evil, and that only?”¹⁸³

Paul was not an apologist for the divine right of kings, Sidney argued; the former endorsed resistance to tyrants. Read, Sidney began, these words from Paul: “Rulers . . . are not terror to good works, but to the evil: Wilt thou then not be afraid of the power? do that which is good, and thou shalt have praise of the same; for he is the minister of God, a revenger to execute wrath upon him that doth evil.”¹⁸⁴ For Sidney, the passage meant that “[h]e therefore is only the minister of God, who is not a terror to good works, but to evil; who executes wrath upon those that do evil, and is a praise to those that do well.”¹⁸⁵ And “he who doth well, ought not be afraid of the power, for he shall receive praise.”¹⁸⁶ It was thus absurd that “Tiberius, Caligula, Claudius, Nero, and the rabble of succeeding monsters, were a praise to those who did well, and a terror to those who did ill.”¹⁸⁷

This excursion into Paul’s epistle might seem a pedantic digression from the central topic of American popular sovereignty, but the meaning of Paul’s epistle will assume, as I show in Part V, political significance in the efforts by American clergy to come to terms with the right to alter or abolish government.

¹⁷⁵ KING JAMES I, *supra* note 97, at 71–72.

¹⁷⁶ *Id.* at 71.

¹⁷⁷ FILMER, *supra* note 133, at 240.

¹⁷⁸ *See id.* (explaining how both Saint Peter and Saint Paul did not take notice of popular government, but instead supported the king).

¹⁷⁹ *Id.*

¹⁸⁰ SIDNEY, *supra* note 146, at 370.

¹⁸¹ *Id.* at 370–71.

¹⁸² *Id.* at 371.

¹⁸³ *Id.*

¹⁸⁴ *Id.* at 371–72 (quoting *Romans* 13:3–4).

¹⁸⁵ *Id.* at 372.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

B. Locke: God, Not the King, Owns Us

For the great John Locke, Filmer's chief failing was his morally serene endorsement of slavery. Accepting wholesale the axiom that kings had absolute right, Filmer, charged Locke, permitted kings to be indifferent to "the Laws by which they are constituted, and are to govern, and the Conditions under which they enter upon their Authority."¹⁸⁸ Locke feared that such power would reduce "all Subjects to the utmost Misery of Tyranny and Oppression," and the king would never be required to seek the people's consent.¹⁸⁹

Locke's criticism of slavery had religious origins. We could not submit ourselves to slavery, Locke explained, because we were "all the Workmanship of one Omnipotent, and infinitely wise Maker; . . . they are his Property, . . . made to last during his, not one another's Pleasure."¹⁹⁰ The argument that we were owned by God challenged the king's claim of absolute power. "For a Man, not having the Power of his own Life, cannot, by Compact, or his own Consent, enslave himself to any one, nor put himself under the Absolute, Arbitrary Power of another, to take away his Life, when he pleases."¹⁹¹ Adam and his mythic heirs, then, could not possess absolute right, for none could "give Life to that which has yet no being" or "frame and make a living Creature, fashion the parts, and mould and suit them to their uses, and having proportion'd and fitted them together, . . . put into them a living Soul."¹⁹² To Locke, Filmer's story of Adam and his heirs was bogus.

Locke supplemented his campaign to discredit absolute monarchy by introducing a conceptual prop called the "state of nature."¹⁹³ The state of nature was the natural condition of man without government.¹⁹⁴ Trying to position himself as a sober empiricist against Filmer's fairy tale narrator, Locke dispassionately observed that the state of nature was evidenced by native peoples in Peru and America.¹⁹⁵ Anthropologically shallow by our standards, Locke's point was that the world did not begin with the anointed Adam, but with men in a state of nature who were born into "a State of perfect Freedom to order their Actions, and dispose of their Possessions, and Persons as they think fit, within the bounds of the Law of Nature, without asking leave, or depending upon the Will of any other Man."¹⁹⁶ While a state of liberty, it was not

¹⁸⁸ LOCKE, *supra* note 2, at 142.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* at 271.

¹⁹¹ *Id.* at 284 (emphasis omitted). By "men," Locke apparently meant women as well, at least for some purposes: "The Power of the Husband being so far from that of an absolute Monarch, that the Wife has, in many cases, a Liberty to separate from him; where natural Right, or their Contract allows it. . . ." *Id.* at 321 (emphasis omitted).

¹⁹² *Id.* at 179.

¹⁹³ *Id.* at 269.

¹⁹⁴ *See id.*

¹⁹⁵ *See id.* at 277.

¹⁹⁶ *Id.* at 269 (emphasis omitted).

a state of license.¹⁹⁷ Men were expected in the state of nature to comport themselves with a “Law of Nature.”¹⁹⁸ “Reason” was itself “that law” and “teaches all Mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his Life, Health, Liberty, or Possessions.”¹⁹⁹ Lest the references to reason and fairness appear to flow from some crypto humanism, Locke directly acknowledged God as the origin: One who violated the law of nature “declares himself to live by another Rule, than that of reason and common Equity, which is that measure *God* has set to the actions of Men, for their mutual security.”²⁰⁰ Observe how “reason,” as Locke defined it, was incompatible in two respects with Filmer’s patriarchalism. First, reason, properly used, admitted the ethical principle that all men were naturally “equal and independent,” not the king’s lackeys.²⁰¹ Second, Locke’s conception of reason presumed that men possessed the mental faculty to discover moral truths in the law of nature.²⁰²

Upon discovering these moral truths, men in the state of nature had the right to enforce them.²⁰³ This led to intractable problems, however. “For though the Law of Nature be plain and intelligible to all rational Creatures,” Locke explained, “yet Men being biassed by their Interest, as well as ignorant for want of study of it, are not apt to allow of it as a Law binding to them in the application of it to their particular Cases.”²⁰⁴ And “[m]en being partial to themselves,” they will often resort to “[p]assion and Revenge.”²⁰⁵ Wanting in the state of nature, then, was “a known and indifferent Judge” to determine conflicts according to the law of nature.²⁰⁶

Men thus consented with each other to create a community—a “civil society,” as Locke called it²⁰⁷—and then to erect a government therein. The admission price for civil society was that people surrender their rights to enforce the law of nature and heed instead the laws created by government.²⁰⁸ People do not, however, *completely* surrender their right to enforce the law of nature. Namely, the people may “remove or *alter the Legislative*, when they find the Legislative act contrary to the trust reposed in them.”²⁰⁹ For the government held a “Fiduciary Power to act for certain ends”²¹⁰ and the government was not permitted to “destroy the Property of the People, or to

¹⁹⁷ *Id.* at 270–71.

¹⁹⁸ *Id.* at 271.

¹⁹⁹ *Id.*

²⁰⁰ *Id.* at 272 (first emphasis omitted; second emphasis added).

²⁰¹ *See id.* at 271.

²⁰² *See id.* at 271–72.

²⁰³ *Id.* at 271, 352.

²⁰⁴ *Id.* at 351.

²⁰⁵ *Id.*

²⁰⁶ *Id.* (emphasis omitted).

²⁰⁷ *Id.* at 324.

²⁰⁸ *Id.* at 352.

²⁰⁹ *Id.* at 367 (second emphasis omitted).

²¹⁰ *Id.*

reduce them to Slavery under Arbitrary Power.”²¹¹ This was not to suggest that “Revolutions happen . . . upon every little mismanagement in publick affairs,”²¹² but only if there was “a long train of Abuses, Prevarications, and Artifices.”²¹³ Locke also distinguished revolutions from rebellions, the latter being “an Opposition, not to Persons, but Authority, which is founded only in the Constitutions and Laws of the Government.”²¹⁴

This rhetoric of revolution and its attendant reliance on religion would be employed in the service of the American Revolution, as I show in Parts V and VI. Both Locke and Sidney sought to limit absolute monarchy in the late seventeenth century; writing nearly one hundred years prior to the American revolution, neither wrote to inspire the aggrieved colonists living in the forlorn wilds of America. Nonetheless, the Americans, in their own hour of political need, found guidance from Locke and Sidney in shaping arguments about the right of peoples to alter or abolish government.²¹⁵

IV. STRUGGLING AUTHORITIES IN AMERICA

If religion is to serve as a resource to help people conceive a right to alter or abolish government, the people must occupy a partial autonomy from governmental coercion where they may make meaningful choices and engage in thoughtful reflection about religion.²¹⁶ Should that conclusion seem unwarranted, imagine a government that controlled every aspect of the people’s religious expression and had inculcated in every person the belief that the governmental rulers were gods to whom was due consummate obedience. Under these circumstances—none too alien for those in nations like North Korea—religion, far from being the balm of revolution, would be the cement of totalitarianism. The right to alter or abolish government, therefore, could have found religious roots only in circumstances where the people exercised some meaningful autonomy from the government.

So it is ironic that America’s colonial history would begin with regimes that used religion (or were used by religion) to enforce norms of strict deference. Consider the two most important English colonies in the early seventeenth century: Virginia and Massachusetts. Virginia was founded by a company chartered by King James I and

²¹¹ *Id.* at 412 (emphasis omitted).

²¹² *Id.* at 415 (emphasis omitted).

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ Indeed, Locke and Sidney are easily among the two most influential thinkers for the colonists. *See* MICHAEL P. ZUCKERT, *NATURAL RIGHTS AND THE NEW REPUBLICANISM* 20 (1994) (“‘Sidney’s and Cato’s are the only political works that appear in the [colonial] libraries with anywhere near the frequency of Locke’s books.’”); *see also supra* note 144 and accompanying text.

²¹⁶ *See* Mark E. Brandon, *Family at the Birth of American Constitutional Order*, 77 TEX. L. REV. 1195, 1227–28 (1999).

its official established church was Anglicanism.²¹⁷ In 1611, Virginia had a law that disciplined with fines, jail, and whippings employees who failed to attend Anglican church services or catechism.²¹⁸ Constant absences at Sabbath were to be punished with death.²¹⁹ Likewise, in 1641 a Massachusetts law grimly warned: "If any man after legall conviction shall have or worship any other god, but the lord god, he shall be put to death."²²⁰ And, another law threatened, "If any person shall Blaspheme the name of god, . . . he shall be put to death."²²¹

Despite these formal restrictions, the colonists were already gratifying themselves with a morally ambiguous independence. Control by religious officials proved difficult in a Virginia where, in 1662, just ten ministers catered to forty-five parishes separated by long distances across rough terrain.²²² Plus, Virginians had other things on their minds besides religion. They had to fight the Indians; as farmers, they had to subdue a harsh wilderness; and, not least, by 1620, for those in Jamestown (America's first boomtown) there were quick fortunes to be made by hoarding and selling goods, including "liquor and luxuries."²²³ On top of this, in Virginia, "[d]runkenness, gambling, brawling, and abuse of servants were so common that the government was almost helpless to stop them."²²⁴ Making things worse, women were only a quarter of the population, and thus families, and the stabilizing forces which they engender, were slow to develop.²²⁵ Not least, to the crimson chagrin of an Anglican Virginia, there roamed within the colony an undaunted troupe of Puritans, Quakers, and Catholics who, in defiance of Virginia's laws, sought out converts.²²⁶

Like Virginia, Massachusetts had an established church, Puritanism, that was supported by the state.²²⁷ But also like Virginia, Massachusetts had problems with sowing obedience to religious authority. For the first nine years, Plymouth Colony lacked an ordained minister, leaving Sabbath duties to a lay elder.²²⁸ Even by 1630, Massachusetts Bay had only five ministers, a distressingly inadequate number to serve the expanding population.²²⁹ This vacuum left Massachusetts vulnerable to

²¹⁷ FRANK LAMBERT, *THE FOUNDING FATHERS AND THE PLACE OF RELIGION IN AMERICA* 46 (2003).

²¹⁸ BONOMI, *supra* note 1, at 16.

²¹⁹ *Id.*

²²⁰ *THE BODY OF LIBERTIES OF THE MASSACHUSETTS COLONIE IN NEW ENGLAND* (1641), reprinted in 5 *THE FOUNDERS' CONSTITUTION* 46, 47 (Philip B. Kurland & Ralph Lerner eds., 1987).

²²¹ *Id.*

²²² BONOMI, *supra* note 1, at 16–17.

²²³ LAMBERT, *supra* note 217, at 53; see also BONOMI, *supra* note 1, at 16–17.

²²⁴ BONOMI, *supra* note 1, at 16.

²²⁵ *Id.*

²²⁶ LAMBERT, *supra* note 217, at 68–69.

²²⁷ See BONOMI, *supra* note 1, at 18.

²²⁸ See *id.*

²²⁹ *Id.*

proselytizing by Familists, Antinomians, Anabaptists, and other critics of Puritanism, as well as maverick Puritans like Roger Williams and Anne Hutchinson whose growing followers worried church leaders to no end.²³⁰ As the Harvard historian Samuel Eliot Morison observed of Massachusetts, “[e]arliest fanatics [were] everywhere.”²³¹ In a telling incident, Henry Dunster, then Harvard’s president, challenged church authority in 1654 when he publicly refused to present his newborn for Puritan baptism.²³²

The Puritans themselves limited the reach of their church. In England, the king was the head of the Church of England and discriminated against competing faiths like Puritanism.²³³ So it was sensible that in America the Puritans saw advantages to separating church and state.²³⁴ This did not mean that the clergy was irrelevant, of course. The Puritan clergy influenced the laity in choosing leaders and it advised government and interpreted the scriptural aspects of Massachusetts Bay’s laws.²³⁵ Unlike England, however, in Massachusetts, “[t]he right to vote and hold office was not revoked by loss of church membership.”²³⁶ The Puritan clergy could not remove government officials if they strayed from their faith. Governor John Winthrop of Massachusetts discerned: “non-membership [in church] may be a just cause of non-admission to the place of magistracy, but yet ejection out of his [church] membership will not be a just cause of ejecting him out of his magistracy.”²³⁷ Blasphemers and heretics could be punished in Massachusetts, but only by civil officials and mostly because religious outsiders were noisy threats to civil order rather than a disgrace to a Puritan god.²³⁸

The examples of Massachusetts and Virginia suggest that the colonists in those states enjoyed spaces of partial autonomy where government and its official religion could not exert total control. In these spaces, people could fashion their own beliefs, including in a manner that justified the right of resistance against government. Such partially autonomous spaces were available in other colonies. Pennsylvania’s Quakers welcomed religious differences in what its leader William Penn called a “Holy Experiment.”²³⁹ All Christians were permitted to become citizens and run for office; this included Roman Catholics, a bold decision at the time.²⁴⁰ Rhode Island began as a chaotic collection of religious fanatics and misfits whom no other colony wanted.²⁴¹

²³⁰ See *id.* at 18–19.

²³¹ *Id.* at 19.

²³² See *id.*

²³³ See LAMBERT, *supra* note 217, at 36, 82–83.

²³⁴ See *id.* at 82.

²³⁵ See *id.* at 83.

²³⁶ *Id.*

²³⁷ Letter from John Winthrop to Lord Saye and Sele, in *THE PURITAN TRADITION IN AMERICA, 1620–1730*, at 147, 149 (Alden T. Vaughan ed., 1997).

²³⁸ LAMBERT, *supra* note 217, at 84.

²³⁹ *Id.* at 102.

²⁴⁰ *Id.* at 100–01; see also BONOMI, *supra* note 1, at 35.

²⁴¹ See BONOMI, *supra* note 1, at 19–21, 34.

In a short time, Roger Williams, the colony's leader, would come to justify the diversity as a matter of principle.²⁴² Elsewhere, the minority English Catholics who held proprietorship of Maryland had no desire to provoke the state's Protestant majority.²⁴³ The Catholics thus refrained from establishing a formal church and instead afforded limited tolerance.²⁴⁴ Carolina, while an Anglican colony, welcomed Baptists, Huguenots, Quakers, Presbyterians, and even Jews, who could help defend it against the bordering French and Spanish settlements.²⁴⁵ Of the 4000 white settlers in southern Carolina in 1700, "some 500 were Huguenots, 1300 Presbyterians, 400 Baptists, and 100 Quakers, while another 1700 adhered to the mother Church of England."²⁴⁶ Up north, New York was colonized by the Dutch West India Company. Peter Stuyvesant, the colony's anti-Semitic director-general,²⁴⁷ once asked the board to halt the immigration of Jews as a threat to morality.²⁴⁸ Scarcely less prejudiced than Stuyvesant, the board of directors rejected the request, citing, among other reasons, the many shares owned by Dutch Jews.²⁴⁹

If state-supported churches in America never enjoyed anything like complete control in the seventeenth century, conditions in the mid-eighteenth century did not improve their chances. For the latter was marked by social forces that eroded established authorities. America's population had doubled and then redoubled since 1700 and people left towns for the frontier where qualified ministers were few and the reach of government tenuous.²⁵⁰ From across the Atlantic, "[t]ens of thousands of immigrants arrived, many—such as Ulster Presbyterians from Northern Ireland and Pietists from Germany—bringing notions that challenged religious establishments and adding more sects to an already pluralistic society."²⁵¹ Then there was the dramatic uprising in the 1740s by a younger generation of fiery preachers across different sects who openly threatened the orthodoxy of the older priests in a movement that historians a century later would call the Great Awakening.²⁵² As historian Alice Baldwin observed, "The Great Awakening with its consequent confusions, political strife, and doctrinal discussions had stimulated men to new and lively thinking in religious and civil affairs."²⁵³ Meanwhile, the Enlightenment philosophies of Locke and Sidney invited the learned to question governmental authority and, by the mid-eighteenth

²⁴² See *id.* at 21, 34.

²⁴³ See *id.* at 21.

²⁴⁴ See *id.*

²⁴⁵ See *id.* at 32.

²⁴⁶ *Id.*

²⁴⁷ LAMBERT, *supra* note 217, at 133.

²⁴⁸ BONOMI, *supra* note 1, at 25.

²⁴⁹ *Id.*

²⁵⁰ See LAMBERT, *supra* note 217, at 123.

²⁵¹ *Id.* at 123–24.

²⁵² See BONOMI, *supra* note 1, at 133; see also BUTLER, *supra* note 14, at 164–65.

²⁵³ ALICE M. BALDWIN, *THE NEW ENGLAND CLERGY AND THE AMERICAN REVOLUTION* 80 (1958).

century, their arguments “soon became standard texts at Harvard, Yale, and William and Mary.”²⁵⁴ All of these disparate and sometimes coalescing phenomena undermined authority and impressed upon people the possibilities for individual choice in matters of religion and politics.

V. GOD OPPOSED THE DIVINE RIGHT OF KINGS

Filmer and King James had commended Paul’s epistle as divine benediction for absolute rule by even “monsters” like Nero.²⁵⁵ Scorning this interpretation, Sidney urged the reader to focus on Paul’s injunction that the king should work for the public good as a “minister of God”²⁵⁶ and to behave as one who was “not a terror to good works.”²⁵⁷ Sidney argued that when rulers acted to the contrary, Paul justified resistance by the people.²⁵⁸ About seventy years after Sidney’s death, American clergy elaborated this alternative reading.

Coiner of the phrase “No Taxation without Representation,” the Harvard-trained Jonathan Mayhew was heir to a prominent line of Congregational ministers.²⁵⁹ Only thirty years old when he penned it, his *Discourse Concerning Unlimited Submission*, was, according to the historian Bernard Bailyn, “the most famous sermon preached in pre-Revolutionary America.”²⁶⁰ Not wanting to invite quibbles about misquotation, Mayhew began the sermon by reciting all of Paul’s epistle in Romans 13:1–8.²⁶¹ Mayhew proceeded to explain why the epistle’s constituent parts justified people in resisting and, if necessary, doing away with unjust rulers.²⁶² But first, there was the business of clarifying those pesky lines adored by Filmer and James. Paul had ordered, “Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God.”²⁶³ Mayhew explained that this passage was intended for those “professed *Christians* [who] vainly imagine that they are wholly excused from all manner of duty and subjection to civil authority.”²⁶⁴ Paul had also announced, “[w]hosoever therefore resisteth the [government’s] power, resisteth the

²⁵⁴ LAMBERT, *supra* note 217, at 124.

²⁵⁵ See, e.g., SIDNEY, *supra* note 146, at 372.

²⁵⁶ *Id.*

²⁵⁷ *Id.* at 371–72 (emphasis omitted).

²⁵⁸ See *id.*

²⁵⁹ Bernard Bailyn, *Introduction* to JONATHAN MAYHEW, A DISCOURSE CONCERNING UNLIMITED SUBMISSION AND NONRESISTANCE TO THE HIGHER POWERS (1750), reprinted in 1 PAMPHLETS OF THE AMERICAN REVOLUTION, 1750–1776, at 204 (Bernard Bailyn ed., 1965).

²⁶⁰ *Id.*

²⁶¹ JONATHAN MAYHEW, A DISCOURSE CONCERNING UNLIMITED SUBMISSION AND NONRESISTANCE TO THE HIGHER POWERS, reprinted in 1 PAMPHLETS OF THE AMERICAN REVOLUTION, *supra* note 259, at 215.

²⁶² *Id.*

²⁶³ *Romans* 13:1.

²⁶⁴ MAYHEW, *supra* note 261, at 217.

ordinance of God: and they that resist shall receive to themselves damnation.”²⁶⁵ Here, too, Mayhew argued that Paul had in mind “ye [who] *factiously* disobey and resist the civil authority.”²⁶⁶

So Paul was not a zealot for unequivocal obedience, in Mayhew’s view. Absurdity abounded therefore when James summoned Paul for the proposition that people should counter the king’s misdeeds with only “sobbes and teares to God.”²⁶⁷ Suppose, Mayhew jeered,

[i]f [rulers] turn tyrants . . . we must not pretend to right ourselves unless it be by *prayers and tears* . . . and if these methods fail of procuring redress we must not have recourse to any other, but all suffer ourselves to be robbed and butchered at the pleasure of the *Lord’s anointed*, lest we should incur the sin of rebellion and the punishment of damnation.²⁶⁸

Paeans to “turn the other cheek” were, from a common sense perspective, never meant to be taken literally, Mayhew argued.²⁶⁹ The maxim to obey had its exceptions, too. Obedience, explained Mayhew, was only due to “good rulers.”²⁷⁰ Called “God’s ministers” by Paul, “[r]ulers have no authority from God to do mischief.”²⁷¹ Mayhew argued that when magistrates “rob and ruin the public instead of being guardians of its peace and welfare, they immediately cease to be the ordinance and ministers of God and no more deserve that glorious character than common pirates and highwaymen.”²⁷² Such knaves are “not God’s ministers but Satan’s.”²⁷³

According to Mayhew, Paul believed that when a ruler “turns tyrant and makes his subjects his prey to devour . . . we are bound to throw off our allegiance to him and to resist.”²⁷⁴ By enjoining the king from doing evil, Paul “implicitly authorizes and even *requires* us to make resistance whenever this shall be necessary to the public safety and happiness.”²⁷⁵ A local analogy was in order. “Suppose,” said Mayhew “[a] parent at length runs distracted, and attempts, in his mad fit, to cut all his children’s throats.”²⁷⁶ In this case, “is not the reason before assigned why these children should obey their parent while he continued of a sound mind, namely, their common good,

²⁶⁵ *Romans* 13:2.

²⁶⁶ MAYHEW, *supra* note 261, at 218 (emphasis added).

²⁶⁷ KING JAMES I, *supra* note 97, at 72.

²⁶⁸ MAYHEW, *supra* note 261, at 222 (first emphasis added).

²⁶⁹ *Id.* at 223.

²⁷⁰ *Id.* at 226 (emphasis omitted).

²⁷¹ *Id.* at 228 (emphasis omitted).

²⁷² *Id.* (emphasis omitted).

²⁷³ *Id.* at 231 (emphasis omitted).

²⁷⁴ *Id.* at 232.

²⁷⁵ *Id.* (emphasis added).

²⁷⁶ *Id.*

a reason equally conclusive for disobeying and resisting him since he is become delirious and attempts their ruin?"²⁷⁷

Mayhew was not the only one upset over attempts by Filmer and James to hijack Paul's message. There was Charles Chauncy, a Harvard graduate and, in his time, "the most influential clergyman in[] Boston."²⁷⁸ Chauncy delivered an election sermon in 1747 to the Massachusetts Governor, the King's Council, and the state house of representatives.²⁷⁹ Seasoned with quotes from Paul's epistle, the sermon acknowledged that rulers are "*the ministers of God*; and *the powers that be* are declared to be *ordained of God*."²⁸⁰ Nonetheless, Chauncy, paraphrasing Paul, insisted that rulers "must be just in the use of their power; confining it within the limits prescribed in the constitution they are under."²⁸¹ So, too, Chauncy spoke that "[t]is the just exercise of power that distinguishes right from might; authority that is to be revered and obeyed, from violence and tyranny, which are to be dreaded and deprecated."²⁸² Just rulers also had to be impartial: "They should not, when upon the business of framing and passing acts, suffer themselves to be swayed by any wrong bias, either from self-will, or self-interest . . ."²⁸³ Scripture, Chauncy reminded, required such conduct.²⁸⁴ For good measure, he announced that the power of tyrants "ought to be taken out of their hands, that they might no longer be under advantages to injure their brethren of the same community."²⁸⁵

The itinerant Baptist preacher John Allen made similar arguments in a 1772 Boston sermon directed to the Earl of Dartmouth, Her Majesty's secretary of state

²⁷⁷ *Id.* (emphasis omitted).

²⁷⁸ Ellis Sandoz, *Introduction* to CHARLES CHAUNCY, A SERMON PREACHED BEFORE HIS EXCELLENCY WILLIAM SHIRLEY, ESQ; THE HONOURABLE HIS MAJESTY'S COUNCIL AND HOUSE OF REPRESENTATIVES OF THE PROVINCE OF THE MASSACHUSETTS-BAY IN NEW ENGLAND (May 27, 1747), *reprinted in* POLITICAL SERMONS OF THE AMERICAN FOUNDING ERA, 1730–1805, at 138 (Ellis Sandoz ed., 1991) [hereinafter POLITICAL SERMONS].

²⁷⁹ *Id.*

²⁸⁰ CHARLES CHAUNCY, A SERMON PREACHED BEFORE HIS EXCELLENCY WILLIAM SHIRLEY, ESQ; THE HONOURABLE HIS MAJESTY'S COUNCIL AND HOUSE OF REPRESENTATIVES OF THE PROVINCE OF THE MASSACHUSETTS-BAY IN NEW ENGLAND (May 27, 1747), *reprinted in* POLITICAL SERMONS, *supra* note 278, at 144 (citations omitted).

²⁸¹ *Id.* at 146 (emphasis omitted).

²⁸² *Id.* at 148.

²⁸³ *Id.*

²⁸⁴ *See id.* at 153 (quoting *Deuteronomy* 19:16: "Thou shalt not wrest judgment, thou shalt not respect persons, neither take a gift; for a gift doth blind the eyes of the wise, and pervert the words of the righteous.").

²⁸⁵ *Id.* Gad Hitchcock, the Congregational minister, also argued that the Bible holds that "the people [are the] judges of the good or ill effects of [government] administration . . ." GAD HITCHCOCK, AN ELECTION SERMON (1774), *reprinted in* 1 AMERICAN POLITICAL WRITING DURING THE FOUNDING ERA, 1760–1805, at 284 (Charles S. Hyneman & Donald S. Lutz eds., 1983) [hereinafter POLITICAL WRITING]. And Hitchcock referred to Saint Paul as "that great patron of liberty," as suggested by the latter's statement that the ruler "is the minister of God to thee [the people] for good." *Id.* at 285.

for the colonies.²⁸⁶ Allen, like Locke and Sidney, eschewed Adam's claim of kingship.²⁸⁷ In its stead, Allen commended an empathic equality. "The law of God directs us to do unto others," he said, "as we would they should do unto us."²⁸⁸ He continued:

As a fly, or a worm, by the law of nature has as great a right to liberty, and freedom (according to their little sphere in life), as the most potent monarch upon the earth: And as there can be no other difference between your Lordship, and myself, but what is political, I therefore without any further apology, take leave to ask your Lordship, whether any one that fears GOD, loves his neighbour as himself (which is the true scripture-mark of a christian), will oppress his fellow-creatures?²⁸⁹

By stipulating that God gave all equal rights, Allen then could insist that "the people are the right and foundation of power and authority, the original seat of majesty—the author of laws, and the creators of officers to execute them."²⁹⁰ Accordingly, "a king is the guardian and trustee of the rights and laws of the people, but a tyrant destroys them."²⁹¹ Alluding to the king's effort to tax the colonists, for example, Allen announced that "[n]ature forbids it; the law of God condemns it. And no law, but that of tyranny, can desire it."²⁹² Allen also pruned examples from the Bible: "Was not David made a king for the people? Was not Saul? Was not Solomon? Then let not kings think too highly of themselves; for the GOD of heaven never intended they should be any more than the servants of the people . . ."²⁹³ Allen then briskly turned to the king of England: "[I]f the king of England is not happy let him thank himself for it: It is not his people's fault—it is his own. For that king is not worthy to reign, that does not make the rights of his people the rule of his actions . . ."²⁹⁴ If a people wage war against a king who has destroyed their liberties, it "is no rebellion."²⁹⁵ If anything, such a king would "be a rebel to GOD."²⁹⁶ Notice the

²⁸⁶ Ellis Sandoz, *Introduction* to JOHN ALLEN, AN ORATION UPON THE BEAUTIES OF LIBERTY (Dec. 3, 1772), reprinted in POLITICAL SERMONS, *supra* note 278, at 305.

²⁸⁷ Nathaniel Niles of Newburyport, Massachusetts also narrated a story of creation where Adam makes no appearance: "Originally, there were no private interests. The world and all things in it, were the common interests of all the inhabitants, under God the great owner." NATHANIEL NILES, TWO DISCOURSES ON LIBERTY, reprinted in 1 POLITICAL WRITING, *supra* note 285, at 260–61.

²⁸⁸ JOHN ALLEN, AN ORATION UPON THE BEAUTIES OF LIBERTY (Dec. 3, 1772), reprinted in POLITICAL SERMONS, *supra* note 278, at 305.

²⁸⁹ *Id.*

²⁹⁰ *Id.* at 307.

²⁹¹ *Id.*

²⁹² *Id.* at 311.

²⁹³ *Id.* at 316.

²⁹⁴ *Id.* (emphasis omitted).

²⁹⁵ *Id.* at 323.

²⁹⁶ *Id.*

resemblance to Sidney's argument, nearly a hundred years prior, that a tyrant was one who rebelled against God's command to respect the people's liberty.²⁹⁷

Elsewhere, there circulated a popular pamphlet ungainly titled *Defensive Arms Vindicated and the Lawfulness of the American War Made Manifest*.²⁹⁸ Dedicated to "General Washington," the anonymous author explained why God supported the people's right to wage war against tyrants.²⁹⁹ Tyrants, our author charged, were servants of the antichrist.³⁰⁰ And what of Paul's epistle? In words that would have pleased Sidney, our author tells us that "[t]he apostle here was, no doubt, speaking of lawful rulers, not tyrants."³⁰¹ As for Nero, that prickly darling of James and Filmer, our author explained that Paul never referred explicitly to Nero and probably meant for us to obey the Nero-hating Roman Senate.³⁰² Then there were those Biblical passages which instructed Christians to turn the other cheek.³⁰³ These, the author explained, referred to "private revenge and retaliation," not the "resisting of tyrants" who "violently endanger[ed] our lives, laws, religion, and liberties."³⁰⁴ For tyrants, the people should embrace the proverb that "[h]e that killeth with the sword must be killed with the sword."³⁰⁵

Abraham Williams, the fiery Congregational minister, also discussed Saint Paul in a sermon before the governor and the general court of Massachusetts.³⁰⁶ Paul, Williams insisted, believed that "Magistrates are God's Ministers, designed for Good to the *People*."³⁰⁷ For the "Voice of the people" is "the Voice of God."³⁰⁸ Accordingly, Paul intended for government "to secure Men from all Injustice, Violence and Rapine."³⁰⁹ In 1768, the lawyer Silas Downer spoke in Rhode Island of the "liberty

²⁹⁷ See SIDNEY, *supra* note 146, at 522–23.

²⁹⁸ DEFENSIVE ARMS VINDICATED AND THE LAWFULNESS OF THE AMERICAN WAR MADE MANIFEST, *reprinted in* POLITICAL SERMONS, *supra* note 278, at 713 [hereinafter DEFENSIVE ARMS].

²⁹⁹ Ellis Sandoz, *Introduction to* DEFENSIVE ARMS, *supra* note 298, at 712. While the pamphlet has been attributed to Stephen Case, the author has never been confirmed.

³⁰⁰ DEFENSIVE ARMS, *supra* note 298, at 728.

³⁰¹ *Id.* at 723.

³⁰² *Id.*

³⁰³ *Id.* at 727 (citing *Matthew* 5:39 and *Romans* 12:17).

³⁰⁴ *Id.*

³⁰⁵ *Id.* at 728. The clergyman Moses Mather, a member of Yale's Society of Fellows, argued that "[g]overnment originates (under God) from the people . . . their good is its ultimate object; and operates by securing to them, the enjoyment of their natural rights and civil privileges." MOSES MATHER, *Appendix to* AMERICA'S APPEAL TO THE IMPARTIAL WORLD, *reprinted in* POLITICAL SERMONS, *supra* note 278, at 486.

³⁰⁶ *Introduction to* ABRAHAM WILLIAMS, AN ELECTION SERMON (Aug., 13 1730), *reprinted in* 1 POLITICAL WRITING, *supra* note 285, at 3.

³⁰⁷ ABRAHAM WILLIAMS, AN ELECTION SERMON (Aug. 13, 1730), *reprinted in* 1 POLITICAL WRITING, *supra* note 285, at 7 (first emphasis omitted).

³⁰⁸ *Id.* at 15 (emphasis omitted).

³⁰⁹ *Id.* at 7.

which the GOD of nature hath given us.”³¹⁰ For Downer, religion “vanished at the deformed appearance of tyranny.”³¹¹ Compare this assessment with Filmer’s, almost one hundred years prior: “That there is no such form of government as a tyranny.”³¹² Filmer would have stoked the ire of Congregationalist pastor Daniel Shute. Shute’s 1768 election sermon observed that while rulers deserved respect, it was also true that “[l]ike other men,” rulers were “exposed to temptations, and perhaps to more and greater than others.”³¹³ Therefore, Shute argued,

[t]he doctrine of passive obedience and non-resistance in the unlimited sense it has been urged by some, came not down from above, as it can be supported neither by reason nor revelation; and therefore if any where, may be urged with a better grace by the rulers of darkness, in the regions below.³¹⁴

Likewise, Congregationalist minister Zabdiel Adams, cousin of John Adams, cried that Paul would never have supposed that “we should obey the unrighteous and oppressive commands of those in power, and *that*, not merely for *wrath*, but for *conscience sake*.”³¹⁵

Consider also Benjamin Colman, the Congregational pastor who had declined Harvard’s presidency but served as a trustee.³¹⁶ Sermonizing in 1730 before Massachusetts’s governor, Colman discussed Paul’s epistle.³¹⁷ At first, he nodded toward Filmer and James. “Let us know and keep our own place,” Colman read Paul as saying, “and do our duty to those whom GOD sets over us.”³¹⁸ This supplication was flanked by a warning to rulers. Colman quoted from Paul’s epistle: “‘Let *every* Soul be subject unto the higher Powers: For there is no Power but of GOD’”³¹⁹ Colman, illustrating Paul’s message, pointed to the first colonial leaders’ “generous regards to the publick” through which “GOD will have glory.”³²⁰ Leaders could not

³¹⁰ SILAS DOWNER, A DISCOURSE AT THE DEDICATION OF THE TREE OF LIBERTY (1768), *reprinted in* 1 POLITICAL WRITING, *supra* note 285, at 99.

³¹¹ *Id.*

³¹² FILMER, *supra* note 133, at 281.

³¹³ DANIEL SHUTE, AN ELECTION SERMON (May 26, 1768), *reprinted in* 1 POLITICAL WRITING, *supra* note 285, at 124.

³¹⁴ *Id.* at 126 (emphasis omitted).

³¹⁵ ZABDIEL ADAMS, AN ELECTION SERMON (1782), *reprinted in* 1 POLITICAL WRITING, *supra* note 285, at 543.

³¹⁶ Ellis Sandoz, *Introduction to* BENJAMIN COLMAN, GOVERNMENT: THE PILLAR OF THE EARTH (Aug. 13, 1730), *reprinted in* POLITICAL SERMONS, *supra* note 278, at 7–8.

³¹⁷ BENJAMIN COLMAN, GOVERNMENT: THE PILLAR OF THE EARTH (Aug. 13, 1730), *reprinted in* POLITICAL SERMONS, *supra* note 278, at 11.

³¹⁸ *Id.* at 21.

³¹⁹ *Id.* (quoting *Romans* 13:1) (emphasis added).

³²⁰ *Id.* at 22.

be trusted with their power and, by implication, the people with God's blessing would need to correct them when necessary. "Take away the fear of GOD'S government & judgment," Coleman cautioned, "and humane rule utterly falls, or corrupts into tyranny."³²¹

Like Coleman, Elisha Williams rejected the divine right of kings with its claim to absolute rule. In his 1744 pamphlet, Williams turned to the Gospel of Matthew: "'Be not ye called Rabbi; For one is your master even CHRIST, and all ye are Brethren: And call no Man your Father upon Earth; for one is your Father which is in Heaven: Neither be ye called Masters; for one is your master even CHRIST.'"³²² Williams added that

[A]ll Christians are charg'd upon the duty and obedience they owe to CHRIST, that they should none of them set themselves up for authoritative masters, judges, or directors of men in religious matters (as the Pharisees did); and likewise that they should not submit to any who should set themselves up as such.³²³

Here was a principle of equality that would underwrite a tacit justification for the people's right to alter or abolish government.

The principle resonated in the 1774 sermon by Samuel Sherwood, nephew of Aaron Burr, Sr., Princeton's president.³²⁴ Titled *A Sermon Containing Scriptural Instructions to Civil Rulers, and All Free-born Subjects*, Sherwood's work was one of the most famous in the Revolution.³²⁵ He made arguments analogous to those of Locke and Sidney. Like them, Sherwood believed that God was perfect while human beings were inherently fallible.³²⁶ Accordingly, no ruler was "infallibly right in all things, and cannot therefore be complied with in all instances, consistent with . . . the superior obligations we are under to the sovereign Ruler of the world."³²⁷ The "Ruler of the world . . . still maintains this rightful authority over us and has not given it by delegation, to any one among created beings."³²⁸

Instead of feigning infallibility, rulers, Sherwood asserted, should emulate those biblical kings who worked for the people. King David, for example, "had no notion of aggrandizing himself, and his nobility, by enslaving his subjects, and stripping

³²¹ *Id.*

³²² ELISHA WILLIAMS, THE ESSENTIAL RIGHTS AND LIBERTIES OF PROTESTANTS (1744), reprinted in POLITICAL SERMONS, *supra* note 278, at 81 (quoting *Matthew* 23:8–10).

³²³ *Id.*

³²⁴ SAMUEL SHERWOOD, SCRIPTURAL INSTRUCTIONS TO CIVIL RULERS (Aug. 31, 1774), reprinted in POLITICAL SERMONS, *supra* note 278, at 375.

³²⁵ *Id.*

³²⁶ *Id.* at 382.

³²⁷ *Id.*

³²⁸ *Id.*

them of their property, at his own arbitrary will and pleasure.”³²⁹ David was rather “the faithful servant of God, and his generation” and he “consider[ed] himself as appointed to serve [the people], whose rights and privileges were esteemed by him, more sacred and inviolable than those of the royal scepter and diadem.”³³⁰ (Compare this democratic rendering of David with Filmer’s gloss that David “was a king, and therefore bound to no laws, because kings are free from the bonds of any fault.”)³³¹

If rulers were not considered by the colonists to be divine and infallible, the latter considered people in general to possess the reason that was necessary to make meaningful decisions about their political future. I discuss this next.

VI. THE PEOPLE POSSESS REASON

Echoing the arguments of Locke and Sidney, the American clergy, I will show, argued that God had given people reason to discern moral principles and make meaningful decisions about self-direction. And because people were reasoning beings, government had to rest on their consent; when government transgressed its authority, the people were justified in their right to alter or abolish it.

The title of Nathanael Emmons’s 1778 sermon, *The Dignity of Man*, portended its optimism regarding man’s capacity for reason.³³² Where Filmer and King James once proclaimed that men should submit themselves without question to the king,³³³ Emmons announced that “man hath a capacity for holiness as well as knowledge.”³³⁴ Emmons argued that “[man’s] rational and moral faculties both capacitate and oblige him to be holy. His perception and volition, in connection with his reason and conscience, enable him to discern and feel the right and wrong of actions, and the beauty and deformity of characters.”³³⁵ Emmons believed that reason “renders [man] capable of doing justly, loving mercy, and walking humbly with God.”³³⁶ And, “as he is capable of growing in knowledge, so he is capable of growing in grace, in a constant and endless progression.”³³⁷ King James, who had boasted a god-like infallibility, would have condemned as irresponsible Emmons’s democratic assurance that all men “bear the image of God, in point of rationality.”³³⁸

Congregational minister Elizur Goodrich similarly spoke that “[t]he great and most universal principle and law of *rational* union and happiness, is the love of God

³²⁹ *Id.* at 383–84.

³³⁰ *Id.* at 384.

³³¹ FILMER, *supra* note 133, at 38.

³³² NATHANAEL EMMONS, *THE DIGNITY OF MAN* (1778), *reprinted in* POLITICAL SERMONS, *supra* note 278, at 884.

³³³ *See supra* notes 104–110, 138, and accompanying text.

³³⁴ EMMONS, *supra* note 332, at 891.

³³⁵ *Id.* at 891–92.

³³⁶ *Id.* at 892.

³³⁷ *Id.*

³³⁸ *Id.* at 896.

and of our neighbour.”³³⁹ The “first maxim derived from it,” Goodrich continued, “is that divine precept in the gospel, ‘whatsoever ye would that men should do unto you, do ye also the same unto them.’”³⁴⁰ More than religious doctrine, “from these principles must be derived the knowledge of all laws.”³⁴¹ Elsewhere, Richard Price, a Presbyterian minister and friend of Benjamin Franklin, rhapsodized: “I see the ardour for liberty catching and spreading; a general amendment beginning in human affairs; the dominion of kings changed for the dominion of laws, and the dominion of priests giving way to the dominion of reason and conscience.”³⁴² The latter statement was not intended, of course, to herald atheism. It was a yearning by Reverend Price for the end of the divine right of kings and the superstitions that nourished its oppressiveness. Price added with gratification, “I have lived to see a diffusion of knowledge, which has undermined superstition . . . I have lived to see the rights of men better understood than ever; and nations panting for liberty.”³⁴³

Israel Evans, Madison’s classmate at Princeton and a Presbyterian minister, delivered an election sermon in 1791 where he announced:

Nor hath the all-wise Creator invested any order of men with the right of judging for their fellow-creatures in the great concerns of religion. Truth and religion are subjects of determination entrusted to all men; and it is a privilege of all men to judge and determine for themselves.³⁴⁴

Evans added that “[s]lavery blots the image of the Creator, which was at first impressed upon man: it banishes knowledge, and courts misery,” but “men, enlightened, pursue with ardour the knowledge and recovery of their rights.”³⁴⁵ By contrast, “[i]n all the dark ages of the world, tyranny has been established upon the slavish ignorance of mankind.”³⁴⁶

The great Puritan Moses Mather believed that “[f]ree agency, or a rational existence, with its powers and faculties, and freedom of enjoying and exercising them, is the gift of God to man.”³⁴⁷ For Mather, the right of meaningful reflection was

³³⁹ ELIZUR GOODRICH, *THE PRINCIPLES OF CIVIL UNION AND HAPPINESS CONSIDERED AND RECOMMENDED* (May 10, 1787), *reprinted in* POLITICAL SERMONS, *supra* note 278, at 915 (emphasis added).

³⁴⁰ *Id.* (quoting *Matthew* 7:12).

³⁴¹ *Id.*

³⁴² RICHARD PRICE, *A DISCOURSE ON THE LOVE OF OUR COUNTRY* (1790), *reprinted in* POLITICAL SERMONS, *supra* note 278, at 1027.

³⁴³ *Id.*

³⁴⁴ ISRAEL EVANS, *A SERMON DELIVERED AT THE ANNUAL ELECTION* (1791), *reprinted in* POLITICAL SERMONS, *supra* note 278, at 1063.

³⁴⁵ *Id.* at 1071.

³⁴⁶ *Id.*

³⁴⁷ MOSES MATHER, *AMERICA’S APPEAL TO THE IMPARTIAL WORLD* (1775), *reprinted in* POLITICAL SERMONS, *supra* note 278, at 444.

something that could not be expunged by other than God: “The right of the donor, and the authenticity of the donation, are both incontestable; hence man hath an absolute property in, and right of dominion over himself, his powers and faculties . . . and uncontrolable by any but him, who created and gave them.”³⁴⁸ The theme of all people as possessing reason was taken up in 1768 by Daniel Shute in his election sermon to the Massachusetts Governor and House of Representatives:

The plan of the creator being thus manifestly adapted to promote the happiness of his creation, his conduct herein becomes a pattern to his creatures that are *rational moral agents*, and the rule of their duty, according to their measure; for all moral obligation on such, indubitably, arises from the will of God, as there is so exact a coincidence between his will, and the relative fitness of things; so that the nearer they resemble him, the nearer they will come to the perfect standard of right action, and the nearer they come to *this* the more happiness will be produced.³⁴⁹

Notice how Shute located rational moralism in all peoples whereas Filmer and James had restricted God-like properties to the king.³⁵⁰

The Massachusetts physician John Perkins, who was not avowedly Christian, reversed the order of inference by the clergy. Writing in 1771, Perkins inferred that God existed because man possessed reason: “Is it possible to believe that an infinitely wise and good Being, would have plac’d such a severe chastiser in our frame, were we really necessitated; but rather that he would have form’d us so as not wrongfully and injuriously to afflict ourselves[?]”³⁵¹ Perkins added, “[w]e should rather believe that he would have impressed mankind with an effectual bias to right conduct, or else with proper instincts for every laudable purpose.”³⁵²

³⁴⁸ *Id.* Chauncy, in a 1747 sermon, extolled that “the voice of reason is the voice of God.” CHAUNCY, *supra* note 280, at 143. Elizur Goodrich also referenced reason in his justification for resistance to tyranny:

When a constitutional government is converted into tyranny, . . . there ought not to be the least doubt but that a remedy consistent with this doctrine of the apostle, is provided in the laws of GOD and *reason*, for their preservation; nor ought resistance in such case to be called rebellion. But who will imagine, that GOD, whose first law, in the world of nature and *reason*, is order and love, has commissioned men of a private character . . . to inflame and raise the multitude. . . .

GOODRICH, *supra* note 339, at 923 (emphasis added).

³⁴⁹ SHUTE, *supra* note 313, at 111 (first emphasis added).

³⁵⁰ See *supra* notes 94, 100–102, and accompanying text.

³⁵¹ JOHN PERKINS, THEORY OF AGENCY: OR, AN ESSAY ON THE NATURE, SOURCE AND EXTENT OF MORAL FREEDOM (1771), *reprinted in* 1 POLITICAL WRITING, *supra* note 285, at 149.

³⁵² *Id.*

Such encomiums to reason were more than scholastic. As Locke and Sidney had shown, they paved the way for a concept of political legitimacy rooted in the consent of the governed. Consider Pastor Samuel Sherwood. He declared that God “has made mankind rational creatures; and left them to choose that which they apprehend to be most perfect in its nature and kind, and best suited to their state, situation and circumstances.”³⁵³ Observe how men being “rational” entitles them to a government of their choosing. Instead of anointing Adam, God, Sherwood insisted, made all “free-agents” in a “state of nature” that was “previous to their uniting as members of society.”³⁵⁴ In this state of nature, people enjoy “free choice to agree upon such a form of government . . . as they judge most conducive to their happiness and good.”³⁵⁵ As such, any one, as a matter of natural principle, “has no more claim than another to be, *jure divino*, or of divine right . . . than its being more conformable to right reason and equity, by the eternal rules of which, God has manifested it to be his will, that his rational creatures be governed.”³⁵⁶ Once established, the governmental rulers were prohibited from abusing their subjects. “[W]hen persons have entered by consent and free choice, into society,” Sherwood explained, “they must acknowledge themselves under strict and sacred obligations to act toward one another agreeable to the laws and constitution of that society whereof they are members.”³⁵⁷

Puritan minister Elisha Williams had something similar in mind. His thesis was that because all people possessed God-given reason, they could justifiably alter or abolish government.³⁵⁸ Like “the celebrated Lock[e],” Williams set out his arguments by beginning with a state of nature, prior to government.³⁵⁹ In this natural condition, “GOD,” Williams declared, had “given man an understanding to direct his actions” and “has given him therewith a freedom of will and liberty of acting, as properly belonging thereto.”³⁶⁰ The God-given liberty, however, did not permit “every one to do what he pleases without any regard to any law; for a rational creature cannot but be made under a law from its Maker.”³⁶¹ Instead, the liberty “consists in a freedom from any *superiour power on earth*” as well as adhering to a “law of nature,” which Williams also called a law of the “Maker.”³⁶² This law of nature, if studied with reason, yielded the precept that “all men are naturally equal in respect of jurisdiction or dominion one over another.”³⁶³

³⁵³ SHERWOOD, *supra* note 324, at 382.

³⁵⁴ *Id.*

³⁵⁵ *Id.*

³⁵⁶ *Id.* at 382–83.

³⁵⁷ *Id.* at 383.

³⁵⁸ WILLIAMS, *supra* note 322, at 57.

³⁵⁹ *Id.*

³⁶⁰ *Id.* at 56.

³⁶¹ *Id.*

³⁶² *Id.*

³⁶³ *Id.*

Men could not endure the state of nature, Williams explained, because many would either ignore the law of nature or fail to study it.³⁶⁴ Passion and revenge would ensue and property and person would be imperiled.³⁶⁵ The problem, at bottom, was the want of “known and indifferent judge[s] with authority to determine all differences according to the established law.”³⁶⁶ To remedy this problem, Williams announced that “reason teaches men to join in society, to unite together into a commonwealth.”³⁶⁷ Upon entering the commonwealth, Williams, following Locke, explained that everyone surrendered his right to do whatever he thinks proper to enforce the law of nature.³⁶⁸ Each person also relinquished his right to punish others.³⁶⁹ However, Williams stressed that “no more natural liberty or power is given up than is necessary for the preservation of person and property.”³⁷⁰ Further, the laws of the commonwealth must adhere to the law of nature and must derive from the people’s consent.³⁷¹ Williams concluded, “[h]ence then the fountain and original of all civil power is from the people, and is certainly instituted for their sakes.”³⁷² This statement presaged Madison’s *Federalist* 49 which states that “the people are the only legitimate fountain of power” and that “it is from them that the constitutional charter, under which the several branches of government hold their power, is derived.”³⁷³ Notice, too, how Williams’s statement inverted Filmer’s belief that the “subjection of children [and subjects] is the only fountain of all regal authority, by the ordination of God himself.”³⁷⁴ Lest his religiosity seem quiescent, Williams stressed: “There are too too many arbitrary governments in the world, where the people don’t make their own laws. These are not properly speaking governments but tyrannies; and are absolutely against the law of GOD”³⁷⁵ Under this definition, Filmer’s monarchy would be a tyranny in defiance of God.

Related arguments were delivered by Samuel West when he gave his 1776 sermon before the Massachusetts Council and state house of representatives.³⁷⁶ Drawing amply from “Mr. Locke,”³⁷⁷ he explained that men were given “right reason”³⁷⁸—which is also the “voice of God”³⁷⁹—such that they generally could determine the

³⁶⁴ See *id.* at 57–58.

³⁶⁵ See *id.*

³⁶⁶ *Id.* at 58 (emphasis omitted).

³⁶⁷ *Id.*

³⁶⁸ *Id.* at 59.

³⁶⁹ *Id.*

³⁷⁰ *Id.* at 60 (emphasis omitted).

³⁷¹ *Id.* at 58.

³⁷² *Id.*

³⁷³ THE FEDERALIST NO. 49 (James Madison), *supra* note 35, at 261.

³⁷⁴ FILMER, *supra* note 133, at 7.

³⁷⁵ WILLIAMS, *supra* note 322, at 59.

³⁷⁶ SAMUEL WEST, ON THE RIGHT TO REBEL AGAINST GOVERNORS (ELECTION DAY SERMON) (1776), *reprinted in* 1 POLITICAL WRITING, *supra* note 285, at 416.

³⁷⁷ *Id.* at 413.

³⁷⁸ *Id.* at 416.

³⁷⁹ *Id.*

“law of nature.”³⁸⁰ The law of nature prohibited that which is “immoral, or contrary to the will of God, and injurious to their fellow-creatures.”³⁸¹ Government becomes necessary because “[m]en of unbridled lusts” ignore the law of nature and “strong propensities of our animal nature often overcome the sober dictates of reason.”³⁸² Without government, people cannot enjoy “all those liberties and privileges which the Deity has bestowed upon [them]” which are “consistent with the public good.”³⁸³ The purpose of government, therefore, was to preserve liberty, not to subdue it.³⁸⁴ Against an oppressive government, the people could justifiably “renounce all submission.”³⁸⁵ For “no rational man” entered government to be oppressed.³⁸⁶ True, the public can misunderstand the facts but, unlike a given individual, “the public is always willing to be rightly informed, and when it has proper matter of conviction laid before it its judgment is always right.”³⁸⁷

Philips Payson took a somewhat different turn. Rather than elaborate the primacy of reason, he argued for the development of knowledge.³⁸⁸ As a scientist as well as a Congregational minister, Payson felt that the accumulation of knowledge was necessary for self-government and approved by God.³⁸⁹ “The voice of reason and the voice of God,” he wrote, “both teach us that the great object or end of government is the public good.”³⁹⁰ And “righteous government originates from the people, and is under their direction and control.”³⁹¹ To make meaningful decisions about their government, Payson explained, people had to be free from “ignorance.”³⁹² Accordingly, government should seek to promote “[e]very kind of useful knowledge.”³⁹³ As such, “[a] republican government and science mutually promote and support each other.”³⁹⁴

CONCLUSION

This Article has traversed two continents and nearly two centuries. It began with copious examples of the American people asserting in the Declaration of Independence,

³⁸⁰ *Id.* at 413.

³⁸¹ *Id.* at 414.

³⁸² *Id.* at 415.

³⁸³ *Id.*

³⁸⁴ *Id.* at 415–16.

³⁸⁵ *Id.* at 419.

³⁸⁶ *Id.* at 420.

³⁸⁷ *Id.* at 423.

³⁸⁸ See PHILIPS PAYSON, A SERMON (1778), reprinted in 1 POLITICAL WRITING, *supra* note 285, at 526–27.

³⁸⁹ See *id.* at 527–30.

³⁹⁰ *Id.* at 524.

³⁹¹ *Id.*

³⁹² *Id.* at 526.

³⁹³ *Id.* at 527 (emphasis added).

³⁹⁴ *Id.* at 526.

as well as their state and Federal constitutions, the right to alter or abolish government. Without discounting the secular origins of the right, I suggested that a religious one was also available. I looked to the early seventeenth century pronouncements of King James I and, later, Sir Robert Filmer. Both insisted that God had anointed kings to rule with absolute sovereignty; Saint Paul was eagerly enlisted by both men as biblical authority. Locke and Sidney, writing in the latter seventeenth century, argued that nothing in Saint Paul's epistle supported such a conclusion. If anything, Saint Paul, they argued, had implored rulers to dedicate themselves to the people's happiness, and that the people had a right from God, even a duty to Him, to overthrow despots. Rulers, Locke and Sidney explained, should not coerce their subjects into accepting some contrived account of the divine right of kings. Locke and Sidney argued that God had given all people the reason necessary for meaningful self-direction, including for matters political. These two arguments were echoed by prominent American clergymen in the eighteenth century who sought out religious justifications for their country's revolution.

After the Revolution, the Constitutional Convention did not produce a document that contained any references to God or a "religious" right to alter or abolish government. But the Constitution, as amended, contained provisions that protected conditions for the faithful to contemplate and give meaning to that right. Consider the religion clauses of the First Amendment: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ." ³⁹⁵ Together and alone, the clauses have been interpreted by the Supreme Court to protect spaces for people to be faithful to their religions. ³⁹⁶ The Establishment Clause prohibits the

³⁹⁵ U.S. CONST. amend. I.

³⁹⁶ Professor Laurence Tribe writes:

Allocating religious choices to the unfettered consciences of individuals under the free exercise clause remains, in part, a means of assuring that church and state do not unite to create the many dangers and divisions often implicit in such an established union. Similarly, forbidding the excessive identification of church and state through the establishment clause remains, in part, a means of assuring that government does not excessively intrude upon religious liberty. Thus, the Supreme Court has frequently recognized that "the two clauses may overlap."

LAURENCE H. TRIBE, *AMERICAN CONSTITUTIONAL LAW* 1156–57 (2d. ed. 1988) (internal citations omitted) (quoting *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 222 (1963)); see also DAVID A. J. RICHARDS, *TOLERATION AND THE CONSTITUTION* 128–33, 141–49 (1986) (arguing that the Supreme Court's interpretation of the religion clauses reflects a Western tradition of protecting the right of conscience); Arlin M. Adams & Charles J. Emmerich, *A Heritage of Religious Liberty*, 137 U. PA. L. REV. 1559, 1643 (1989) ("The core value of the religion clauses is liberty of conscience in religious matters, an ideal which recurs throughout American history from the colonial period of Roger Williams to the early national period of the Founders."); Rodney K. Smith & Patrick A. Shea, *Religion and the Press: Keeping First Amendment Values in Balance*, 2002 UTAH L. REV. 177, 202 ("The Establishment Clause limitation protects against a particular religion or group of religions

government from coercing people to adopt a given religion (or religion generally),³⁹⁷ and the Free Exercise Clause prohibits the government from punishing people for being faithful to their own religions.³⁹⁸ Notice how the two religion clauses in the

commandeering the state in a manner that infringes on the liberty of conscience of others,” and the “free exercise limitation, in turn, protects the right to act upon one’s religious conscience unless, in the words of James Madison, ‘the preservation of equal liberty, and the existence of the State be manifestly endangered.’”).

³⁹⁷ See *Everson v. Bd. of Educ. of Twp. of Ewing*, 330 U.S. 1 (1947). Justice Black, for the Court, wrote:

Neither a state nor the Federal Government . . . can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance.

Id. at 15–16. Justice Kennedy, for the Court, in *Lee v. Weisman* added: “It is beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way which ‘establishes a [state] religion or religious faith, or tends to do so.’” 505 U.S. 577, 587 (1992) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 678 (1984)). Invoking a different rationale, Justice O’Connor explained in a concurring opinion in *Lynch v. Donnelly* that

[g]overnment can run afoul of that prohibition [in the Establishment Clause] in two principal ways. One is excessive entanglement with religious institutions, which may interfere with the independence of the institutions, give the institutions access to government or governmental powers not fully shared by nonadherents of the religion, and foster the creation of political constituencies defined along religious lines. The second and more direct infringement is government endorsement or disapproval of religion. Endorsement sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community. Disapproval sends the opposite message.

465 U.S. 668, 687–88 (1984) (O’Connor, J., concurring) (citation omitted).

³⁹⁸ See *Weisman*, 505 U.S. at 597 (rejecting a state-sanctioned religious exercise “in which the student was left with no alternative but to submit”); *Employment Div., Dep’t of Human Res. of Or. v. Smith*, 494 U.S. 872, 877 (1990) (“The free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires.”), *superseded by statute*, Religious Freedom Restoration Act of 1993, Pub. L. No. 103-141, 107 Stat. 1488; *Wallace v. Jaffree*, 472 U.S. 38, 52–53 (1985) (“[T]he Court has unambiguously concluded that the individual freedom of conscience protected by the First Amendment embraces the right to select any religious faith or none at all.”); *Thomas v. Review Bd. of the Ind. Employment Sec. Div.*, 450 U.S. 707, 717–18 (1981) (“Where the state . . . denies [an important] benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs, a burden upon religion exists.”); *United States v. Ballard*, 322 U.S. 78, 86 (1944) (“Freedom of thought, which includes freedom of religious belief, is basic in a society of free men. It embraces the right to maintain theories of life and of death and of the hereafter which are rank heresy to followers of the orthodox faiths.”) (citation omitted).

Federal Constitution correspond nicely with the arguments by Locke and Sidney and their American progeny. Locke and Sidney had argued that God had never given the king a divine right of absolute dominion. They had argued, in other words, that the king lacked the authority to coerce his subjects to accept his religious mandate, an objection that anticipates the Establishment Clause. Locke and Sidney had also argued that God had given to all peoples the reason necessary for meaningful self-direction, including in political matters. The Free Exercise Clause likewise insists that people be left alone to discover religious truths, including truths pertaining to politics, for themselves. In this way, Americans were guaranteed a right to reflect on politics in a manner whereby they could, in unusually arduous circumstances, appeal to heaven.