



# THE AMERICAN TESTAMENT

**Mortimer J. Adler**  
and  
**William Gorman**

for the Institute for Philosophical Research  
and  
the Aspen Institute for Humanistic Studies

## **Part 4 of 12**

This conception of the transmission of authority had a classical origin in ancient Roman history. Because it succeeded the Roman Republic, the Empire, when it first came into being, saw fit to pay lip service to the republican principle of the consent of the governed. It did so by means of a juridical fiction, first formulated by Ulpian and later canonized by Justinian in his codification of Roman law. The formula ran as follows:

Quod principi placuit, legis habet vigorem, cum lege regia, quae de imperio eius lata est, populus ei et in eum omne suum imperium et potestatem concessit.

Whatever pleases the emperor has the force of law, since by the royal law, which has been laid down concerning his authority, the people conceded to him and into his hands all its authority and power.

In this great fictional event, the transfer of authority from the people to the Emperor was presented as a total and irrevocable transmission. The transition from the Republic to the Empire was pictured as a point of no return, the people pictured as having completely abdicated their sovereignty. In sharp contrast, the later Western theory of republican or constitutional government regarded the transmission of authority from the people to their representatives as neither total nor final and irrevocable: not total, because limitations were to be placed on the powers vested in public offices by a constitution; not final or irrevocable, because provisions were to be made to keep officeholders accountable to the citizens they represented. Officials were to be judged by the people with regard to their exercise of the just—or authorized—powers derived 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, . . .

A government, instituted by the people and deriving its just powers from their consent, would continue and might endure so long as it earns that consent. But precisely because the consensual transmission of authority was not final or irrevocable, the people retain, as part of their original and standing right to self-rule, the right to alter and abolish a government that departs from or transgresses the ends for which a form of government had been instituted in the first place. This right to alter or abolish is simply

the other face of the right to erect or constitute a framework of government for the effective exercise of self-rule.

So long as a people does not exercise its right to alter or abolish, it can be construed as giving both the form of government it has constituted and also the administration of that government its continuing consent on the grounds that both have served the ends or the objective assigned—the securing of human rights. However, when, for whatever reason, a form of government fails to serve these ends or its administration subverts them and usurps unauthorized power (power not consented to), then the people have a right to withdraw their consent. This right, often called “the right of revolution,” provides the grounds of justification for a change in government, either partial (i.e., alteration) or total (i.e., abolition).

That change, whether partial or total, need not involve insurrectionary violence or open civil war, though, in the usual course of events, it probably would. Civil dissent, or dissent within the boundaries of consent, should be able to bring about legislative reforms or changes in public policy without recourse to violence. But once consent itself has been withdrawn by all or by a preponderant majority, there is little hope for a peaceful resolution of the conflict between a people that wishes to preserve its rights and liberties and those who wish to continue in power—power that has now become sheer might, for it has been deprived of any right or authority because of the withdrawal of consent by the governed. If the arbitrament of war cannot be avoided, the responsibility for it, John Locke had observed, rests on those who have provoked the withdrawal of consent by exceeding the authority conferred on them.

. and to institute new government, . . .

The purpose behind the impulse to abolish an existing form of government is not to do away with government itself. Jefferson may have been a minimalist with regard to the extent of government that is desirable, but he was certainly not an anarchist wishing to dispense with government entirely. Rebellion may, indeed, involve a return to the state of war, but it does not aim at a return to the state of nature—in which each man is judge in his own case and can preserve his rights and liberties only by the resort to force, since he is without recourse to laws and tribunals.

A revolution is a change in the form of government. It has two stages: the alteration or abolition of an existing government, and the institution of a reformed or a new government. On the eleventh anniversary of the Declaration of Independence, the poet and diplomat Joel Barlow, addressing the Society of the Cincinnati at Hartford, Connecticut, said:

Whenever praise is due for the task already performed, it is certain that much remains to be done. The Revolution is but half completed. Independence and government were the two objects contended for, and but one is yet obtained.

It was fitting that in the Declaration of Independence Jefferson, speaking for a people that intended to assume an equal station among the powers of the earth, would assure a candid world that, after independence had been won, the new free people would proceed with all deliberate speed to institute a new government. The Constitution of the United States emerged from the convention for ratification by the people less than three months after Barlow's eleventh anniversary address. The effort had been difficult and the progress deliberate but not unduly prolonged.

. . . laying its foundations on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.

*“Laying its foundations on such principles . . .”* There is little doubt that Jefferson intended the word “such” to be retroactive, referring to the fundamental equality of men and their equal possession of natural rights. Such principles, and only these, in Jefferson's mind, could yield the true end of just government—the securing to all men of their human rights.

The point is not of slight importance. Jefferson expected that the same principles that impelled the colonies to declare their independence would also preside over the subsequent institution of a new government and would regulate deliberation about how it should be constituted. He expected continuity on the level of principle and fundamental purpose from the initiating to the consummating moment of the American Revolution. An argument about whether such continuity or conformity was being achieved occurred in what newspapers of the time called “The Grand Convention of 1787.” The argument raged throughout the course of the first three administrations, during which Jefferson became increasingly furious as he observed the use that Alexander Hamilton was making of the new constitution to subvert, in Jefferson's phrases, “the spirit of '76” and “the principles declared in 1776.”

*“And organizing its powers . . .”* This is Jefferson's prevision of what remained to be done in the second moment of the Revolution. Though his phrasing is highly compressed, it indicates what is involved in the making of a constitution, which, according to ancient political thought, is an organization of offices with limited powers assigned to each. The constitution to be drafted

after independence had been won would be precisely such a charter, setting forth the offices in the several departments of government, relating them to one another in a functional plan of organization, and prescribing the powers they would exercise as well as what powers would be reserved.

*“In such form . . .”* From the Greeks onward, political philosophy had considered the problem of diverse forms of government and had been concerned with their definition, classification, and evaluation. The most fundamental distinction made in antiquity was that between royal and constitutional government—a government by men, men above all laws, and a government of laws, laws above all men. Constitutional government was one of the major types of government; royal or, as it is sometimes called, absolute or despotic government another. But not all constitutions are alike, and so there are different forms of constitutional government according to the way in which a constitution determines the distribution of power among the offices of government. That, in turn, is determined by the purpose or ultimate objective to be served by the government being constituted. Jefferson calls attention to the relation between the form to be chosen and the purpose to be served by immediately qualifying the phrase “in such form” by the further phrase “as to them shall seem most likely to effect their safety and happiness.”

*“As to them shall seem most likely to effect . . .”* These words, especially the words “shall seem most likely” forecast the debates that were to occur once independence had been declared, debates concerning the form of government that the people of the individual states would select; debates in the Constitutional Convention of 1787 concerning the form of government to be set up for the *United States*; debates antecedent to the ratification of the proposed constitution; debates after ratification, and continuing to the present day, about the adequacy of that constitution for the nation’s appointed ends.

That so much debate should occur is foreshadowed in Jefferson’s very careful diction—“as to them shall *seem* most *likely*.” He is making use of the distinction, coming down from Plato, between knowledge and opinion, between judgments having certitude and commanding agreement and merely probable judgments about which men can reasonably disagree. Jefferson’s second paragraph had begun with the words “We hold these truths.” He did not write: “We hold the following opinions.” According to Jefferson, certitude was attainable on the level of principles. The propositions about human equality, about inalienable rights, about the requirement that government must aim to secure these rights in order to be just—these propositions were for him matters of knowledge, not of opinion. About these he thought reasonable men

could not reasonably disagree. From other writings of Jefferson, we know that he would have included among such propositions the assertion that to be fully just a government has to be constitutional in form and democratic in principle. But how a constitution should be drafted, how the powers of government should be organized to embody these principles and serve these purposes, such matters Jefferson readily acknowledged belonged in the realm of “likely” opinion rather than knowledge. Reasonable men, for example, have disagreed and continue to disagree about the presidential as contrasted with the parliamentary system of constitutional government. Either, it can be argued, might “effect their safety and happiness.”

The revolutionary leaders were well versed in the theories about the forms of government and acquainted with the historical fate that had befallen each of the several forms. Less than a generation earlier, most of them had been fervent admirers of the British version of the ancient form known as “mixed government,” or in the words of Bracton and Fortescue, a *regimen regale et politicum*, a government both royal and constitutional. However, they had more recently come, with Bolingbroke and the Radical Whigs in the mother country, to think that that form was being subverted in Britain, in consequence of which many of the arbitrary acts of which the colonists complained had been committed. In the light of such acquaintance with the past and their own recent experiences, they were not likely to consider the problem of deciding on a form of government an easy one. In both state and national constitutional conventions, there would be ample room for reasonable differences of opinion.

It has already been suggested that Jefferson did not think the right to alter or abolish an existing form of government should be exercised impetuously or arbitrarily. Its exercise would call for a judgment made after careful deliberation. The Declaration proceeds to consider the manner in which such a judgment should be reached and the kind of evidence it would require in order to be reasonable and sober, not hasty or impetuous. It cannot be properly made unless it is prudently made.

Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; . . .

For the beginning of this section of the Declaration, Jefferson chose the venerable term “prudence.” From the Greeks on, the traditional account of the four cardinal virtues had included prudence, or practical wisdom, along with fortitude, temperance, and justice. Prudence and these other virtues were, of course, first thought of as elements in the moral character of the individual

person. The prudent man is one who has acquired the habit, or the firm, reliable disposition, to make judgments that are practically sound or wise. Analogically, however, in the political order, prudence can be attributed to men as rulers or as ruled, and to a whole people engaged in considering a change in government.

*“Will dictate . . .”* Prudence not only habituates and strengthens the mind for the process of due deliberation about the means to be chosen for an end in view under the complex circumstances of a particular time and place, but also brings practical deliberation to a close with a *dictamen* to the will. One of Thomas Paine’s many ringing sentences in *Common Sense* had been: “The time for debate is over.”

*“That governments long established . . .”* The requirements of prudence might be less onerous with regard to governments of recent date and short duration. They would not call for the respect due to governments having a protracted continuity, a long tradition, and an assured stability.

*“Should not be changed for light and transient causes . . .”* A decision to change—to alter or abolish—a form of government would not be prudent if the grievances to be redressed or the injustice to be rectified were not grave, long-standing, and unlikely soon to dwindle and vanish. It is only after a people has suffered a long train of abuses and failed to halt them by civil dissent or by petitions for redress of its grievances that it is entitled to resort to more drastic measures.

. . . and, accordingly, all experience bath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed.

The record of human experience, showing extraordinary patience under sufferable evils, tends to confirm the recommendation of prudence which urges caution in changing governments. Jefferson, himself by temperament a revolutionary in *his* sense of the term, reveals some passion about the way that the force of custom restrains people who have been wronged from “righting” themselves. Custom is conservative and imposes a laggard pace on moral and political progress.

There is textual evidence for the belief that Jefferson had, either at hand or firmly in his memory, the last chapter of John Locke’s *Second Treatise of Civil Government*, entitled “Of the Dissolution of Government.” On the point here being considered, Locke had written somewhat more expansively as follows:

It will be said that the people being ignorant and always discontented, to lay the foundation of

government in the unsteady opinion and uncertain humor of the people, is to expose it to certain ruin; and no government will be able long to subsist if the people may set up a new legislative whenever they take offense at the old one. To this I answer, quite the contrary. People are not so easily got out of their old forms as some are apt to suggest. They are hardly to be prevailed with to amend the acknowledged faults in the frame they have been accustomed to. And if there be any original defects, or adventitious ones introduced by time or corruption, it is not an easy thing to get them changed, even when all the world sees there is an opportunity for it. This slowness and aversion in the people to quit their old constitutions . . .

Jefferson's whole sentence, beginning with "Prudence dictates," served to remind Americans, and to inform a candid world, that the American Revolution was not a wild eruptive event, inflamed by uncontrollable passions. Many historians of the American Revolution have called it "a *conservative* revolution." In spite of the apparent contradictoriness of that phrase, it does emphasize the contention that there had been patient sufferance of evils, that protracted debate and due deliberation had taken place, that right up to the end petitions had been submitted for the redress of grievances, and that the decision to act had been prudently made after the British had evidenced their intention to resort to force.

Before reaching the concrete bill of particulars—the circumstances calling for a decision to be made—Jefferson added one more complex sentence that served to complete the general philosophical argument.

But, when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security.

It is useful, once again, to quote from the corresponding but more ample section of Locke's chapter on the dissolution of government:

Such revolutions happen not upon every little mismanagement in public affairs. Great mistakes in the ruling part, many wrong and inconvenient laws, and all the slips of human frailty will be born by the



people without mutiny or murmur. *But if a long train of abuses, prevarications, and artifices, all tending the same way, make the design visible to the people,* and they cannot feel what they lie under, and see whither they are going, it is not to be wondered that they should then rouse themselves, and endeavor to put the rule into such hands which may secure to them the ends for which government was at first erected.

*“It is their right . . .”* Quite apart from the fact that Jefferson is perforce writing with much greater compression than Locke, he is more severe in his statement of the point. Where Locke states empirically that “it is not to be wondered” what people will do under the circumstances both he and Jefferson are alluding to, Jefferson speaks juridically of what it is the people’s *right* to do. In the preceding sentence beginning with “Prudence dictates,” as well as in the present long and complex sentence, Jefferson plainly manifests his view that we must distinguish between the *possession* of a right and the *exercise* of it. We must also distinguish between having reasons of prudence for *not* exercising a right (which we continue to possess even when we do not exercise it) and having the *duty* to exercise that right under a given set of circumstances. It is here that Jefferson proceeds to make a moral judgment not to be found in Locke.

*“It is their duty . . .”* Confronted with convincing evidence of a design to subject them to despotic rule, it is the *duty* of a people to exercise their right of revolution. The duty is an elementary one. Subjugation by despotism robs a people of the exercise of its right to self-rule. Submission to subjugation ends the political life of a people. A people, then, has more than a right not to be subjugated, a right to self-government. It has a self-preserving duty to fight for its political existence as a people.

*“To throw off such government, and to provide new guards for their future security.”* Once again, as earlier, Jefferson is careful to proceed directly from reference to the act of abolishing a government to a mention of the intention to institute a new government. A revolution is a change in the form of government, not a return to the state of nature or to anarchy. Jefferson’s phrasing here of the ultimate aim of the revolution—“to provide new guards for their future security”—must be read as a variant of the earlier statement of ultimate purpose. Except for stylistic reasons, he could have repeated earlier diction and said: “to institute a new government better designed to secure the rights to life, liberty, and the pursuit of happiness.”

From the foregoing sequence of general propositions in political philosophy, Jefferson drew the major premise for the Declaration's basic syllogism or line of argument. It can be formulated as follows: A PEOPLE SUBJECT TO A DESIGN OF DESPOTISM HAS THE RIGHT AND THE DUTY TO THROW OFF A GOVERNMENT EVINCING SUCH A DESIGN.

The Declaration goes on:

Such has been the patient sufferance of these colonies. . . . The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having, in direct object, the establishment of an absolute tyranny over these states.

That passage, in effect, provides the minor premise in the argument, an assertion of the following statement of fact: THE AMERICAN PEOPLE HAS BEEN SUBJECT TO SUCH A DESIGN OF DESPOTISM. An interpolated passage then reads as follows:

. . . and such is now the necessity which constrains them to alter their former systems of government.

In effect, this passage states the conclusion of the syllogism, to which the preceding line of reasoning has led: THE AMERICAN PEOPLE, THEREFORE, HAS THE RIGHT AND THE DUTY TO THROW OFF A GOVERNMENT EVINCING SUCH A DESIGN.

What remains to be offered is evidence in support of the factual minor premise, the assertion that the American people have been subject to a design of despotism. The bill of particulars indicting the King provides that evidence. The passage in which this is accomplished begins as follows:

To prove this, let facts be submitted to a candid world: . . .

After twenty-seven specific charges, the passage ends as follows:

A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of 'a free people.

The twenty-seven charges are to be taken together as evincing “a design to reduce them under absolute despotism” and as “having, in direct object, the establishing of an absolute tyranny over these states.”

Jefferson does mention the “character” of the King, but that was, perhaps, something of a slip. Neither he nor any of the revolutionary leaders would, by that time, have had any interest in the inner life of George III. The focus of the indictment was on the objective record of “a long train of abuses and usurpations.” It made little difference whether these had been committed by the King or committed by his Parliament and sanctioned by him. Though there were a few covert references to Parliament, the King was the sole object of the indictment because, prior to July 4, 1776, the revolutionary leaders had come to deny that the King’s Parliament in England had any authority over the colonies. Each of the colonies was presumed to have its own form of parliament or general assembly, all coequal with the British Parliament under the King. Hence the present action had to be construed as one of withdrawing allegiance to the King.

The intention of the indictment, with its twenty-seven charges, must be clearly understood. Its aim is to impeach the King and, in accordance with Locke’s conception of the matter, to declare him the real rebel—the usurper who has gone beyond his constitutional prerogatives and resorted to force. Since there was no competent legal tribunal before which the charges could be placed, the indictment must be what Jefferson called it—“an appeal to the tribunal of the world.”

In form, the indictment is a presentation of charges that would justify impeachment. In acts committed or sanctioned by him, the King is charged with diverse, repeated, and grave violations of the British constitution and of the rights of British citizens in America. Allegiance or consent is, therefore, to be withdrawn because these violations were destructive of the ends for which allegiance or consent had been given. Juridical impeachment being impossible, the only practical alternatives were submission to despotism or a struggle for independence.

With ample time for composition, Jefferson might well have borrowed, and used in compressed phrasing, another theme from the final chapter of Locke’s treatise. In that chapter, on the dissolution of government, Locke had reiterated the proposition that rulers who usurped powers not authorized by law and so have acted unconstitutionally, ruling by force rather than by law, were properly to be designated “rebels.” The people who took up arms in defense of their constitutional rights and liberties were not the rebels, but rather those who had breached the civil peace and returned to the state of war. A number of passages from Locke are worth quoting

because of their relevance to the “rebellion” involving George III, on the one hand, and the American colonists, on the other.

Whenever the legislators endeavor . . . to reduce [the people] to slavery under arbitrary power, they put themselves *into a state of war* with the people, who are thereupon absolved from any further obedience, and are left to the common refuge which God hath provided for all men against force and violence.

For rebellion being an opposition, not to persons, but authority, which is founded only in the constitutions and laws of the government: those, whoever they be, who, by force, break through, and, by force, justify their violation of them, are *truly and properly rebels* . . . those who set up force again in opposition to the laws do *rebellare*—that is, bring back again the state of war, and are properly rebels.

When . . . legislators act contrary to the *end* for which they were *constituted*, those who are [thus] guilty are guilty of *rebellion*.

[Those who introduce] a power which the people hath not authorised, actually introduce a *state of war, which is that of force without authority*.

[Those who put] themselves into a state of war with those who made them the protectors and guardians of their peace . . . are properly, and with the greatest aggravation, *rebellantes*, rebels.

Whosoever uses force without right . . . puts himself into a state of war with those against whom he so uses it, and in that state all former ties are cancelled, all other rights cease, and every one has a right to defend himself, and to *resist* the aggressor.

George III had declared the colonies in a state of rebellion and had begun to wage war against them. In Locke’s terms, the counter proposition provides a more accurate description of the events. By the actions listed in the Declaration’s indictment, the King had put himself, as well as those in Great Britain who acquiesced in his actions, into a state of war with the American colonists. He, the King, was the rebel. He had evinced a design to subject the Americans to absolute despotism—despotism being

defined in exactly the same terms Locke had employed to define a “state of war”; namely, *the use of force without authority*. The only alternatives open to the Americans were submission to despotism or what Locke calls “rightful resistance”—resistance, *not rebellion*. The King was the rebel. Successful resistance to the King’s rebellious acts would, however, lead to a revolution, that is, to a change in the form of government.

The substance of the twenty-seven-point indictment has been much examined. Questions have been raised about its fairness to the King, the accuracy of several of the charges, even about the intensity of the crisp phrasing. Careful scholarship with regard to such questions will always be in order; but there can be no question that Jefferson worked with the stringency of a lawyer preparing a bill of impeachment. When all reservations are taken into account, the indictment retains its full force. Each of the charges has been acknowledged to have some basis in fact. The force of the indictment derives from the cumulative or aggregate effect of the many charges.

The testamentary value of the indictment lies in the fact that the long list of wrongs reveals a rich lode of rights. The intensity of the outrage felt on so many counts arose from a keen sensitivity to the various rights, both substantive and procedural, that secure the life of a free people. It was ironic that this sensitivity on the colonists’ part owed so much to their love of the venerable traditions of the “mother country.”

After a strongly worded paragraph that reviewed the ineffectual appeals made by the colonists to their “British brethren” for their support of the American cause, the Declaration goes on to state the action that now must be taken to carry out the conclusion reached in the foregoing argument.

We, therefore, the representatives of the united States of America . . . in the name, and by the 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, and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved;* .

..

The action is taken by the representatives of the *United States of America* (the first official use of this phrase) , *in the name and by the authority of the good people of these colonies*. The italicized part of the text above was inserted by the Continental Congress, altering what Jefferson had written. It was taken from

Lee's Resolution of Independence, which had been approved by Congress on July 2. Congress also inserted into Jefferson's draft the "appeal to the Supreme Judge of the world for the rectitude of our intentions," and the phrase in the last sentence—"with a firm reliance on the protection of Divine Providence."

. . . and that, as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do.

Once again, the Declaration does not rest content with the act of dissolving existing political connections. Once again, having in mind the intent to assume an equal station among the powers of the earth, the united states describe themselves not merely as separated from Great Britain, but also as having the status of a free and independent people, ready to exercise the sovereign powers possessed by their peers among the nations of the earth.

And, for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

The mutual pledge looked immediately to the ordeal of the war for independence. Beyond that, it looked forward to what this people might be held accountable for in human history, after their independence had been won by military victory. Whatever constitutional difficulties were later to arise concerning the bonds of union which united these states, it was as united that they went to war and looked forward to a united life after the war.

Later controversies about the juridical character of "the union" adverted to this final paragraph in the Declaration. We learn, for example, from James Madison's reports on the Constitutional Convention, that James Wilson held the view that, during the war, the states formed one community; that when the colonies became independent of Great Britain, they did not thereby become independent of each other; that for him the Declaration of Independence provided the basis for the proposition that the several states that had adopted that measure were independent in their confederated character, not as separate communities.

Reference to the Declaration was also pivotal for the impassioned argument by John Quincy Adams in 1839, in an address delivered by him in more ominous times, celebrating the fiftieth anniversary of George Washington's inauguration. The

address was entitled “The Declaration and the Constitution.” It contained the following passage:

It is not immaterial to remark that the signers of the Declaration, though qualifying themselves as the representatives of the United States of America, in general Congress assembled, yet issue the Declaration *in the name and by the authority of the good people of the colonies*; and that they declare, *not* each of separate colonies but the *united colonies*, free and independent states. The *whole people* declared the colonies *in their united condition* of right, free, and independent states.

Within a generation after that address, the idea of “union” was to become a tragic theme



---

## THE GREAT IDEAS ONLINE

is published weekly for its members by the

### CENTER FOR THE STUDY OF THE GREAT IDEAS

Founded in 1990 by Mortimer J. Adler & Max Weismann

Max Weismann, Publisher Emeritus

Elaine Weismann, Publisher and Editor

Phone: 312-943-1076

Mobile: 312-280-1011

Ken Dzugan, Senior Fellow and Archivist

A not-for-profit (501) (c)(3) educational organization.

Donations are tax deductible as the law allows.