

## THE ENLIGHTENMENT IN EARLY AMERICA

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### ABSTRACT

*The founding of the United States of America is often said to have been the product of Enlightenment ideals that emphasized reason, individual liberty, and notions of progress. During this same era, however, racially based slavery, which confounded reason, denied individual liberty to millions, and challenged ideas about progress, existed in all of the colonies of North America.*

*The third president of the United States, Thomas Jefferson, embodied this seeming contradiction at the heart of the American founding. The principal author of the American Declaration of Independence enslaved hundreds of people over the course of his long life.*

*This Article argues that a bedrock verity of the Enlightenment influenced Jefferson's thinking on these matters, specifically the tendency to emphasize the importance of categories. In the world of Enlightened science, everything had a place—scientific phenomena, plants, ideas, even people. In this view, human beings of African descent were placed at the bottom of what was seen as inevitable hierarchy, justifying treating them as an exception to the rules about the natural liberty of mankind. Whether this circumstance would continue indefinitely was an open question, though Jefferson posited that time might ameliorate the situation. As scholars have noted, there was a dark side to Enlightenment thinking.*

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## TABLE OF CONTENTS

INTRODUCTION . . . . .	673
I. NOTIONS OF RACIAL DIFFERENCE . . . . .	677
II. LIVING THE ENLIGHTENMENT IN PARIS . . . . .	683
III. BLACKS IN AND (MAYBE) OUT OF THE NEW REPUBLIC . . . . .	684
IV. JEFFERSON'S VERSION OF AN ENLIGHTENED IMAGINATION . . . . .	686

## INTRODUCTION

Americans take pride in the belief that the United States of America is a country founded on the ideals of the Enlightenment. When the American colonists left the British Empire, they separated themselves from a monarchy, the most common form of government at the time.<sup>1</sup> Their leaders constructed this action as a defining break with the past—significantly, what they came to characterize as a stultifying and unenlightened past. What has come to be called the “American Experiment” would take them into a future that left Old World ways behind. In *The Federalist*—the first of a series of essays written by Alexander Hamilton, James Madison, and John Jay under the name *Publius*—Hamilton described what was at stake in the deliberations on “the new Constitution” that would create the American government.<sup>2</sup> He wrote:

It has been frequently remarked, that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not, of establishing good government from reflection and choice, or whether they are forever destined to depend, for their political constitutions, on accident and force.<sup>3</sup>

“Reflection and choice”—both are very much central to the concept of reason, which was thought to be at the heart of the Enlightenment.<sup>4</sup> Thomas Jefferson expressed this idea many times. Once, in 1787, when writing to his nephew, Peter Carr, on the subject of religion and how the young man should approach religious dogma, Jefferson revealed his thinking about the place of reason in what he saw as the new society based upon the idea of progress: “Fix reason firmly in her seat, and call to her tribunal every fact, every opinion. Question with boldness even the existence of a god;

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1. VERNON BOGDANOR, *THE MONARCHY AND THE CONSTITUTION* 1 (1995) (“Until the First World War, monarchy was by far the prevalent form of government.”).

2. *THE FEDERALIST* NO. 1, at 4 (Alexander Hamilton) (Jacob E. Cooke ed., 1961).

3. *Id.* at 1.

4. *See id.*

because, if there be one, he must more approve the homage of reason, than that of blindfolded fear.”<sup>5</sup>

For Jefferson and other members of the Founding Generation, creating a republic was in perfect keeping with Enlightenment values. Instead of having leadership based upon the mere accident of birth, the people would apply reason and choose the individuals who would govern them. They opted for a notion of popular sovereignty that put the people in the place that kings and queens had occupied. Done in the proper way, this would require knowledge, consideration, and the exercise of decision-making; in Hamilton’s words, a government based on “reflection and choice” where the concept of reason would hold sway.<sup>6</sup>

Even more than Hamilton, Jefferson—the principal author of the American Declaration of Independence, the third President of the United States, and the founder of the University of Virginia—is associated with Enlightenment values. In his home at Monticello, Jefferson displayed portraits of three notable Enlightenment figures: Francis Bacon, Sir Isaac Newton, and Sir John Locke, describing them as his trinity of “the three greatest men that have ever lived.”<sup>7</sup>

After receiving a classical education in boarding schools, Jefferson went on to the College of William & Mary, where he studied math, natural philosophy, and political philosophy with Scottish scholar William Small.<sup>8</sup> Small exposed Jefferson to the leading thinkers of the Enlightenment who believed that rational thought and useful knowledge guaranteed the progress of humanity.<sup>9</sup> Jefferson learned to revere science, express skepticism of organized religion, and champion a form of government that promoted the freedom of individuals.<sup>10</sup> After studying with Small, Jefferson went on to read law for nearly five years under the tutelage of George Wythe, a

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5. Letter from Thomas Jefferson to Peter Carr (Aug. 10, 1787), *in* 12 THE PAPERS OF THOMAS JEFFERSON 14, 15 (Julian P. Boyd ed., 1955).

6. THE FEDERALIST NO. 1, *supra* note 2, at 1 (Alexander Hamilton).

7. Letter from Thomas Jefferson to John Trumbull (Feb. 15, 1789), *in* 14 THE PAPERS OF THOMAS JEFFERSON 561, 561 (Julian P. Boyd ed., 1958).

8. *See* KEVIN J. HAYES, THE ROAD TO MONTICELLO: THE LIFE AND MIND OF THOMAS JEFFERSON 51 (2008).

9. *See id.*

10. *See id.* at 51-53.

prominent judge who would also be a signatory of the Declaration of Independence.<sup>11</sup> Most young men who read law spent one or two years—sometimes less than a year—with their tutor. Jefferson’s extraordinary connection to Wythe shows his affection for his teacher and the extent to which he was willing to steep himself in Enlightenment ideas. Instead of spending time with his fellow students, Jefferson was more apt to have dinner with Small, Wythe, and Governor Faquier.<sup>12</sup> Jefferson would later call Wythe “one of the most virtuous of characters,”<sup>13</sup> and the pair remained friends for the rest of Wythe’s life.

Jefferson drew upon his education in law and Enlightenment philosophy when he wrote *A Summary View of the Rights of British America* (1774) and the Declaration of Independence (1776). Written in 1774 in response to the Coercive Acts, *A Summary View* was a critique of arbitrary power in keeping with the Enlightenment.<sup>14</sup> The famous words in the preamble of the Declaration of Independence amount to a powerful expression of Enlightenment notions that were used to justify the creation of a new country:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.<sup>15</sup>

When he became president in 1800, recapturing, he believed, the spirit of 1776, Jefferson offered that the United States was indeed something “new under the sun.”<sup>16</sup>

The new American republic could lay claim to being exceptional in another way: the institution of slavery, which had existed in

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11. NOBLE E. CUNNINGHAM, JR., IN PURSUIT OF REASON: THE LIFE OF THOMAS JEFFERSON 7 (1987).

12. See HAYES, *supra* note 8, at 60.

13. Letter from Thomas Jefferson to Richard Price (Aug. 7, 1785), in 8 THE PAPERS OF THOMAS JEFFERSON 356, 357 (Julian P. Boyd ed., 1953).

14. THOMAS JEFFERSON, A SUMMARY VIEW OF THE RIGHTS OF BRITISH AMERICA 8-10 (1774).

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

16. Letter from Thomas Jefferson to Joseph Priestly (Mar. 21, 1801), in 33 THE PAPERS OF THOMAS JEFFERSON 393, 394 (Barbara B. Oberg ed., 2006).

British America since the second decade of the seventeenth century, setting it apart from other European countries.<sup>17</sup> Indeed, very famously, the dispute about slavery almost scuttled the Constitutional Convention in Philadelphia in 1787.<sup>18</sup> Only a compromise that assured southern states could continue to rely on slavery saved the day.<sup>19</sup> Of course, European nations were also involved in the institution. In fact, they had initiated the Atlantic trade, but slavery was largely practiced in its overseas colonies.<sup>20</sup> The realities of the institution were disconnected from day-to-day life in Europe. They did not have to think about learning to live with large numbers of people who were of a different race.<sup>21</sup>

In America, at the time of the Revolution, all thirteen colonies had slavery, though the institution was most thoroughly centered in the southern colonies.<sup>22</sup> The South had large numbers of people of African descent. For example, 40 percent of the population in Virginia was Black.<sup>23</sup> Native Americans had dwindled, but they were still a presence in the area.<sup>24</sup> Throughout the South, the different races confronted one another on a daily basis. As long as

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17. See Stephanie Hall, *Beyond 1619: Slavery and the Cultures of America*, LIBR. OF CONG. BLOGS (Aug. 28, 2019), <https://blogs.loc.gov/folklife/2019/08/beyond-1619/> [<https://perma.cc/7AJC-EYPH>] (explaining that although many Europeans practiced slavery in North America, slavery “was especially prevalent” in southern British colonies).

18. Calvin H. Johnson, *Grading the Constitutional Convention on Slavery*, 9 CONST. STUD. 31, 33-34 (2024).

19. See *id.*; U.S. CONST. art. I, § 2, cl. 3 (the Three-Fifths Clause).

20. See John C. Coombs, *The Phases of Conversion: A New Chronology for the Rise of Slavery in Early Virginia*, 68 WM. & MARY Q. 332, 332, 334 (2011); Hall, *supra* note 17.

21. For example, although eighteenth-century Britain had a population nearing ten million, only 15,000 Black people lived in the country. Compare Ralph Charles Atkins & Dorothy Whitelock, *Britain from 1754 to 1783*, ENCYCLOPEDIA BRITANNICA (Jan. 12, 2025), <https://www.britannica.com/place/United-Kingdom/Britain-from-1754-to-1783> [<https://perma.cc/L647-633S>], with *Black People in Late 18th-Century Britain*, ENG. HERITAGE, <https://www.english-heritage.org.uk/visit/places/portchester-castle/history-and-stories/black-people-in-late-18th-century-britain/> [<https://perma.cc/46MU-XBL3>].

22. See Damian A. Pargas, *Slavery in the US South*, in THE PALGRAVE HANDBOOK OF GLOBAL SLAVERY THROUGHOUT HISTORY 441, 442 (Damian A. Pargas & Juliane Schiel eds., 2023).

23. Malik Simba, *The Evolution of Slavery in Virginia, 1619 to 1661*, BLACKPAST (Jan. 13, 2022), <https://www.blackpast.org/african-american-history/perspectives-african-american-history/the-evolution-of-slavery-in-virginia-1619-to-1661> [<https://perma.cc/B2RC-EULP>].

24. See Ben Swenson, *Virginia's Native Americans Were Caught in the Crossfire of the Revolution*, CARDINAL NEWS (Mar. 12, 2024), <https://cardinalnews.org/2024/03/12/virginias-native-americans-were-caught-in-the-crossfire-of-the-revolution/> [<https://perma.cc/9Y8J-CKDC>].

the importation of Africans continued, cultural differences between the groups would be a point of tension. What did that mean for the values of the Enlightenment? How did the much-vaunted beliefs in the importance of individual liberty work in a society where human beings were held as chattel?

### I. NOTIONS OF RACIAL DIFFERENCE

As has happened in every situation in which different groups were in close proximity to one another, racial mixing occurred. This was despite the fact that very early on, laws were put in place to discourage sexual relations or marriage between different races.<sup>25</sup> The existence of these laws tells an important story about European reactions to people of African descent, for they were the ones who had the power to put such laws in place. Scholars such as Winthrop Jordan and Philip D. Morgan have demonstrated that notions of racial differences emerged early in the British colonial period in the Americas.<sup>26</sup> We do not have much evidence of how people of African descent in the colonies viewed Europeans. Though one can suppose, given the circumstances, that at the very least, there was a great degree of mistrust. However, it is clear the English colonists saw people of African descent as different in ways that justified their enslavement and treating them as people who should not become a part of their families.<sup>27</sup> This thinking would have enormous implications for what would become the American republic, where the notion of “the people” as sovereign would be all important.

What did the existence of slavery and notions of race mean to this American Experiment steeped in Enlightenment values? It is often noted that members of the Revolutionary Generation, usually meaning the leadership of the era, saw slavery as a necessary evil.<sup>28</sup> Under the influence of the Enlightenment, which taught that liberty

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25. See generally Kevin Mumford, *After Hugh: Statutory Race Segregation in Colonial America, 1630-1725*, 43 AM. J. LEGAL HIST. 280, 285 (1999).

26. See generally WINTHROP D. JORDAN, *WHITE OVER BLACK: AMERICAN ATTITUDES TOWARD THE NEGRO, 1550-1812* (1968); PHILIP D. MORGAN, *SLAVE COUNTERPOINT: BLACK CULTURE IN THE EIGHTEENTH-CENTURY CHESAPEAKE AND LOWCOUNTRY* (1998).

27. See JORDAN, *supra* note 26, at ix.

28. See, e.g., William W. Freehling, *The Founding Fathers and Slavery*, 77 AM. HIST. REV. 81, 82-83 (1972).

was the natural state of human beings, they declined to openly argue it was a positive good. That would come with a later generation of southern planters.<sup>29</sup> In the aftermath of the Revolution, northern colonies enacted gradual emancipation statutes or abolished slavery outright.<sup>30</sup> Of course, southern states did not go that far. But the largest state, Virginia, passed a statute in 1782 that liberalized emancipation.<sup>31</sup> Before then, the enslavers had to seek permission of the government before an individual could be freed. The 1782 law allowed for private emancipation.

Because slavery was racially based, and the European colonists most responsible for carrying forward the revolutionary ideals were part of, and supported, the racial hierarchy as it existed, we should not be surprised at the seeming contradictions on the questions of equality and the basic right to liberty that were on display during this time. This is especially true given that, as scholars have noted, the Enlightenment philosophy gave its eighteenth- and nineteenth-century adherents ample cover for the ways in which they excluded people of color, and people of African descent, from what could be called the benefits of Enlightenment thought.<sup>32</sup>

At the heart of Enlightenment thinking was the desire to categorize: it was part and parcel of the scientific method. Putting things, phenomena, and experiences into their proper place was of the utmost importance. Scholars have recognized that, as Europeans came into contact with different types of people—particularly as they engaged in the slave trade and institution of slavery—they contemplated the difference in human beings.<sup>33</sup> This gave rise to a system of racial classifications. As scholar Devin Vartija has noted:

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29. See, e.g., John C. Calhoun, *Speech on the Reception of the Abolition Petitions, February 1837*, in SPEECHES OF JOHN C. CALHOUN: DELIVERED IN THE CONGRESS OF THE UNITED STATES FROM 1811 TO THE PRESENT TIME 222, 225 (1843) (arguing that the enslaver-enslaved relationship “is, instead of an evil, a good—a positive good”).

30. See Richard Johnson, *First Emancipation*, BLACKPAST (July 19, 2007), <https://www.blackpast.org/african-american-history/first-emancipation/> [<https://perma.cc/6634-2A2D>].

31. See Act to Authorize the Manumission of Slaves, 1782 Va. Acts 39.

32. See David R. Roediger, *Historical Foundations of Race*, NAT'L MUSEUM OF AFR. AM. HIST. & CULTURE, <https://nmaahc.si.edu/learn/talking-about-race/topics/historical-foundations-race> [<https://perma.cc/8ZS4-TB3U>].

33. See *id.*



In his seminal essay “The Philosophical Basis of Eighteenth-Century Racism”, Richard Popkin argued that, when one looks more closely at some of the Enlightenment’s most important thinkers, one is confronted with a paradox: from the heart of the venerable Enlightenment humanist tradition sprung the not-so-enlightened theories of the inferiority of non-Europeans.<sup>34</sup>

Scholars have argued about the origins of the European attitudes about race. Did they predate slavery and contribute to the willingness to treat Africans as items of property, or did the experience of treating Africans as items of property create the notion of white supremacy that gave rise to the racial hierarchy? There is no need to answer that question today. My purpose is to suggest that the intellectual tradition of the Enlightenment worked in tandem with the experiences on the ground to create the seeming gap between the ideals expressed during the American Founding and the realities of that period.

No one exemplifies this better than my once and future subject, Thomas Jefferson. Scholars turn to Jefferson on this point because he is among the most famous members of the Founding Generation who engaged the subject of race. Unfortunately for his reputation, he did so in a way that does not give him credit with modern readers. I understand that we should be wary of using an individual as a stand-in for an entire group within a society. However, I will press forward because Jefferson’s life contains so many different currents present in the lives of white Americans who helped set the tone of life in this country that it is hard to resist using him in this way. There is no one from the Founding Era who better represents the various positive and negative strands of the Enlightenment, such as the belief of science, the right of personal liberty, and the importance of education along with expressions of racial animus.

Jefferson is likely most well-known for two writings that show Enlightenment thinking in its best and worst forms: the Declaration of Independence with its soaring rhetoric about the equality of

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34. Devin Vartija, *Revisiting Enlightenment Racial Classification: Time and the Question of Human Diversity*, 31 INTELL. HIST. REV. 603, 603 (2021) (citing Richard H. Popkin, *The Philosophical Basis of Eighteenth-Century Racism*, in 3 STUDIES IN EIGHTEENTH-CENTURY CULTURE 245 (1974)).

mankind and the right to liberty<sup>35</sup> and his *Notes on the State of Virginia*, written in the 1780s.<sup>36</sup> In the latter work, framed as a series of answers to queries, he engages in the very Enlightenment-influenced practice of classifying the races of people who lived in America.<sup>37</sup> Of course, in Jefferson's formulation, whites are adjudged to be more beautiful and intelligent.<sup>38</sup>

Blacks were at the opposite end of the scale. Jefferson ventured it "as a suspicion" that they were less intelligent than whites.<sup>39</sup> Because he always wanted to be seen as reasoning in a scientific manner, and he knew he had not conducted anything that remotely resembled a scientific investigation, he did not want to state flatly that they were less intelligent.<sup>40</sup> There is no reason to doubt that he basically believed that. Such a belief would not have been unusual for Europeans to harbor during Jefferson's time, and I venture as a sad suspicion, even now. The only thing he would concede that Blacks were better at was rhythm.<sup>41</sup> At a later date, when pressed on the question of his views about Blacks and intelligence, he explained that this assessment said nothing about their right to exist as free people.<sup>42</sup> Jefferson offered that just because Sir Isaac Newton was more intelligent than other people, it did not give him the right to masters of others.<sup>43</sup> It was very important for him to be seen as holding fast to Enlightenment notions about the natural right to liberty, even while he took liberty from other human beings.

As hard as it may be for modern observers to accept, it mattered greatly to Jefferson that he be seen as anti-slavery, despite the fact that he enslaved people.<sup>44</sup> Having signed on to the Enlightenment

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

36. See generally THOMAS JEFFERSON, NOTES ON THE STATE OF VIRGINIA (William Peden ed., 1982).

37. See *id.* at 138.

38. See *id.* at 143.

39. *Id.*

40. See Nicholas E. Magnis, *Thomas Jefferson and Slavery: An Analysis of His Racist Thinking as Revealed by His Writings and Political Behavior*, 29 J. BLACK STUD. 491, 495 (1999).

41. See JEFFERSON, *supra* note 36, at 140.

42. See Letter from Thomas Jefferson to Henri Gregoire (Feb. 25, 1809), in 11 THE WORKS OF THOMAS JEFFERSON 99, 99-100 (Paul L. Ford ed., 1905).

43. *Id.* at 100.

44. See Sue Kozel, *Thomas Jefferson, Enslaved People, His Enslaved Family and Liberty*, NJEA (Feb. 1, 2022), <https://www.njea.org/thomas-jefferson-enslaved-people-his-enslaved->

as a young man, listening to men like his tutor and friend George Wythe—who was also known to espouse anti-slavery views<sup>45</sup>—he wanted to be remembered as having been on what he was sure would be the right side of history. Jefferson viewed life through the prism of science.<sup>46</sup> New discoveries would make life better and better as the years went by. Slavery existed then, but progress would bring a change in attitudes, and it would not exist in the future.<sup>47</sup>

But what to do about now? How could a person who claimed to know better not work harder to rid himself of the connection to the liberty-denying economic and social system? There is little reason to doubt that the notion of racial hierarchy, created by Virginian society for reasons other than the Enlightenment, provided a ready excuse for holding people of African descent in bondage. The Revolutionary War, Jefferson said in a letter to Edward Coles in 1814, helped shape Jefferson's understanding of where things stood at the point the American Experiment came into being.<sup>48</sup> Before then, he said, Virginians thought of the enslaved as akin to their farm animals.<sup>49</sup> They did not pay attention to the humanity of those in bondage, and the thought of Black agency did not seriously occur to them. The War for American Independence taught Jefferson and white Virginians that African Americans did, in fact, have independent will and agency. Very early on, some enslaved people left plantations—even some from Jefferson's plantations—to join the British in exchange for their freedom.<sup>50</sup> Lord Dunmore's proclamation of November 1775 promised freedom to any enslaved person who left the home of the Americans in rebellion to fight with the British.<sup>51</sup> As it turned out, a number of enslaved individuals,

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family-and-liberty/ [https://perma.cc/Y8S5-SH3G].

45. A. Leon Higginbotham, Jr., *West Virginia's Racial Heritage: Not Always Free*, 86 W. VA. L. REV. 3, 14 (1983).

46. See HAYES, *supra* note 8, at 432.

47. See JEFFERSON, *supra* note 36, at 163.

48. See Letter from Thomas Jefferson to Edward Coles (Aug. 25, 1814), in 7 THE PAPERS OF THOMAS JEFFERSON: RETIREMENT SERIES 603, 603 (J. Jefferson Looney ed., 2010).

49. *Id.*

50. *Resistance*, THOMAS JEFFERSON FOUND., INC. (Feb. 2003), <https://www.monticello.org/slavery/landscape-of-slavery-mulberry-row-at-monticello/explore-topics/resistance/> [https://perma.cc/LWB6-R3DT].

51. *Lord Dunmore's Proclamation, 1775: A Spotlight on a Primary Source*, GILDER LEHRMAN INST. AM. HIST. (2017), [https://www.gilderlehrman.org/sites/default/files/inline-pdfs/01706\\_fps\\_1.pdf](https://www.gilderlehrman.org/sites/default/files/inline-pdfs/01706_fps_1.pdf) [https://perma.cc/3ZND-XBX6].

along with some freedmen, joined the American Patriot cause.<sup>52</sup> Native Americans made similar choices, with some joining the British and others joining the American colonists in rebellion.<sup>53</sup>

Historian Robert Parkinson, in his groundbreaking work *The Common Cause: Creating Race and Nation in the American Revolution*, demonstrates how the Americans used the participation of people of color on the side of the British as a rallying cry.<sup>54</sup> In the War for Independence, the issue of race was raised to unite the thirteen colonies, using the distrust of Black people and Native people to bind together whites in the colonies. Parkinson details how some leaders, including Benjamin Franklin and Marquis de Lafayette, went so far as to use lies in propaganda efforts to stoke racial animus.<sup>55</sup> All these experiences led Jefferson to see Blacks as people who would fight for their freedom if given the chance.<sup>56</sup> War presented the opportunity. He took very much to heart John Locke's (another Enlightenment figure's) idea that slavery was a state of war between the enslaver and the enslaved<sup>57</sup>—more specifically, a war between white males and Black males.<sup>58</sup> Jefferson constructed Black males as potential soldiers. In a letter to Jared Sparks discussing the idea of emancipation of Blacks followed by expatriation, he warned that if too much time passed, “one million ... fighting men, will say ‘we will not go.’”<sup>59</sup> As slavery had destroyed the *amor patriae* of African Americans, whites would never give up their prejudices against Blacks, and there could be no wholesale mixing between Blacks and whites, it would be well-nigh impossible to

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52. See Edward Ayres, *African Americans and the American Revolution*, AM. REVOLUTION MUSEUM AT YORKTOWN, <https://www.jyfmuseums.org/learn/research-and-collections/essays/african-americans-and-the-american-revolution> [https://perma.cc/WLA3-6FYB].

53. See Swenson, *supra* note 24.

54. See generally ROBERT G. PARKINSON, *THE COMMON CAUSE: CREATING RACE AND NATION IN THE AMERICAN REVOLUTION* (2016).

55. See *id.* at 402.

56. See CHRISTA DIERKESHEIDE, *AMELIORATION AND EMPIRE: PROGRESS AND SLAVERY IN THE PLANTATION AMERICAS* 55 (2014).

57. JOHN LOCKE, *TWO TREATISES OF GOVERNMENT* 132, 133 (Thomas I. Cook ed., Hafner Publ'g Co. 1947) (1690) (“This is the perfect condition of slavery, which is nothing else but ‘the state of war continued between a lawful conqueror and a captive.’”).

58. See DIERKESHEIDE, *supra* note 56 (noting Jefferson feared that slavery could lead to a “bloody race war”).

59. Letter from Thomas Jefferson to Jared Sparks (Feb. 4, 1824), in 20 *THE PAPERS OF THOMAS JEFFERSON* 474, 477 (J. Jefferson Looney ed., 2023).

maintain a peaceful and enlightened republic if the former enslaved people were allowed to remain in the United States.

## II. LIVING THE ENLIGHTENMENT IN PARIS

Jefferson's time in Paris further reinforced his self-identification as a devotee of the Enlightenment. That is not surprising given that France was, by some measures, the seat of that intellectual movement.<sup>60</sup> Jefferson took full advantage of the city and country's reputation, appreciating the architecture, art, and music that so far transcended whatever he could experience in his own country.<sup>61</sup> He connected to French *philosophes* in correspondence and in person, attending salons where the issues of the day in pre-revolutionary times were discussed.<sup>62</sup> These experiences allowed him to take the measure of the state of his own home territory, viewing its strengths, weaknesses, and possibilities through the prism of what he learned in France.

It is common to think of the Enlightenment as synonymous with improvement and progress. As strange as it may appear, however, Jefferson's time in Europe also gave him another way to use Enlightenment thought to help him become even more comfortable in a role that we no longer associate with improvement and progress: that of an enslaver. Considering French history and the long road to revolution, Jefferson made the determination that, as it took the French many years to get to the point where dissatisfied members of society could strike for a change in their government, it only made sense that the ending of slavery in the United States would also be a process.<sup>63</sup> Progress did not have to come as a bolt of lightning. Historian Christa Dierksheide has described Jefferson's attempt to create a new regime at Monticello based on the idea that slavery could be "ameliorated"—made more human—by providing incentives such as money, extra clothing, and food for the young

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60. See generally WILLIAM HOWARD ADAMS, *THE PARIS YEARS OF THOMAS JEFFERSON* (1997).

61. See *id.* at 37, 41, 67-68.

62. See *id.* at 7, 10.

63. See Aaron Schwabach, *Thomas Jefferson, Slavery, and Slaves*, 33 T. JEFFERSON L. REV. 1, 32 (2010).

boys working in the nail factory he set up at Monticello.<sup>64</sup> Jefferson's reading of Cesare Beccaria, whose treatise "On Crimes and Punishment" advocated for the end of the death penalty and against torture and extreme forms of physical punishment, led him to believe that he was making progress when he decreed that the nail boys would not be whipped, but would be stimulated to work hard by the use of incentives.<sup>65</sup> This was another way that his belief in Enlightenment-based progress could coexist with an institution that was at odds with the most vaunted values of the Enlightenment.

### III. BLACKS IN AND (MAYBE) OUT OF THE NEW REPUBLIC

The idea of Enlightenment-infused amelioration could only be a stop gap measure until emancipation could be achieved. Jefferson's version of an enlightened imagination raised the question of the status of people of African descent post-emancipation. With the 1782 liberalization of emancipation laws in Virginia allowing for private emancipations, the state's population of free Black people grew, raising the issue of race in a stark fashion.<sup>66</sup> How were Black Virginians to fit into the new republic? Whites in the North, living in states with smaller Black populations, asked the same question.<sup>67</sup> Despite the fact that some Blacks had participated in the Patriot cause in both regions of the country, they were still treated as outsiders. While Enlightenment-tinged rhetoric may have caused people in the North to pass gradual emancipation statutes and, in some cases, to end slavery outright, it could not compel them to make the leap to championing actual civic and social equality for the African Americans in their midst. The Preamble to the American Constitution contains the bold phrase "We the People,"<sup>68</sup> but were Blacks really meant to be a part of this formulation?

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64. See DIERKSHEIDE, *supra* note 56, at 48, 55.

65. See *id.* at 52; John D. Bessler, *The Italian Enlightenment and the American Revolution: Cesare Beccaria's Forgotten Influence on American Law*, 37 MITCHELL HAMLINE L.J. PUB. POL'Y & PRAC. 1, 34-35 (2016).

66. See, e.g., Schwabach, *supra* note 63, at 12.

67. See GARY B. NASH, *RACE AND REVOLUTION* 57 (1990).

68. U.S. CONST. pmb.

In Jefferson's view, Blacks were a "captive nation" who would not have been in the Americas but for the inhumane slave trade.<sup>69</sup> The solution for Jefferson—which became the answer for many members of the Founding Generation and beyond—was to argue for emancipation, because of the Enlightenment value of liberty and freedom, followed by the expatriation of emancipated Black people.<sup>70</sup> They would be trained according to their genius, men to age twenty-one and women to age eighteen, then forced to leave the new United States to some ever-changing destination.<sup>71</sup> First, there was talk of sending the captive nation to the West, and then there was talk of Africa and the Caribbean.<sup>72</sup> Once they set up their own country—with some degree of help from the United States—they then could meet other nations as equals in their own land.<sup>73</sup> This would require the separation of families, of course, but Jefferson saw that as a small price to pay for the future freedom of the young people who would be set free and sent to another homeland that would become their own.<sup>74</sup>

Historian Peter Onuf has made a connection between Jefferson's plan, described in *Notes on the State of Virginia*, and what would happen to his own enslaved children with Sally Hemings.<sup>75</sup> According to Madison Hemings, while in Paris, his parents made an agreement—a "treaty," as he called it—that any children his mother had would be freed at the age of twenty-one if she agreed to come back and live with Jefferson at Monticello.<sup>76</sup> They would be freed and, thus, able to leave Monticello. In the fullness of time, the two eldest children would leave to live as white people, separating themselves from their family forever.<sup>77</sup> However, they would get the benefit of living as white people in a country that favored whites. They could take full advantage of whatever blessings were conferred upon citizens of the republic. The youngest two children would

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69. See DIERKSHEIDE, *supra* note 56, at 47.

70. *See id.*

71. *See id.* at 39.

72. *See id.*

73. *See id.*

74. *See id.* at 43.

75. See ANNETTE GORDON-REED & PETER S. ONUF, "MOST BLESSED OF THE PATRIARCHS": THOMAS JEFFERSON AND THE EMPIRE OF THE IMAGINATION 67-68 (2016).

76. *See id.* at 129-31.

77. *See id.* at 68.

remain in the Black community for a number of years.<sup>78</sup> One, the youngest son, Eston Hemings, would ultimately decide that life as a Black person was too harsh for himself and for his children.<sup>79</sup> He decided to move into whiteness with his family and change the course of life for the generations to come.<sup>80</sup> As Onuf has noted, what Jefferson planned for Black people in general was enacted at Monticello.

#### IV. JEFFERSON'S VERSION OF AN ENLIGHTENED IMAGINATION

Jefferson is often chided for the failure of his imagination. That usually refers to his inability to imagine a multiracial society, something we often say that we view as positive.<sup>81</sup> But his imagination failed him in another way. As a proponent of the Enlightenment and of a republican society that would be based upon those ideals, Jefferson could not imagine—or did not want to imagine—a society with first- and second-class citizenship; the America that we have lived in and are still struggling to change.<sup>82</sup> He believed that if emancipated Blacks remained in the country, they would rightfully demand the rights of citizenship.<sup>83</sup> They would also expect to take part in the social equality that was the birthright of people born into a republican society—you were either a citizen or you were not.<sup>84</sup> As Jefferson and the vast majority of white Americans were not in favor of the total social equality of people of color, adherence to the racial hierarchy created a problem for the ideals that the Declaration of Independence had come to represent.<sup>85</sup> The experience of slavery and what it taught white people about the relative status of the races, along with the Enlightenment's permission—if not insistence—on classification, turned out to be the stronger force when confronted with what we now consider to be the more positive aspects of Enlightenment thinking.

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78. *See id.* at 17.

79. *See id.* at 16.

80. *See id.*

81. *See* DIERKSHEIDE, *supra* note 56, at 48.

82. *See* GORDON-REED & ONUF, *supra* note 75, at 146.

83. *See id.* at 284.

84. *See id.*

85. *See id.* at 148.



This is despite the fact that Jefferson's daily existence at Monticello told him that Black people could manage in society, if the social rules did not actively seek to prevent their success. Not one of the disparaging comments Jefferson makes about Black people in the *Notes* is not contradicted by his experiences at Monticello. He claimed never to have encountered a Black person who could reason above "plain narration."<sup>86</sup> That is essentially saying Blacks could tell stories, but could not analyze situations and make decisions. But Jefferson asked Black people to do things at Monticello and his other plantations that he knew required them to reason and analyze.<sup>87</sup> He had a Black man—who by the appearances of his son in a nineteenth-century daguerreotype, seems to have been of near-total African heritage—as the only Black overseer at Monticello.<sup>88</sup> How could one put an individual who did not have the capacity to reason and analyze circumstances in the position of being the overseer at his most important plantation? Jefferson's "suspicion" that Blacks were intellectually inferior to whites<sup>89</sup> was certainly more than a suspicion. But his statement about the total inability of Black people to reason is in keeping with his well-known tendency to exaggerate to make a point. He knew Monticello's overseer, George Granger, could operate above plain narration.<sup>90</sup> This was several years after the publication of the *Notes*, but he never publicly repudiated what he had written in the *Notes*. In dealing with small numbers of Black people in his personal life, the strictures set out in the *Notes*—and the policies that could be extrapolated from them—did not apply.

In truth, his words about racial mixture show the gap between Jefferson's professed beliefs and lived experiences most starkly. He wrote that it was imperative that, once Black people were emancipated, they should be removed far from admixture, as if that phenomenon would come into being for the first time.<sup>91</sup> He

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86. JEFFERSON, *supra* note 36, at 140.

87. *See id.* at 62.

88. *See George Granger, Sr.: 1730-1799, An Enslaved Overseer*, THOMAS JEFFERSON FOUND., <https://www.monticello.org/slavery/landscape-of-slavery-mulberry-row-at-monticello/meet-people/george-granger-sr/> [<https://perma.cc/7AJN-LXHK>].

89. JEFFERSON, *supra* note 36, at 143.

90. *See generally George Granger, Sr.: 1730-1799, An Enslaved Overseer*, *supra* note 88.

91. *See DIERKSHEIDE, supra* note 56, at 47.

understood that slavery created the conditions for racial mixing. As he was writing the *Notes on the State of Virginia*, his household staff consisted of people who were of European and African descent.<sup>92</sup> His wife had brought to Monticello six of her enslaved half-siblings with whom she shared a father, the lawyer and slave trader John Wayles.<sup>93</sup> One of his best friends in Charlottesville, a man with whom he regularly associated, lived in town with one member of the mixed-race Hemings family.<sup>94</sup> Jefferson himself would have children who were mixed race.<sup>95</sup> But that was racial mixture on particular terms—it almost always involved white men and Black women. In the circumstances of freedom, Black men, if they were to become equal parts of the new republican society, might choose to form families not only with Black women, but perhaps with white women as well. In fact, Jefferson says in the *Notes* that they actually preferred white women. Of course, it would be possible for white women to accept Black men as partners.<sup>96</sup> The early colonial experience had proved that. Among the first group of free Blacks were the children of white women, because of the rule *partus sequitur ventrem*, which the Virginians had adopted—contra the norm of English society—in the seventeenth century.<sup>97</sup> This was the unthinkable outcome for Jefferson and for white society at large. It was so important to members of society that they passed laws to severely punish white women who had children with Black men, while meting out no real punishment to white men who had children with Black women.<sup>98</sup> The laws, and the ideas behind them, were accepted by the surrounding society, so this was not simply Jefferson's judgment on the matter. That there were laws against interracial marriage on the books until 1967 shows the depth of whites' feelings about the matter.<sup>99</sup>

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92. See GORDON-REED & ONUF, *supra* note 75, at 156.

93. See *id.* at 14.

94. *Id.* at 14.

95. *Id.*

96. See JEFFERSON, *supra* note 36, at 138.

97. See generally Karin Wulf, *Making Partus: Law, Power, and Heritable Slavery in 18th-Century British America*, AGE OF REVOLUTIONS (May 1, 2023), <https://ageofrevolutions.com/2023/05/01/making-partus-law-power-and-heritable-slavery-in-18th-century-british-america/> [<https://perma.cc/MY7K-KGK8>].

98. See *id.*

99. See *Loving v. Virginia*, 388 U.S. 1, 2 (1967).

In 1798, Jefferson was given the opportunity to apply Enlightenment ideas about progress to the subject of white and Black family formation. William Short, a young Virginian who had been Jefferson's protégé and secretary when he was in France, wrote to him, in problem solving, to say that he had found the solution to the problem of slavery and race.<sup>100</sup> If some people expressed prejudice against Black people, there was a way (a scientific way) to deal with the problem.<sup>101</sup> Whites and Blacks should marry one another. The end result, he said, would be a group of people who looked like the Spanish, and people thought that Spanish people were attractive.<sup>102</sup> Short offered this in spirit of progress that could fit with the part of the Enlightenment philosophy that championed reasoned problem solving, though it could have been interpreted as violating the rules that held the races of people in strict categories. This was about exploding those categories. Jefferson did not answer the letter. Short, who had remained in Europe after Jefferson went home,<sup>103</sup> raised the subject with his mentor a couple of times after that, but Jefferson never responded.<sup>104</sup>

Scholars have long noted that Jefferson had a different view of mixing with Native Americans. He thought that cultural and biological assimilation was the best answer to the Native American question, while he claimed it was out of the question for the situation with Black people.<sup>105</sup> In the absence of cultural and genetic assimilation, he believed Native Americans would disappear, as white settlers would eventually overrun their communities.<sup>106</sup> He could not bring himself to offer that as a policy with respect to African Americans. This was despite the fact that he believed, as a matter of science, that Black people, through mixture, could become white. In correspondence with Francis Gray, in 1815, Jefferson

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100. Letter from William Short to Thomas Jefferson (Feb. 27, 1798), in 30 THE PAPERS OF THOMAS JEFFERSON 146, 149-53 (Barbara B. Oberg ed., 2003).

101. *See id.*

102. *See id.*

103. *Who Was William Short?*, UNIV. OF S.C.: COLL. ARTS & SCIENCES, [https://sc.edu/study/colleges\\_schools/artsandsciences/centers\\_and\\_institutes/southern\\_studies/selected\\_resources/whowasws.php](https://sc.edu/study/colleges_schools/artsandsciences/centers_and_institutes/southern_studies/selected_resources/whowasws.php) [<https://perma.cc/H754-4KQF>].

104. *See* Cara J. Rogers, *The French Experiment: Thomas Jefferson and William Short Debate Slavery, 1785-1826*, 10 AM. POL. THOUGHT 327, 328 (2021).

105. *See* JEFFERSON, *supra* note 36, at 140.

106. *See id.* at 59-61.

answered Gray's question about when a Black person could become white, with an algebraic formula setting forth what it took to "clear" a person of "negro blood."<sup>107</sup> Through math, he was describing Virginia law's determination that a person who was seven-eighths white was, by law, a white person. Interestingly enough, his children with Sally Hemings were seven-eighths white.<sup>108</sup> He told Gray that if such a person were emancipated, they would become a free white citizen of the United States.<sup>109</sup> That was his legacy to them.

Jefferson could never confront this directly, either about his wife's enslaved family members or his own children. One has to be wary of psychoanalyzing an individual across the centuries. Jefferson considered himself a full adherent to Enlightenment philosophy.<sup>110</sup> At the same time, he was enmeshed in a community that he knew was not yet ready for the more exalted aspects of the Enlightenment.<sup>111</sup> The notion of racial classifications that grew out of the Enlightenment worked well with the lessons that white Virginians learned through the operation of the institution of slavery. It must always be remembered that slavery was not simply a system in which people were made to work for no pay—it was a system of social control. Liberated Blacks living among whites, particularly if they were given all the same rights as free white citizens, was perceived as a threat to whites' very existence.<sup>112</sup> When he referred to white Virginians' relationship to slavery (and he probably meant white Virginians' relationship to Black people in general) as having "the wolf by the ears," he was thinking about all that could happen if Black people, who made up 40 percent of Virginian society, were freed.<sup>113</sup> The commitment to racial hierarchy, which formed the basis of Virginian slave society, along with Enlightenment notions about the classifications of mankind, was

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107. Letter from Thomas Jefferson to Francis C. Gray (Mar. 4, 1815), in 8 THE PAPERS OF THOMAS JEFFERSON: RETIREMENT SERIES 310, 310-12 (J. Jefferson Looney ed., 2011).

108. *The Life of Sally Hemmings*, THOMAS JEFFERSON: MONTICELLO, <https://www.monticello.org/sallyhemings/> [<https://perma.cc/P3PC-HZTG>] (describing Hemmings's children as "7/8 European and 1/8 African").

109. Letter from Thomas Jefferson to Francis C. Gray, *supra* note 107.

110. See generally GORDON-REED & ONUF, *supra* note 75.

111. See generally *id.*

112. See generally *id.*

113. Letter from Thomas Jefferson to John Holmes (July 8, 1820), in 16 THE PAPERS OF THOMAS JEFFERSON: RETIREMENT SERIES 92, 92 (J. Jefferson Looney ed., 2019).

much stronger than the commitment to the more abstract notion of universal liberty and equality. The evidence indicates that this was as true for the rest of white society at the time as it was for Jefferson.

Returning to where I began, the commitment to racial hierarchy has been a part of American life from the very beginning. There were efforts to write a new story of how the American Experiment related to the Enlightenment. That was Abraham Lincoln's message at Gettysburg when he used Jefferson's words to suggest that the Civil War, and what would be its aftermath, was the occasion to write a new understanding of the message that the Declaration was sending.<sup>114</sup> Blacks, in the person of Black male soldiers, had firmly established their rights to the stirring words that Jefferson had written about equality and the right to life, liberty, and the pursuit of happiness. The Civil War Amendments that ended slavery, made African Americans citizens, and gave Black men the right to vote<sup>115</sup> were efforts to shore up the part of the Enlightenment that was devoted to the idea of liberty and equality. It is a promise that we have been trying to make real ever since.

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114. See Abraham Lincoln, *Address at Gettysburg, Pennsylvania*, in ABRAHAM LINCOLN'S SPEECHES AND LETTERS 1832-1865, at 259 (Paul M. Angle ed., 1957) (1863).

115. See U.S. CONST. amends. XIII-XV.