THOMAS JEFFERSON (1743-1826).
Medallion engraving by
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# Thomas Jefferson and the Education of a Citizen

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# Contents

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# Beyond Education: Thomas Jefferson's "Republican" Revision of the Laws Regarding Children

During the Revolutionary War Thomas Jefferson not only wrote a draft for a new Virginia Constitution but participated, with Edmund Pendleton and George Wythe, in an attempt to revise and update Virginia's entire code of laws. His purpose in the "revisal of the laws" was not only to "remove from our book shelves about twenty folio volumes of statutes [of England and early Virginia] retaining all parts of them which either their own merit or the established system of laws required," but also to eradicate "every fiber of antient or future aristocracy" and to lay "a foundation . . . for a government truly republican."[1] These passages point to the close interconnection between political ideas and laws, a connection that some recent historians have challenged.[2] Jefferson himself acknowledged this connection explicitly: "Every political measure will for ever have an intimate connection with the laws of the land; and he who knows nothing of these will always be perplexed and often foiled by adversaries having the advantage of that knoledge over him."[3]

An examination of Jefferson's philosophical perspectives and his revision of Virginia's laws reveals some of the tensions that existed between the theory of republican government and the practice thereof, as well as the philosophical tensions that existed within republican ideology itself.[4] These interconnections and tensions emerge as we examine the implications for children of the political discourse of the New Republic. Jefferson, who held some of the more revisionist ideas espoused by Virginians or in the new republic as a whole, proposed significant legal reforms that affected the status of children. At the center of Jefferson's ideas about the state's regulation of children was the public education of children, but Jefferson also advocated other revisions in the codes of laws and upheld older laws even though, in a few cases, they had become inconsistent, philosophically, with his reforms. These revisions and reembodiments are important if we are to understand how children were defined and also the ways in which republican political theory was understood in the late eighteenth century. The separate space Jefferson allocated to children—indeed, the extension of that space—reveals the tensions within





political theory, tensions engendered by the inequalities that remained within a theory of equality.

## *Children in Republican Political Thought*

Children and childhood hold a central place in any discussion of eighteenth-century political thought because even more than women, blacks, or Indians, they were explicitly classified as the nonrational in Enlightenment writings. Most eighteenth-century republican political theorists assumed that reason formed the foundation of human nature and that only adult men had the capability to exercise reason. Most also qualified these assertions by arguing that reason needed to be cultivated from infancy or by arguing that men in positions of power needed to be prevented from having their reason corrupted. Ultimately, the character of the government they advocated rested to a significant degree on whether they believed that human reason was innate, acquired, or impossible and unnecessary for most to acquire. The lack of reason (because some group of people had not yet—or could not—acquire it) became an excuse for excluding people from having a political voice or political power. Inequalities based on age were built into Jefferson's legal reforms and were justified within Jefferson's political philosophy: children were distinctive because they were not reasonable.

The reigning political theory at the time of the founding of the first English colonies was patriarchalism, and it was this theory that republican theorists and Jefferson argued against. Patriarchal theory, as espoused by such thinkers as Sir Robert Filmer in the seventeenth century, compared the king's power over his people to a father's power over his children. Both the responsibilities and the privileges of the king were the same as those of a political father. Filmer wrote "[i]f we compare the natural rights of a father with those of a king, we find them all one . . . as the father over one family, so the king, as father over many families, extends his care to preserve, feed, clothe, instruct, and defend the whole commonwealth."[5] The only difference between a father's power and the king's power was that the king gained his right by primogeniture. The king's position was based on inherited status, not on his production of offspring. Filmer echoed earlier patriarchal ideas such as those expressed by James I in 1598 and gave them a more rigorous justification. In *The Trew Law of Free Monarchies,* James I claimed that "the King towards his people is rightly compared to a father of children," and the people must behave dutifully toward their king. The people do not consent to the king's government. Rather, the king's right is based only on his being "their heritable overlord, and so by birth . . . comes to his crown . . . [as] the nearest and lawful heir." No matter how "wicked" any king's actions, he was king by the will of God, and it should be left to God, not the people, to judge his actions.[6]

Although patriarchal theory as such received its most rigorous justification in

the early seventeenth-century attempts by the Stuarts and Royalists to justify absolutism, two of its basic premises had formed key elements of medieval political thought. First, the description of the king as a temporal "Father" of his people was a direct analogy to the spiritual "Father" God and his spiritual earthly representatives in the church.[7] Second, the rules of primogeniture served as the primary means of granting authority.

Thomas Jefferson's political ideas can only be fully understood when it is realized that many of the books that influenced him were written as reactions to the royalist Sir Robert Filmer and to patriarchal absolutism. In fact, two of the philosophers whom Jefferson most admired, John Locke and Algernon Sidney, wrote their political treatises directly in response to Filmer. The following sketch of Thomas Jefferson's political ideas draws not only on his own writings but also on the writings of Sidney and Locke.[8] Although some modern historians have found a dichotomy between Sidney and Locke, and thus have seen Jefferson as torn between two opposing schools of thought, Lockean Liberalism on the one hand and Classical Republicanism on the other, this difference has been drawn too rigidly and rests partly on an overemphasis on the place of liberty in John Locke's thought and a corresponding underemphasis on the place of liberty, equality, and consent in Classical Republican thought.[9] Focusing on reason in the thought of Jefferson, Locke, and Sidney illustrates that conflicts between two opposing schools of thought can be seen instead as tensions within a single paradigm.

In Jefferson's America, students of Locke read both of his treatises of government as well as his *Some Thoughts Concerning Education* and his *Essay Concerning Human Understanding*.[10] Any careful reading of the documents in conjunction, or even a reading of *The Second Treatise of Government* that highlights Locke's consideration of the status of children, illustrates that Locke did not perceive humans as asocial, nor did he believe that human beings should not learn self-discipline and virtue, or that humans should or could have perfect liberty. For Locke, liberty and equality come only with control over the passions and the exercise of reason. John Locke's writings formed probably the strongest philosophical argument for the formal education of children in eighteenth-century England and his *Some Thoughts Concerning Education* and *Essay Concerning Human Understanding*, in particular, resulted directly in the appearance in England and America of a literature, the first of its kind, directed specifically toward children.[11] In many ways, what Pocock described as the emphasis on virtue in republican writings is similar to the emphasis on education in Locke's writings. Public virtue in classical republican theory, according to Pocock, meant, in part, the gaining of independent, rational thought and control over the passions, a self-control that was the same focus of Locke's education.[12]

Writing in the early 1680s, nearly forty years after Filmer, John Locke claimed in his *Two Treatises of Government* that paternal authority is not the same as political



authority, that most citizens are not children but are adults who can reason and should be able to consent to their own government. At the same time, however, Locke distinguished adults who could reason from the children who could not: "Children, I confess, are not born in this full state of equality, they are born to it. Their parents have a sort of rule and jurisdiction over them. . . ." Locke referred to children as "weak and helpless, without knowledge or understanding." The parents' task is to "govern the actions of their yet ignorant nonage, 'til reason shall take its place." This power belongs to parents in particular because the child is dependent on the parent—to feed and clothe it and care for it.[13] He elaborated on these ideas in *Some Thoughts Concerning Education* and *An Essay Concerning Human Understanding*, both of which described the lengthy process a child undergoes in order to develop reason, what Locke called "reflection," or the ability to "abstract" generalizations from particular observations to develop complex ideas. The chief end of developing the understanding is to discover, and follow, morality. He held that these abilities were essential to participatory citizenship.[14]

Thus although Locke, as most scholars have emphasized, advocated equality and made consent the basis of legitimate authority, he excluded some from having a political voice because they did not have reason. He also upheld key elements of Filmer's patriarchal theory, particularly the power of parents over children. Locke limited parental authority more than Filmer because Filmer held that the father had the power of life and death over his children while Locke held that only the state had that power. Still, Locke never held that parental authority should originate in consent but rather that parents legitimately exercised authority because children were dependent and lacked reason.[15]

Writing at the same time as John Locke, Algernon Sidney did not emphasize formal education to the same degree and wrote more about "virtue" and "wisdom" than the "reason" that Locke explicitly emphasized.[16] Yet he attacked Filmer's ideas at precisely the points as did Locke; he objected to primogeniture as a system for the allocation of power and to the link that Filmer had established between familial and state power. For Sidney, people should be advanced to leadership positions by merit of their experience, wisdom, and virtue, not by birth. The fact that children—who lacked wisdom and experience and could more easily be corrupted—could be advanced to leadership positions represented, for Sidney, the best proof of the problems with monarchy in particular and with a feudal as opposed to a republican system. Sidney began his *Discourses* with an attack on primogeniture, a system of government that allocated power on the basis of inheritance rather than reason, merit, and virtue.[17] He mocked Filmer's defense of primogeniture by describing its consequences. While Filmer acknowledged that with primogeniture, "it comes to pass that many a child, by succeeding a king, hath the right of a father over many a greyheaded multitude, and hath the title of Pater Patriae,"[18] Sidney made this right seem ridiculous. For Filmer, primogeniture with respect to kings is the

> Royal Charter granted to kings by God. They all have an equal right to it; women and children are patriarchs; and the next in blood, without any regard to age, sex, or other qualities of the mind or body, are the fathers of as many nations as fall under their power. We are not to examine whether he or she be young or old, virtuous or vicious, sober minded or stark mad; the right and power is the same in all.[19]

Although the lack of age and reason are not the only characteristics by which Sidney mocked Filmer's claim that kings were patriarchs (clearly Sidney held that a disregard to sex was suspect as well) the fact that a person could be the leader of a nation who had neither age nor reason nor virtue formed the crux of his argument against Filmer. The text of Sidney's *Discourses Concerning Government* is devoted to demolishing Filmer's argument for an inherited authority based on primogeniture, or a government based upon status. The fact that a child could be king represented the most ludicrous aspect of monarchy.[20]

Thomas Jefferson, like Locke and Sidney, believed that in order to be a participatory citizen, a person needed to be able to exercise reason. A simple statement perhaps. Yet it hides layers of assumptions and creates, by definition, a two-tier system of equality, one in which children, in particular, were defined as the nonreasonable. That those who could participate in government should be able to exercise reason was the key theoretical formulation underpinning Jefferson's plan for public education and his statute on religious toleration. It also affected a range of public policies that served to define and limit children's participation. Jefferson, like Locke and Sidney, still advocated equality: the fact that there were differences in who could participate did not mean that equality was merely a fiction.[21] Rather, equality needs to be understood within the context of this emphasis on reason. Equality was clearly an important element of Jefferson's thought and provided the basis for some of his legal reforms. Indeed the other two reforms—in addition to public education and religious toleration—that Jefferson regarded as the key elements of his "republican revisal" both sought to erase a system of inheritance that had favored one child because of birth: they did away with entail and primogeniture. In other words, Jefferson's thinking, like that of many reformers whose political ideas developed in the crucible of the American Revolution, reflected shifting political priorities that moved away from an emphasis on inherited status and toward an emphasis on merit, with that merit defined, largely, through a person's or a group's ability to exercise reason.

Like both Locke and Sidney, Jefferson in some passages seemed to imply that humans possessed free will and were equal in that freedom as soon as they had been created. "All men are *created* equal," he wrote in the *Declaration of Independence,* "they are endowed by their creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness." In his manuscript for *A Summary View,* published in July 1774, he wrote similarly that "The God who gave us life, gave us liberty at the *same time:* the hand of force may destroy, but cannot disjoin



them."[22] In the original published version of his *Bill for Establishing Religious Freedom,* Jefferson wrote that he (and the Virginia Legislature) were "[w]ell aware that Almighty God hath *created* the mind free, and manifested his supreme will that free it shall remain by making it altogether insusceptible of restraint."[23]

A closer examination, however, reveals what kind of limits he set on that equality and that freedom. The sentence that follows "life, liberty and the pursuit of happiness" in the Declaration of Independence is, "to secure these rights, governments are instituted among men, deriving their just powers from the *consent of the governed.*" Did Jefferson believe that all should consent? The restrictions on voting that Jefferson proposed in his draft of a Virginia Constitution, written in the same year, reveal that he did not.[24] Are the governed, then, the same group as could consent? No. Are the governed the same group who had a right to life, liberty, and equality? Although the answer to this question is more complicated, it to some extent matches the first, particularly with respect to "liberty" and "equality." In his *Bill for establishing Religious Freedom,* Jefferson explained how he thought people came to have "opinions and belief" that made them able to consent. "The opinions and belief of men depend not on their own will, but follow involuntarily the evidence proposed to their minds . . . the holy author of our religion . . . chose . . . to extend it by its influence on reason alone."[25]

For Jefferson, then, what humans believe is shaped by reason filtered through experience. Not until humans gain reason, through both experience and (possibly) a formal education, are they actually entitled to the freedom to which they were born. "To render a child independent of its parents," Jefferson wrote on the question of leaving money to grandchildren, "is to ruin it's education, it's morals, it's reputation and it's fortune."[26] John Locke had developed this argument further, linking together what sometimes seem to be contradictory statements within Jefferson's writings. Just after claiming that all men are equal, Locke equivocated: "Children, I confess, are not born in this full state of equality, they are born to it."

> Thus we are born free, as we are born rational; *not that we have actually the exercise of either:* age, that brings one, brings with it the other too. And thus we see how natural freedom and subjection to parents may consist together, and are both founded on the same principle. A child is free by . . . his father's understanding, which is to govern him till he hath it of his own. The freedom of a man at years of discretion, and the subjection of a child to his parents, whilst yet short of that age, are so consistent, and so distinguishable . . ." [my italics].[27]

Thus for Jefferson, as for Locke, until children attained reason, or roughly speaking, until they gained the appropriate age, they should be dependent on their parents and subject to their will.

Yet the gaining of reason did not come merely with age for Jefferson. Although in a letter to Madison of 1786 he implied that men could and should form their own opinions,[28] in general he made it clear that some measure of formal education was

necessary in order to adequately nurture reason. Although Jefferson fluctuated he generally emphasized formal education, rather than just experience, as the key to wisdom: reason was learned deliberately; it was not innate to all those who had accumulated a certain amount of experience or lived a certain length of time.

Thus, although reason and education do not necessarily accompany one another, for Jefferson they were usually allied. The content of education was to teach a method of analysis and to learn about the range of human experience. For Jefferson as for Locke, education was a mixture of experience and a program of formal education. Jefferson thought that a more formal education served three functions: It gave people the strength of purpose to resist mental vassalage to others; it was a prerequisite for "rightful" informed consent; and it provided equality of opportunity. The first two goals of education relied on an education that taught reason; the third goal generally aimed at educating children in a trade, such that those who inherited no land at least had a means to subsist.[29]

Jefferson strongly promoted public education as a means of inculcating public reason—that is, teaching people to think for themselves so they could be less easily duped by unscrupulous rulers. The purpose of public education was to "enlighten" the public and to help them exercise their reason. In 1786, in a letter to George Wythe about the far-reaching changes in the legal code of Virginia, he wrote: "I think by far the most important bill in our whole code is that for the diffusion of knowledge among the people. No other sure foundation can be devised for the preservation of freedom, and happiness." Afraid that without education the mass of the people in America would become, like the peasants in France, the victims of unscrupulous overlords, he cautioned his friend Wythe:

> Preach, my dear sir, a crusade against ignorance; establish and improve the law for educating the common people. Let our countrymen know that the people alone can protect us against these evils [kings, nobles, and priests], and that the tax which will be paid for this purpose is not more than the thousandth part of what will be paid to kings, priests and nobles who will rise up among us if we leave the people in ignorance.[30]

If people were left ignorant, they would not realize when governments or religious organizations threatened their interests.

Education was also a prerequisite for "rightful" informed consent. Jefferson elaborated on this aspect of education in January 1787, in a letter giving his response to news of Shays' Rebellion in Massachusetts. Instead of endorsing the military force which was in fact used Jefferson warned that "to punish [the] errors [of the people] would be to repress the only safeguard of the public liberty." He told Edward Carrington not to "be too severe upon their errors but *reclaim them by enlightening them*"[my italics].[31] Almost thirty years later, in 1816, he reinforced the same message: "I know no safe depository of the ultimate powers of society but the people themselves; and if we think them not enlightened enough to exercise their control



with a wholesale discretion, the remedy is not to take it from them, but to inform their discretion by education." Here in particular Jefferson acknowledged that the "unenlightened" should not have a political voice. But unlike John Adam's and Gouverneur Morris's solution, which was simply to exclude those who could not exercise reason, Jefferson's solution was to educate them.[32]

Jefferson's 1801 inaugural address made a similar distinction: "that although the will of the majority is in all cases to prevail, that will, to be rightful, must be reasonable."[33] Although Jefferson was describing the general character of the people's consent he was also, by implication, commenting on the qualifications of the electors. He was not excluding the unreasonable adult. Clearly Jefferson felt that the people, uninformed by reason, should be granted some limited political authority, if only to restrain those in power from becoming tyrants. Yet Jefferson did argue that only with an informed electorate could the will of the people be "rightful," or correct. In other words, the people would not perceive wholly their own good, or the good of the country, until they had reason.

Thus, although it could be argued that Jefferson modified a conservative interpretation of Locke and inclined more toward Sidney, who did not emphasize a formal education and held that most male adults had reason, it is also clear that Jefferson believed that formal education of the people was critically important to "rightful" government.[34] Jefferson's comments on the power of parents or teachers contain a similar tension. In his letter to John Banister he suggested that parents should act more as friends than as authorities toward their children: "The post which a parent may take most advantageous for his child is that of his bosom friend. I know your way of thinking too well to doubt your concurrence in this."[35] Indeed, his letters to his daughters, while persuading them to be good and study hard, are full of love and affection and certainly not strictly authoritarian.[36] His letter to Peter Carr telling him to obey his tutor, however, implies that he thought a teacher should have a great deal of authority and should be obeyed. "Do not be misled by others into an opinion that to oppose a tutor and to set him at defiance is shewing a laudable spirit, on the contrary nothing can be more blameable and nothing will discredit you more in the opinion of sensible men."[37] The passage quoted above, wherein Jefferson showed that he thought too much independence in a child would render it impossible for the child to be properly educated, shows that he thought, at the very least, that the structure of authority should exist, even if parents or tutors did not always choose to act upon it. "To render a child independent of it's parents is to ruin it's education, it's morals, it's reputation and it's fortune." Even his letters to his daughters reveal that while he might extend a hand of friendship and love, he does it partly to bolster his authority.[38]

Ultimately, as the laws Jefferson outlined make clear, he relied upon a somewhat simple equation between reason and age, with age serving as a marker for intellectual development, to set the qualifications for obtaining personal and political

power. Some age distinctions were already partly built into the common law, but Jefferson helped to solidify legal distinctions based on age: to strengthen parents' powers over children until children had achieved "the age of reason" and to decrease children's legal abilities by increasing age requirements for various citizenship rights and responsibilities. Jefferson's advocacy of these reforms hinged on the same conception of an elongated childhood that underlaid his emphasis on formal education and experience.

### *Legal Reform to Limit Children's Authority*

Particularly in the practical laws he wrote, Jefferson showed clearly that he did not indeed believe that all people, even all men, were equal from birth. More than some of his contemporaries, he gave a great deal of freedom to youth—once they came of age. He advocated that a constitutional convention be held every generation so that as each group of young men came of age they need not be bound by their father's consent to their new government, but could be bound by their own. In some ways Jefferson had a vision of America as a young nation, and he thought that a seal of the United States should have an image of a father presenting his son with a bundle of rods.[39] Yet Jefferson explicitly altered many laws to give increased power to parents while their children were young and lengthen the legal dependency of childhood. He made these alterations to coincide with republican political theory. They included the abolishing of entail and primogeniture, plans for public education, minimum age requirements for those elected, such as members of the Virginia Senate, and stronger parental control over marriage choices. Other elements of the laws, which Jefferson might have chosen to change (and indeed which were changing gradually during this period), he apparently did not choose to dramatically alter. Among them were poor law policy and various regulations relating to children and contracts and children as witnesses.

Primogeniture and entail were parts of the English common law relating to inheritance. Entail, in layman's terms, was a process by which some ancestor wrote in a will, "I leave this to my son and to the *heirs* of his body after him." This coded legal passage then prohibited the man who inherited the property from choosing to whom the property would descend: it automatically followed general rules of primogeniture and went to his eldest son, and if he had no son, to his daughter, or if he had no daughter, to his brother, and so on. The property could descend to daughters as long as the entail did not specify male heirs, which it sometimes did. This practice gave very little manipulative control to parents over children: children would inherit what they would inherit. Jefferson consciously described this lack of control as a problem. In the preamble to his bill abolishing entail, he wrote that one of the evils of entail was that it could do "injury to the morals of youth, by rendering them independent of and disobedient to their parents."[40] Whereas earlier



historians had concluded that entails were not common in Virginia and thus that these reforms were unimportant, my recent work has shown that entails exerted a powerful grip over Virginia and that thus getting rid of them was a very significant change in Virginia's law and institutions.[41]

Primogeniture also referred specifically to the system of inheritance where a person possessed of nonentailed real property died without a will, or intestate. In this case, the estate would be distributed as though it had been entailed. With this looser type of primogeniture, the testator had control over how his or her property was distributed if he or she chose to leave a will—although there might well have been a residual tendancy to transmit all property to one priviliged heir so that a plantation would remain in the family without having to be broken up. The changes Jefferson proposed abolished both systems (entail and general primogeniture) and divided estates among all children (females as well as males) where a man died intestate. Otherwise, the testator had complete discretion over the disposal of his estate and the education of his children, a change that increased the father's power. These bills concerning "wills" and the "course of descents," both known to have been written by Jefferson, he regarded as cornerstones of "the foundation . . . for a government truly republican."[42] They were doubly so: not only did they increase equality of opportunity for the younger generation, but they increased fathers' powers over their children by increasing their control over inheritance. By itself the abolition of entail reveals the tension between control and liberty, equality and inequality, within Jefferson's political and legal thought.

This tension is also illustrated in Jefferson's discussion of children as citizens. Were children citizens and at what age did they become participatory citizens? Bill 55 of the revision of the Virginia laws, attributed by the editors of his papers to Jefferson, stated that all were citizens who either were born within the territory of "this commonwealth" or who migrated there and swore allegiance, including "all infants [children under twenty-one] wheresoever born, whose father, if living, or otherwise, whose mother was a citizen at the time of their birth" or whose parent(s) migrate to Virginia.[43] On the one hand this discussion argued that a child is a citizen regardless of age. On the other, it argued that the citizenship of the child was determined by the parent (and the child could not choose it) until it arrived of age (although Jefferson did note that children who migrated to [the United States?] of their own accord could be considered citizens.) A discussion of property rights modified this point: According to Jefferson, an adult citizen of America could not inherit property from a relative in Britain, because the American citizen would be an alien in Britain. A child, however, could inherit property, even though living in America (as long as he or she was born in Britain or in the colonies before independence), because he or she would not be of age to choose their citizenship.[44] The child being both citizen and not citizen went beyond the mere question of property. Jefferson, Pendleton, and Wythe in the revision of the laws directed in several

places that normal statutes of limitations would not begin for children until they reached the age of twenty-one.[45]

With respect to active citizenship—voting, jury service, and militia service—Jefferson either approved or increased age requirements. Age requirements for voting had been set in Virginia in 1699, following the addition of age requirements (to property requirements) in England in 1695; both set twenty-one as the minimum age to vote or to be elected. These age requirements were set just after the Glorious Revolution, and the addition of age to property requirements probably reflected the influence of John Locke, if not Sidney (although his *Discourses* was not published until 1699), and of Whig pamphleteers such as Henry Care who railed against the practice of "minors" being elected in the 1680s.[46] Jefferson upheld the age of twenty-one in his various writings on suffrage requirements, and suggested thirty-one as the age at which a man could be elected to the Virginia Senate, or six years older than the age requirement in the Virginia Constitution.[47] Age requirements increased in two other areas of citizenship in the years after the Revolutionary War: jury service and military service. The minimum age for jury service was fourteen in Virginia until 1792 when the Virginia legislature increased it to twenty-one; the age minimum for military service in Virginia, although it changed sporadically over the eighteenth century, was raised from sixteen to eighteen in 1784. Jefferson's precise role in these raises in age limits is unclear, but they fit in with a larger pattern of republican principles. With so much emphasis on reason, and children being given as examples of the unreasonable, it was logical to exclude them from participatory citizenship.[48]

The exclusions that Jefferson chose to leave in place, minimal property qualifications, twenty-one years of age, male gender, and sanity, all reflect a concern with the reason and the independence of the voter. Independence was not merely a vague consideration, as Richard Bushman and Edmund Morgan have pointed out: bribery and "dependence," in the form of being an employee or a renter, might in fact influence a person's vote.[49] Reason and mental and physical independence were in fact closely linked in political theory, and indeed implicitly by Jefferson himself, although, as argued above, Jefferson tended to shy away from the dependence argument as it related to adult males.[50] Rather than just excluding unenlightened, unreasonable, or otherwise dependent adult white males, Jefferson sought to include them by educating them.[51]

Jefferson also strengthened parental power in critical respects, partly, perhaps, because he saw girls and boys under twenty-one as unable to make their own decisions and the parent as their best, and most loving, counselor. Jefferson can be partly credited with Bill 86, which would have revised Virginia marriage law, although he probably did not write it. Wythe, Pendleton, and Jefferson met and discussed the revisions *in toto*. Bill 86 strengthened the power of parents by making the marriages of those under twenty-one void unless their parents had consented: "And a marriage



between any persons whatsoever unless it be with such license [that contains the father's or guardian's consent], and, moreover if both or either of the parties not having been married before, be under the age of twenty one years, with such consent, as herein after directed, shall be *null*."[52]

This voidability presented a dramatic strengthening of Virginia marriage law. In eighteenth-century Virginia, ministers were merely fined if they had performed marriages without having the parent's, generally the father's, signature on a license or without having published banns (presumably the parents could dissent after hearing the banns). Making these marriages void would have given much more legal weight to parents, although this portion of the law was not ultimately passed.[53] This change had been adopted in 1753 in England in a law that attempted to prevent "clandestine" marriages, and had resulted in a flurry of pamphlets about whether girls between the ages of twelve and twenty-one and boys between the ages of fourteen and twenty-one could in fact consent at all to the marriage contract if the parents' consent was also necessary. In other words, they should either be able to make that decision or not able, since it was they, not their parents, who would have to spend the rest of their lives in that relationship.[54] In fact the law in England and Bill 86 of the Revision of the laws in Virginia represented dramatic attempts to strengthen parental control over marriage. Under the Catholic church before the reformation in England and in the Anglican ecclesiastical courts, it is clear that the agreement to marry, in the future, between two people, unmarried, of opposite genders and over twelve for girls and fourteen for boys, if proven, represented a binding promise in the eyes of the ecclesiastical law. The punishment for teenagers who disobeyed their parents might be a loss of inheritance, but nothing more. Although early American colonists instituted laws that strengthened parental power by restraining the ability of ministers to officiate over the marriages of minors without parental consent, they never sought to actually invalidate marriages once they had occurred.[55]

Yet Jefferson's refusal to reinstate the English law on statutory rape in his bill on crimes and punishments challenges the idea that Jefferson did not think children could consent to sex. According to a statute passed during the reign of Queen Elizabeth, a statute that appeared in early Virginia guides to justices of the peace, which were basic guides for how the law should be enforced, sexual relations with a girl under the age of ten was rape whether or not the girl consented, based on the idea that a girl under ten had no ability to consent. Jefferson's reasoning against statuatory rape rested on an argument that this law was not part of the common law. He ultimately chose to dismiss this statute passed during the reign of Queen Elizabeth because it was a statute, and thus, he argued, not part of the common law, and because Blackstone, in his *Commentaries,* did not discuss it.[56] Yet ultimately, this statute had been in force so many years and had been recognized as valid by enough people that Jefferson could easily have chosen to accept it based upon a common

law argument or to accept it as a revision that he thought beneficial. Perhaps Jefferson thought that statutory rape should not be a crime because it assigned blame to only one person — the adult male — for an act of consensual sexual intercourse.[57] Both Jefferson's dismissal of statutory rape and his revision of the marriage law involve a child's or young adult's consent to sexual relations. That these two policies in some ways contradict each other suggests that Jefferson did not think through the entire context of his reforms. On the one hand, with regard to parental consent to marriages, he seemed to greatly strengthen parental power and undercut a young adult's abilities to consent, and on the other, he seemed to accept that girls, even under ten, had enough reason to give valid consent to sex—or at least that they could be partly to blame. Jefferson, on neither point, was accepted: marriages without parental consent were not voided, and the rape and abduction of young girls continued to be punished by Virginia law and codified statutes were introduced as part of a continuing revision (in which Jefferson probably had no part) by an abduction law of 1789, and a statutory rape law of 1792.[58]

Jefferson displayed reciprocity, however, in his revision of intrafamilial murder law, a reciprocity that in some ways undercut parental power. His opinions in this respect display some of his reasons for strengthening parental power in other respects: Jefferson felt that natural parents were unique and had strong ties of affection to their children, bonds which made them the most appropriate and natural overseers of their children. Although according to common law it had been "petty treason" for a child to kill a parent and only murder for a parent to kill their offspring, with the punishment for petty treason being worse than the punsishment for murder, Jefferson imposed the same punishment on a parent who killed a child as a child who killed a parent, "death by hanging, and his body be delivered to Anatomists to be dissected." The dissection was an interesting variant on the previously more horrible death imposed on those who committed treason of any kind, whether high or petty, which had been, if male, to be first "drawen" (disembowelled while alive) and then hanged, or, if female, to be burned alive.[59] Jefferson also eliminated an old law that presumed an unmarried woman guilty of murder if her child was stillborn or died soon thereafter and she had concealed the birth. This law had argued that the concealment itself signified an intent to kill the child. Jefferson challenged this: "If shame be a powerful affection of the mind, is not parental love also? Is it not the strongest affection known? Is it not greater than even that of self-preservation? While we draw presumptions from shame, one affection of the mind, against the life of the prisoner, should we not give some weight to presumptions from parental love, an affection at least as strong, in favor of life?"[60]

Jefferson also might have intended to reinforce the natural bonds between parent and child through a pension plan for the families of soldiers involved in the Revolutionary War. Under the poor law as it was administered in Virginia, when families could not support themselves, the children were almost always removed from their families and bound out as apprentices by the overseers of the poor. This



temporary pension plan, which gave food and other supplies to families who were poor and who had a father or son fighting in the Revolutionary War, began in fall 1779, during Jefferson's first term as governor.[61] It had the effect of reducing the rate of children removed from their natural parents and apprenticed, a removal process usually based on the poverty of the parents. Analysis of data collected from Frederick County, Virginia, reveals that the rate of children apprenticed dropped from 7.3 percent to 3.9 percent of all children between 1751-60 and 1781-90. Thus many more children were able to remain with their natural parents, particularly with their natural and legitimate mothers.[62] This would certainly fit in with Jefferson's emphasis on parental love and with the emphasis, explicit in Locke and Sidney and implicit in Jefferson's political thought, that parental power was separate from state power.

The poor law, as it had existed in Virginia and in England, had operated under the aegis of *parens patriae,* or the state as parent. Jefferson did not altogether dismember the old poor law in his revision of the laws. Indeed, that would have been an expensive step: for without apprenticeship, assuming that the state should not let these children starve, a system that let many children remain with their parents would have meant substantial transfer payments from the parish or county or the commonwealth of Viriginia to each family. Jefferson, instead, supplemented and found substitutes for the older policy, adding provisions for all apprentices to be able to attend the public schools that he was developing and adding the pension plan discussed above. He still, however, directed that every orphan who could not be maintained out of the estate which they were to inherit should be bound out, as well as mulattos and the children of the those who received poor relief.[63] The pension plan did not completely reform the poor law, yet in providing avenues for children to remain with their natural parents—when these were the children of soldiers fighting for their country—the pension law increased the separation between the powers of parents and the powers of the state, putting the responsibility for children ever more fully into the private familial domain.

The core of Jefferson's revision of the laws with respect to children, in his own eyes, was his Bill for the More General Diffusion of Knowledge, in which he provided three years of public education for all free children, male and female. For Jefferson, a formal education that included reading, writing, common arithmetic, and "Graecian, Roman, English and American History" was critical for making a republic work. Education helped the populace to protect its own exercise of natural rights, prevented tyranny, and encouraged the most "wise and honest," the most endowed with "genius and virtue," to rise to positions of leadership without regard to inequalities based on inherited wealth. Thus, for Jefferson, education, or the process of "illuminat[ing], as far as practicable, the minds of the people at large," granted people the reason necessary to make their government function properly, based on their consent and their participation.[64]

People should be promoted based upon their wisdom and virtue, not based on

the abstractions of birth; and children should be excluded from positions of power. They were the unreasonable. They had not learned virtue and had not yet gained wisdom. They should not reach positions of power through "the accident of birth," that Sidney railed against, and they lost some of the legal privileges they had previously exercised. Childhood became extended because there was more emphasis on that development. And parents gained more power over their children as children lost some autonomy, and state power became more separated from parental power.

## *Conclusion*

Jefferson himself did not always make clear what was new in his revision of the laws; regarding children, indeed, he was caught in broader changes. Given the tendency of the common law to conceal change because every alteration is based upon "precedent," it is sometimes hard to know whether Jefferson recognized the extent to which he was a part of changes that were being incorporated into the common and statute laws of England and America.[65] These changes grew out of the political theories that originated in England during the two revolutions of the seventeenth century, theories that were adopted and reinforced by Americans during our Revolutionary War. Broader changes included statutory changes in the initial requirements for a voting age that appeared in England and Virginia soon after the Glorious Revolution; also the shift in the minimum age for jury service which occurred in Virginia in 1792, but in England in 1694, the year before minimum age limits were attached to voting and being elected; and the shift in military service from sixteen to eighteen in Virginia in 1784. Aside from these statutory changes in Virginia, other changes occurred within the supposedly unchanging common law. Children lost the ability to testify as witnesses during the seventeenth and eighteenth centuries, part of a broader reform of the laws of evidence, a change also linked to the rise in age for jury service; and children's consent ceased to be requisite for trade apprenticeship contracts. I discuss these changes elsewhere.[66] They are linked to the distinction in political theory between the rational adult and the irrational child and occurred in the context of debate over who was reasonable and independent enough to fulfill citizenship rights, a debate in which age became increasingly relied upon as a gauge of reason and independence. The place of children in republican political theory and in Jefferson's revision of the laws illustrates some of the tensions within republican political theory itself. Whatever Jefferson might have felt about these other issues that affected the legal status of children, it is clear that Jefferson legally sought not to liberate children themselves, at least not until they became adults: he thereby set liberty and equality in the context of a theory of human development.