

Eudemonism or Survivalism? Jefferson and the Unwritten Laws of Self-Preservation

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Abstract: Jefferson states that in certain dire circumstances—e.g., when a person's life is at stake or when a belligerent nation threatens the existence of another—the legal pacts between those persons or nations, and even the laws of morality, are left in abeyancy. Survival of the threatened person or nation is the only thing that matters, and any actions that conduce to survival are justifiable. Self-preservation in such cases trumps all considerations—even moral considerations. The right to existence then, seems to be the first axiom of morality, *lex suprema*, for Jefferson in such scenarios. Virtuous living is ancillary. Jefferson seems to be advocating a sort of moral or egoistic "survivalism."

For ancient eudemonists like Aristotle and the Stoics, happiness is the end of living, and a life without the prospect of happiness, of which virtue is the key or sole ingredient, is not worth living. All the goods or conveniences of life, without virtue, cannot make a person anything but miserable. In sum, virtuous living, not living, is the human *telos* (the Stoics), or the chief part of it (Aristotle). And so, survival without the prospect of virtue is valueless.

Is Jefferson a eudemonist or a moral survivalist? Are the two positions reconcilable? In this essay, I argue that the difficult passages, mostly of a political sort, do not lead to moral survivalism, but are instead consistent with the unique eudemonism Jefferson embraced.

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David Hume in “Passive Obedience” writes of a problem with the obligation to seek justice in all mutual relations concerning humans and human institutions.¹ The maxim, *fiat justitia et ruat cælom* (let justice occur and the heavens be razed), would have “pernicious consequences,” if applied in extreme instances. When the safety of a nation is at stake, to be constrained by justice is to sacrifice “the end to the means”—i.e., lose the nation to win justice. Justice, for Hume, is not an end, but a means for human safety and wellbeing. Hence, in extraordinary circumstances, justice must be pretermitted for self-preservation. Thus, “salus populi suprema lex, the safety of the people is the supreme law.”²

Jefferson, like others of his day, was abundantly aware of the problem of which Hume writes. Jefferson states that in certain dire circumstances—e.g., when a person’s life is at stake or when a belligerent nation threatens the existence of another—the legal pacts between those persons or nations, and even the laws of morality, are left in abeyancy. Survival of the threatened person or nation is the only thing that matters, and any actions that conduce to survival are justifiable. Self-preservation in such cases trumps all considerations—even moral considerations. The right to existence then, seems to be the first axiom of morality, *lex suprema*, for Jefferson in such scenarios. Virtuous living is ancillary. Jefferson, like Hume, seems to be advocating a sort of moral or egoistic “survivalism.”

Survivalism for Hume makes sense, for morality for Hume is a matter of human sentiment, and the varied human constitutions do not make all persons equal and sturdy moralists—hence, the need of justice. To secure justice, the employment of reason is needed to enable humans to assess utilities, and each person, though not without feelings of benevolence, regards the continuance of his person and his nation with utmost utility.³

1 I would like to thank the journal’s two reviewers, Daniel Walker Howe and Richard Samuelson for aidful comments concerning a prior draft of this paper.

2 David Hume, “Of Passive Obedience,” *Essays: Moral, Political, and Literary*, ed. Eugene F. Miller (Indianapolis: Liberty Fund, 1987), 489. In “Of Justice,” he writes, “The safety of the people is the supreme law: All other particular laws are subordinate to it, and dependant on it: And if, in the *common* course of things, they be followed and regarded; it is only because the public safety and interest *commonly* demand so equal and impartial an administration.” David Hume, “Of Justice,” *An Enquiry concerning the Principles of Morals*, ed. J.B. Schneewind (Indianapolis: Hackett Publishing Company, 1983), 29.

3 David Hume, “Concerning Moral Sentiment” and “Some Farther Considerations with regard to Justice,” *An Enquiry concerning the Principles of Morals*, ed. J.B. Schneewind (Indianapolis: Hackett Publishing Company, 1984), 83-8 and 93-98.

With Jefferson, the moral landscape is different. He is not only a liberal, but also an eudemonist of some persuasion,⁴ as he customarily couples the terms liberty and happiness in writings, and the notion of liberty without happiness is for him empty. Yet his *telos* is not dualistic: Liberty is in the service of happiness.

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The Case for Moral “Survivalism”

In a letter to John Colvin (20 Sept. 1810), Jefferson asks whether circumstances do not sometimes require a prudent officer of a nation to go beyond the written laws and act rather as circumstances dictate. The question is weighty. An affirmative answer allows for the sort pretermission of written laws that Federalists of Jefferson’s day thought a strong, capable executive should embrace. The question, Jefferson also asserts, requires an affirmative answer.

A code of laws cannot offer an inviolable blueprint for correct political action in all scenarios. First, no code of laws anticipates all courses of events. Second, there will be times when the correct course of action for an officer will be transgression of a written law. Jefferson writes: “A strict observance of the written laws is doubtless *one* of the high duties of a good citizen, but it is not *the highest*. The laws of necessity, of self-preservation, of saving our country when in danger, are of higher obligation. To lose our country by a scrupulous adherence to written law would be to lose the law itself, with life, liberty, property, and all those who are enjoying them with

4 See M. Andrew Holowchak, *Dutiful Correspondent: Philosophical Essays on Thomas Jefferson* (Lanham: Rowman & Littlefield, 2012), 51–68.

us; thus absurdly sacrificing the end to the means.” Thus, if scrupulous adherence to written laws which guarantee life, liberty, property, and their enjoyment will result, in certain ultraist circumstances, in their riddance, then the laws must at least temporarily be pretermitted to save the people.

Jefferson illustrates. “A ship at sea in distress for provisions, meets another having abundance, yet refusing a supply; the law of self-preservation authorizes the distressed to take a supply by force. In all these cases, the unwritten laws of necessity, of self-preservation, and of the public safety, control the written laws of *meum* and *tuum*.” In dire circumstances, “mine” and “yours” are void.

He then offers a radically different, hypothetical example, set in autumn in 1805. What is at stake is a great public boon, provided that the executive acts in a timely manner. Suppose that the president—and Jefferson was president in 1805—should be offered the Florida territories at a reasonable price, though one without the appropriation of law, and that Congress should meet within three weeks to decide the issue. The advantage to the country would be undeniable and considerable, but the risk to the executive, as a vilipender of laws, would also be considerable.⁵ Yet Jefferson supposes a retardment, which allows for Congress to meet and decide the issue. He supposes too that fiery Congressman John Randolph protracts the proceedings till the spring to buy time, through a change of circumstances, to convince the party other than the president’s not to purchase the territories. Should he have foreknowledge of the shifty manoeuver, ought the president to overpass the laws and make the purchase? Jefferson writes, “I think he ought, and that the act would have been approved.” He Jefferson cites the British invasion of the Chesapeake Bay, during his tenure as governor of Virginia. “Our magazines were illy provided with some necessary articles, nor had any appropriations been made for their purchase. We ventured, however, to provide them, and to place our country in safety; and stating the case to Congress, they sanctioned the act.”

Jefferson turns to the case of the Burr conspiracy to overthrow the fledgling American government and General Wilkinson’s situation in New Orleans apropos of the conspiracy. Wilkinson expected an attack on New Orleans by Burr from the north and by a fleet of British ships from the south.

5 In the main, Jefferson favored legislative power to executive power, as made evident by his First Inaugural Address. See Gerhard Casper, “Executive-Congressional Separation of Power during the Presidency of Thomas Jefferson,” *Stanford Law Review*, Vol. 47, No. 3, 476.

Was Wilkinson justified in essaying to seize the conspirators and to send them on trial before the judiciary? Self-preservation dictated that Wilkinson, as an officer of the army, overpass the laws and act immediately to apprehend the conspirators for the good of the nation.

The danger of their rescue, of their continuing their machinations, the tardiness and weakness of the law, apathy of the judges, active patronage of the whole tribe of lawyers, unknown disposition of the juries, an hourly expectation of the enemy, salvation of the city, and of the Union itself, which would have been convulsed to its centre, had that conspiracy succeeded; all these constituted a law of necessity and self-preservation, and rendered the *salus populi* supreme over the written law.

Three points are worth underscoring. First, though Wilkinson clearly overstepped the laws, circumstances showed that Wilkinson believed that preservation of the union was at risk. Where there is perceived or above-board risk of loss of the nation, a right-regarding officer is duty-bound to place wellbeing of the nation and his fellow citizens, the *salus populi*, above himself and even the laws of the land. Second, those persons judging the innocence or guilt of the transgressor must do what they can to “put themselves [uniquely] into his situation.” They must judge the transgressor by the circumstances in which he was placed and the information, true or untrue, by which he acted. If he acted *saluti populi*,⁶ he is to be exonerated—perhaps even praised. Three, this scenario differs much from that of the possible purchase of the Florida territories, but both involve the *salus populi*.

Jefferson also writes of the *salus populi* defense concerning the Burr conspiracy in letters to William C.C. Claiborne and Dr. James Brown. To Claiborne, governor of the Louisiana territory (3 Feb. 1807), Jefferson writes: “We judge of the merit of our agents there [at Natchez] by the magnitude of the danger as it appeared to them, not as it was known to us. On great occasions, every good officer must be ready to risk himself in going beyond the strict line of law, when the public preservation requires it; his motives will be a justification as far as there is any discretion in his ultra-legal proceedings, and no indulgence of private feelings.” To Brown (27 Oct. 1808), Jefferson talks of a “set of foreign adventurers, & native mal-contented” in New Orleans that would gladly form a separate nation. Acknowledging the law

6 *Saluti*, is the dative of *salus*, so *saluti populi* is to be read “for the safety of the people.”

inter arma silent leges,⁷ Jefferson says, “In an encampment expecting daily attack from a powerful enemy, self-preservation is paramount to all law.” He then mentions his dismay that the laws are being used by opportunistic Federalists to shield traitors. The traitors ought to be apprehended, not shielded. The wellbeing and existence of the nation are at stake. “Should we have ever gained our Revolution, if we had bound our hands by manacles of the law, not only in the beginning, but in any part of the revolutionary conflict? There are extreme cases where the laws become inadequate even to their own preservation, and where, the universal resource is a dictator, or martial law.”

The argument from self-preservation *saluti populi* is a message Jefferson consistently preached. In a circular letter to Virginia’s county magistrates (20 Jan. 1781), Jefferson states, “He is a bad citizen who can entertain a doubt whether the law will justify him in saving his country, or who will scruple to risk himself in support of the spirit of a law where unavoidable accidents have prevented a literal compliance with it.”⁸ In a report to President Washington (18 Mar. 1792), Jefferson writes of a putative treaty with Spain for the right to navigate the Mississippi River. He supposes a protracted and sanguinary war with England, where the United States relinquishes a small parcel of territory in exchange for peace. Such a scenario is not straightforwardly applicable to Spain, for the Constitution guarantees every state security against invasion and a sanguinary war with Spain might yield unexpected results, “as necessity is above all law.”⁹ In a special message to the Senate and House of Representatives (13 Jan. 1806) concerning Tripolitan piracy, Jefferson addresses the actions of American agents Commodore Barron and Consul Eaton in forging an alliance with Hamet Caramalli, ex-bashaw of Tripoli and elder brother of the current bashaw of Tripoli, and the implications of such an alliance. Was the United States involved in overthrowing the Tripolitan government? Nothing in the verbal instructions of Barron to Eaton involved a stipulation that the United States sanctioned Hamet’s overthrow of his brother. Jefferson advocates trust of Barron and Eaton:

7 Roughly, “when a country is at war, its laws are silent.”

8 Thomas Jefferson, *The Writings of Thomas Jefferson, Volume II: 1776-1781*, ed. Paul Leicester Ford (New York: P.G. Putnam’s Sons, 1893), 431.

9 Thomas Jefferson, *The Writings of Thomas Jefferson, Vol. III*, ed. Andrew A. Lipscomb and Albert Ellery Bergh (Washington, D.C.: Thomas Jefferson Memorial Association, 1904), 170.

In operations as such a distance, it becomes necessary to leave much to the discretion of the agents employed, but events may still turn up beyond the limits of that discretion. Unable in such cases to consult his government, a zealous citizen will act as he believes that would direct him were it apprized of the circumstances, and will take on himself the responsibility. In all these cases the purity and patriotism of the motives should shield the agent from blame, and even secure the sanction where the error is not too injurious.

Such American agents, he adds, even if ultimately acting injuriously, ought to be excused if they acted from “purity and patriotism of ... motives.” The conjunction, as we shall see, is critical. As agents of America, patriotism is needed. Since public service for Jefferson entails both genius and virtue—see, e.g., Jefferson’s letter to John Adams (28 Oct. 1813)—purity of intention is needed.

To the governor of Virginia, James Barbour (22 Jan. 1812), Jefferson argues against the notion that executive action ought to be stunted, when executive counsel is divided or wanting. “It is difficult to suppose it could be the intention of those who framed the constitution, that when the council should be divided the government should stand still; and the more difficult as to a constitution formed during a war, and for the purpose of carrying on that war, that so high an officer as their Governor should be created and salaried, merely to act as the clerk and authenticator of the votes of the council.” One can envision instances where advice cannot be given (e.g., absence or sickness or advisors) or is unavailing (e.g., division among advisors or dissatisfactory counsel). Is the executive to be an inactive spectator, who allows the government to “tumble to pieces for want of a will to direct it”? Jefferson adds: “In executive cases, where promptitude and decision are all important, an adherence to the letter of a law against its probable intentions ... would be fraught with incalculable danger.” When the state is invaded and the legislature, convened, is divided on appropriate action, “can it be believed to have been the intention of the framers of the constitution, that the constitution itself and their constituents with it should be destroyed for want of a will to direct the resources they had provided for its preservation?”

In such dire instances, “construction must be made *secundum arbitrium boni viri*¹⁰ and the constitution be rendered a practicable thing.” *Boni viri* here is not mere political rhetoric, but plainly has moral intent. Analogy

10 “Following the umpirage of a good man.”

with the judiciary is unaidful. "They act ever on an individual case only, the evil of which is partial, and gives time for correction. But an instant of delay in executive proceedings may be fatal to the whole nation. They must not, therefore, be laced up in the rules of the judiciary department." The executive must be amenable to seek out, assimilate, and conform to counsel, but he must not be stockstill when counsel is gridlocked or unavailable. It is the same when an individual's life is threatened. "There are situations when form must be dispensed with," Jefferson tells William Short (24 Nov. 1791). "A man attacked by assassins will call for help to those nearest him, and will not think himself bound to silence till a magistrate may come to his aid."

In his "Autobiography," Jefferson even endorses some mechanism of removal of judges, whose biased decisions threaten the confederation of states. "Honest error must be arrested where it's toleration leads to public ruin. As, for the safety of society, we commit honest maniacs to Bedlam, so judges should be withdrawn from their bench, whose erroneous biases are leading us to dissolution. It may indeed injure them in fame or in fortune; but it saves the republic, which is the first and supreme law." That is not to invoke a consolidation of powers, for there is good government only when, by a "partition of cares, descending in gradation from general to particular [i.e., from state to counties to wards to individual farms], the mass of human affairs [is] best managed for the good and prosperity of all."¹¹

The issue of vilipending moral obligations between nations occurs also in "Opinion on the French Treaties" (28 Apr. 1793). Jefferson advises President Washington on whether treaties with France are still binding, given France's recent movement from a monarchy to a declared republic. The people of a nation, Jefferson begins, are the voice of that nation. Therefore, the treaties between France and the United States are between the peoples of each nation. Given that each nation still exists, though both have "since changed their forms of government," the treaties are not annulled. He says that there are three branches of the "Law of nations": the moral law, the usages of nations, and the special conventions of nations. Of those, only the moral law is relevant.

The Moral duties which exist between individual and individual in a state of nature, accompany them into a state of society & the aggregate of the duties of all the individuals

11 See also Jefferson's Seventh Annual Message (1807).

composing the society constitutes the duties of that society towards any other; so that between society & society the same moral duties exist as did between the individuals composing them while in an unassociated state, their maker not having released them from those duties on their forming themselves into a nation. Compacts then between nation & nation are obligatory on them by the same moral law which obliges individuals to observe their compacts.¹²

Thus, the question is moral, not political. “Questions of natural right are triable by their conformity with the moral sense & reason of man. Those who write treatises of natural law, can only declare what their own moral sense & reason dictate in the several cases they state.”¹³

Because the principle of morality exists in the heart of every honest and rational man, Jefferson, following Vattel, says, “[a person] will never read there the permission to annul his obligations for a time, or for ever, whenever they become ‘dangerous, useless, or disagreeable.’” Nonetheless, there are dire times, as we have seen, when the moral duties between persons are exempted. Likewise there are dire times when the moral duties between nations are exempted. Jefferson continues, in a manner that suggests a homomorphic relationship between moral duties between individuals and nations: “There are circumstances however which sometimes excuse the non-performance of contracts between man & man: so are there also between nation & nation. When performance, for instance, becomes *impossible*, non-performance is not immoral. So if performance becomes *self-destructive* to the party, the law of self-preservation overrules the laws of obligation to others.”¹⁴

Jefferson especially has in mind scenarios in which what is at risk is the life of a person or the existence of a nation.¹⁵ If, for illustration, someone *non compos mentis*¹⁶ threatens to kill another, the person threatened has no duty to treat the deranged person with benevolence. Likewise, if an aggres-

12 Thomas Jefferson, *Writings*, ed. Merrill D. Peterson (New York: The Library of America, 1984), 423.

13 Thomas Jefferson, *Writings*, 428.

14 Thomas Jefferson, *Writings*, 423–24.

15 Thomas Jefferson, “Answers to Dêmeunier’s First Queries,” 24 Jan. 1786. In less dire circumstances, such as when one state threatens secession from the nation, the other states have a “natural right” to force the compliance of the maverick state to the will of the majority of states. That, however, is not to say the maverick state has no right to secede. The secession of any one state, Steele shows in his excellent paper, does much to destabilize the union of the remaining states. For more, see Brian Steele, “Thomas Jefferson, Coercion, and the Limits of Harmonious Union,” *The Journal of Southern History*, Vol. 74, No. 4, 2008, 823–54.

16 “Of unsound mind.”

sive nation threatens to invade another nation and exterminate it, the threatened nation has no duty to treat the aggressive nation with benevolence. Here the language starkly suggests abeyancy of moral conduct—a temporary state of amorality. Anything, it seems, goes to preserve personhood or nationhood.¹⁷ As Reginald Stuart says, “Jefferson held both his intellectual convictions and moral sympathies well in check when it came to the survival of his country.”¹⁸ He adds later: “Jefferson, although deeply committed to liberal and moral principles, saw war as an act for the protection and survival of the state. He would no more contemplate an international crusade for republicanism than he would agree to war unless the circumstances were unequivocal and compelling.”¹⁹

All such dire circumstances, *pace* Vattel, involve danger, but not uselessness or disagreeableness.²⁰ Danger is illustrated by three scenarios. First, the danger which absolves a nation must be “great, inevitable, & imminent.”²¹ The lengthy elaboration which follows makes it clear that the conjunction of terms is crucial. Failure of magnitude, inevitability, or imminence is sufficient grounds for maintaining moral duties. Second, there can be “great & inevitable danger” that is the result of a treaty.²² Third, circumstances can make compliance impossible and dangerous.²³ Yet if non-compliance occurs without just cause or without compensation, there are grounds for war.

Life versus the Good Life

The scenarios examined above strongly intimate abeyancy of morality—*viz.*, that there are dire times when the laws and moral relations between persons and nations must be temporarily shelved. That seems in conformance with the *Zeitgeist* of Jefferson’s day. Thomas Hobbes in *Leviathan* maintained that “to seek peace and follow it” was the fundamental law of

17 Such passages are manifestly at odds with Jesus’s teachings, though Jefferson never claimed to follow Jesus all the way. E.g., Jefferson writes to Short, “[Jesus] preaches the efficacy of repentance towards forgiveness of sin; I require a counterpoise of good works to redeem it.” TJ to William Short, 4 Aug. 1820.

18 Reginald C. Stuart, “Thomas Jefferson and the Function of War: Policy or Principle?” *Annales Canadiennes d’histoire*, Vol. 11, No. 2, 1976, 162.

19 Reginald C. Stuart, “Thomas Jefferson and the Function of War,” 170.

20 To concede uselessness or disagreeableness is to make a concession “in opposition to the morality of every honest man.” Thomas Jefferson, *Writings*, 428.

21 Thomas Jefferson, *Writings*, 424.

22 Thomas Jefferson, *Writings*, 427.

23 Thomas Jefferson, *Writings*, 427.

nature, but the second law, “by all means we can, to defend ourselves,” each had too by right of nature.²⁴ “The office of the sovereign be it a monarch or an assembly, consisteth in the end, for which he was trusted with the sovereign power, namely the procuration of the safety of the people.; to which he is obliged by the law of nature, and to render an account thereof to God.”²⁵ John Locke states that a man’s first power in the state of nature is “to do whatsoever he thinks fit for the preservation of himself, and others within the permission of the *law of nature*.”²⁶ The motto, *Salus populi suprema Lex esto*, is the epigram to his *Two Treatises of Government*. So it is not untoward that Jefferson should view self-survival as a principal that trumps all moral considerations in dire circumstances—*viz.*, that is the axial principal of morality (*salus populi suprema lex*).

An immediate imbroglio is the significant influence of ancient virtue-ethics thinking on Jefferson as well as all moral-sense philosophers of his day. Jefferson, I have elsewhere shown, is a eudemonist of some persuasion,²⁷ and for eudemonists, like Aristotle and the Stoics, it is not any life that is worth living, but only a virtuous life. Jefferson, in his “Opinion on the French Treaties” especially, is clear that self-preservation trumps duties to others, and that seems inconsistent with ancient eudemonism. For ancient eudemonists, self-preservation in dire circumstances is not morally neutral. Furthermore, for ancient eudemonists, self-preservation neither trumps all considerations of morality nor can it be taken as the first axiom of morality.

Aristotle in *Nicomachean Ethics* catalogs three goods—goods of soul, of body, and of chance—all of which are needed for happiness (Gr., *eudaimonia*). Goods of soul—e.g., generosity, friendliness, magnanimity, justice, courage, and irascibility, etc.—are illustrative of virtue (Gr., *aretē*) or an even, settled disposition of soul. Goods of body—e.g., health and good looks—are illustrative of a settled, humoral disposition of body. External goods—e.g., wealth and fame—are dictated by chance and not up to persons. One perfectly happy has the right admixture of the three sorts of goods. He is fully virtuous—*viz.*, he has a full amount of each of the par-

24 Thomas Hobbes, *Leviathan*, ed. Michael Oakeshott (London: Collier MacMillan Publishers, 1962), 104.

25 Thomas Hobbes, *Leviathan*, 247.

26 John Locke, *Second Treatise of Government*, ed. C.B. Macpherson (Indianapolis: Hackett Publishing Company, 1980), §128. See also §6.

27 The moral behavior for Jefferson is, of course, not rationally directed as it is for Aristotle and the Stoics. See M. Andrew Holowchak, *Dutiful Correspondent: Philosophical Essays on Thomas Jefferson* (Lanham: Rowman & Littlefield, 2012), 51–68.

ticular virtues—and possesses a full complement, though a lesser degree, of bodily and external goods. Though all three are labeled “goods” and are deemed needed, the virtues are preeminent goods. One in full possession of virtue will never be miserable; one lacking virtue will be miserable irrespective of full possession of bodily and external goods.²⁸

For the Stoics, in contrast, virtue is the sole good and it is deemed sufficient for happiness. The particular virtues have a value that is fixed and absolute. Other things—such as health, wealth, and even life—are valuable and choice-worthy, but not goods. “We deem nothing as good that someone can put to wrong use,” writes Seneca,²⁹ and health, wealth, and even life can be put to wrong use. Antoninus makes the point more bluntly, “Ask yourself whether we should accept as goods—and should value—the things ... whose abundance leaves their owner with ‘no place to shit.’”³⁰ Such things are “conveniences” (Gr., *proegmena*, L. *commoda*) and their value is unfixed and relative. One in full possession of virtue is happy; one lacking full possession of virtue, even one close to full possession of virtue, is miserable.

For both Aristotle and the Stoics it is not life that is worth living or preserving, but only a virtuous life. One without full possession of virtue will always be miserable. It is only virtue, or the prospect of attaining it, that gives life worth. The Stoics, Cicero tells us, go so far as to advocate suicide, when the prospect for virtuous living is minified.³¹ What is applicable to persons is applicable straightforwardly to states (*poleis*). A state without virtue is a miserable state, and so it is not any state that is worth having, but a virtuous state.³²

Jefferson agrees. His experiment with republican government does not merely aim at political expediency, but also at moral advance. In his “First Inaugural Address” (4 Mar. 1801), Jefferson states limns numerous moral principles of republicanism, among them: equal and exact justice to all men; peace, commerce, and honest friendship with all nations; the preservation of the federal government as “the sheet anchor of our peace at home and

28 Aristotle, *Nicomachean Ethics*, trans. Terence Irwin (Indianapolis: Hackett Publishing Company, 1999), I.8–10.

29 Seneca, *Epistles*, CXX.3

30 Aurelius, *Meditations*, trans. Gregory Hays (New York: The Modern Library, 2002), V.12.

31 Cicero, *De finibus*, III.60–1.

32 E.g., see Aristotle, *Politics*, trans. C.D.C. Reeve (Indianapolis: Hackett Publishing Company, 1998), 1324a5–7.

safety abroad”; election by the people; acquiescence to the will of the majority; supremacy of the civil over the military authority; honest and timely payment of our debts; encouragement of agriculture, and of commerce as its handmaid; the diffusion of information; and freedom of religion, of the press, and of person. The address is not rhetoric. Consistent with the message of numerous other writings, Jefferson’s political principles are normatively grounded. Liberty for Jefferson is in service to human happiness or thriving.

As with Aristotle and the Stoics, virtuous governing and a morally sensitive citizenry are needed. Virtuous governing occurs by instantiating a system of government that allows for rule by the most intelligent and most virtuous—i.e., the “natural aristoi.” He writes to John Adams (28 Oct. 1813), “The natural aristocracy I consider as the most precious gift of nature for the instruction, the trusts, and government of society. ... May we not even say that that form of government is the best which provides the most effectually for a pure selection of these natural aristoi into the offices of government?” Nothing is needed for a morally sensitive citizenry other than liberty and general education. “State a moral case to a plowman & a professor,” Jefferson says to nephew Peter Carr (10 Aug. 1787), “the former will decide it as well and often better than the latter, because he has not been led astray by artificial rules.” A state in neglect of the happiness of its citizenry is morally degenerate. For illustration, as president, Jefferson’s advocacy of the purchase of the Louisiana territories and his use of embargo as a political response to the British attack on the U.S.S. Chesapeake on June 22, 1807, had moral sanction.³³

However, Jefferson’s argument from self-preservation seems to be positing that the preservation of a nation or of a man trumps all regard for principles—written laws, established by convention, as well as moral duties, inscribed in the heart of each person. For instance, at times when the existence of the state is in question, moral considerations can be deferred for the sake of self-preservation. In such scenarios, anything goes. Put otherwise, the first principle of morality is the right to neglect morality when existence is threatened. Other moral principles, even virtuous existence, are subordinate. That means that preservation of life, irrespective of its morality or non-morality, is the chief moral good. Life is the first axiom of moral-

33 A point that does not go unnoticed by Peterson. Merrill D. Peterson, *Thomas Jefferson & the New Nation: A Biography* (Oxford University Press, 1970), 885–86.

ity; living well is a secondary consideration. If so, Jefferson here is a sort of moral or egoistic “survivalist.” That is inconsistent with eudemonism.

The Foundation and Nature of Morality

There is, however, a difficulty in dubbing Jefferson a moral survivalist. The basal egoism it presumes is inconsistent with Jefferson’s moral sense.

In a letter to Thomas Law (13 June 1814), Jefferson examines several theories, self-love among them, apropos of the foundation of morality. Self-interest or egoism cannot be the foundation of morality, concludes Jefferson, for “I consider our relations with others as constituting the boundaries of morality. . . . To ourselves, in strict language, we can owe no duties, obligation requiring also two parties.” It is not just that self-love is not a part of morality, but also that “it is its exact counterpart”—*viz.*, “the sole antagonist of virtue.” Self-interest causes neglect of moral duties to others.

To Benjamin Rush over 10 years earlier (21 Apr. 1803), Jefferson makes good on a promise years ago to expand on his views of Christianity. Having read and mulled over Joseph Priestley’s “Socrates and Jesus Compared,” Jefferson drafts his “Syllabus of an Estimate of the Merit of the Doctrines of Jesus, Compared with Those of Others.” When he comes to the contribution of ancient moralists—and he lists Pythagoras, Socrates, Epicurus, Cicero, Epictetus, Seneca, and Antoninus—he asserts that they do well in prescribing precepts, applicable to governing bestial passions and procuring tranquility of mind, but were “short and defective” concerning duties to others. “They embraced . . . the circles of kindred & friends, and inculcated patriotism, or the love of our country in the aggregate, as a primary obligation: toward our neighbors & countrymen they taught justice, but scarcely viewed them as within the circle of benevolence. Still less have they inculcated peace, charity & love to our fellow men, or embraced with benevolence the whole family of mankind.” Jesus corrected the defects of the ancient moralists. He preach universal benevolence—*i.e.*, “he pushed his scrutinies into the heart of man; erected his tribunal in the region of his thoughts, and purified the waters at the fountain head.” In short, Jesus factored in intendment.

These letters, where Jefferson comes as clean as he can come on the nature of morality, show that morality comprises duties to men (and to deity), not duties to self. The letter to Law shows that duty for Jefferson is dyadic, never monadic. The letter to Rush shows that the chief defect of ancient moralists is that they displace the base of morality. Their accounts are not

duty-driven. For such ancients, actions involving others are substratally egoistical.

Nonetheless, his “Syllabus” his letter to Law strongly suggest that Jefferson was not moral survivalist—that the right to life cannot be the first principle of morality—for self-preservation is a species of self-interest and morality is nowise concerned with self-interest. Morality entails duty, and duty is dyadic. It essentially involves other persons (and deity).

Still, as we have seen, Jefferson thought self-preservation of crucial importance in dire straits—e.g., “if performance becomes *self-destructive* to the party, the law of self-preservation overrules the laws of obligation to others.” In certain scenarios, such as when one’s life is unfairly jeopardized by a thug, one is entitled to use singular means to protect oneself from the thug. Yet one certainly would not want to say that the person threatened is using immoral actions by protecting himself—that his actions are “selfish”—even if he kills the thug. Selfishness is not the issue. Everyone has a right to be “selfish” in such scenarios. The selfishness to which Jefferson objects in his letter to Law is “self-gratification in violation of our moral duties to others.” Protecting oneself from unwarranted harm by parrying off a thug and perhaps even killing him in the process is not self-gratifying action at expense of fulfillment of duties to others. What is applicable to individuals is applicable to states. No state is “selfish” for essaying to protect itself against another state, intent at all costs on belligerency.

In dire circumstances, self-preservation for Jefferson is not selfish, but self-regarding, as the *normal* duties between men or nations are in abeyance. Nevertheless, such scenarios are not monadic, but dyadic, and so morality is not inappropos. Regard for morality requires protective measures. Such actions are not amoral.

Fiat Justitia et Ruat Coelum: The Case for Eudemonism

Jefferson did not value life as the first axiom of ethics. His apologia for self-preservation of nations is not only consistent with ancient eudemonism, but also derived from consideration that it is not any political unit that is worth preserving, but only one with due regard for the wellbeing of its citizenry. Thus, the scenarios which Jefferson dubbed self-preservative are not exceptions to moral action, instances where morally correct action is prorogued, or instances of amoral action. They are *bona fide* instances of agents or nations acting with due regard for morality—i.e., in keeping with ancient

eudemonism. So, self-preservation is not the issue for Jefferson, but self-preservation *saluti populi*.

In A Summary View of the Rights of British America, Jefferson speaks of “many unwarrantable encroachments and usurpations” on the god-given rights of British Americans. He limns numerous acts passed by Parliament that can only have the intent of reducing British Americans to slavery. “Single acts of tyranny may be ascribed to the accidental opinion of a day; but a series of oppressions, begun at a distinguished period, and pursued unalterably through every change of ministers, too plainly prove a deliberate and systematic plan of reducing us to slavery.”³⁴ The king is, after all, nothing more than “the chief officer of the people, appointed by the laws, and circumscribed with definite powers, to assist in working the great machine of government, erected for their use, and consequently subject to their superintendence.”³⁵ He sums, “The God who gave us life gave us liberty at the same time; the hand of force may destroy, but cannot disjoin them.”³⁶ This final declaration is critical. It is not any life that is worth preserving, but only one, in keeping with the nature of man, that is free. The linkage of life with liberty is correct, but misleading. There is here only a loose sort of normativity. More needs to be said to secure normativity.

Happiness—the predominant ingredient of which is virtue for Jefferson—is missing. Happiness is the true end of human living, and liberty, often adjoined to happiness in Jefferson’s writings, is subordinate to it. To, he asserts, “The freedom and happiness of man ... [are] the sole objects of all legitimate government.” To Thomas Cooper (29 Nov. 1802), Jefferson links happiness with negative liberty. “A noiseless course, not meddling with the affairs of others, unattractive of notice, is a mark that society is going on in happiness. If we can prevent the government from wasting the labors of the people, under the pretence of taking care of them, they must become happy.”³⁷ Again, happiness and liberty through governmental non-intervention Jefferson applies to commerce between nations in a report in 1793.³⁸

34 Thomas Jefferson, Summary View, *Writings*, 110.

35 Thomas Jefferson, Summary View, *Writings*, 105.

36 Thomas Jefferson, Summary View, *Writings*, 122.

37 See also TJ to Jean Baptiste Ternant, 23 Feb. 1793; TJ to Madame de Lafayette, 16 Mar. 1793; TJ to Joseph Priestley, 29 Nov. 1802; TJ to Gen. Thaddeus Kościusko, 26 Feb. 1810; TJ to A.L.C. Destutt de Tracy, 26 Jan. 1811; TJ to George Tincknor, 25 Nov. 1817; TJ to Samuel Adams Wells, 12 May 1819; and TJ to Judge Spencer Roane, 6 Sept. 1819.

38 Thomas Jefferson, “Report on the Privileges and Restrictions of the Commerce of the United States in

The Declaration of Independence is perhaps Jefferson's plainest expression of the insufficiency of the coupling of life and liberty. Happiness is needed. Writes Gilbert Chinard, "I do not believe that any other State paper in any nation had ever proclaimed so emphatically and with such finality that one of the essential functions of government is to make man happy, or that one of his essential natural rights is 'the pursuit of happiness.'"³⁹ Yet Chinard understates the issue by failing to note that happiness is the sole end of human action—the true first axiom of morality, given that men are axially social creatures.

The Declaration begins by listing several self-evident truths: all men are created equal, all men are endowed by deity with certain inalienable rights (life, liberty, and the pursuit of happiness), governments derive their powers from the consent of the governed, governments are instituted to secure citizens' rights, and when government does not preserve citizens' rights, citizens have a right to "alter or abolish" their government and to institute a new one on "such principles, & organizing it's powers in such for, as to them shall seem most likely to effect their safety & happiness."

Expatiating on the final truth—the right to revolution, whether mild or wholesale—he maintains that, in cases of governmental abuse, it is prudent to suffer "while evils are sufferable," but action must be taken when the evils are significant of despotism—when happiness is burked. "When a long train of abuses & usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty to throw off such government, & to provide new guards for their future security."⁴⁰ The sentiment is in keeping with the triad of dangers—great, inevitable, and imminent—in "Opinion on the French Treaties." It is not any form of government that citizens have a right to overthrow, but merely a dangerously oppressive government, which disallows human happiness. Thus, it is not any form of government that is worth having, but merely virtuous government. Jefferson writes at the end of the Declaration, "For the support of this declaration we mutually pledge to each other our lives, our fortunes, and our sacred honour."⁴¹ Consequently, for

Foreign Countries," *Writings*, 435–48.

39 Gilbert Chinard, *Thomas Jefferson: The Apostle of Americanism* (Ann Arbor, MI: The University of Michigan Press, [1929] 1962), 75.

40 Thomas Jefferson, Declaration of Independence, *Writings*, 19.

41 Thomas Jefferson, Declaration of Independence, *Writings*, 24.

Jefferson, life cannot be the first axiom of morality, for it is not any life that is worth defending, but only that life that promises human happiness. Jefferson is no moral survivalist.

The “Principles” of Moral Activity

Jefferson, we have seen, often writes of self-preservation as a principle that trumps all principles of written law or moral activity. The intimation is that self-preservation or the right to life is the first axiom of morality.

Yet such passages show that self-preservation is not the issue, but self-preservation in certain, dire scenarios—*viz.*, self-preservation *saluti populi*. It is not every life or every nation that is worth preserving at any cost. Consonant with ancient eudemonism, it is only the existence of a virtue-embracing person or virtue-embracing nation that is worth defending at any cost. As Julian Boyd argues, Jefferson’s “uncompromising devotion” to the confederation of states was not due to a sense of nationalism, but because of “its identity with human rights”—*viz.*, it was a virtue-embracing confederation. When a villainous person or nation severely derogates the happiness of a virtue-abiding person or nation, the person or nation threatened has a right, and even a moral duty, to protect oneself or itself, and defend the right to pursue a happy existence. Thus, abeyancy of laws and moral duties in dire scenarios is not a temporary state of amorality. It is instead a temporary state of abeyancy of the *normal, mutually beneficent* moral relations that ought to obtain between nations. Such a state of abeyancy is not abeyancy of action, but instantiation of another, more substratal code of moral actions on behalf of the virtue-abiding nation, threatened with dissolution. Dire circumstances demand dire actions on the part of a virtue-abiding person or state. No virtue-abiding person or nation is morally required to respond to malevolent actions with beneficence. Here Jefferson parts sharply with the Jesus’s morality, which, stripped of its corruptions, he says to Benjamin Rush (21 Apr. 1803) is “the most perfect and sublime that has ever been taught by man.” As Jefferson writes to William Short (4 Aug. 1820), “[Jesus] preaches the efficacy of repentance towards forgiveness of sin; I require a counterpoise of good works to redeem it.”

Merrill Peterson roughly captures the sentiment of self-preservation *saluti populi* when he states that “the moral right [for Jefferson] precedes the

legal guarantee.”⁴² I add “roughly,” because for Jefferson, like Aristotle and the Stoics, there are no formalizable and inviolable principles of morality. Were that the case, morality would be beholden to rationality, not to the moral sense, which operates independently of rationality and formulates *au pied levé* its moral judgments in scenarios. Jefferson writes, for instance, to nephew Peter Carr (10 Aug. 1787), “He who made us would have been a pitiful bungler if he had made the rules of our moral conduct a matter of science.”⁴³ Rules are, in the main, rough guides for youths and initiates.⁴⁴

The scenario is similar for the ancient Stoics, whom Jefferson read thoroughly and whose teachings Jefferson integrated into his life. The Roman Stoic Seneca limns *praecepta* and *decreta*—that is, specific rules (precepts) and basic principles (doctrines) of right conduct. Precepts, grounded in doctrines, are rough guides to action in specific scenarios. Doctrines are serviceable, but not indefeasible guides of action. Writes Seneca: “Virtue depends partly on instruction and partly on practice. You must learn first and then strengthen your learning by action. If this is true, not only do the doctrines of wisdom help us, but so do the precepts, which check and banish our emotions by a sort of official decree.”⁴⁵ Seneca here, like Jefferson, is directing his statements to youths. The difference, however, is that right action for the Stoics had the sanction of reason, which is not the case for Jefferson.

Because precepts and doctrines were defeasible guides of action, the Stoics referred often to moral exemplars, like Socrates or Zeno, the founder of Stoicism, to guide those persons aspiring to virtue. Writes Epictetus:

42 Merrill D. Peterson, *Thomas Jefferson & the New Nation: A Biography* (Oxford: Oxford University Press, 1970), 94.

43 See also TJ to Maria Cosway, 12 Oct. 1786; TJ to James Fishback, 27 September 1809, and TJ to Thomas Law, 13 June 1814. Nonetheless, Jefferson does sometimes write of general rules of right conduct—he has a predilection for speaking of “moral principles” (e.g., TJ to Benjamin Rush, 21 Apr. 1803; TJ to John Adams, 12 Oct. 1813; TJ to P.S. Dupont de Nemours, 24 Apr. 1816; and TJ to Mathew Carey, 11 Nov. 1816)—but rule-following, all in all, is unavailing.

44 That is why Jefferson advises the young to read history and morally uplifting fiction. For adults, because of the complexity of real-life situations, moral principles are in the main unavailing. The moral sense, fully nurtured and strengthened by the exercise of experience, dictates morally correct action in mature persons. See TJ to Robert Skipwith, 3 Aug. 1771; TJ to James Madison, 20 Feb. 1784; TJ to Ebenezer Hazard, 18 Feb. 1791; TJ to John Norvell, 14 June 1807; TJ to Anne Randolph Bankhead, 8 Dec. 1808; TJ to Col. William Duane, 1810; TJ to Col. William Duane, 4 Apr. 1813; TJ to William Wirt, 1814; TJ to John Adams, 10 Aug. 1815; TJ to William Wirt, 12 Nov. 1816; TJ to John Adams, 5 May 1817; and TJ to William Short, 8 Jan. 1825.

45 My translation. Seneca, *Epistles*, Vol. III, trans. Richard M. Gummere (Cambridge: Harvard University Press, [1925] 2000), XCIV.47.

Take Socrates and observe a man who had a wife and children, but regarded them not as his own, who had a country—as far as it was his duty and in the way in which it was his duty—friends, and kinsmen—one and all subject to the law and to obedience to the law. That is why, when it was his duty to serve as a soldier, he was the first to leave home. That is why he ran the risks of battle most ungrudgingly.... When he had to speak in defense of his life, he did not behave as one who had children or wife, did he? No, he spoke as one who was alone in the world. Yes, and when he had to drink the poison, how did he act? ... He did not care, he says, to save his paltry body, but only what is increased and preserved by justice and what is decreased and destroyed by injustice.... It is impossible to save such a man by dishonor, but he is saved by death, not by fleeing from prison.⁴⁶

Jefferson too relied on moral exemplars like William Small, George Wythe, and Peyton Randolph in his own upbringing. To grandson Thomas Jefferson Randolph (24 Nov. 1808), Jefferson writes, in a moving passage reminiscent of Hercules's choice between Virtue and Pleasure in Greek mythology,⁴⁷ of two paths which he, at a kairotic moment at the age of 14, faced.

I had the good fortune to become acquainted very early with some characters of very high standing, and to feel the incessant wish that I could ever become what they were. Under temptations and difficulties, I would ask myself what would Dr. Small, Mr. Wythe, Peyton Randolph do in this situation? What course in it will insure me their approbation? I am certain that this mode of deciding on my conduct, tended more to correctness than any reasoning powers I possessed. Knowing the even and dignified line they pursued, I could never doubt for a moment which of two courses would be in character for them. Whereas, seeking the same object through a process of moral reasoning, and with the jaundiced eye of youth, I should often have erred. From the circumstances of my position, I was often thrown into the society of horse racers, card players, fox hunters, scientific and professional men, and of dignified men; and many a time have I asked myself, in the enthusiastic moment of the death of a fox, the victory of a favorite horse, the issue of a question eloquently argued at the bar, or in the great council of the nation, well, which of these kinds of reputation should I prefer? That of a horse jockey? a fox hunter? an orator? or the honest advocate of my country's rights? Be assured, my dear Jefferson, that these little returns into ourselves, this self-catechising habit, is not trifling nor useless, but leads to the prudent selection and steady pursuits of what is right.⁴⁸

46 Epictetus, *Discourses*, IV.i.159-65. See also III.14-8, II.5-6, II.14-6, and II.22-3, and Aurelius's *Meditations*, VII.66.

47 Heracles faced the choice between two goddesses—*Hēdonē*, a life of ease and pleasure, and *Aretē*, a life of hardship and toil, but one dear to the gods. He chose the latter. Xenophon, *Memorabilia*, E.G. Marchant and O.J. Todd (Cambridge, MA: Harvard University Press, 1923), § II.ii.21-34.

48 See also TJ to John Saunderson, 31 Aug. 1820; TJ to Isaac Engelbrecht, 25 Feb. 1824; and Thomas Jefferson, "Autobiography," *Writings*, 4-5.

The passage, gravid, has never been given due moral consideration. Jefferson mentions exposure to two societies: the society of horse racers, card players, and fox hunters, and the society of scientific, professional, and dignified men. He chose the latter. Yet his “choice” was not determined by deliberation. Jefferson early in life had the good fortune to be exposed to the company of a few men of high social and moral standing, and that made a large and lasting impression on him. Thus, he formed the “self-chate-chising” habit of assuming their presence in difficult moral scenarios and of aiming to secure their approbation and avoid their disapprobation. Note both that the “jaundiced eye of youth” and a “process of moral reasoning” are each listed as impediments to right moral action. The choice essentially involved either being of worth to society and indifferent to self-indulgence or being self-indulgent and indifferent to social betterment.

Upshot

It is well known that Jefferson, in spite of his criticism of their shortcomings in his “Syllabus” and other pertinent writings, was mightily drawn to ancient moral treatises more than any other moral works. “I saw him more frequently with a volume of the classics in his hand than with any other book,” says beloved granddaughter Ellen Randolph Coolidge,⁴⁹ and he valued the Classics chiefly, as he did the reading of history and even fiction, for its moral content. Again, when he passed away, his reading table had on it Aristotle’s *Politics*, one of Seneca’s moral works, and two French political treatises⁵⁰—the first two are ancient works fraught with moral content. Having books by Aristotle and Seneca on his reading table attests to his enjoyment and the influence of eudemonism in Jefferson’s ethical thinking. Following ancient eudemonism, one would fully expect Jefferson at least to show a marked preference for a life lived virtuously over a life merely lived. That is what we find, for example, in his 1808 letter to grandson Thomas Jefferson Randolph.

Nevertheless, several passages in Jefferson’s corpus of writings create a problem for that reading. They suggest that Jefferson is a sort of moral “survivalist”—that life, not the good life, is the first axiom of morality.

Scrutiny of such passages, however, show that the issue, for Jefferson, is not self-preservation, but self-preservation *saluti populi*. Jefferson argues

49 Douglas L. Wilson, *Jefferson’s Books* (Charlottesville: Thomas Jefferson Memorial Foundation, 1996), 49.
50 Merrill D. Peterson, *Thomas Jefferson & the New Nation*, 1008.

for self-preservation *saluti populi* in dire scenarios to preserve human thriving by preserving the sort of state in which governors are public stewards, with limited terms, and citizens are morally sensitive agents that participate in political affairs, if only locally, to the fullest of their capacities. Acts of governors must preserve citizens' rights. Thus, international acts of aggression, in which the normal moral relations between states are put in abeyance, are given moral sanction not when the existence of any nation is at stake, but only when the existence of a law-abiding nation is at stake. Intranational acts of aggression, such as acts of revolution by citizens, must only be dictated, as Scottish philosopher Francis Hutcheson states, by "flagrant Necessity."

From the Idea of Right ... we must necessarily conclude, 'that there can be no Right, or Limitation or Right, inconsistent with, or opposite to the greatest publick Good.' And therefore in Cases of extreme Necessity, when the State cannot otherwise be preserv'd from Ruin, it must certainly be Just and Good in limited Governours, or in any other Persons who can do it, to use the Force of the State for its own preservation, beyond the Limits fix'd by the Constitution, in some transitory acts, which are not to be made Precedents. And on the other hand, when an equal Necessity to avoid Ruin requires it, the Subjects may justly resume the Powers ordinarily lodg'd in their Governours, or may counteract them. This Privilege of flagrant Necessity, we all allow in defence of the most perfect private Rights: And if publick Rights are of more extensive Importance, so are also publick Necessitys. These necessitys must be very grievous and flagrant, otherwise they can never over-balance the Evils of violating a tolerable Constitution, by an arbitrary act of Power, on the one hand; or by an Insurrection, or Civil War, on the other. No Person, or State can be happy, where they do not think their important Rights are secur'd from the Cruelty, Avarice, Ambition, or Caprice of their Governours. Nor can any Magistracy be safe, or effectual for the ends of its Institution, when there are frequent Terrors of Insurrections.⁵¹

Jefferson says much the same in his Summary View of the Rights of British America and Declaration of Independence.

Thus, Jefferson never argues that the right to life is the first axiom of ethics. He argues for self-preservation *saluti populi*, not self-preservation *per se*. It follows that Jefferson is a eudemonist, not a moral survivalist.

51 Francis Hutcheson, *An Inquiry into the Original of Our Ideas of Beauty and Virtue*, Fifth Edition (London, 1753), 304-5.