Natural Rights Dissected and Rejected: John Lind’s Counter to the Declaration of Independence

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James Oliver Robertson intended no sacrilege when he called the Declaration of Independence a sacred text, an essential component of what has become American “holy writ.” It is now venerated as a founding document of the national civil religion.¹ The Declaration, Robertson emphasized, reflects an expectation that the new United States would become the nation among all nations. As celebrated now, independence then provided the political means to achieve a social end, that social end being a better life for Americans, their new nation acting as an exemplar for the larger world. Or, as Stephen E. Lucas put it, the Declaration of Independence went through an “apotheosis,” through which, over the years, Americans have come to “see its original purpose in universal terms almost wholly divorced from the events of 1776.”²


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This is not to say that the Declaration has not had its critics. It has, from the moment it was made public. Most of those first generation critics are long forgotten, lost in a past left behind by the future American rise to world leadership. In the short list of the Declaration’s contemporaneous detractors, John Lind stands out as the most prominent and the most dismissive of what that founding text proclaimed. A London barrister, Lind applied his lawyerly skills in large part to counter the Declaration’s charges against alleged acts of British tyranny, but also in part, Lind sought to discredit the Declaration’s natural rights assertions as the basis of American liberties. In doing so Lind drew on arguments that he had made earlier in an unfinished essay that challenged the natural rights position taken by William Blackstone in his *Commentaries on the Laws of England*. He also borrowed from his friend and confidant, Jeremy Bentham, to make his case.

Admittedly, Lind failed to change many—if any—minds. Revolutionary Americans stood by their condemnation of crown and empire, and they held onto their natural rights beliefs. For most contemporary Americans, the particulars of the Revolutionaries’ indictment of British tyranny no longer matter. Those complaints have passed into the foggy realm of “self-evident”—and therefore no longer debated—truths, but the American attachment to natural rights, symbolically strong though it may be, is, in real legal terms, almost as problematically vague. For Lind, a natural rights foundation to law could be no foundation at all. As he saw it, revolutionary Americans may have believed that they started anew in founding a nation, and yet they did so while perpetuating the old philosophical errors of Britain’s most famous jurist. Time and again, Lind would blast away at the notion of natural rights as utterly ridiculous. Ironically enough, whatever inconsistencies Lind may have found in Blackstone’s thinking or in that of American Revolutionaries when it came to natural rights, he could not escape the inconsistencies in his own legal logic.

For much of his life, John Lind was a gadfly who fell short of realizing his grander ambitions. He followed the intriguing travels abroad of his early

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years with constant social and political maneuvering back home. It was not the course that his father, Charles Lind, an Oxford-educated doctor of divinity, had envisioned for him. The elder Lind, a vicar of modest means in Colchester, sent his only son off to Oxford in 1753.\(^4\) Then 15 years old, John did quite well in his studies at Balliol College. He left 8 years later with both a bachelor’s and master’s degree in hand.\(^5\) He had been made an Anglican deacon as well, no doubt to his father’s pleasure, even pride, sentiments that did not last. When Charles Lind died in 1771, John had been abroad for nearly a decade. The father left his son a bequest of a mere 5 shillings; the rest of his estate—what little there was—went to John’s sisters. Should John ever return to England to claim his inheritance, Charles wrote in his will, “and demands the same I pray God to bless . . . and to preserve Him in the Belief & practice of his Holy Religion”: a dying father’s admonition to a prodigal son, more an expression of despair than

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hope. Charles knew that John had abandoned his prospective career in the Anglican Church in favor of more earthly pursuits.

By then John had had a long stay in Constantinople and was in the midst of a new career in Warsaw. He made lasting connections in Poland, eventually rising to become “general and adjutant” to King Stanislaus Poniatowski. Elected king by the Polish Diet in 1764, Poniatowski styled himself Stanislaw August II when he took the throne in 1764. Tutoring him and other members of the royal household in English, Lind rose to become a councilor to the new king and head of a school for young cadets.

Lind left Poland in 1772 but kept his Polish connections, which proved useful as he made his way in London society. There were well-placed Poles in London who were hoping that the British would see that it was in their interest to defend Poland from land-hungry neighbors. Adding his voice to theirs, Lind took up Poland’s cause in a pamphlet that went through two printings in less than a year. The issue was urgent: Russia, Austria, and Prussia had sliced off large portions of Poland, taking just under a third of its territory and population, this despite Catherine the Great’s many promises to respect Polish sovereignty. Lind could do little himself to change any of this, but he never lost his interest in Polish affairs.

With a pension from King Stanislaus, Lind had started a new life in London. He drew on his ever-widening circle of social contacts—including, most notably, the Earl of Mansfield, Chief Justice on the court of King’s Bench—to gain entry to Lincoln’s Inn in June 1773. In the three years he was enrolled there he spent most of his time observing barristers in court, learning how to enter pleas and argue cases before judges and juries. There was very little formal training beyond that; certainly

6. From Charles Lind’s will, dated February 26, 1771 and proved on March 19. In the Archdeaconry Records, Essex Record Office, St. Botolph Parish D/ACW 33/1/5, misdated 1773. John Lind’s older sister, Elizabeth, had died before. Mary and Laetitia, his other sisters, were still alive, and what their father left behind went to them and to Elizabeth’s two children. Lind’s daughter, born out of wedlock in Poland, was apparently named for Laetitia.


8. According to the Records of the Honorable Society of Lincoln’s Inn: Admissions from A.D. 1420 to A.D. 1799 (London: Lincoln’s Inn, 1896), 473, Lind entered Lincoln’s Inn on June 22, 1773, one of four to enter that month, and one of forty-four for the year. The Records of the Honorable Society of Lincoln’s Inn: The Black Books, 4 vols. (London: Lincoln’s Inn, 1897–1902), 4:257, lists Lind as being sworn to the bar on June 24, 1776, along with seven others from Lincoln’s Inn on that date. (Jeremy Bentham had been sworn to the bar on November 6, 1769; ibid., 3:400.)
almost nothing in legal philosophy. Because Lind had not concentrated on
the law at Oxford, most of what he learned, beyond courtroom essentials,
he picked up on his own, which was typical of even the best barristers of
this age.

He did become successful enough to support himself in a legal practice,
with lodgings a few blocks north of Lincoln’s Inn. Eventually he rented a
second residence south of the Thames to escape the hustle and bustle of the
city. Lind entered the polemical lists as a defender of Britain’s new
harder-line American policies even before he completed his terms at
Lincoln’s Inn. In doing so he anticipated what he would eventually
argue in his critique of the Declaration of Independence. It was all of a
piece, each individual essay a variation on a larger theme.

Thus, in early 1775 Lind offered Remarks in response to Arthur Lee’s
anonymously authored Appeal. Lee, a transplanted Virginian trying to
strengthen his connections with Londoners sympathetic to American griev-
ances, wrote this pamphlet under the guise of “an old member of
Parliament.” American colonists, he insisted, could lay claim to the same
basic rights as Englishmen. Warning against any attempt to coerce
American obedience to imperial policy, he asked, rhetorically, if Britain
had the right or the need to tax the colonies. He answered his own question
with an emphatic no. He insisted that “taxation and representation are con-
stitutionally inseparable” and yet Americans neither were nor could they be
represented in Parliament. Citing authorities from Henry de Bracton to Sir
Edward Coke to John Locke, he claimed that “it is an eternal law of
Nature” that property could not be secured without recognition of that
right.

Turning to the past, Lee contended that the colonial charters under
which so many transplanted Englishmen were or had once been governed
recognized such rights. They did not, however, create them. Those rights
were an “unalienable” element of the human condition. Lee warned mem-
bers of Parliament who wanted to coerce protesting colonists into

9. For general observations, see David Lemmings, Professors of the Law: Barristers and
English Legal Culture in the Eighteenth Century (Oxford: Oxford University Press, 2000);
and Sir John Baker, Legal Education in London, 1250–1850 (London: Selden Society,
2007).
is listed as residing at Lamb’s Conduit Street, Holborn 65. His residence south of the
Thames, in Ewell, Surrey, is listed in the estate sale of his property. See n. 73.
11. An Old Member of Parliament [Arthur Lee], An Appeal to the Justice and Interests of
Great Britain, in the Present Disputes in America (London: J. Almon, 1774), “taxation and
representation inseparable,” at 4; “eternal law of Nature,” at 4–5. My primer for the larger
subject has been John Finnis, Natural Law and Natural Rights (Oxford: Clarendon Press,
1980).
submission that, even “if we succeed, we are ruined” because the French would not stand idly by.\textsuperscript{12} Therefore, Whitehall and Westminster must agree to repeal the controversial legislation passed since 1763 and recall the troops sent across the Atlantic in more recent months to compel compliance.

Lind disagreed with Lee on both political and philosophical grounds, although he took an oblique approach to countering him. Maintaining the fiction common to political essayists of the age, Lind professed to be evenhanded. “Wherever I think parliament has acted as the faithful guardian of our rights and liberties I shall freely applaud;” where it failed, “I shall as freely censure.”\textsuperscript{13} True enough, he did not simply whitewash imperial policy, but as befitted a lawyer trained in an adversarial system, he argued in the manner used by both sides in the revolutionary debate described by historian John Phillip Reid: that is, he relied on “forensic” evidence.\textsuperscript{14} He pled his case as vigorously as possible, leaving it to his opponents to point out whatever weaknesses or inconsistences they might see in his argument. Simply put, it was not his job to make their case for them. Although he was not necessarily disingenuous in claiming to be “evenhanded,” it must be remembered that his notion of “evenhanded” did not mean that he wrote as a mere spectator; objective, disinterested, observing from above the fray.

That Lind sided with crown and Parliament was evident in his view of basic authority in the empire. He conceded that Parliament’s American policies may not have always been wise, but that they were always constitutional, because Parliament, and Parliament alone, determined constitutionality. Parliament could “change the constitution,” even going so far as to constrain monarchical authority because the monarch was “a constituent part” of Parliament. Lords and Commons would together decide what represented the limit to legitimate royal prerogative. Colonial charters

\textsuperscript{12} Ibid., 19 for “unalienable”; 42 for “ruined.”


\textsuperscript{14} Reid suggests this distinction in a number of his works, notably in his abridged edition of the \textit{Constitutional History of the American Revolution} (Madison: University of Wisconsin Press, 1995); and \textit{The Ancient Constitution and the Origins of Anglo-American Liberty} (DeKalb: Northern Illinois University Press, 2005).
before the Glorious Revolution had been granted by the crown through its older, “procuratorial capacity,” which no longer existed. Although George III did not have that sort of independent authority, until Parliament decided otherwise, he “is invested with a full discretionary power, to be used as he thinks best, and most conducive to the benefit of the whole.” Colonial charter rights, coming from revocable crown grants, could not be considered an expression of fundamental law.

Lind dismissed as nonsense any claim that the colonists had rights based on the “immutable laws of nature.” What were called “natural rights” had no place in law on either side of the Atlantic. Ostensibly the quintessential legal positivist, Lind countered that all rights—in person as in property—only became enforceable after having been formally enacted. Legal claims could only be made good if given approval by governmental action, as pronounced in a royal decree or as specified in a statute passed by Parliament or as found by judges in a court of law. The English common law tradition and ideas of justice based on customary practice were one thing; a vague notion of natural rights derived from imagined “laws” of nature was quite another. The former was proper; the latter was not. Besides, philosophical abstractions had no place in deciding disputes in real political life. Therefore relying, as Lee had, on the rights arguments made by Bracton or Coke or Locke was intellectually sloppy, even counterproductively absurd.

Lind avowed that what colonists considered to be their rights were more often than not actually privileges, existing at the sufferance of the crown and Parliament. British sovereignty was inextricably tied to parliamentary supremacy. “Subjection to the jurisdiction of the British legislature is the very circumstance which constitutes a British subject,” Lind emphasized. Parliament had the authority as well as the need to regulate commerce and raise revenue in the empire. Taxes were not the “gift of the people,” as Arthur Lee, following John Locke, called them; they were, instead, fees owed for services rendered. Protesting colonists—and those misguided Britons who supported them—did not understand the hierarchical structure of the empire or what constituted political representation within it. Without using the phrase “virtual representation,” Lind made the argument that is

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16. Ibid., no “immutable laws of nature,” at 22; absurdity of relying on Bracton or Coke, xii–xiiii. Lind slipped into the constitutional and historical mire when he called Ireland a “colony,” at 12, but he was not alone there. See Neil L. York, Neither Kingdom Nor Nation: The Irish Quest for Constitutional Rights, 1698–1800 (Washington, DC: Catholic University of America Press, 1994).

17. Lind, Remarks, 49.
associated with it: namely, that American colonists, like Britons, had their interests and rights secured by Parliament even if they had no seats at Westminster and no one represented them directly. Besides, however much colonists resented the so-called Coercive Acts of 1774, they had precipitated them by their “audacious usurpation of the powers of government.”

Lind conceded that there was no sense in trying to impose imperial authority if there was no longer a sense of imperial community, which prompted him to offer a “Plan of Reconciliation.” Under it, Parliament would pass a “bill of American rights” to replace the problematical Declaratory Act. That 1766 statute avoided use of the word “tax,” but also claimed that Parliament had the authority to legislate for the American colonies “in all cases whatsoever.” As it turned out, using such deliberately obscure language had only served to further alienate Britons from Americans. Lind urged, as an alternative, a variation on the approach that Lord North had taken recently in Parliament: to wit, in February 1775, North called for a requisition system in which Parliament would allow the individual American colonies to tax themselves, raising revenue to meet quotas set by Whitehall and Westminster.

Lind modified North’s proposal by dividing trade between Britain and the American colonies into four categories. Two would fall entirely within Parliament’s purview (British exports to the colonies, and colonial exports to Britain) and two would be shared by Parliament and the individual colonies. Revenue generated in those latter two categories (goods produced in the colonies and traded between them, and goods exchanged between the colonists and trade partners outside the empire) would be gathered by crown-appointed “treasurers” who were “accountable to the provincial legislatures.” Those legislatures would determine how the funds raised through trade duties should be spent within their own borders, setting aside a portion to guarantee the salaries of governors, judges and other officials necessary to imperial administration. “Americans should contribute

18. Ibid., 321.
their proportion, as we should contribute ours,” Lind advised. “That we must either give up the colonies, or strike out some method of reconciling British superiority with American ‘liberty’ seems to be allowed on all hands,” he warned.20

In offering that warning, Lind knowingly echoed Josiah Tucker.21 Unlike Tucker, who had given up on salvaging the empire even before the shooting started, Lind continued to advocate a solution to the problem short of American independence although, like Tucker, he believed that Americans would suffer more than Britons should the break occur. And unlike others who called for an imperial restructuring, such as creating a new imperial parliament or giving Americans seats in the existing Parliament at Westminster or allowing the colonists to have an intercolonial legislature, or, in yet another alternative, recognizing their legislative autonomy with the only tie to Britain through the crown, Lind pressed for a changed attitude rather than institutional reform.

Lind’s Remarks had appeared in May 1775. Lee’s Appeal, first printed the previous November, was already out in a second edition by then. A third printing appeared before the year was over. Lee’s pamphlet would be reprinted in the colonies; Lind’s tract was not.22 By then, the most powerful elements of the colonial press had aligned with the proprotest group and there was nothing in Lind’s argument that those self-proclaimed patriots would find appealing. The loyalists who might have agreed with Lind had fewer sympathetic press outlets.23


21. Josiah Tucker, Four Tracts, Together with Two Sermons, on Political and Commercial Subjects (Gloucester: R. Raikes, 1774); followed by Tract V: The Respective Pleas and Arguments of the Mother Country, and of the Colonies Distinctly Set Forth (Gloucester: R. Raikes, 1775). For the various failed attempts at imperial reorganization suggested during these years—creating a new imperial parliament, giving Americans seats at Westminster, setting up an intercolonial American congress, or granting the American colonists legislative autonomy—see Neil L. York, “Federalism and the Failure of Imperial Reform” History 86 (2001):155–79. Of the various reformers, John Cartwright, American Independence the Interest and Glory of Great-Britain (London: H. S. Woodfall, 1775)—independence meaning legislative autonomy—was most emphatic in turning to John Locke and natural rights arguments in making his case.


23. For the American press, see Arthur M. Schlesinger, Prelude to Independence: The Newspaper War on Britain, 1764–1776 (New York: Alfred A. Knopf, 1957); Philip Davidson, Propaganda and the American Revolution (Chapel Hill: University of North Carolina Press, 1941); and Russ Castronovo, Propaganda 1776: Secrets, Leaks, and...
Lind’s second foray into political propagandizing on the American crisis came in response to Richard Price’s Observations, a tract that enjoyed even more success than Lee’s Appeal. Price’s basic contentions were reminiscent of Lee’s. Price, too, concentrated on the reality of natural rights and Britain’s violation of colonial liberties by taxing Americans without allowing them representation in Parliament. Price was dismayed that the author of Remarks—whom he knew to be Lind—had been so wrongheaded as to argue that “a people have no property or rights, except such as their Civil Governors are pleased not to take from them.”

Lind fired back in Three Letters that Price’s assertion that “in every free state every man is his own Legislator” reflected an unfortunate naiveté, an inability to understand things as they really were. If ever there was an instance of two authors talking past each other, this was it.

What is most noteworthy about Lind’s retort—which, like Lind’s counterblast to Lee’s Appeal, found nowhere near the success in sales enjoyed by Price—is one particular element of the larger argument. Lind attacked Price’s definition of both civil liberty and political rights. “What then is Liberty,” asked Lind. “Clearly nothing more than the ABSENCE of COERCION.” All laws, he insisted, “are coercive; the effect of them is to either restrain or constrain; they either compel us to do or to forbear certain acts.” Were Price to flee to the rebellious colonies in pursuit of greater freedom, Lind scoffed, he would find the new governments being formed there every bit as restrictive as what he lived under in Britain. Price’s idea


25. Three Letters to Dr. Price (London: T. Payne, 1776), 37. But Lind also stated (at 88) that government’s primary job is to “produce the greatest happiness of the greatest number”—perhaps reflecting his continuing discussions with Jeremy Bentham? See n. 28.
of a “free state” implied “a flat contradiction” because “it supposes a relative without its correlative; a superior without an inferior; a sovereign without a subject.”26

Price countered Lind in *Additional Observations.*27 Price’s new essay, too, garnered favorable notice on both sides of the Atlantic, again among those sympathetic to the American cause and critical of Britain’s policy toward the colonies. But Lind had by then moved on. He was more concerned about another reader’s reaction to his *Three Letters* than he was to anything written by Price. A footnote in Lind’s pamphlet had given a “very worthy and ingenious friend” credit for the notion that “liberty is nothing positive, that it means only the absence of *restraint.*” That friend, “whose name I am not now permitted to mention,” was an as yet virtually unknown Jeremy Bentham. “Liberty,” Lind explained, “I thought meant the absence of *constraint,* as well as of *restraint.*” Bentham preferred absence of “coercion” to either of those words, which is what Lind consequently settled on for his pamphlet. “This notion of liberty will make a leading principle in a work which” (the unnamed) Bentham would soon, Lind hoped, “give to the world.”28

Lind and Bentham had been discussing the problem of defining the nature of liberty and rights well before Lind turned his attention to

26. Ibid., “ABSENCE of COERCION,” at 16; “restrain or constrain,” at 24; “sovereign without a subject,” at 37. Lind noted (at xi) that he had first responded to the *Observations* under the guise of “Attilius” in *The Gazetteer and New Daily Advertiser* (beginning with the first “letter” on March 21, 1776, with a second letter the next day, a third on March 24, a fourth on March 27, a fifth on March 29, and a sixth and final on April 1; prompting a response by “Seneca” on April 2), but he had needed more space to make his arguments than a newspaper could provide. J. A. W. Gunn, *Beyond Liberty and Property: The Process of Self-Recognition in Eighteenth-Century Political Thought* (Kingston and Montreal: Kingston and McGill University Press, 1983), 244–46 alludes to the Price–Lind debate.


28. Lind, *Three Letters,* at 16–17n. See Bentham’s letter to Lind of March 27–April 1, 1776 in Sprigge, et al., eds., *Correspondence of Jeremy Bentham,* 1:309–11, which was prompted by the “Attilius” letters. Bentham chided Lind for using his definition of rights before he could make them public himself in his *Fragment* (see n. 36). Lind therefore added this note, which Bentham had made a point of honor—credit to be given where credit is due. Bentham worried that he might be considered a plagiarist, since Lind’s *Three Letters* was coming out before his *Fragment*; see Jeremy Bentham, *A Fragment on Government* (London: T. Payne, 1776). Working on the same issues of rights and authority was obviously putting a strain on the friendship. Perhaps that, too, helps to explain why Lind abandoned his essay on Blackstone.
American affairs or wrote either of his tracts. It was that deeper concern that would eventually bring Bentham his most lasting fame. It is also the context in which Lind’s critique of the Declaration of Independence needs to be studied.

Most of the little that we know about John Lind comes from the not always reliable reminiscences of Jeremy Bentham nearly a half century later. Lind and Bentham may have first met at Oxford. Bentham, younger than Lind by more than a decade, arrived at Queen’s College a year or thereabouts before Lind left Balliol. There had been a family connection already, with Bentham’s father Jeremiah, a prominent London attorney, helping Lind’s father manage his troubled personal finances. Obviously more than just a passing acquaintance, Lind assured Bentham’s father that his diminutive son, at 13 years of age already considered a prodigy, impressed people at Oxford “that he has multum in parvo.”

Bentham enrolled at Lincoln’s Inn while yet an undergraduate, and still kept chambers there when Lind moved to London from Warsaw, despite his spending little time practicing law. The two soon became quite close. Bentham traveled with Lind to visit his sisters in Colchester and he stood as a witness when Lind was married. He even lived with Lind for a time, with the older, more worldly Lind playing the role of man about town, pursuing the “grande monde” and spending more lavishly than he could really afford. Mixing disdain with envy, Bentham pulled back somewhat from the friendship, although he did not want to give up the personal connections he had made through the gregarious Lind. “There was a time when I doubted whether, so long as you were alive, I could live without you,” Bentham confessed in a note to Lind near the end of 1775. “It became necessary for me to try; I have tried and I have succeeded,” he boasted, even as, perhaps, he tried to convince himself it was true.

29. Lind to Jeremiah Bentham, from Balliol College, November 17, 1760, in Sprigge et al., eds., Correspondence of Jeremy Bentham, 1:17. The Latin phrase “multum in parvo” - was used to indicate, in effect, much in little.

30. The marriage between John Lind and Mary Welch is recorded in St. George the Martyr, Queen Square, London, parish church records, as filmed for the London Metropolitan Archives, London, England, Marriages and Banns, 1754–1821. Bentham mis-remembered the church as St. Andrews, Holborn, and spelled the name of the rector who performed the ceremony as “Eton” rather than “Eaton.” The rest he remembered correctly.


32. Bentham to Lind, December 9, in ibid., 1:289. Also see Bentham to Lind, September 11, 1775, and the awkwardness over whether Bentham owed Lind any rent for having lived with him that summer. Ibid., 1:248–50.
By then Bentham had found his passion, even his lifelong obsession: developing a new code of laws for England that would have a new legal philosophy at its core. It was this project that Lind hinted at in his response to Price. Bentham began modestly, in a quest to displace William Blackstone’s highly regarded *Commentaries* on the laws of England. The *Commentaries* grew out of a lecture series that Blackstone offered at All Soul’s College, beginning in 1758 and carrying through the next 8 years. The first Vinerian Chair of Common Law at Oxford, Blackstone was determined to provide a grounding in that subject that had been lacking before. Although canon law had been banned as a field of study at Oxford since the Reformation, the civil law, as derived from Roman law, was still the preferred course of study there, in spite of the fact that the common law, including related notions of equity, had long been the basis for legal practice in England.\(^3\) The *Commentaries* carried on what Blackstone had started with his lectures, in line with reading materials he developed for them that emphasized “natural law is the rule of human action, as prescribed by the creator, and discoverable by the light of reason.”\(^4\)

Lind had not attended Blackstone’s lectures when he was at Oxford. Bentham did, but only after he had also begun his terms at Lincoln’s Inn. Bentham thought that Blackstone erred in grounding English law in natural rights. As H. L. A. Hart put it, with Blackstone, Bentham saw “an unexplained and indefensible inconsistency.” Blackstone asserted that “men have inalienable rights to enjoy life and liberty” while, at the same time, they also accept “the necessity of government.” That acceptance included government exercising powers involving “the taking of life” and “the limitation of liberty.”\(^5\)

Bentham informed readers of his 1776 *Fragment* that he needed to “expose the errors and insufficiencies” of Blackstone’s *Commentaries*.

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4. From Blackstone’s (anonymous) *An Analysis of the Laws of England* (Oxford: Clarendon Press, 1756), 1 (unnnumbered), timed to complement his proposed lecture series at All Souls. He noted that the lectures would place him in a legal lineage traceable through Justinian to Bracton to Coke to Hale. *An Analysis* had gone through six editions by 1771, as it was gradually displaced by the now more famous *Commentaries on the Laws of England*, 4 vols. (Oxford: Clarendon Press, 1765–69), which went through even more editions, to the present.

before he could propose an alternative to them. Consequently his first task was “to overthrow” rather than to “set up.” Blackstone had acted as an “expositor” of the law;” Bentham would act instead as a “creator,” to explain what the law ought to be, not simply to review what it had become. Bentham insisted that Britons lived in a new age, an exciting time “in which knowledge is rapidly advancing towards perfection.” In the “moral reformation” to come there was a “fundamental axiom” that should govern law as it guided life, a realization that “it is the greatest happiness of the greatest number that is the measure of right and wrong.” This now famous phrase captured the essence of Bentham’s “utilitarianism.” Any notion of natural rights derived from a law of nature could have no place in this more moral and yet more empirical age, to which Bentham believed his “fundamental axiom” was perfectly attuned.


37 Bentham, Fragment, 148–49; or in Burns and Hart, eds., Comments on the Commentaries, 483.

38 Once again, from Bentham’s letter to Bowring of January 30, 1827, in Sprigge et al., eds., Correspondence of Jeremy Bentham, 12:307.
That sharper edge first appears in Lind’s unfinished critique of Blackstone, apparently begun sometime in the summer or fall of 1774, many months before Bentham embarked on his *Fragment*. This essay would inform Lind’s counterarguments to both Arthur Lee and Richard Price the next year, and likewise his critique of the Declaration of Independence the year after that. It is possible that Lind turned to Blackstone on his own, as the result of personal study at Lincoln’s Inn, or perhaps Blackstone’s name came up in conversations between Lind and Bentham, with Bentham recalling what he had heard from as well as what he had read in Blackstone; but any more than that it is difficult to say. Lind shared what he had written with Bentham; Bentham offered a critique, then gave Lind a copy of what he had written on Blackstone thus far. Bentham was willing to let Lind take his work and incorporate it within Lind’s own, or, instead, he would put it aside until Lind had published his tract. As yet another alternative, Bentham suggested that he continue on, with Lind offering advice while putting his own essay aside. Lind, interestingly enough, chose that latter course: he left the subject of Blackstone to Bentham.

Lind focused his energy more narrowly, hence his *Remarks* in response to Arthur Lee and then his *Three Letters* to Richard Price. Both essays reflected his disregard for Blackstone’s notion of natural rights, although Blackstone is nowhere mentioned by name. Lind presumably gave Bentham the benefit of his insights on Blackstone and natural rights, as Bentham completed his *Fragment*. Bentham most definitely advised Lind on his Lee and Price tracts, as he would advise Lind on his later critique of the Declaration of Independence.


40. See Bentham’s letter to Lind of October 5, 1774, in Sprigge, ed., *Correspondence of Bentham*, 1:204–8. Also see the observations offered by Burns and Hart, eds., *Comments on the Commentary*, xxv–xxvi; and Douglas G. Long, *Bentham on Liberty* (Toronto: University of Toronto Press, 1977), 51–55. See, too, Armitage, *Declaration of Independence*, 75–81, for the Bentham–Lind partnership extending through Lind’s *Answer* to the Declaration. Signing himself “A.B.” Lind would defend the *Fragment* in a “letter” to the *Morning Chronicle*, July 26, 1776, written in response to two other “letters” by “D.” published on July 6 and 10 in that same newspaper. Lind’s basic purpose was to use his own light satire to top that of the other writer; neither commented at length on the actual content of the *Fragment*.

Lind carried into that third tract on American affairs the same position on natural rights that he took in his unfinished Blackstone critique, and he defended it with the same acerbic language. To give just one example from that 1774 essay: Blackstone had said in his Commentaries that the law of nature reflected the will of God. How were fallible, often irrational men supposed to discern the divine, asked Lind? They could not; therefore, this “law” of nature, the supposed foundation of all other laws, “proves at last to be no more than the deductions of any man’s reason or the dreams of any man’s fancy.” Sadly, Lind concluded, Blackstone had contrived an “unintelligible cant of false metaphysicks and falser Theology.” Because there was no “such thing as a Law of Nature” there could not be natural rights.42 So stated John Lind about the philosophical foundation of English law, before he turned his attention to the American rebellion and, thereafter, to the claims made in the Declaration of Independence.

London newspapers began reprinting the Declaration of Independence in mid-August 1776, as soon as copies made the trans-Atlantic crossing.43 Its appearance did not mark any significant increase in British press coverage of American affairs. The colonial crisis had been a center of attention since before the shooting started, with essays in some newspapers expressing much sympathy for the rebels, others less. The fact that the American rebels eventually chose independence shocked very few Britons. American leaders had denied that that was their goal for many months after the fighting erupted at Lexington and Concord in April 1775. Thoughtful Britons understood that the longer the fighting lasted, the less likely reconciliation became.

42. From Lind’s untitled and theretofore unpublished critique of Blackstone’s Commentaries, reproduced as Appendix G in Burns and Hart, eds., Comment on the Commentaries, 351–89; “deductions,” at 357; “unintelligible cant” and no “Law of Nature,” at 362. On xliiv–xlv the editors explained that they were working from the only known copy, which ended up in Jeremy Bentham’s papers, now at University College London. They identified Bentham’s recommended changes, but they did not mark all of the changes that Lind made to the copyist’s text. For those, see the scanned original pages, accompanied with transcriptions (which are not as reliable as the printed text produced by Burns and Hart), available online through the Transcribe Bentham website, (http://www.ucl.ac.uk/transcribe-bentham) a part of the larger Bentham Papers project, vol. XCVI, fos. 1–49. Lind’s many changes to his argument were essentially stylistic, substituting a different way of making the same point.

Nor did it take Thomas Paine’s *Common Sense* to intensify the rhetoric. King George III had been the target of personal, vituperative attacks in the London press even before the fighting erupted. 44 Nevertheless, whatever sympathy some Britons may have felt for their rebellious cousins, hardly any wanted to follow them into a new republican age, even if they could understand that, for revolutionary Americans, at least, choosing to form an independent nation made more sense than remaining in the empire.

For Thomas Hutchinson, the onetime Massachusetts governor now exiled in London, the Declaration of Independence provided an excuse to make public the opinions he had long held privately. His pamphlet and John Lind’s were the only ones to appear in London as immediate responses to the revolutionary American pronouncement. 45 They were both published in early November 1776. 46 Hutchinson and Lind did not know each other; therefore, the timing was coincidental, but where Hutchinson worked on his own, Lind wrote at the behest of the North ministry. Five hundred copies of Lind’s tract were pulled from the print run and sent straight to the colonies, in the vain hope that a defense of the empire and critique of revolutionary American justifications would have a direct political impact. 47 Hutchinson’s essay went through just one printing; Lind’s was reprinted in London a half dozen times within a year. 48

Generally speaking, Hutchinson and Lind took the same approach in attempting to contest the claims made in the Declaration. Both rejected the philosophical grounds claimed for American rights as well as what

45. Although there had been numerous newspaper pieces that criticized the Americans for pressing toward independence. See especially those by “Pacificus” that appeared in *The Morning Chronicle, and London Advertiser*, starting on August 8, 1776. For the Declaration as a “pompous Catalogue of Grievances” full of “impudent Fallacies” see article by “A Country Gentleman” in the *Public Advertiser*, October 23, 1776. Also see articles by “An Englishman,” in the *St. James Chronicle*, September 10, 1776, which condemned the idea of self-evident truths and unalienable rights; and by “A True Briton” in *The Gazetteer and New Daily Advertiser*, September 14, 1776, who likened the rebellious Americans to those who had destroyed the Roman republic.
46. A notice for Lind’s *Answer* ran in the *Public Advertiser*, November 5, 1776, stating that it had been published that same day. Also see the notice 2 days later in the *London Chronicle*.
47. William Knox noted the dispatch of those copies in a letter to William Howe of November 6 1776, in the National Archives, Kew, Public Record Office, Colonial Office 5/93, fo. 290.
the Declaration offered as evidence of British tyranny. Hutchinson railed at the Declaration’s “absurd notions of government” and the “false hypothesis” that Americans were a distinct people.49 Like Lind, he contended that Britain was sovereign, Parliament supreme, and the navigation system reciprocal, all familiar arguments made by defenders of the empire. Hutchinson took the allegations leveled at King George III in the Declaration personally, because so many alluded to issues raised when he was Massachusetts’s governor. He countercharged those now advocating independence with having wanted it all along. In his view, they were rank opportunists who disingenuously hid behind the facade of violated natural rights, shifting their arguments to suit their selfish political purposes.

Lind chose the same general line of disputation, with one notable exception. After impugning the Revolutionaries’ motives, Hutchinson’s Strictures followed the Declaration’s organization, from first paragraph to last. Lind’s Answer also opened by questioning the Revolutionaries’ integrity, but then, by contrast, went straight to the specific allegations, saving the Declaration’s beginning for the end.50 Lind argued as he might have in the courts of Common Pleas or King’s Bench: he picked at the particulars as a way of dismantling the whole. Lind the barrister wanted to simultaneously build his case, the specific leading to the general, one


example stacked on another, the result being an obvious, even incontestable verdict, in theory, at least. In reality it would not be that simple. On the contrary; what Lind presented as evidence that he hoped would stand as proof could too easily be turned against him. In this microcosm of the larger imperial dispute, there were no irrefutable truths to reveal; rather, there were different perspectives that could not be reconciled.

Lind took the grievances included in the Declaration and enumerated them, one through twenty-eight. In each case he repeated the passage in full before attacking it for faulty logic, muddled law, or distorted history, or as all three combined. In doing so, Lind most likely hardened positions rather than changed minds. Lind’s attempt to simplify ran the risk of reductionism, because his purportedly reasoned argument did double duty as partisan polemic. Those already inclined to discredit revolutionary American claims could have felt more rather than less confident in their position. Those inclined to give American claims more credence could have become equally insistent about the correctness of their view.

Reviewing all of the “Articles,” as Lind labeled them, is not necessary here. Lind himself derisively offered each of the twenty-eight as variations on the same theme. “Of the whole list of charges, so confidently urged against his Majesty, each seems to be distinguished by its own peculiar absurdity,” he sniped. For our purposes, one example will suffice. “Article IV” of the Declaration alleged that the King “has called together legislative bodies at places unusual, uncomfortable, and distant from the depositary of their public records, for the sole purpose of fatiguing them into a compliance with his measures.” This allegation, Lind reminded readers, was based on Governor Francis Bernard’s 1769 decision to have the Massachusetts General Court meet in Cambridge rather than Boston. What Bernard did on his own initiative, King George III later endorsed. The king also instructed Bernard to stand by his ruling until order had been restored to the town. Lind emphasized that the king had authorized the dispatch of troops to Boston just the year before because of the growing unrest in the Bay Colony. He and Bernard intended nothing more sinister than restoring the...
peace and protecting the innocent. Lind therefore huffed that the charge lev-
eled at him in the Declaration was “truly ridiculous.” The Declaration pre-
sented no evidence that the king or his servants acted unjustly or without provocation. Certainly no right-thinking person could consider it grounds for a “national revolt” leading to a war for independence. “Sickly and fee-
ble” must be the “patriotism”\(^53\) that attached any importance to it, he chided. But here, as with the other twenty-seven allegations, Lind showed that he did not grasp—or that he unrealistically denied—the broad psychological elements to what he wanted to confine within narrow legal limits. What is more, establishing what was clearly legal—or not—was no simple task.

Bernard had reconvened the legislative session in Cambridge after it began in Boston on the grounds that political unrest in the capital proved too unsettling for any public business to be done there. Leaders of the General Court in both the House of Representatives and Governor’s Council demanded that he order the British troops who had been in Boston since October 1768 out of the town; likewise British warships in the harbor. Bernard refused, saying that he had no authority to issue those orders.\(^54\) Tired of hearing these repeated demands, fearing mob action and wanting a different, one would hope, more neutral, venue, he decided that Harvard College in Cambridge would be a better meeting place than the town house in Boston. He knew that he took a calculated risk, as did any imperial official in the colonies who went against the preferences of the political opposition. Bernard confessed to the Earl of Hillsborough, Secretary of State for American Affairs, that if he had it to do over again, he would have moved the General Court to Cambridge before the legislative session even opened. He was confident he could have done so “by law,” meaning, within his purview as governor. He also knew that doing so would produce a political uproar, and yet, as he saw it, he needed to take the risk, because, in this imperial Catch-22, if he allowed “the Seeds of Discord” being planted by members of the General Court to take root, matters would only get worse.\(^55\)

Aggrieved members of the General Court seized this moment in 1769 to compile a list of what they deemed to be Bernard’s threats to the people’s liberties. Their petition to the crown anticipated the form that the

\(^{53}\) Ibid.; all quotations from 29.

\(^{54}\) See the House’s complaint to Bernard of May 31, 1769, Bernard’s response that same day, a renewed House protest on June 13, again with Bernard’s response the next day, in the *Journals of the House of Representatives of Massachusetts*, 55 vols. (Boston: Massachusetts Historical Society, 1919–1990), 45:117–20, 130–32.

Declaration of Independence would take in 1776. Accusing Bernard of violating the “first Principles of the British Constitution” and their “charter rights,” they ticked off “he has” this and “he has” that allegations eighteen times, then “humbly” entreated the King to remove him.\textsuperscript{56} There was one key difference between this protest and what eventually followed: in 1769, these Bay colonists appealed to the king as they condemned the actions of his governor; in 1776, the American Revolutionaries appealed to the opinions of an amorphous “mankind” as they protested against their king, or, more correctly, against the man they had once called their king.

The 1769 dispute had frayed political nerves as it exposed legal gray areas. It lasted nearly 3 years and ended without any clear victor or clarification of colonial autonomy versus imperial authority.\textsuperscript{57} Each side attempted to prove that it had the law on its side. Neither could clearly prevail and neither would concede defeat. Lind’s brief recapitulation of this episode in his critique of the Declaration only underscored the impossibility of reconciling rival views.

American Revolutionaries issuing their 1776 Declaration, and Massachusetts legislators drafting their 1769 petition continued an old English parliamentary tradition, seen with the 1628 petition to Charles I and the 1689 declaration of right presented to William and Mary. In composing such texts they all—Englishmen as well as colonists—had acted as insistent supplicants, pairing healing language uneasily with veiled threat. Parliament had objected when the Massachusetts House asserted its rights in February 1768, passing resolutions that it then sent in a circular letter to the assemblies of other colonies. The Lords and the Commons concurred that those resolutions were “illegal, unconstitutional, and derogatory of the Rights of the Crown and Parliament.”\textsuperscript{58} They did not, however, challenge the supposed grounds for those rights. Unlike John Lind in coming years, not all members of Parliament objected to natural rights claims. Their thinking mirrored that of William Blackstone, who was then himself a member of the Commons. Even so, Blackstone did not agree with the Bay colonists’ claims that their natural rights had been violated even if he might have conceded that, theoretically, they existed. Nor did he think that they had a basis for complaint under positive law.

\textsuperscript{58} A resolution passed by both houses of Parliament, printed in the \textit{The Journals of the House of Commons}, 32 (1803):185–86; quote from 185 (for February 8, 1769; approved by the Lords the next day).
Members of the Massachusetts House had contended that any government actions subverting “the principles of equity” and their “natural and constitutional rights” were indefensibly unjust and invalid.\(^59\) When pressured by Whitehall to repeal its February 1768 resolutions, the Massachusetts House passed them a second time by an even larger margin. It again reaffirmed those rights the next year in a set of resolutions countering Parliament’s resolutions at essentially the same moment that it petitioned King George III to remove Bernard.\(^60\)

Equally as significant—although less often noticed by historians—was the Massachusetts House’s later assertion of primacy in determining what was legal and what was not. This came when Lieutenant Governor Thomas Hutchinson, acting in place of the departed Governor Bernard, continued Bernard’s policy of having the General Court meet in Cambridge. Hutchinson submitted to the General Court a ruling made in London by the attorney general and solicitor general that he and the king were constitutionally and legally right; that he, like Bernard before him, could choose where legislative sessions would meet. The House was unmoved; it stood by its insistence that it meet in Boston, not Cambridge. “The opinion of the Attorney General and Solicitor General has very little weight with this House in any case,” it informed the lieutenant governor, because “this province has suffered so much by unjust, groundless, and illegal opinions of those officers of the Crown, that our veneration, or reverence for their opinions, is much abated;” so too for any ruling that might come out of the king-in-council. The House would determine for itself what was right and lawful, regardless of what the king’s men thought. Alluding to John Locke, the House warned that, if need be, the people of Massachusetts could reclaim the power that they had delegated to government, and make their appeal to Heaven. In other words, they had the right to rebel.\(^61\)

To John Lind, this sort of attitude was anathema: using a supposed higher law to threaten anarchy. But by the late 1760s, the opposition-minded held most of the real political power in Boston, and by the early 1770s, in most of the rest of the Bay Colony. Naturally, those critics of empire would claim to hold the legitimate authority behind their power.

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\(^60\) Resolutions passed on June 29, 1769, printed in ibid., 45:168–72. 
Unable to countermand that local power, imperial officials found it increasingly difficult to establish their own authority in its place.62

In his *Answer* to the Declaration, Lind had set for himself the impossible task of discrediting the type of protest that he felt had begun in Boston and then spread elsewhere, eventually leading to rebellion. He wanted to persuade readers that it was wrong of American Revolutionaries to try to hide behind the law, because the law—*real* law, not the ethereal ideas of political philosophers—backed crown and Parliament. He arrayed examples of what he took to be inconsistent arguments and inappropriate behavior by the colonists over the previous decade to prove his point. He argued that, before the shooting started, protesting Americans had professed that they owed a “due subordination” to Parliament and that they accepted the king’s “just prerogative,” and yet at every turn their actions belied that claim of allegiance. They repeatedly resisted crown and Parliament, as if every exercise of imperial authority could be rejected as unjust and unconstitutional. For all intents and purposes, subordination to Parliament was never “due” nor was any exercise of the royal prerogative ever “just.”

Lind groused that revolutionary Americans in their Declaration continued the bad-faith tendency shown repeatedly in Massachusetts as they attempted to make a virtue of their habitual disobedience. They complained about the vice-admiralty courts and royally appointed judges that had competed with their own common-law courts for jurisdiction. Lind’s retort was that their incessant smuggling made those courts necessary because Americans had perversely turned lawbreaking into some sort of public virtue, with juries not convicting the accused, evidence of guilt regardless.63

Americans had objected to troops in their midst, standing armies among civilians in peacetime being a violation of their fundamental rights as Englishmen. Lind retorted that whatever guarantees Englishmen had enjoyed since 1689 with regard to soldiers not being stationed among civilians in peacetime, the colonists—*because* they were colonists—did not enjoy the same protections, and American lawlessness had made the dispatch of troops to Boston—in 1768 and again in 1774—unavoidable. He contended that even William Pitt supported the right of the king to send troops where needed (a point better left unstated, because Pitt had also

62. For the difficulty—even the impossibility—of London trying to control a recalcitrant Massachusetts, a contest in which local authority could dominate imperial authority, see John Phillip Reid’s *In a Defiant Stance* (University Park: Pennsylvania State University Press, 1977) and *In a Rebellious Spirit* (University Park: Pennsylvania State University Press, 1979).

63. Lind, *An Answer*, 36–39, in response to the allegations in “Article X” about “swarms of officers” being sent “to harass our people and eat out their substance.”
made it clear that he did not think that they should have been sent among the colonists). Lind was insistent: the navigation laws needed to be enforced and, without the troops there to protect them, imperial officials could not do their jobs. Had Americans forgotten that those very same troops had driven the French out of New France, better securing their safety and making their future growth possible? An “ungrateful people” led by “selfish Demagogues,” American revolutionaries had spent the previous decade finding ways to avoid shouldering their fair share of the imperial burden.

After ticking off this litany of deliberate obfuscations, Lind finally turned to the Declaration’s opening. Bentham actually framed the argument for this “Short Review of the Declaration.” Whatever the strains in their personal relationship, he and Lind still formed a literary partnership of sorts. As Bentham remembered it many years later, Lind “wrote as he thought, which was what I thought.”

Lind borrowed from Bentham to build on the foundation he had laid in 1774 when critiquing Blackstone’s Commentaries. He had, he confessed to readers of An Answer, given the Declaration’s opening little notice because “the truth is, little or none does it deserve.” Oozing sarcasm, he equated the revolutionaries’ ideas on government found there with those “of their good ancestors on witchcraft.” The revolutionaries had tried “to establish a theory of Government; a theory as absurd and visionary as the system of conduct in defence of which it is established, is nefarious.” The notion of a “self-evident truth” was on its face ludicrous. It became dangerous when joined with their mistaken notion that they could comprehend the laws of nature and the intentions of “Nature’s God.” Their ideas were not only “repugnant to the British Constitution,” they were “subversive of every actual or imaginable kind of Government.” All governments were based on the recognition that some rights must be surrendered for society to function.

64. Ibid., 39, in Lind’s counter to “Article XI,” where “he has kept among us in times of peace standing armies, without the consent of our Legislatures.” Pitt’s (the Earl of Chatham’s) “Provisional Act for settling the Troubles of America,” introduced in the House of Lords on February 1, 1775, in which the sending of troops is condemned, is printed in William Cobbett, ed., Parliamentary History of England from the Norman Conquest in 1066 to the Year 1803, 36 vols. (London: T. C. Hansard, 1806–20), 18:199–203.

65. Ibid., “ungrateful people,” at 52, in response to “Article XVII” protesting taxes “imposed on us without our consent;” and “selfish Demagogues,” at 67, in response to the complaints lodged about the Quebec Act in “Article XX.”

66. Bentham to Bowring, January 30, 1827, in Barker, ed., Parriana, 2:11; also in O’Sullivan and Fuller, eds., Correspondence of Jeremy Bentham, 12:293. For the incomplete surviving text of what Bentham sent to Lind, which Lind reworked for the “Short Review” in An Answer, 107–19, with helpful editorial comments to serve as a guide, see Sprigge, et al., eds., Correspondence of Jeremy Bentham, 1:341–44.
None could literally be “unalienable,” including those associated with “life, liberty and the pursuit of happiness.”

The revolutionaries had admitted that government should not be overthrown for “light” or “transient” reasons. They claimed that “a long train of abuses” had caused them to rise in rebellion, a Lockean phrase that Lind wanted to throw back at them. Because what, in their list of twenty-eight grievances, rose to that level, he asked? None, he answered, not a single one. The king was no tyrant. He had not violated their fundamental rights. To contend that he had driven Americans, as reluctant revolutionaries, to independence because they had had no choice except to declare it was nothing more than “hypocrisy.” If only they knew where their true interests lay, if only they could put their outrageous rhetoric aside, then they might understand that the good lives they once enjoyed came because of—not despite—their place in the British Empire.67

Thus, resoundingly, did John Lind conclude his tirade against the Declaration of Independence. The North ministry was apparently pleased enough with it to pay Lind a pension, which he passed on to his sisters, although the pamphlet’s impact appears to have been negligible then and it is all but forgotten now.68 Lind continued to practice law. He also continued in his pamphleteering, writing one tract to defend the Earl of Mansfield against an attack made on him by the Earl of Abingdon in the House of Lords, and another to defend the actions of the late Lord Pigot while he was governor of Madras.69 The Abingdon piece in particular took a bitingly sarcastic tone, Lind writing only in mock admiration. As always, it is hard to know the extent of Lind’s impact on anyone’s thinking.

67. Ibid., from Lind’s “Short Review of the Declaration,” 107–19, with all the quotations from 107, except for “hypocrisy,” at 118. The first edition included “Outlines of a Counter-Declaration,” 121–37, which was not in subsequent printings. There, Lind wrote thirty-five “Articles” of his own to mock the Americans. The Articles took the form of allegations that the king could make against those who rebelled against him if he chose to, all of which went to prove the revolutionaries’ selfishness and ingratitude, these “artful men” who had deceived the gullible into rising against a good king and just empire, at 121. Eliminating the “Outlines” most likely meant that the ministry decided that Lind had already been harsh enough; no need to overdo the sarcasm and show of disdain. Whitehall and Westminster would be looking for ways to bring the revolutionaries back into the imperial fold, negotiation and coercion being awkwardly combined through much of the war.

68. Although, according to Jeremy Bentham, Lind had thought that success with An Answer might actually help get him a seat in the House of Commons. See Bentham’s letter to his brother Samuel of January 19, 1777, in Sprigge, et al., eds., Correspondence of Jeremy Bentham, 2:11–13.

Lind died of “dropsy” at his London home in early January 1781; he was 43 years old.70 Whatever signs he may have shown that he was jeopardizing his health by living extravagantly, his death was sudden and took his friends by surprise. “Poor Lind,” lamented Jeremy Bentham’s younger brother Samuel upon hearing the news; “he was altogether a very extraordinary character.”71 Longtime friend and putative Earl of Banbury, Thomas Knollys, also lamented Lind’s dying “in the prime of life” and added that “he has not left his equal.”72 Cash poor because of his over-spending, Lind nevertheless left behind a substantial amount of personal property: phaeton and horses, plus the books and fine furniture at his two rented homes and chambers at Lincoln’s Inn. It was all sold at public auction to provide for his widowed wife Mary.73 Herbert Croft, a colleague at Lincoln’s Inn, took care of the funeral arrangements and Lind’s burial in the Anglican parish churchyard in Long Ditton, Surrey.74 Croft later had a marble scroll placed there. The scroll has long since been lost. Its disappearance—and the disappearance of the churchyard as well as the church that stood there—captures, inadvertently, the scroll’s message. In it, Croft had wanted to say something about the evanescence of life, with John Lind serving as his example. It read: “If Ambition or Genius should ever contemplate this marble, let them reflect how suddenly their brightest prospects may be darkened by the hand of Death. Let all who read it,

70. There were brief notices on Lind’s passing in the Morning Herald and Daily Advertiser, January 15, 1781; the London Courant and Westminster Chronicle, January 16, 1781; the Morning Post and Daily Advertiser, January 17, 1781; and, as a mark of his national prominence, in the Gentleman’s Magazine (January 1781):47, although the Annual Register did not comment on his death.


73. Lind’s will, dated January 8, 1781 and proved on January 16, can be found in the Prerogative Court of Canterbury wills, PCC 11/1073/194. It named his wife Mary and friend Herbert Croft as executors. There are no details about his estate there; however, a good sense of that can come from reviewing the announcements for the public auctions to sell his personal property, as reported in the Morning Post and Daily Advertiser, February 3, 1781 (personal effects at his residence in Lamb’s Conduit Street); the Morning Chronicle and Daily Advertiser, February 12, 1781 (for what he left behind in his chambers at Lincoln’s Inn); and the Morning Herald and Daily Advertiser, May 5, 1781 (personal property at his rented house in Ewell, Surrey). Creditors were to lay their claims before Herbert Croft in a London tavern near the end of May. See the London Gazette, April 17, 1781.

74. Surrey, England, Births, Marriages and Burials, 1538–1812, Register for Long Ditton, Burials, 1758–1810. Lind was buried on January 17, 1781.
remember they may die in a year, in a month, in a week, to-morrow, or even to-day.”

Although John Lind’s unfinished 1774 critique of Blackstone laid a philosophical foundation for the 1776 pamphlet belittling the Declaration of Independence, Lind knew that revolutionary Americans had not borrowed their natural rights arguments from Blackstone. They had been making them long before the Commentaries appeared in print. There was nothing novel in the natural rights arguments made by protesting Bay colonists in 1768 or 1769 that Lind attempted to discredit in 1776. In 1762, in anticipation of unpopular imperial policies to come after the French and Indian War, the Massachusetts General Court had stated that “the natural rights of the Colonies we humbly conceive to be the same with those of all other British Subjects, and indeed of all Mankind.” In response to those anticipated policies becoming real a few years later, the General Court asserted that all legitimate government “has an everlasting foundation in the unchangeable will of God, the author of nature, whose laws never vary.”

Even as the imperial crisis deepened, there were still members of Parliament who sided with protesting Americans, both in accepting the reality of natural rights and the contention that those of the colonists had been violated. Others who may have disagreed that Americans had been tyrannized nevertheless agreed that fundamental rights came from God and through nature, that all legitimate government depended on the consent of the governed, and that even though the king-in-Parliament reigned supreme, no one stood above the law and no power short of God’s could be unlimited. Natural rights arguments made in Parliament, it is important to remember, had a much older pedigree than those made in colonial American assemblies. Blackstone in his Commentaries turned

75. As recorded in Edward Westlake Brayley, A Topographical History of Surrey, 5 vols. (London: G. Willis, 1850), 3:139. According to St. Mary’s churchwarden Peter Topp, the present church dates from 1881 and there is very little left standing from the previous structures on that site.

76. Instructions from the Massachusetts General Court on June 14, 1762 to its agent in London, Jasper Mauduit, in the Massachusetts Archives, Letters, 1756–1774, 56:386–87 (film copy).


78. See, notably, the Earl of Camden in the House of Lords, on March 7, 1766; John Dunning and Constantine Phipps in the Commons on May 4, 1774 (with Phipps dismissing Blackstone as “no authority at all” on the rights enjoyed by Americans); Temple Luttrell in the Commons on February 27, 1775; and John Sawbridge, also in the Commons on April 5, 1775, all in Simmons and Thomas, eds., Proceedings, 2:322, 4:385 and 390–91, 5:469–70, and 6:8, respectively.
to the fifteenth century English jurist Sir John Fortescue to validate his characterization of England’s legal past. Fortescue had contended that “the Law of Nature is the same, and has the same force all the world over.” Consequently “the laws of England, as far as they agree with, and are deduced from the Law of Nature, are neither better or worse in their decision than the law of all other nations or kingdoms in similar cases.”

Fortescue’s source for this assertion was Aristotle.

This is not to say that protesting colonists or their sympathizers in Parliament always turned to natural rights to make their case. Their protests were intended first and foremost to change imperial policy. Before July 1776, they argued accordingly, saying only as much as they felt they needed to in order to carry a political point. Sometimes they argued on the basis of constitutional rights, sometimes on the basis of charter rights, sometimes on the basis of natural rights, and sometimes they combined all three, often with God as the ultimate source of everything just. The Declaration of Independence did not introduce natural rights into the mix; rather, it used natural rights to legitimize the decision of revolutionary Americans to leave the empire and found their own nation. Only thus, they contended, could they secure their liberties.

Superficially, transforming revolt into revolution had made the English constitution and colonial charters irrelevant; not so the appeal to natural rights. At first blush, then, revolutionary Americans appear to have rejected Blackstone’s constitutional and legal world to create their own. Blackstone had attempted to separate constitutional law from the law of nature and any talk of natural rights. There might be a right of revolution within natural law, he conceded, but not within constitutional law. His professed Lockean sympathies—holding that all legitimate power was derived from the people and that they had “absolute rights which were invested in them by the immutable laws of nature”—notwithstanding, Blackstone added this qualification.

However just this conclusion may be in theory, we cannot adopt it, or argue from it, under any dispensation of government at present existing. For this devolution of power, to the people at large, includes in it a dissolution of the whole form of government established by that people, reduces all members to their original state of equality, and by annihilating the sovereign


81. Blackstone, Commentaries, 1:120 (Book I, Ch. 2).
power repeals all positive laws whatsoever enacted. No human laws will therefore suppose a case, which at once must destroy all law, and compel men to build afresh upon a new foundation; nor will they make provision for so desperate an event, as must render all legal provision ineffectual. So long therefore as the English constitution lasts, we must venture to affirm, that the power of parliament is absolute and without control.82

And yet, before writing that passage Blackstone had contended “Acts of Parliament that are impossible to be performed are of no validity.” If they contradicted “common reason” they were “void”—although, “if the parliament will positively enact a thing to be done which is unreasonable, I know of no power that can control it.”83 It was this sort of circuitous thinking that John Lind challenged as being utterly illogical. From Lind’s perspective, Blackstone had played into the hands of revolutionary Americans who claimed to be defending rights under law when they were actually subverting them.84

Nonetheless, eliminating natural rights arguments would not by itself have brought with it the legal positivism that Lind advocated. Even if natural rights had not become part of the imperial debate, the tendency of rights talk to obscure rather than clarify, to divide rather than unite, would have remained.85 There were nebulous constitutionalist ideas circulating in the Atlantic world that existed apart from a belief in natural rights.86 The notion of an ancient constitution going back to an idealized Saxon or earlier Gothic past still had its appeal in Britain, including to William Blackstone, which he carried into his Commentaries.87 Historian John Phillip Reid examined this ancient constitution’s “evolving

82. Ibid., 1:157 (Book I, Ch. 2).
83. Ibid., “no validity” and “common reason,” at 1:91 (Introduction, Section 3); “absolute and without control,” at 1:157 (Book II, Ch. 2).
85. As seen with what the distinguished historian Edmund S. Morgan called, in his book Inventing the People (New York: W. W. Norton, 1988), the “fiction” of popular sovereignty, which required a suspension of disbelief to be sustained.
86. As John Phillip Reid asserted in The Concept of Representation in the Age of the American Revolution (Chicago: University of Chicago Press, 1989), 8, in “the eighteenth century, the constitution was not the measure of what was lawful but the standard of what law should be. The British constitution was whatever could be plausibly argued and forcibly maintained.”
permanence”: an acceptance that social circumstances change, coupled with an insistence that political principles remain the same.  

Blackstone treated the Glorious Revolution as a return to that ancient constitution, a restoration rather than an innovation. The “transcendant and absolute” jurisdiction of the crown-in-Parliament, as Blackstone defined it, had been “entrusted” to it “by the constitution of these kingdoms.”

What, precisely, was that constitution and whence the source of its authority? Blackstone did not say, because he was astute enough to know that he could not. He downplayed the revolutionary implications of the Convention of 1689, its declaration of right, and the contract theory that produced them even as he celebrated the Glorious Revolution. He subsumed the theory of popular sovereignty within the reality of parliamentary supremacy. In his constitutional world, the people could not legitimately act independently of Parliament.

John Lind, too, fell under the sway of the ancient constitution, his positivist preferences notwithstanding. He did not allude to an ancient or Gothic constitutional past in his pamphlets opposing American assertions of natural rights, but he did characterize the Glorious Revolution as a resurrection of Britain’s “happy” constitution. Recall, too, his warning to British defenders of the ancient constitution did not necessarily side with revolutionary Americans.

88. Reid, Ancient Constitution, 84.


91. Lind, Answer, 6.
rebellious Americans that they risked losing “the blessings of the British constitution,” essentially unwritten though it may have been. “It is upon custom that a greater part of our political as well as our civil government depends,” he had contended in his 1775 Remarks. Even though Lind denounced the a priori assumptions behind natural rights arguments made in the Declaration of Independence, he could not escape his own set of beliefs, his own underlying assumptions about what constituted the just society. His legal arguments reflected the same moral and ethical assumptions as those of William Blackstone; indeed, the same as those of revolutionary Americans. It is not an irony that Lind would have appreciated being pointed out to him, but it can be added to other ironies that mark the debate over rights in the Revolutionary Era.

92. Lind, Remarks, 427.
93. Ibid., 22.