

Excerpts from the writings of Thomas Jefferson

Please read the following excerpts from the writings of Thomas Jefferson, paying careful attention to his discussion of experiment and experimentation in these excerpts.

What role does experimentation play in the issues Jefferson is considering in these writings?

How does one experiment?

Why does one experiment?

Excerpt from the Transcript of the *Declaration of Independence* (1776)

Available at: <https://www.archives.gov/founding-docs/declaration-transcript>

The unanimous Declaration of the thirteen united States of America, When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, -- That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

Thomas Jefferson, *Notes on the State of Virginia* (1781-1783)

Available at: Thomas Jefferson, *The Works of Thomas Jefferson*, Federal Edition (New York and London, G.P. Putnam's Sons, 1904-5). Vol. 4. 7/5/2017.
http://oll.libertyfund.org/titles/756#Jefferson_0054-04_43

Excerpt from Query XIII: The constitution of the State and its several charters?

This [Virginia] constitution was formed when we were new and unexperienced in the science of government. It was the first, too, which was formed in the whole United States. No wonder then that time and trial have discovered very capital defects in it.

Excerpt from Thomas Jefferson, *Autobiography*

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http://oll.libertyfund.org/titles/800#Jefferson_0054-01_162

[Note: In the following excerpt, Jefferson discusses his work on the committee that revised the law of Virginia following the *Declaration of Independence*.]

When I left Congress, in 76. it was in the persuasion that our whole code must be reviewed, adapted to our republican form of government, and, now that we [67] had no negatives of Councils, Governors & Kings to restrain us from doing right, that it should be corrected, in all it's parts, with a single eye to reason, & the good of those for whose government it was framed. Early therefore¹ in the session of 76. to which I returned, I moved and presented a bill for the revision of the laws; which was passed on the 24th. of October, and on the 5th. of November Mr. Pendleton, Mr. Wythe, George Mason, Thomas L. Lee and myself were appointed a committee to execute the work. We agreed to meet at Fredericksburg to settle the plan of operation and to distribute the work. We met there accordingly, on the 13th. of January 1777. The first question was whether we should propose to abolish the whole existing system of laws, and prepare a new and complete Institute, or preserve the general system, and only modify it to the present state of things. Mr. Pendleton, contrary to his usual disposition in favor of antient things, was for the former proposition, in which he was joined by Mr. Lee. To this it was objected that to abrogate our whole system would be a bold measure, and probably far beyond the views of the legislature; that they had been in the practice of revising from time to time the laws of the colony, omitting the expired, the repealed and the obsolete, amending only those retained, and probably meant we should now do the same, only including the British statutes as well as our own: that to compose a new Institute like those of Justinian and Bracton, or that of Blackstone, which was the model proposed by Mr. Pendleton, would be an arduous [68] undertaking, of vast research, of great consideration & judgment; and when reduced to a text, every word of that text, from the imperfection of human language, and it's incompetence to express distinctly every shade of idea, would become a subject of question & chicanery until settled by repeated adjudications; that this would involve us for ages in litigation, and render property uncertain until, like the statutes of old, every word had been tried, and settled by numerous decisions, and by new volumes of reports & commentaries; and that no one of us probably would undertake such a work, which, to be systematical, must be the work of one hand. This last was the opinion of Mr. Wythe, Mr. Mason & myself. When we proceeded to the distribution of the work, Mr. Mason excused himself as, being no lawyer, he felt himself unqualified for the work, and he resigned soon after. Mr. Lee excused himself on the same ground, and died indeed in a short time. The other two gentlemen therefore and myself divided the work among us. The common law and statutes to the 4. James I. (when our separate legislature was established) were assigned to me; the British statutes from that period to the present day to Mr. Wythe, and the Virginia laws to Mr. Pendleton. As the law of Descents, & the criminal law fell of course

within my portion, I wished the commee to settle the leading principles of these, as a guide for me in framing them. And with respect to the first, I proposed to abolish the law of primogeniture, and to make real estate descendible in parcenary to the next of kin, as personal property is by the statute of distribution. [69] Mr. Pendleton wished to preserve the right of primogeniture, but seeing at once that that could not prevail, he proposed we should adopt the Hebrew principle, and give a double portion to the elder son. I observed that if the eldest son could eat twice as much, or do double work, it might be a natural evidence of his right to a double portion; but being on a par in his powers & wants, with his brothers and sisters, he should be on a par also in the partition of the patrimony, and such was the decision of the other members.

On the subject of the Criminal law, all were agreed that the punishment of death should be abolished, except for treason and murder; and that, for other felonies should be substituted hard labor in the public works, and in some cases, the Lex talionis. How this last revolting principle came to obtain our approbation, I do not remember. There remained indeed in our laws a vestige of it in a single case of a slave. it was the English law in the time of the Anglo-Saxons, copied probably from the Hebrew law of “an eye for an eye, a tooth for a tooth,” and it was the law of several antient people. But the modern mind had left it far in the rear of it’s advances. These points however being settled, we repaired to our respective homes for the preparation of the work.

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http://oll.libertyfund.org/titles/800#Jefferson_0054-01_163 and

http://oll.libertyfund.org/titles/800#Jefferson_0054-01_164

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On the subject of the Criminal law, all were agreed that the punishment of death should be abolished, except for treason and murder; and that, for other felonies should be substituted hard labor in the public works, and in some cases, the Lex talionis. How this last revolting principle came to obtain our approbation, I do not remember. There remained indeed in our laws a vestige of it in a single case of a slave. it was the English law in the time of the Anglo-Saxons, copied probably from the Hebrew law of “an eye for an eye, a tooth for a tooth,” and it was the law of several antient people. But the modern mind had left it far in the rear of it's advances. These points however being settled, we repaired to our respective homes for the preparation of the work.

Beccaria and other writers on crimes and punishments had satisfied the reasonable world of the unrightfulness and inefficacy of the punishment of crimes by death; and hard labor on roads, canals and other public works, had been suggested as a proper substitute. The Revisors had adopted these [72]opinions; but the general idea of our country had not yet advanced to that point. The bill therefore for proportioning crimes and punishments was lost in the House of Delegates by a majority of a single vote.¹ I learnt afterwards that the substitute of hard labor in public was tried (I believe it was in Pennsylvania) without success. Exhibited as a public spectacle, with shaved heads and mean clothing, working on the high roads produced in the criminals such a prostration of character, such an abandonment of self-respect, as, instead of reforming, plunged them into the most desperate & hardened depravity of morals and character.—To pursue the subject of this law.—I was written to in 1785 (being then in Paris) by Directors appointed to superintend the building of a Capitol in Richmond, to advise them as to a plan, and to add to it one of a prison. . . . [Jefferson then details his architectural plans.] With respect to the plan of a Prison, requested at the same time, I had heard of a benevolent society in England which had been indulged by the government in an experiment of the effect of labor in *solitary confinement* on some of their criminals, which experiment had succeeded beyond expectation. The same idea had been suggested in France, and an Architect of Lyons had proposed a plan of a well contrived edifice on the principle of solitary confinement. I procured a copy, and as it was too large [74] for our purposes, I drew one on a scale, less extensive, but susceptible of additions as they should be wanting. This I sent to the Directors instead of a plan of a

common prison, in the hope that it would suggest the idea of labor in solitary confinement instead of that on the public works, which we had adopted in our Revised Code. It's principle accordingly, but not it's exact form, was adopted by Latrobe in carrying the plan into execution, by the erection of what is now called the Penitentiary, built under his direction. In the meanwhile the public opinion was ripening by time, by reflection, and by the example of Pensylva, where labor on the highways had been tried without approbation from 1786 to 89. & had been followed by their Penitentiary system on the principle of confinement and labor, which was proceeding auspiciously. In 1796. our legislature resumed the subject and passed the law for amending the Penal laws of the commonwealth. They adopted solitary, instead of public labor, established a gradation in the duration of the confinement, approximated the style of the law more to the modern usage, and instead of the settled distinctions of murder & manslaughter, preserved in my bill, they introduced the new terms of murder in the 1st & 2d degree. Whether these have produced more or fewer questions of definition I am not sufficiently informed of our judiciary transactions to say. I will here however insert the text of my bill, with the notes I made in the course of my researches into the subject.¹

Excerpt from Thomas Jefferson, *Notes on the State of Virginia* (1781-1783)

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Query XVII: The different religions received into that state?

The present state of our laws on the subject of religion is this. The convention of May 1776, in their [Virginia] declaration of rights, declared it to be a truth, and a natural right, that the exercise of religion should be free; but when they proceeded to form on that declaration the ordinance of government, instead of taking up every principle declared [290] in the bill of rights, and guarding it by legislative sanction, they passed over that which asserted our religious rights, leaving them as they found them.

Our sister states of Pennsylvania [296] and New York, however, have long subsisted without any establishment at all. The experiment was new and doubtful when they made it. It has answered beyond conception. They flourish infinitely. Religion is well supported; of various kinds indeed, but all good enough; all sufficient to preserve peace and order: or if a sect arises whose tenets would subvert morals, [81] good sense has fair play, and reasons and laughs it out of doors, without suffering the state to be troubled with it. They do not hang more male-factors than we do. They are not more disturbed with religious dissensions. On the contrary, their harmony is unparalleled, and can be ascribed to nothing but their unbounded tolerance, because there is no other circumstance in which they differ from every nation on earth. They have made the happy discovery, that the way to silence religious disputes, is to take no notice of them. Let us too give this experiment fair play, and get rid, while we may, of those tyrannical laws. It is true we are as yet secured against them by the spirit of the times. I doubt whether the people of this country would suffer an execution for heresy, or a three years imprisonment for not [297] comprehending the mysteries of the trinity. But is the spirit of the people an infallible, a permanent reliance? Is it government? Is this the kind of protection we receive in return for the rights we give up? Besides, the spirit of the times may alter, will alter. Our rulers will become corrupt, our people careless. A single zealot may commence persecuter, and better men be his victims. It can never be too often repeated, that the time for fixing every essential right on a legal basis is while our rulers are honest, and ourselves united. From the conclusion of this war we shall be going down hill. It will not then be necessary to resort every moment to the people for support. They will be forgotten therefore, and their rights disregarded. They will forget themselves, but in the [82] sole faculty of making money, and will never think of uniting to effect a due respect for their rights. The shackles, therefore, which shall not be knocked off at the conclusion of this war, will remain on us long, will be made heavier and heavier, till our rights shall revive or expire in a convulsion. [298]