The Pursuit of Happiness in the Founding Era: An Intellectual History (Studies in Constitutional Democracy)
Scholars have long debated the meaning of the pursuit of happiness, yet have tended to define it narrowly, focusing on a single intellectual tradition, and on the use of the term within a single text, the Declaration of Independence. In this insightful volume, Carli Conklin considers the pursuit of happiness across a variety of intellectual traditions, and explores its usage in two key legal texts of the Founding Era, the Declaration and William Blackstone's Commentaries on the Laws of England. For Blackstone, the pursuit of happiness was a science of jurisprudence, by which his students could know, and then rightly apply, the first principles of the Common Law. For the founders, the pursuit of happiness was the individual right to pursue a life lived in harmony with the law of nature and a public duty to govern in accordance with that law. Both applications suggest we consider anew how the phrase, and its underlying legal philosophies, were understood in the founding era. With this work, Conklin makes important contributions to the fields of early American intellectual and legal history.
Look inside the book

THE PURSUIT OF HAPPINESS IN THE FOUNDING ERA

The Pursuit of Happiness IN THE FOUNDING ERA
An Intellectual History
CARLI N. CONKLIN
Columbia


STUDIES IN CONSTITUTIONAL DEMOCRACY

Justin B. Dyer and Jeffrey L. Pasley, Series Editors

The Studies in Constitutional Democracy Series explores the origins and development of American constitutional and democratic traditions, as well as their applications and interpretations throughout the world. The often subtle interaction between constitutionalism's commitment to the rule of law and democracy's emphasis on the rule of the many lies at the heart of this enterprise. Bringing together insights from history and political theory, the series showcases interdisciplinary scholarship that traces constitutional and democratic themes in American politics, law, society, and culture, with an eye to both the practical and theoretical implications. Previous Titles in Studies in Constitutional Democracy: The Panic of 1819: The First Great Depression / Andrew H. Browning; Lloyd Gaines and the Fight to End Segregation / James W. Endersby and William T. Horner; Aristocracy in America: From the Sketch-Book of a German Nobleman / Francis J. Grund; From Oligarchy to Republicanism: The Great Task of Reconstruction / Forrest Nabors; John Henry Wigmore and the Rules of Evidence: The Hidden Origins of Modern Law / Andrew Porwancher; Bureaucracy in America: The Administrative State's Challenge to Constitutional Government / Joseph Postell; The Myth of Coequal Branches: Restoring the Constitution's Separation of Functions / David J. Siemers
For my parents, Dr. Keith R. Conklin and Cathy A. Conklin
A father's goodness is higher than the mountain,
A mother's goodness deeper than the sea.—attributed to a Japanese proverb
Declaration of Independence with Thomas Jefferson’s, John Adams’s, and Benjamin Franklin’s Edits Included, as Reconstructed by Carl Becker
V. The Declaration of Independence with Edits by the Continental Congress Marked, as Reconstructed by Carl Becker
VI. The Declaration of Independence, a Transcript from the National Archives
Notes
Bibliography
Index

ACKNOWLEDGMENTS
I have had the opportunity to share the ideas at the heart of this work with so many terrific audiences over the years. I would like to thank my wonderful former colleagues at John Brown University, where interdisciplinary engagement and intellectual curiosity are on constant display. It was while teaching legal history and introductory political theory at JBU that I first began asking the key questions at the heart of this work. In a similar vein, I am deeply indebted to the outstanding past and present faculty at the University of Virginia School of Law and Corcoran Department of History, who so willingly shared with me their love for their academic disciplines. For their suggestions on this project, in particular, I would like to thank Barbara E. Armacost, Paul Halliday, and Karen Parshall. Paul Kershaw, Elizabeth Meyer, and Hunter R. Rawlings III contributed much to my understanding of Anglo-Saxon England and the classical world. I will be forever grateful to have had the opportunity to explore this topic under my PhD advisor, Charles W. McCurdy. My special thanks also go out to G. Edward White, whose comments on earlier iterations of this work have been invaluable.

This work benefited from presentations in a variety of academic settings over the years, including the Lehrman American Studies Institute at Princeton University; the Institute for Constitutional History's Summer Research Seminar at George Washington University; the Center for Christian Study in Charlottesville, Virginia; the University of Missouri School of Law; the University of Arkansas–Fayetteville School of Law; Regent University School of Law and Robertson School of Government; Washington University in St. Louis School of Law's Junior Faculty Workshop; the Shawnee Trail Regional Conference on American Politics and Constitutionalism; and the Society of Early Americanists' Religion and Politics in Early America Conference, which was co-sponsored by the John C. Danforth Center in Religion and Politics at Washington University in St. Louis and the Kinder Institute on Constitutional Democracy. Jeffrey A. Brauch, Michelle Cecil, the late Richard Chewning, Shirley Clarke
Chewning, Martha Dragich, Justin B. Dyer, Alan Charles Kors, Paul Litton, Stephen M. Sheppard, Richard Skalstad, Bill Wilder, and Donna Wilson are among those who provided insightful feedback and suggestions at earlier stages of this work. I greatly appreciate the work of Washington University Jurisprudence Review editor in chief Krista C. McCormack and chief executive articles editor Matthew K. Suess, whose professionalism and careful editorial eye aided me in an earlier article-length exploration of this topic. Although the external reviewers for this current project remain anonymous, I would like to thank them here for the care with which they read this work and for their detailed and incisive comments. My research assistant, Taylor Tutin, proved invaluable in the latter stages of this project. Any errors remain mine, alone. This project benefited from research leave, funding, and the support of terrific colleagues at the University of Missouri School of Law and Kinder Institute on Constitutional Democracy. Finally, I am grateful to everyone at the University of Missouri Press for their professionalism, patience, humor, and warm collegiality in shepherding the manuscript through to publication. It has been a particular honor to publish this work through the Studies in Constitutional Democracy series. It is no accident that the names and venues above cut across a wide variety of academic fields and subfields: law, history (including early American history, American legal history, Roman history, Greek history, and Anglo-Saxon history), political theory, the classics, philosophy, theology, and mathematics. The variety is reflective of the multiple-traditions school of the founding era, which is where this work ended, but not where it began. As I began looking into the meaning of the pursuit of happiness in its historical context, I was delighted to find that Thomas Jefferson, John Adams, and Benjamin Franklin inhabited an intellectual world that was invigorating both in its breadth and in its depth. They spoke with ease across academic disciplines and subfields in ways that are, at times, disconcerting to a modern reader and, with our emphasis on specialization, seemingly impossible to emulate. This work therefore relies not only on the writings of the founders and their Enlightenment-era contemporaries, but also on the works of more recent scholars, both those who have dedicated their time and scholarly attention to exploring the depths of a specific field or subfield and those who have dedicated their time and scholarly attention to identifying the places where those fields or subfields connect or overlap. For the former, I am indebted to I. Bernard Cohen, for his illuminating work on the influence of scientific thinking on the founders, in general, and on John Adams, Benjamin Franklin, and Thomas Jefferson, in particular; to Wilfrid Prest and Carol Matthews, whose scholarship has added nuance and depth to historical accounts of the life and legal philosophy of William Blackstone; to Daniel Dreisbach and Carl J. Richard, whose recent works have added compelling detail and complexity to our understanding of how the Bible influenced the founders in their personal lives and their political thought; to Charles Barzun, for his insightful work on the impact of the Scottish Common Sense school on early American legal thought; and to Carl J. Richard (again) for his excellent work on the founders’ classical heritage. The goal of this work is to provide an intellectual history—the history of an idea—in the best sense of the term. Its purpose is, in the words of
Thomas Jefferson, “not . . . to invent new ideas altogether” but, instead, to illuminate the intermingling and ultimate convergence of several old ideas at a single place of particular meaning: the pursuit of happiness. I hope you enjoy the journey as much as I have.

INTRODUCTION

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.—Declaration of Independence (1776)

From 1823 forward, the phrase “pursuit of happiness” appeared in ninety-six United States Supreme Court cases.1 The pursuit of happiness was used by litigants to argue for everything from the right to privacy to the right to pursue one's chosen occupation, and it was invoked by the Court to uphold the same. Black's Law Dictionary cites to that case law as it defines the right to the pursuit of happiness as “[t]he constitutional right to pursue any lawful business or activity that might yield the highest enjoyment, increase one's prosperity, or allow the development of one's faculties as long as it is not inconsistent with others' rights.”2 While this definition reflects how the right to the pursuit of happiness has been cited in Supreme Court case law from the 1820s forward, it does not tell us how the phrase was understood in its historical context.

Historians have long struggled to define the pursuit of happiness as an unalienable right. Most accounts begin in 1689 with John Locke's Two Treatises of Government. In The Second Treatise, Locke lists the natural rights of “life, liberty, and estate,” with “estate” being what we today would call “property.” Locke defined “property” in a narrower sense, as that with which man “mixed his labour . . . and thereby makes it his [own]” and, as will be discussed later, in the broader sense of man's natural right to “life, liberty, and estate.”3 Locke's work was widely popular among the founders, in general, and with Jefferson, in particular.4 The traditional explanation for pursuit of happiness draws on these connections and holds that, when writing the Declaration, Jefferson deliberately mirrored Locke's listing of unalienable rights, but with one exception: Jefferson omitted Locke's unalienable right of property and included the unalienable right of the pursuit of happiness instead. From there, the historical accounts attempt to make sense of the reasons Jefferson would replace property with the pursuit of happiness. The most persistent explanation offered is that Jefferson was uncomfortable enough with slavery to want to avoid perpetuating a property ownership in slaves by including an unalienable right to property in the Declaration.5 Yet even if this explanation is true, it is not complete. Jefferson's discomfort with slavery may explain why he would omit property from Locke's original listing. It does not explain why Jefferson would insert the pursuit of happiness in its place. In attempting to explain the substitution, historians have taken two approaches. The first approach argues that the substitution has substantive meaning. As discussed more fully in appendix 2, historians adopting this approach have argued that the pursuit of happiness evokes a synonymous right to property, the happiness to be found in the acquisition of material comfort, the happiness to be found in family life, or the Scottish Enlightenment idea of public virtue.6 But each of these definitions has its difficulties. The first two definitions articulate various forms of
property ownership, but eighteenth-century rights theorists, including John Locke, articulated property and the pursuit of happiness as distinct—not synonymous—rights. As historian Jan Lewis highlights in her work, the third definition of happiness as family life was a concept that did not develop until the nineteenth century, which would make its application to the Declaration anachronistic. Finally, the idea of happiness as public virtue, while more in keeping with eighteenth-century understandings of happiness, omits the placement of the phrase in the unalienable-rights portion of the Declaration not as a public duty but as an individual and unalienable right. It was not uncommon, at the time of the Declaration, to view rights and duties in relationship to one another, with any given right encompassing a corresponding duty. A full understanding of the pursuit of happiness would need to fully consider both the public-duty and the private-right implications of the phrase.

The second, and more common, approach to defining the pursuit of happiness has been to conclude that it is a substitution for property that has no substantive meaning—or, at least, not one that is presently discernible. This understanding is best articulated by Rufus Choate's 1856 description of the phrase as one of the Declaration's “glittering . . . generalities”; it sounds pretty and appealing, but it is either too general or too individualized to have any practical, substantive meaning. This line of thinking suggests that Jefferson inserted the pursuit of happiness into the Declaration not in an attempt to list a substantive unalienable right but instead as an instrument of rhetoric, and it is as an instrument of rhetoric that the phrase does its work. It adds rhythm and beauty to Jefferson's listing of unalienable rights, and if the pursuit of happiness does anything more in the Declaration, it is only to add a sense of undefined idealism to the listing of unalienable rights the Declaration contains. The pursuit of happiness as a glittering generality is the definition that has most recently taken hold among historians, and it makes sense within a common twenty-first-century understanding of happiness as feeling good. But this definition seems at odds with what we know of Jefferson as a meticulous and deliberate writer and proponent of the rights and duties of man. When forming his list of unalienable rights—those rights that are so important that we obtain them simply by being human and that are so essential to our humanity that we cannot alienate them from our persons—Jefferson selected only a representative three. “Life” is the precondition upon which all other rights were to be exercised. “Liberty” also carries a preconditional weightiness, since, in order to exercise one's rights, one must first be at liberty to do so. But what are we to make of the pursuit of happiness? Why would Jefferson then include a phrase as glib, and as seemingly overly generalized, as the pursuit of happiness in a document that was, in all other respects, a serious and quite particular declaration of man's natural and political rights? This question becomes more complex when examined in connection with the introductory portion of William Blackstone's Commentaries on the Laws of England. The Commentaries, published from 1765 to 1769, were a written version of lectures on English common law that Blackstone had been delivering at Oxford University for more than a decade prior. As the Vinerian Chair in Common Law, Blackstone was the first professor to lecture on
English law in the English university system. Blackstone's Commentaries went on to provide the foundation of late-eighteenth- and nineteenth-century legal education not only in England but also in the British colonies in mainland North America and then the new United States. In the second section of his introduction to the Commentaries, Blackstone argues that God has created laws of nature by which the entire natural world is to be governed. In a fascinating passage on jurisprudence, Blackstone claims that the pursuit of happiness is the primary method by which men can know and then apply the law of nature as it pertains to humans: men can readily “discover . . . what the law of nature directs in every circumstance of life; by considering, what method will tend the most effectually to our own substantial happiness.” As will be demonstrated, Blackstone understood happiness to be synonymous with the Greek concept of eudaimonia; it evoked a sense of well-being or a state of flourishing that is the result of living a fit or virtuous life. In the words of eighteenth-century dictionary author Samuel Johnson, “fit” is “[c]onvenient; meet; proper; right.” It is to be rightly ordered to the law of nature. Rather than being fleeting or temporal, Blackstone described such happiness as “real” and “substantial.” As highlighted in dictionary definitions of the time, to be real indicated that such happiness was “not fictitious; not imaginary; [but] true; genuine.” In other words, it was not a mere perception of happiness or sense of feeling good but a state that reflected reality. It was substantial in that it pertained to the substance or essence of the thing—in this case, the substance or essence of what it meant to be fully human. Thus, for Blackstone, to pursue happiness was to pursue a fit or rightly ordered life, one that was in harmony with what is true or real, as expressed within the law of nature as it pertains to man. In fact, when revising the Commentaries for the eighth edition, which was published in 1778 just prior to his death, Blackstone seems at pains to make this point even more clearly by revising the phrase to read “That man should pursue his own true and substantial happiness,” a phrasing that mirrored his descriptions of happiness as “real” and “substantial” from the first edition of this portion of the Commentaries forward. Knowing of Jefferson's antipathy for Blackstone (Jefferson famously referred to Blackstone as a “honeyed” Tory and viewed Blackstone’s Commentaries as overly simplistic in comparison with the works of Sir Edward Coke), it does not seem, at first glance, that Jefferson would have shared Blackstone’s understanding of the pursuit of happiness when Jefferson included the phrase in the Declaration. Yet the framing of the phrase in both works suggests otherwise. Blackstone’s discussion of the pursuit of happiness was included in the second section of his introduction, titled “Of the Nature of Laws in General.” His discussion of the pursuit of happiness was both preceded by and informed by his discussion of those laws, a contextual placement that we see mirrored in the Declaration. In both texts, the authors sought to summarize their understanding of the relationship between the Creator, nature, man, and law. In both texts, pursuit of happiness played a prominent role in that discussion. The work that follows then seeks to determine the eighteenth-century legal meaning of pursuit of happiness by undertaking two parallel investigations. The first investigation will explore William Blackstone’s use of
the pursuit of happiness and the work it performs in his Commentaries on the Laws of England. The second investigation will explore the pursuit of happiness and the work it performs in the Declaration of Independence. Each investigation sets aside twenty-first-century understandings of happiness and pursuit of happiness and, instead, adopts a methodology that focuses on understanding historical actors and ideas in their own context. This methodology is advocated for by historian G. E. White in his work “Recovering the World of the Marshall Court.” According to White, early American legal historians (particularly those studying the Marshall Court) all too frequently encounter two problems: First, if modern mind-sets and philosophies include a “conscious repudiation” of previous mind-sets and philosophies, historians may fail to understand “how a sensible actor” could hold those mind-sets and philosophies with which they, themselves, disagree. Second, if the conscious repudiation is strong enough, legal historians will then look for “other ‘causes’ to explain the motivation or actions of these earlier legal or judicial figures,” missing the actual motivations and actions of these earlier figures as a result. To remedy this problem, White urges legal historians first to reject the notion that earlier ways of thinking are necessarily inferior to later ways of thinking and then “to engage in a suspension of contemporary belief” while conducting their research. In other words, White urges legal historians to take the past on its own terms, however incomprehensible those terms may be to present-day sensibilities, and to adopt a methodology that focuses on understanding historical actors and ideas within their own context. It is this methodology I adopted as I explored the meaning of the pursuit of happiness as it was used first by Blackstone in his Commentaries on the Laws of England and then in the Declaration of Independence by the American founders. This exploration suggests that, instead of being a mere substitution for Locke's property or a glittering generality, the pursuit of happiness in the Declaration has a clear and distinct meaning, and it is the same meaning as outlined by Blackstone when he included a discussion and definition of the phrase in his Commentaries on the Laws of England. An investigation into the historical context of each document does not reveal a specific reference proving that the founders intended to evoke Blackstone's understanding of the pursuit of happiness when they included the phrase in the Declaration. It does not reveal a reference to Blackstone's pursuit of happiness in early drafts of the Declaration, in the edits that followed, or in Thomas Jefferson's or John Adams's later reflections on the text. Instead, this investigation reveals something even more compelling, given the intellectual diversity of the founders who edited and then approved the Declaration of Independence and its inclusion of the pursuit of happiness as an unalienable right: each of four key strands of thought that were prevalent at the American founding—English law and legal theory, the history and philosophy of classical antiquity, Christianity, and the Scottish Enlightenment's focus on Newtonian science—had, at their core, the same understanding of epistemology or ways of knowing that Blackstone described when he defined the pursuit of happiness in the introductory portion of his Commentaries. The pursuit of happiness, as used in both works, refers to man's ability to know the law of nature as it pertains to man and man's
unalienable right to then choose to pursue a life of virtue or, in other words, a life lived in harmony with those natural law principles. The result would be eudaimonia, or man's own real and substantial happiness. This exploration of the pursuit of happiness will unfold in three parts. Part 1 will begin with a discussion of Blackstone's definition of the pursuit of happiness and the placement and purpose of that phrase in the Commentaries. Specifically, it will describe Blackstone's inclusion of the pursuit of happiness in his Commentaries as a science of jurisprudence by which his students could know and then rightly apply the first principles of the common law in their future work as lawyers, judges, jurors, or members of Parliament (MPs). Second, it will demonstrate that Blackstone was not alone in defining the pursuit of happiness in this way but was simply articulating an understanding of the pursuit of happiness that was common among the latitudinarian Anglican theologians and Scottish Common Sense philosophers of his day. Part 1 will conclude with an exploration of Blackstone's goal of using the pursuit of happiness as a means of improving and perfecting the English common law and the emphasis he placed on examples from history and architecture to communicate that goal. Part 2 will explore the pursuit of happiness as it was used in the Declaration of Independence. First, it will describe the placement of the phrase in the Declaration, the treatment of pursuit of happiness throughout the drafting of the document, and its context within the Declaration's larger structure. Second, it will explore the intellectual backdrop of the Declaration, with an emphasis on four key strands of thought that were prevalent during the founding era: English law and legal theory, the history and philosophy of classical antiquity, Christianity, and the Scottish Enlightenment's focus on Newtonian science. It will explore how Thomas Jefferson, John Adams, and Benjamin Franklin—the initial drafters of the Declaration—intermingled these strands in their own political, natural, and moral philosophies. Next, it will demonstrate that the pursuit of happiness is defined at the place where the four strands converge, which is in an understanding of the natural world governed by first principles, most frequently described in the founding era as fundamental principles or the laws of nature and of nature's God. Part 2 will conclude with a discussion of how Jefferson, Adams, and Franklin, like Blackstone, ultimately understood the pursuit of happiness within the Greek concept of eudaimonia, the well-being or human flourishing that results from a life lived in harmony with those laws. While parts 1 and 2 provide evidence that Blackstone and the founders understood the pursuit of happiness to have the same Enlightenment-era meaning, part 3 will explore how that meaning had two distinct applications in the Commentaries and the Declaration. First, it will highlight Blackstone's and the founders' shared definition of the pursuit of happiness. Second, it will explore their dual applications of the phrase as a private right and a public duty. It will begin by describing the private-right use of the phrase, as exemplified by the founders' inclusion of the pursuit of happiness as one of the individual and unalienable rights listed in the Declaration and Blackstone's claim that the law of eternal justice is "inseparably interwoven" with the happiness of each individual. Then it will discuss the public-duty applications of the phrase. This public-duty usage was exemplified by
Blackstone's belief that the pursuit of happiness as a science of jurisprudence would enable future lawyers, judges, jurors, and MPs to conduct their legal work in harmony with the first principles of the English common law—and his insistence that future lawmakers had a duty to determine and apply the law within that framework. It is also reflected in the founders’ repeated statements, both before and after the Declaration of Independence, that to secure the happiness of the people is a proper end of good governance. Part 3 will then explore how the private-right and public-duty applications of the pursuit of happiness overlapped, both through the founders’ discussion of virtue and through Blackstone’s and the founders’ belief that the public duty of the pursuit of happiness both informed and limited its private pursuit. Finally, part 3 will conclude by putting theory into practice with an exploration of how, despite their diverging political opinions, William Blackstone and Thomas Jefferson utilized the pursuit of happiness as a science of jurisprudence in remarkably similar ways in their efforts to improve and perfect the criminal law of England and the new United States.

Readers who are interested in historians’ efforts to understand Blackstone as a legal thinker and the Commentaries as a legal text may want to explore the historiographical overview of Blackstone and the Commentaries that I have included in appendix 1. Readers who would like to know more about previous histories of the pursuit of happiness in the Declaration of Independence may be interested in the historiographical discussion included in appendix 2. In the chapters ahead, I will refer often to Blackstone’s Commentaries on the Laws of England, Introduction, Section the Second, “Of the Nature of Laws in General.” The full text of this portion of Blackstone’s Commentaries is included in appendix 3, with Blackstone’s edits in editions 2–8 of the Commentaries marked. Appendixes 4–6 include reconstructions of the Declaration of Independence to highlight how it was altered—and what stayed the same—throughout the drafting process. This work preserves the punctuation, spelling, and grammar of the original sources, without the addition of [sic] to highlight inconsistencies with modern spelling and language usage. Any changes to the original sources have been marked. The Chicago Manual of Style suggests the use of quotation marks for direct quotations and for special words or phrases. To follow these guidelines with the pursuit of happiness would make it unclear when quotation marks were used to indicate the pursuit of happiness as an idea (a special phrase) versus when quotation marks were used to indicate how the pursuit of happiness appeared in a specific text (a direct quotation). To promote clarity, this work places the pursuit of happiness in quotation marks only when necessary to draw the reader’s attention to the details of how the words appeared in a specific text.

The drafts of the Declaration of Independence include “the pursuit of happiness” with no capitalization. During the final printing of the Declaration, many words were capitalized, resulting in a final reading of “the pursuit of Happiness.” This variance in capitalization has been preserved in direct quotations from these documents.

*Download to continue reading...*

The book has a rating of 5 out of 5.0. 5 people have provided feedback.
Book Information

Language: English
File size: 5584 KB
Text-to-Speech: Enabled
Screen Reader: Supported
Enhanced typesetting: Enabled
Word Wise: Enabled
Print length: 255 pages
Lending: Not Enabled
X-Ray: Not Enabled

DMCA