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CHAPTER 1

AMERICA’S “PARCHMENT REGIME”: THE ORIGINAL CHARACTER OF THE AMERICAN DEMOCRATIC REPUBLIC AND THE CULTURE SUPPORTING IT

Introduction

We hear it said often that the practice of something does not measure up to the theory behind it. This is the case with political orders as with other types of entities, as well as with individual persons.

In Federalist 10, James Madison says that in “a pure democracy...there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence and contention...and as short in their lives as they have been violent in their deaths.”¹ With such an utterly unflattering assessment by the main author of the Constitution, one wonders how we might be able to refer to the United States as a *democratic* republic? Martin Diamond, Winston Mills Fisk, and Herbert Garfinkel, in their book entitled *The Democratic Republic*, say that the U.S. is “democratic”—in the representative, not pure, sense—because it features majority rule, and is “republican” because it was intended to demonstrate such characteristics as restraint, sobriety, competence, and liberty.² There was intended to be majority rule, to be sure, but within the context of preserving minority rights; that is, the minority could not be suppressed or its liberty destroyed. As Diamond, et al. say, our Constitution is “faithful to the spirit and form of democracy...[but] guards against its dangerous propensities.” The latter are not just the tyranny referred to by Madison, but also folly, feebleness, and ineptitude.³ It seeks to “reconcile the advantages of democracy with the sobering qualities of republicanism,” and “to render a democratic regime compatible with the protection of liberty and the requisites of competent

government.”⁴ The consent of the governed, then, is at the heart of the American political order, but its force is mitigated by the restraints of representative institutions, the rule of law, and social, cultural, and moral influences. This insures that the majority’s will not only is not abusive, but also that the common good of the political order will be promoted.

The View Prevalent at the Time of the American Founding Fathers about the Principles and Practices Needed to Sustain a Democratic Republic

We can identify at the time of our Constitution’s adoption widely held views about the principles and practices that have to be prevalent to sustain a democratic republic. They represent: 1) a mixture of institutional factors and democratic (i.e., democratic republican) practices; 2) those that relate strictly to democratic principles and practices; and 3) those involving social conditions that are necessary to sustain republican government. We can identify these views in writings of the individual American Founding Fathers (i.e., the leading figures at the 1787 Constitutional Convention and Thomas Jefferson, who is often also reckoned a “Founding Father”), major political documents of the constitutional (i.e., Founding) era, the thought of the philosophers of republican government who especially influenced the thinking of the Founders, and the retrospective assessment of the greatest commentator on the American democratic republic, Alexis de Tocqueville. These are principles and practices that from learned reflection and actual experience the leading political thinkers and statesmen of the Founding Era concluded should be present to call a political order a “democratic republic.”

Regarding the first category (institutional arrangements), separation of powers, checks and balances, an independent judiciary, and federalism were particularly emphasized. Separation of powers did not happen automatically in early America, even though it was a staple of the thinking of such influential political philosophers as John Locke and Baron de Montesquieu. Indeed, after the outbreak of the Revolutionary War legislative supremacy was the order of the day in the American states, an outgrowth of the bitterness about the overbearing royal-appointed colonial governors in the years before.⁵ The abuses of institutionally unchallenged legislative power became readily apparent, however, as the Federalist Papers make clear.⁶ The writings of numerous Founding Fathers underscore the centrality of the notion of separation of powers. In spite of the movement toward legislative supremacy in the period 1776-1789, it also appears as a basic principle in such prominent new state constitutions as those of Virginia and Massachusetts.⁷ James Madison sums it up in Federalist 47: “No political truth is certainly of greater intrinsic value.”⁸

Checks and balances, of course, is a concomitant of separation of powers. Alexander Hamilton, another prominent Founder, speaks of the need for “mutual checks.”⁹ It had roots going back at least to Solon in ancient Athens.¹⁰ George

Dargo writes that "separation of powers, mixed with an elaborate system of checks and balances among roughly equal branches" became the cornerstone principle of American government.¹¹

Probably the most famous Founding Era argument for an independent judiciary is Hamilton's Federalist 78, although the Declaration of Independence also pointedly speaks about it when it includes among the colonists' grievances against King George III that "[h]e has made judges dependent on his will alone for the tenure of their offices, and the amount and payment of their salaries."

The federal system was not something established in the Founding Era; the Constitution was erected upon the long-existing reality of it. Hamilton, representing well the general views of the Founders, insisted that the state governments had to be strong and a balance of power between them and the new federal government was as essential as the forging of a strong union.¹² Later, Tocqueville mentioned the federal system as crucial to the American democratic republic ("one of the most powerful combinations favoring human prosperity and freedom").¹³ Both the Framers and Tocqueville spoke about how the federal structure in conjunction with the large land mass and population of the U.S.—large even then with many fewer states—gives rise to the notion of the extended republic. They argued that this helps protect liberty because within it dangerous factions (see below) and intense political passions are more likely to be geographically contained.¹⁴

It is clear that both the Founding Fathers and Tocqueville were suspicious of excessive centralization of government. The Founders state that the national government under the Constitution only has a limited range of powers and would be concerned only with matters of general concern to the whole country.¹⁵ Tocqueville speaks of "the extreme evils which centralization can produce."¹⁶ His conclusion that it is good for the American democratic republic that the nation (at that time) had "no great capital" seems to be connected with this concern about centralization.¹⁷ Despite his admiration for democratic republics, he was concerned that what might happen as time goes on is that while they would continue to let individuals have some role in shaping "important affairs"—for example, by extending them the franchise—they would increasingly regiment the particular everyday aspects of their lives.¹⁸ He sees equality as preparing men for this kind of "gentle" despotism, with enhanced centralized governmental authority, since it makes them so independent of one another that they will be only too ready to turn to the state as protector and provider.¹⁹

There are several factors that combine institutional arrangements and democratic practice, not fitting neatly into simply one or the other. These include the following: the notion that the makers of the laws must be subject to them like everyone else; the need for a "mixed" government, where both the propertied or leading elements of the political society and the much more numerous popular elements are represented; the presence of parties and factions to check each other so as to preserve liberty, not allowing any one group to become so powerful that it threatens the common good; and also that the laws and not the mere arbitrary whim of rulers control public affairs (i.e., "a

government of laws and not of men”).

The applicability of the laws to their makers was stressed by the political philosopher John Locke²⁰ and was commonly accepted in the political life of America almost from the beginning. Locke saw this, along with rotation in office, as being a major means of avoiding political arbitrariness.²¹ This was something that obviously distinguished a constitutional regime from, say, a traditional monarchy.

Closely related to this principle, of course, was the notion that there must be a government of laws or, in other words, the rule of law must prevail. This was certainly not a new idea in the Founding period; we can find it as far back as Aristotle’s writing (which indirectly influenced the liberally-educated Founding Fathers through their learning),²² although for the most part we find that it took root in customary practice only after centuries of political struggle and constitutional development. Indeed, Aristotle delineated the fundamental elements of the rule of law (he also called it “constitutional rule”): it furthers the common interest of the community as against individualistic or singular group interests (even though the former is *mostly* derived by compromise among different specific interests); governance proceeds by means of general regulations instead of arbitrary decrees; and government is carried out by willing citizens instead of by force-wielding despots.²³

We see many emphatic endorsements of the rule of law in the Founding Era and the thought that influenced it. Locke says that men must be “govern[ed] by *promulgated establish’d Laws*...[which] have one Rule for Rich and Poor...[and] be designed for no other end ultimately but *the good of the People*.”²⁴ Montesquieu says that a democratic republic requires ordered political liberty within law.²⁵ Such thinkers as John Milton and James Harrington, who influenced the Founders but less directly than Locke and Montesquieu,²⁶ also stressed the rule of law.²⁷ John Adams writes, “the laws...are the only possible rule, measure, and security of justice.”²⁸ Thomas Jefferson insists on the need for “equal laws” to protect the “equal rights” of all, even minorities.²⁹

In the writing of the Founding Era and the thinkers who inspired it, we find frequent references to two other points relating to law, which are part of the notion of the rule of law. While these fit more appropriately into our other categories, for the sake of continuity we relate them here. Most crucial is that the civil laws embody natural law or principles of morality not made by men (this is in the category of democratic principles and practice, without any institutional dimension; that is, it is a principle for lawmakers in a democratic republic to put into practice in their activity of lawmaking).³⁰ When reference is made to “good laws” in the writing of the Founding Era and in the philosophers of constitutional or republican government from the seventeenth century to Tocqueville, what is meant is the upholding of the rule of law (as defined above) and of the notion of the civil laws embodying natural law. The other point pertaining to law fits into the category of social conditions and attitudes. It is that in a democratic republic, all citizens—rulers and ruled alike—must have a respect for law. Washington and Adams say that the laws must not just be

respected, but *revered*.³¹

The notion of the mixed government or mixed regime is the foundation for separation of powers. Mixed government as it appeared in the American colonies was different from the classical understanding of it and even the version that prevailed in England. The classical notion called for involving in the ruling activity monarchical, aristocratic (usually, in practice, oligarchic), and popular elements. (The latter referred to the many who were poor). This was approximated in England with the particular governmental institutions that took shape: the king or queen, the House of Lords (which represented the traditional landed aristocracy), and the House of Commons (which represented the majority who were not in the royal family or aristocracy, the commoners). The arrangement that took shape in the American colonies was necessarily somewhat different since there was no American aristocracy, and the king was present only vicariously in the person of the colonial governor (although these governors typically did not have anything like kingly powers). The U.S. Constitution also established an untraditional kind of mixed regime, although not completely different. The presidency is, in effect, the monarchical part, apparently intended to have power rivaling that of the English king—but, as the great constitutional scholar Edward S. Corwin says, without the hereditary aspect or the corruption.³² The Senate and the Supreme Court were intended to be something like an aristocratic part, with neither elected directly by the people (this was the case with the Senate until the Seventeenth Amendment). The Senate was closer to the people—as might be expected by the fact that it comprised part of the legislative body—because it originally was elected by the people's representatives in the state legislatures. The House of Representatives was meant to be the popular body in the U.S. government, directly elected by the people. Although the U.S. had no hereditary aristocracy, the fact that this means of selecting senators brought forth the more eminent and distinguished men is clearly seen from Tocqueville's discussion of it.³³ Essentially, though, the American mixed government could not be like the English or classical one because the social framework within which the government operated was different. As Russell Kirk points out, the U.S. was a middle class country, and this helped to moderate people's attitudes and in some sense to build community. In colonial and early republican America, virtually everyone was middle class.³⁴ This is not to say that early America viewed property as irrelevant to politics because having the franchise was generally conditioned on either the holding of a certain amount of real property—normally quite low—or some other showing of attachment to the community.³⁵

Further, in the context of mixed government, a senate—which by indirect election, long terms, or both is somewhat shielded from immediate democratic pressures—was held to be especially critical. We see this clearly in the writing of such Founding Fathers as Madison, Hamilton, and Adams. Although, as Hamilton puts it, a "broad democratic branch" is crucial in a republic, the democratic impulse must not be allowed to go unchecked (recall above the danger of a majority faction). As Federalist 63 observes, "history informs us of no long-lived republic which had not a senate."³⁶

The eminent historian of the American Founding, Bernard Bailyn, writes that the early state constitutions derived the principle of separation of powers not from a specific intention to balance the powers and functions of distinct branches but from the English mixed government idea, which they in turn embodied, and from a general colonial concern about influence and corruption in government.³⁷

The classic statement of the notion of the essentiality of parties and factions for holding overreaching power in check is, of course, James Madison's Federalist 10. The essence of his argument is that faction is inevitable in free political societies. Its causes cannot be eliminated, so its effects must be controlled. A minority faction can be checked by the vote—that is, a majority can overwhelm it. A majority faction needs to be checked by such institutional arrangements as the federal system and representative bodies that will render nationwide cabals and large-scale demagoguery (characteristic of pure democracies) unlikely. Although as indicated below the Founders in no way dismiss the importance of good statesmanship (i.e., public-spirited men able to discern and unselfishly focus on furthering the good of their political order), Federalist 10 clearly downplays its capability to control faction.³⁸

It was only three generations before the Founding Era that the principle of Federalist 10 gained credence. Before the 1730s, parties and factions were seen as destructive of liberty and strongly discouraged.³⁹ This suspicion had not completely disappeared, however, even by 1800, as can be seen by Jefferson's insistence that his Democratic-Republican party—which he was the standard-bearer of in that year's presidential election—was the party to end all parties and restore the situation that had previously prevailed.⁴⁰

Finally in this first category, we find the Founding Fathers enunciating the notion of vigorous or energetic government. That is, government must be sufficiently strong to carry out its purposes, noted below.⁴¹ It is suggested from the above that this is part of the reason why they sought a democratic republic, instead of a pure democracy. To establish a vigorous national government in place of the weak Confederation that could not meet national needs and internal and external threats was a major objective of the 1787 Philadelphia Constitutional Convention.⁴²

The items in the category of strictly democratic principles and practice are the following: that the twin purposes of government are to secure men's inherent natural rights and promote the common good; popular sovereignty; a limitation of the franchise to those who demonstrate some permanent attachment to the community; measured (i.e., ordered) liberty; political equality, but with limitations; respect for private property; the guarantee of various political and legal rights, the most important of which were freedom of speech, freedom of the press, freedom of religion, freedom of assembly, the right to trial by jury, the right to habeas corpus, due process guarantees, and the prohibition of bills of attainder; generally, short duration in public office; civilian control of the military; and the taking of due care about public credit and avoiding excessive public debt.

Locke's natural rights of life, liberty, and property were echoed in the

Declaration of Independence's life, liberty, and the pursuit of happiness. These are also seen clearly in the Virginia Bill of Rights of 1776 and the Massachusetts Constitution of 1780. Actually, natural rights-type language is abundantly observed in the political discussion of the Founding Era. The protection of men's natural rights was not the only object of government, however. The Virginia Bill of Rights specifically speaks of attaining the common good as the other purpose. Federalist 51 states, "Justice is the end of government. It is the end of civil society."⁴³ Adams stresses the need for a democratic republic to motivate the citizens to "prefer the public good before their own."⁴⁴ Tocqueville states that the Founding Fathers commendably understood how the federal system would motivate citizens to take an interest in the public good.⁴⁵ The terms "public good" and "common good" are treated interchangeably here. It might appropriately be asked if for the Founding Fathers and their era it had the traditional philosophical meaning of the good of the community and of each individual person in the community. Since the education of many of Founders seems to have acquainted them with Scholastic philosophy,⁴⁶ they perhaps had this definition roughly in mind (though below we raise the question about how deep their philosophical reflection went). Even if they did not think of it precisely in this way, they were certainly trying to imply in using the term "common good" or "public good" that republican citizens must not narrowly focus on their own particularistic interests and ignore those of their political community. Indeed, their desire to establish a democratic republic to protect minorities further suggests something like this traditional philosophical meaning of common good.

The expressions of popular sovereignty in the writing of the Founding Era are numerous. Jefferson and Madison are representative. The former writes that the "mother principle" of democratic republics must be that "they embody the will of their people and execute it."⁴⁷ The latter says that the vital principle of republican government is the *lex majoris partis*, the will of the majority,⁴⁸ which was noted above in our definition of a democratic republic. Popular sovereignty included, as the colonists' grievances against England made clear, that taxation could not be levied without the consent of the people or their representatives.

To insure popular sovereignty in practice, representation was held in the political thinking—and practice—of the late colonial and early Republican period to have to correspond to population levels and to be apportioned fairly equally among geographical areas.⁴⁹ At least Jefferson, who was more pro-democratic in his sentiments, believed it essential to conduct government in the open.⁵⁰ Interestingly, this is in opposition to the closed-door Constitutional Convention of 1787, which Jefferson was not present at.

On the question of the limitation of the franchise, as stated above, property ownership or at least some attachment to the community was generally viewed as a necessary requirement for voting in the Founding Era. Sometimes, service in the militia or simply paying taxes would substitute for property holding. The Constitution itself adopted no requirements; it strictly left the matter to the states, which is where these typical requirements were enforced.⁵¹ There are

indications, however, that the Founders wanted to leave open the issue of the further democratization of the franchise.⁵²

The following statements, among others, express the Founding Era's adherence to the principles of measured or ordered liberty and restrained equality (as opposed to outright egalitarianism). Montesquieu had strongly stressed both, defining liberty not as a right to do whatever one likes, but as "a right of doing whatever the laws permit," and warning that "[d]emocracy has...two excesses to avoid—the spirit of inequality...and the spirit of extreme equality, which leads to despotic power."⁵³ The Federalist poses the problem of seeking ordered liberty—i.e., citizen liberty within a framework of social order—very bluntly: "In framing a government...the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself."⁵⁴ The Declaration of Independence cries out with the theme of ordered liberty. While liberty is one of the unalienable rights and the despotism being directed at them the reason the Americans were separating from England, the order provided by government was seen as so crucial that it is insisted that men will not change "governments long established" for "light and transient causes." When they do throw off one governing authority, they will "provide new guards for their future security" because government is vital for men. For our Founding Fathers, the need for order was a given, and completely unquestioned. The fear that it was breaking down after the Revolutionary War stimulated them to assemble in Philadelphia in 1787 to forge a better frame of government that would insure it and at the same time protect the liberty that they had fought so hard for.⁵⁵

The notion of equality that one sees in the Founding Era is equal application of the laws, equal rights for all citizens, and a rendering of equal justice for all.⁵⁶ There was no question at all about the Founders being like contemporary egalitarians. Madison says the following in Federalist 10, regarding governmental recognition of differences in wealth: "[It is t]he diversity in the faculties of men, from which the rights of property originate...The protection of these faculties is the chief object of government. From th[is] protection...the possession of different degrees and kinds of property immediately results..."⁵⁷ Indeed, the Founders were greatly troubled by the threats to the security of property posed by the debtor class that had manifested itself in such developments as Shays' Rebellion.⁵⁸ The right of private property and the incidents thereof was fundamental for the Founding Era.⁵⁹ The Founders' sense of the folly of egalitarianism is clearly seen in the famous correspondence between the elderly Adams and Jefferson when they both state the need for a natural aristocracy of merit and virtue to be brought forth to rule in any kind of government (which is one of the necessary social conditions they pointed to).⁶⁰ There was no question in the Founders' minds about all men not being equally capable of effective rule. In emphasizing this, they were following a long line of political philosophers back to antiquity and including such moderns as Montesquieu, Milton, and Harrington.⁶¹

By short duration in office, the Framers did not seem to mean what we call today "term limits" (i.e., office holders not being allowed to run for office more

than a stated number of consecutive times or only being permitted to hold a designated office for so many years during their lifetimes). What was meant was that the terms should be only for a limited—i.e., quite short in duration—number of years. The exception would be the Senate that they were establishing, since there would be need of a body to provide continuity and stability.

Effective civilian control over the military was a basic principle of the Framers. They knew only too well the history of the military tyranny of Cromwell in England.⁶² Jefferson called for “a well-disciplined militia” and Washington cautioned, “overgrown military establishments...are inauspicious to liberty.”⁶³ Related to this, Washington warned against America's foreign policy becoming partial to particular foreign nations and of the dangers of foreign influence on the country.⁶⁴

The Founders also viewed the question of public debt as connected with liberty. As Jefferson writes, “We must make our election between *economy and liberty* or *profusion and servitude*.” This is because taxation follows debt, “and in its train wretchedness and oppression.”⁶⁵

As far as concerns the guarantee of the rights above (i.e., freedom of the press, freedom of religion, freedom of assembly, the right to trial by jury, the right to habeas corpus, due process guarantees, and the prohibition of bills of attainder), they are mentioned in numerous statements of the Founders, the Bill of Rights (bills of attainder are mentioned in the original Constitution itself), such important state documents as the Virginia Bill of Rights of 1776 and the Massachusetts Constitution of 1780, and *The Federalist*. Actually, most of the rights that appeared in various colonial and state documents found their way explicitly into the federal Bill of Rights. Others were encompassed implicitly in one or another provision. Again, the fact that the rights above were repeatedly singled out for mention indicates that they were seen as particularly central for a viable democratic republic. Sometimes, as in Madison's case, the Founders indicated directly that they believed these to be the most important rights.⁶⁶

Finally, in terms of what might be called social conditions, or necessary elements that must be present in culture, our sources most frequently point to the following as particularly essential: religion (which is treated at length in a separate section of this chapter), education, morality (implied in the discussion of natural law above, and often referring in the Founding Era specifically to Christian moral beliefs), virtue (which of course is in many respects synonymous with morality), mores (closely related to morality and discussed later in this chapter), a commitment to freedom and republican principles, a condition of prosperity and certain economic factors, respect for law, respect for the common good, and the presence of a natural aristocracy (the latter three were discussed above).

The many references to education in statements and writings of the Founding Fathers and Tocqueville make one conclude that while it is crucial for the sustenance of a democratic republic, it did not have to be of the same type for everyone. They basically see two informal “levels”: all citizens require a moral education and—more formally—an education in basic subjects and citizenship, but the minority who will go on to become leaders must have

advanced study in the liberal arts so they can gain the deeper insights and understanding necessary to steer the ship of state (much like the education that many of the Founding Fathers themselves received).⁶⁷ In his “Bill for the More General Diffusion of Knowledge” in Virginia, Jefferson endorsed education as the means of preventing even the best form of government from degenerating into tyranny.⁶⁸ Adams says that, “[e]ducation is more indispensable, and must be more general, under a free government than any other.”⁶⁹ In his famous Farewell Address, Washington says that, “[I]n proportion as the structure of a government gives force to public opinion, it is essential that public opinion should be enlightened.”⁷⁰

Regarding morality and virtue, we have seen their importance to the Founding Era by discussing natural law, the natural aristocracy, and moral education above, and below we quote Washington stressing the need for morality in conjunction with religion. The Massachusetts Constitution of 1780, which we have noted, similarly says, “the good order and preservation of civil government essentially depend upon piety, religion, and morality.”⁷¹ Hamilton insists that free government requires that “the virtue of...[the] rulers” be “strongly connected” “with their interest.”⁷² Adams says that “virtue, honor, and fear of the citizens” is required to secure liberty.⁷³ Montesquieu holds that virtue is especially crucial in a republic and entails love of the laws and country, constantly preferring the public to private interest, a love of equality and frugality (the latter seems to relate, at least in part, to what was said above about government debt), and good maxims to direct people’s lives.⁷⁴ Later, Tocqueville became famous for his “doctrine of self-interest properly understood”—a kind of enlightened self-love—that he sees as motivating in Americans orderliness, temperateness, caution, self-control, and small sacrifices for the good of neighbor and community. These are not the noblest of virtues, but are virtues nonetheless and help men to both be free and work for the common good.⁷⁵

Next, Jefferson and Madison both speak about the need for a spirit of commitment to republican principles.⁷⁶ Similarly, Tocqueville says the people need a taste for freedom.⁷⁷

Finally, we could categorize in the realm of social conditions economic considerations. Hamilton and Jefferson also believed that government should help develop the economy, although the former heavily emphasized commerce and the latter a more balanced approach toward both commerce and agriculture.⁷⁸ Tocqueville mentions the geographical vastness of the U.S. and its great natural resources, and resulting material prosperity, as helping to sustain its democratic republic. While he does not see natural abundance as in any way a guarantee of republicanism, prosperity is crucial because it has a moderating effect on political behavior. It tempers extremism and encourages law and order.⁷⁹ This is obviously related to the presence of a substantial middle class, discussed above.

Religion in the Founding Era

Many writers have noted the centrality of religion in early America, but few have expressed it as powerfully as Tocqueville. He said that while religion "never intervenes directly in the government of American society" (viz., separation of church and state, in its proper conception) it nevertheless should "be considered the first of their political institutions."⁸⁰

What was the religious perspective of the colonial and, especially, the Founding Era in the United States, how did it affect the life of the people, and how important was religion viewed in the shaping and sustaining of basic American political and social ideas?

We find a strong endorsement of the importance of religion for sustaining republican government in the statements of the Founding Fathers. In his Farewell Address, George Washington said that "[o]f all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports."⁸¹ John Adams similarly wrote that "it is religion and morality alone, which can establish the Principles upon which Freedom can securely stand"⁸² and that the "*general Principles*, on which the Fathers achieved Independence...were...the general Principles of Christianity...And the *general Principles* of English and American Liberty."⁸³ Dr. Benjamin Rush wrote, "the only foundation for a useful education in a republic is to be laid in Religion. Without this there can be no virtue, and without virtue there can be no liberty."⁸⁴ The Northwest Ordinance, adopted by an Articles of Confederation Congress that included many of the Constitution's Framers in it, declared, "Religion, morality, and knowledge [as] being necessary to good government."⁸⁵ Even the supposed deist, Benjamin Franklin, at a crucial impasse during the Constitutional Convention, spoke up to call for prayers, saying "that God governs in the affairs of men...without his concurring aid we shall succeed in this political building no better than the Builders of Babel."⁸⁶ He also said, "If men are so wicked as we now see them *with religion*, what would they be if *without it*?"⁸⁷ Jefferson and Madison, noted so much for their struggles for religious liberty and strong skepticism about the undue influence of religious bodies on government, echo these sentiments. In Query XVIII of his *Notes on Virginia* in 1781, Jefferson wrote: "God who gave us life gave us liberty. And can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are of the Gift of God? That they are not to be violated but with His wrath?"⁸⁸ Once, when he was confronted about his religious beliefs, Jefferson said, "No nation has ever yet existed or been governed without religion. Nor can be."⁸⁹ In 1785, Madison stated that, "Religion is the basis and Foundation of Government."⁹⁰ In 1788 he said, "We have staked the future of all of our political institutions upon the capacity of mankind for self government; upon the capacity of each and all of us to govern ourselves, to control ourselves, to sustain ourselves according to the Ten Commandments of God."⁹¹ Later in his life, in 1825, he wrote, "The belief in a God All Powerful wise and good, is...essential to the moral order of

the World and to the happiness of man.”⁹² In his First Inaugural Address, he asserted, “We have all been encouraged to feel in the guardianship and guidance of that Almighty Being, whose power regulates the destiny of nations.”⁹³

Some have argued essentially that the respect accorded to religion by the Founding Fathers was strictly utilitarian, to achieve the morality and order that republican government requires.⁹⁴ While the above quotations make clear that they believed it indeed was necessary for this, the evidence indicates strongly that this was not all there was to religion for them. While as Tocqueville says, no one can know for certain what is in the human heart,⁹⁵ we make a judgment about their religiosity on the basis of the evidence we have. M.E. Bradford’s study of the fifty-five Founders established that “with no more than five exceptions (and perhaps no more than three), they were orthodox members of one of the established Christian communions.”⁹⁶ M. Stanton Evans writes that “many of the framers were professing Christians—active in church affairs, engaged in prayer, avowing a belief in God and Scripture.”⁹⁷ Bradford recounts the religious utterances, without reference to political concerns, and religious writings and efforts of many of them.⁹⁸ They did not just hold these beliefs privately, but the latter shaped their political thought and efforts. Charles S. Lutz and Donald S. Hyneman’s well-known study of the Founders’ writings from 1760 to 1805 showed that of 3,154 references they made to other sources, fully 34% were from the Bible. Another 9% were from ancient or classical writers. Thus, fully 43% came from Judeo-Christian or classical sources. Another 18% came from Whig writers, whose views were often closely intertwined with Protestantism. Another 11% came from the English common law, behind which, of course, stood the natural law and Christianity. In spite of the view of many writers that the American Founding was simply a reflection of Locke’s political philosophy,⁹⁹ it should be noted that of Enlightenment era figures referred to by the Founders (only 18% of the overall total), the most frequently cited was Montesquieu (who was also one of the closest to the natural law and Christian tradition). He was mentioned three times more frequently than Locke.¹⁰⁰ Russell Kirk notes that studies of Americans’ reading habits in the second half of the eighteenth century suggest that educated persons “often mentioned Locke on the eve of the Revolution, but seldom read his books at first hand.” He says that even Jefferson cited legal thinkers such as Lord James Coke and Henry Home, Lord Kames in his *Commonplace Book* and public papers more frequently than Locke, and Jefferson denied that the Declaration of Independence was simply copied from Locke’s *Second Treatise*. It is not surprising that Kirk observes that, “The Americans would make use of Locke, but they would not worship him.”¹⁰¹

The Founders’ other actions further establish that they were very serious about religion and its importance for republican government. There has been much debate and disagreement over the decades about the meaning of the religious references in the Declaration of Independence. To be sure, the reference to “Nature’s God” seems to be deistic, although it was changed from an expression in an earlier draft that sounded more Christian. The statement appealing to the “Supreme Judge of the world” is essentially theistic. What use would it have been to make an active appeal to a God who could not or would

not listen? In expressing their "firm reliance on the protection of divine Providence," the signers of the Declaration are clearly theistic: men can only rely on a God who can help them. This phrase, appearing near the end of the Declaration, was added by the Second Continental Congress to Jefferson's draft precisely so, in Kirk's estimation, it would sound more theistic.¹⁰²

The practices of the Second Continental Congress, which included a number of the later Founders, give further evidence of the latter's serious religiosity. On numerous occasions, the Congress called for days of public fasting, humiliation, and thanksgiving throughout the Revolutionary War. The language of their proclamations had a distinctly Christian character. The notion of covenant, so evident in colonial American politico-religious symbolism, came across clearly in them.¹⁰³

There was not a great deal of talk about religion at the Philadelphia Constitutional Convention of 1787, probably because the Founders knew that their concerns were with state and not church—that is, with forging a workable frame of government—and because they viewed any significant governmental involvement with religion as unacceptable. For example, as Kirk states, "no one of importance in America desired to establish a *national* church."¹⁰⁴ There were two noteworthy cases where it did come up, however. One concerned the oath to be taken under the Constitution by all American public officials. Framers Oliver Wolcott and James Iredell argued in favor of the exclusion of a religious test for federal officeholders (a position that the Convention agreed to) because the oath was itself such a test since it was taken before God who was thereby acknowledged to be the source of political authority and One who would be ready to punish perjury. In effect, it was a statement of the God-fearing attitudes of the Founders.¹⁰⁵ The other significant point of the Convention where religion came up was at the time of the impasse between the large and small states when Franklin asked for prayers. Hamilton opposed it and the Convention agreed with him. This is said by some to demonstrate the Framers' secularism. Actually, however, Hamilton said that the reason he was opposing Franklin was because he thought it would give the impression to their countrymen—who knew what they were attempting to do behind the locked Convention doors—that things were going badly.¹⁰⁶ This, by the way, is the same Hamilton who years later had resolved in advance of his fatal duel with Aaron Burr that he would not fire on him because his Christian scruples could not permit it.¹⁰⁷ Like so many things about the Convention and the Constitution, the real or full meaning is not written down or explicitly stated.

The same commitment to religion—in particular, Christianity—among the public men of the Founding Era was seen at the state ratifying conventions. One of the concerns of the Anti-Federalists—missing the very point, as so many do today, that much was unstated or assumed—was that the proposed Constitution was not religious, or Christian, enough. The responses of the Federalists sought to assure them that the Protestant Christian character of the Republic would continue.¹⁰⁸

The proposal of the First Amendment, with its free exercise and establishment clauses, in the First Congress also in no way altered the prevailing

view about the importance or place of religion in the American public sphere. The strong evidence about the meaning of the clauses is that they sought to preclude the creation of a national established church (but did not affect the authority of states to have established churches), to require that the national government exhibit no sect preference (at least among Christian denominations), and to insure that free exercise of people's beliefs be guaranteed. This is apparent from the Congressional debate.¹⁰⁹ The final language of the Amendment was fashioned by a conference committee whose members, as we have discussed elsewhere, can hardly be said to have promoted the notion of a secular state or in any way tampered with the accepted relationship of religion and politics. The conferees included Founding Fathers William Paterson of New Jersey, who once said, "Religion and morality were...necessary to good government, good order and good laws," and Oliver Ellsworth of Connecticut, who had favored a preamble to the Constitution which would have declared belief in "the one living and true God, creator and supreme Governor of the World."¹¹⁰

How much the late colonial period and the Founding Era put into practice and policy the above expressions of the importance of religion for sound political life was seen by the following: publicly-owned lands were made available, both by the states and the Continental Congress, to religions and their affiliated religiously-oriented educational institutions and public funds provided to them;¹¹¹ the Continental Congress authorized the Commissioners of Indian Affairs to employ ministers to preach and teach among the Indians;¹¹² state statutes granting tax exemptions for church property existed and, apparently to aid the cause of religion, states sometimes permitted churches and church-related schools to conduct lotteries to raise building and maintenance funds;¹¹³ both the federal and state governments employed and paid chaplains in their conventions, legislatures, armed forces, and hospitals;¹¹⁴ laws made blasphemy a serious offense¹¹⁵ and punished those who labored on Sunday or otherwise disrupted the Sabbath observance;¹¹⁶ governmental officials frequently proclaimed days of thanksgiving to God, fasting, and prayer;¹¹⁷ and prayers were also a regular feature in the Continental Congress and in the state legislatures.¹¹⁸

By as late as 1775, nine colonies had established churches to one degree or another. By the time of the Constitutional Convention, three were still in place.¹¹⁹ It is clear that the First Amendment did not compel disestablishment when it is considered that Connecticut's regimen of taxing to support the established Congregational Church continued until 1818, and five New England states had established churches in some sense until different points in the first third of the nineteenth century—with Massachusetts' established church continuing the longest until 1834—without constitutional controversy.¹²⁰

The above has discussed the official recognition of the importance of religion in the Founding Era. It remains to be asked what role it played in the life of the American people generally. Tocqueville, writing in the 1830s, speaks about "the quiet sway of religion" over America,¹²¹ and says that it "is mingled with all the national customs and...feelings which the word fatherland evokes...[so] it has particular power." Specifically, "Christianity has kept a

strong hold over the minds of Americans.”¹²² The Christian influence obviously continued on from early colonial times, and was rejuvenated by the Great Awakening.¹²³ As historian Donald J. D’Elia writes, “[t]he social way of life” in eighteenth century America was “largely based on the Christian faith...the social and political symbols of the American Founding took their meaning from it.” Both the pietists and the early religious liberals among the predominant Calvinist strain of Christianity believed that government should encourage religion and morality.¹²⁴ Evangelical Protestantism had gotten a strong hold on much of American culture,¹²⁵ and reading of the Bible was widespread (with no other book approaching it in importance).¹²⁶ Tocqueville commented that even people on the isolated frontier typically had a Bible.¹²⁷ As Kirk says, “it was a biblical Christianity, this American faith, securely rooted in popular conviction.”¹²⁸ American law upheld the Christian dimension of the common law. While, to be sure, Enlightenment-generated liberal ideas were being incorporated into early American law and the direct role of religious sects in government was receding, the law respected and upheld the country’s Christian culture.¹²⁹

Morality, Mores, and Culture in Early America

The early Americans’ common Christianity (albeit housed in different sects) meant a common morality. There was no significant difference in moral teachings or divergence from the natural law. As Tocqueville states, this “innumerable multitude of sects...all preach the same morality in the name of God”¹³⁰—and, as we have suggested elsewhere (and will pick up again in coming chapters of this book), except in the area of economics continued to do so until the twentieth century.¹³¹ As Kirk writes, the Americans had “the Ten Commandments at the back of their minds, when not in the forefront” and “[m]ores and morals flowed from religious doctrine.”¹³² While men in early America, as at all times, fell short in practice, they accepted without much question the moral *standards* of Christianity. The virtues that the Founders emphasized were so important to the sustenance of a democratic republic were a part of this morality.

Largely connected to, and sometimes interchangeable with, morals are mores (i.e., aspects of culture, patterns of behavior). As indicated, mores were an important consideration for the Founding Fathers and the thinking of their era in maintaining a democratic republic. Mores will take a somewhat different coloration, even within the context of a common morality, on the basis of the cultural situation of a people. The culture Americans had inherited had, of course, substantially come from England. Morality was a serious matter in the life of the early republic. Tocqueville mentioned “the great severity of mores which one notices” in the U.S.¹³³ Nowhere were these morals/mores stricter than in sexual matters,¹³⁴ and female modesty was stressed everywhere.¹³⁵ Marital fidelity and family stability were central, and Tocqueville emphasized how critical this was for political life: “In Europe almost all the disorders of society

are born around the domestic hearth and not far from the nuptial bed. It is there that men...develop a taste for disorder, restlessness of spirit, and instability of desires. Shaken by the tumultuous passions which have often troubled his own house, the European finds it hard to submit to the authority of the state's legislators."¹³⁶ Indeed, Marvin Olasky writes in our time that a major advantage the Americans had over the British during the Revolution was that leading figures in the British government and military weakened the spirit of their ranks by sexual and other moral corruption.¹³⁷

Tocqueville was not alone among commentators in the early years of America who made clear that the concern about morality included sexual and conjugal matters. We see exhortations to self-restraint and the avoidance of a mere pleasure orientation from such thinkers as Locke, Montesquieu, and Jefferson. While not developing the connection with political life as sharply as Tocqueville, they are not oblivious to it.¹³⁸ They are also not reluctant to repudiate wayward sexual activity, as Locke implicitly does with adultery, incest, and fornication.¹³⁹

There were other mores that, while not so directly preached by Christianity, were often rooted in the Christian and usually the classical virtues as well. The eminent American historian Gordon S. Wood mentions the frugality, industry, temperance, and simplicity of the people.¹⁴⁰ Kirk speaks about: "high courage in danger or adversity"; willingness to make present sacrifices for expected good in the future (which meant, among other things, that hard work would pay off in the end); a "strong inclination toward household independence," but not excluding a kind of sociality ("hospitable reception of most wayfarers and newcomers"); a "[s]hrewd practical intelligence," which helped one to know how to survive in difficult conditions; intellectual curiosity; and respect for the laws.¹⁴¹ Courage, industry, and the willingness to sacrifice, especially, were considered what Wood calls the manly virtues that were often associated with the struggle to settle early America.¹⁴² Honesty, truth-telling, fair-dealing, promise-keeping, and commercial efficiency also characterized the Americans.¹⁴³ The education of youth stressed honesty and obedience.¹⁴⁴

The desire for household independence underscored the central place of the family in early America, how it was "the center of all rights and obligations." Extended, not just nuclear, families were important and a key element in most people's lives. This somewhat underscored the weakness of other social institutions in early America, such as guilds.¹⁴⁵ As the republic developed, however, it was not long before associational activity became abundant, as Tocqueville makes clear.¹⁴⁶ The sociality that Kirk says accompanied the family relation extended beyond just individuals to a general spirit of cooperativeness and a concern about the community and the general welfare;¹⁴⁷ maybe this stimulated the associational activity which soon followed. One result of this was that people looked out for each other; they saw themselves as having the obligation to be "their brother's keeper." Sometimes, especially in Calvinist-inspired New England, this became too close of a monitoring and interference in others' personal affairs; there was not clear enough of a public-private distinction.¹⁴⁸ The early Americans also did not believe that public virtue, much

less enduring popular government, could result from people simply pursuing their own self-interest in the fashion of Adam Smith's invisible hand.¹⁴⁹ It was not necessarily that they did not subscribe to something like Tocqueville's "self-interest properly understood," but they did not believe that they could be attained without the effort to first acquire private virtue and the self-sacrifice mentioned above.

Generally, the thrust toward any kind of outright, self-serving individualism in early America was constrained by the belief in the higher moral order.¹⁵⁰ The hold of Christianity and its morality blunted any slippage into a Hobbesian-type atomism and resultant conflict among men that the individualistic ethos of a frontier land that came to be especially oriented to rights-thinking could have occasioned.¹⁵¹ Closely related to this was the prevailing conception of liberty, which was seen in a "clearly restrictive and communal" and not "expansive and individualistic" (i.e., self-centered) sense; "it was an opportunity for the community to guide the individual toward self-regulation in the service of God, the public good, and family." The early Americans' conception of liberty stood in opposition to tyranny—hence their opposition to King George III—and license.¹⁵² They did not see any intrinsic conflict between individual liberty and the general welfare, so long as the political society acted in accordance with the higher moral law (which means that it upheld the common or corporate good, i.e., the good of the community and of every person in it).¹⁵³ In this sense the early American conception of liberty emerged from the background of medieval Europe.

The social concern of early Americans reflected a sense of friendship that existed among their communities, of the sort that Aristotle said was needed for any truly good political order.¹⁵⁴ Indeed, William J. Bennett reminds us that George Washington "indicated that the ideal political life is to be conducted among citizens animated not just by laws or rights but also by a spirit of friendship or comity."¹⁵⁵ Such a spirit no doubt grew out of the myriad personal attachments that characterized the America of this time.¹⁵⁶ While sometimes having a dependency and paternalistic background in the colonial era, these—like the strong stress on the family—also reflected the absence of more formal institutions that would have required a more impersonal, arms-length carrying out of human interactions and affairs.¹⁵⁷ They also illustrated the fact that while there were social hierarchies in early America and it was a deferential society, there were no great inequalities among the people.¹⁵⁸ There was no nobility or hereditary aristocracy.¹⁵⁹ Nor, in this largely middle-class society, was there a serious poverty problem or much lower class economic and social discontent. Unlike Europe, there was a high rate of vertical mobility and a supple class structure, limited concentration of wealth, widespread land ownership, and much social and economic opportunity. Even the franchise, while not universal, was surprisingly broad.¹⁶⁰

In line with this culture of relative friendship was a strong stress on the social virtue of civility, which, as Bennett puts it, "asks simply that we respect the rights and dignity of our fellow citizens." Part of what this involved was basic good manners, such as politeness. This was a dimension of basic self-

restraint, learning to “become mindful of how our actions and words affect others.”¹⁶¹ The learned formalities over time become habitual, like the deeper virtues (e.g., temperance, justice) they reflect. As a basic example, Bennett presents George Washington’s “Rules of Civility” in his book.¹⁶² The cultivation of civility, Bennett tells us, was done and expressed by people mostly in their private interactions, but by helping to mold “domestic tranquility”—i.e., peace and harmony among persons—it had a profound effect upon politics and public life generally.¹⁶³

There is little doubt that this stress on civility developed from the tradition of the gentleman that the Americans inherited from the British, even though the former’s conception of the gentleman was a public-spirited supporter of republicanism instead of one steeped in the tradition of monarchy and European nobility. As Wood puts it, “the enlightened people of Western society had steadily enlarged the pale of civilization...Always at the center of this advance was the changing idea of the gentleman.” The gentleman exhibited good behavior, amiability, high-mindedness, and acted properly in any company.¹⁶⁴

This civility perhaps made possible the relatively peaceful melding of so many different nationality groups, even early in American history—groups that in Europe had sometimes been in intense conflict with each other. On the other hand, one might be able to view civility as actually being encouraged by this melding. It was a voluntary melding by self-selection—the free choice to come to America and be in a community with these other groups—and soon intermarriage. It was a “new principle of nation-building,” different from the conquest and subjection that most of history had seen.¹⁶⁵

Even though the early American people tried to build a community of friendship and treated each other with respect and civility—and thus related to each other as citizens on basically equal terms—and there was no nobility or significant class cleavage, they—like their leading public men above—possessed a restrained view of equality. They did not believe in egalitarianism; the equality they favored was one that acknowledged natural differences in talent, disposition, and virtue. Unlike its French counterpart, the American Revolution did not seek to destroy the social hierarchies that existed. In line with the Founding Fathers above, the American populace embraced the view that there should be an aristocracy, even if no nobility—a *natural* aristocracy “based on virtue, temperance, independence, and devotion to the commonwealth.” For them, equality meant, in part, that the lowest man could climb to the top—if he exhibited these qualities.¹⁶⁶ It was, of course, from this natural aristocracy that our Founding Fathers—the leaders in the cause of American independence, the framers of the Constitution, and the first generation of the republic’s political leaders—emerged.

The concern about the public good, the sense of people as part of a corporate whole, the widespread distribution of land and productive goods, and the middle class character of the country give some sense of the outlook about economics and economic morality in early America. There was a multitude of small producers. There were no large-scale corporations and no separation of ownership from operation.¹⁶⁷ The arrangement of economic life, like political

and other types of institutions, was decentralized. There was not much industrialization, and its development was progressing at a very slow rate.¹⁶⁸ Most people were farmers of one kind or another, and most of the others were merchants or small-scale producers or manufacturers.¹⁶⁹ The effect of all these conditions was that in economics people tended to be independent, self-directed, and initiative-takers.¹⁷⁰ Even while the early Americans would not accept feudal era-type economic and property restrictions—in which the Church, state, and society each helped regulate wages, prices, quality of workmanship, working conditions, profit, interest, level of wealth, etc.—in the name of greater personal independence, social mobility, and entrepreneurial efforts, they nevertheless continued to be guided by the sense of the social obligation of property use. Private economic activity had to be carried out in a manner consistent with the general welfare. How one used one's property and wealth was a moral question.¹⁷¹ Numerous laws regulated how one might use his property and put limits on economic freedom in the interest of the public good, including those which governed interest rates and forbade usury, trade restrictions, monopolies, aid to encourage new industries, and debt repayment. A broad concern—in line with the medieval tradition—seemed to be preventing unproductive investment (i.e., that which could redound to the detriment of the public).¹⁷²

William B. Scott writes that Benjamin Franklin's views about property embodied well the view of Americans around the time of the Founding. Like a Jefferson, he strongly emphasized landholding and the ownership of productive goods. Also, similar to the later notion of the universal destination of goods in Catholic social teaching, he believed that individuals had a right to access to the resources necessary to sustain themselves. He supported a rudimentary notion of what in later labor struggles would become a just or at least a fair wage. In a departure from medieval thinking, he endorsed an acquisitive attitude and believed that people should be able to accumulate wealth without clear limits, so long as the opportunity for this was available to everyone. At the same time, ownership was subject to the needs and demands of the broader public.¹⁷³ Americans were known for thrift, sobriety, and temperance in their way of life, and there was a constant concern among their clergymen and public spokesmen about their falling prey to luxury.¹⁷⁴

Bennett speaks about the meaning of justice for the Founding Fathers, and it is likely that this view represented the one in American culture more generally. He says that, while not necessarily departing from the classical and Augustinian understanding of justice as giving each one his due, justice for early America specifically meant protection *both* of people's material property and immaterial property—their safety, liberty, faculties, rights, consciences, and equality as men (even if the practice did not always measure up to their convictions).¹⁷⁵ The reach of justice, then, seemed to encompass both dimensions of man as understood by the twentieth century Catholic philosopher Jacques Maritain: man as individual (i.e., property and political rights) and man as person (the matters relating to his soul).¹⁷⁶ The presence of this dual focus seems further confirmed by the fact, stated above, that men were understood to be part of a community

which had to help improve them and whose greater good they had to be ever oriented to.

A final feature to note about early American culture—and American culture mostly in an ongoing way—was the people’s great faith in man’s possibilities. This was present in spite of the hard-nosed realism—even in certain instances, pessimism—that their religious background instilled in them.¹⁷⁷

Possible Weaknesses in the Founding Vision

Although the focus of this book is not an evaluation of the American Founding itself, by considering what possible weaknesses may have been present in our Founders’ vision or conception of a democratic republic—or, of political life more generally—we may be able to better understand the developments that have historically occurred to transform its character. We may also be able to consider later whether and to what extent those possible weaknesses played a role in its ultimate transformation.

The starting point for this examination is our previous writing on the topic of the elements of a good political order and on its reverse, the factors that have caused the decline of political orders. By noting these and making some reflection about whether they seem to be present or absent in our Founding principles above, we might be able to get a sense about deficiencies that may be at least partly the sources of later problems and harbingers of transformation. This previous research sought first to determine the elements necessary to sustain a good political order as discerned from the writings of the great political thinkers of ancient, medieval, and early modern times—when this topic was very much the concern of political philosophy and, especially in ancient (classical) thought, there was often reflection about what the best political order would be like—and from sound, realist philosophic speculation generally; second, it surveyed the writings of significant thinkers in Western history who addressed the question of what factors have caused the decline of political orders.

On the elements of a good political order, we studied the discussion of this by the following great thinkers: Plato, Aristotle, Marcus Tullius Cicero, St. Augustine of Hippo, St. Thomas Aquinas, Richard Hooker, Baron de Montesquieu, Edmund Burke, and Alexis de Tocqueville (Montesquieu and Tocqueville, of course, have been discussed in reference to the principles of the American Founding above). While these thinkers mention different elements as necessary to preserve a good political order, a number of elements appear commonly among them. The most frequently mentioned are the following of the natural law or the prevalence of virtue; the existence of the rule of law and the presence of good and just laws; the maintenance of a condition of moderation or prudence in the conduct of public affairs, or the presence of a mixed regime (which by its very nature leans to moderation); the rejection of egalitarianism, or the leveling of men or outright ignoring of differences among them; the seeking of the common good; the prevalence of good statesmanship or good legislators;

the adherence of people to religion; and a properly educated citizenry. A minority of these thinkers mentioned also: the need to have private property; the need for a natural aristocracy or in some sense rule by the wise; the need for the people to consent or agree to their rulers; and the reliance on tradition or experience or custom. Only a couple mentioned specifically the need for the family to be strong, but it is probably implicit in the thinking of a number of the others (especially the thinkers from the Christian era).¹⁷⁸

Sound philosophy is reasoning things out, coming to conclusions step-by-step on the basis of evidence after starting out by accepting certain basic principles of all knowledge (e.g., the principle of contradiction) that it would be absurd to reject. Philosophy is thus a science and proceeds systematically by a kind of scientific method to point to truths about reality and morality—and politics, as the classics pointed out, is tied up closely with morality. In fact, they saw it as indispensable for the shaping of the human soul. In our previous writing, we explained how the following were the principles that can be reasoned out philosophically as needed for the maintenance of a good political order: religion, the natural law, the common good, the principle of subsidiarity,¹⁷⁹ the principles of solidarity and social charity (which are closely related to the civic friendship mentioned above), the family, a balanced understanding of the state's role so that it is neither expansive nor minimalistic, and a condition of justice in human affairs.¹⁸⁰

Next, in previous writing, we examined numerous thinkers from the ancient, modern, and contemporary (i.e., post-1900) eras who reflected in a significant way about the decline and fall of political orders: Plato, Aristotle, Cicero, St. Augustine of Hippo, St. Thomas Aquinas, Giambattista Vico, Edward Gibbon, Orestes Brownson, Brooks Adams, Oswald Spengler, Hilaire Belloc, Arnold Toynbee, Christopher Dawson, Malcolm Muggeridge, C.E.M. Joad, C. Northcote Parkinson, Carroll Quigley, and Russell Kirk. Listing here the factors these thinkers set forth as causing the decline of nations and civilizations (which does not mean just their outright collapse, but also the transformation of the character of the political order or its change into another type of political order), in the order of those receiving the most mention down to those receiving the fewest (the fewest listed were mentioned at least by two of these thinkers), perhaps provides us with a framework for consideration of the question of the transformation or decline of the American democratic republic. These factors are: turning away from religion, or at least from a people's traditional religious belief (which is the most mentioned factor); materialism or the excessive pursuit of luxury or runaway prosperity; excessive orientation to private pleasure or lack of control of the desires or passions; social conflict, turmoil, or revolution; the prevalence of a relativistic moral or ethical outlook; overcentralization or excessive bureaucratization or excessive emphasis on bigness; the dissolution of the middle class or serious economic disorders (the latter can easily relate to the former); the loss of will or the growth of a sense of purposelessness or general societal drift; the breakdown of the family; excessive urbanization or the related rise of mass culture; the prevalence of "liberalism" (which is defined by different thinkers to mean an anti-traditional viewpoint and an excessively

present-oriented state of mind overrun by a moralistic sentimentality instead of reason and a false sense of benevolence, which also is intolerant of disagreement); militarism (i.e., a glorification of a military spirit and ideals); the descent of politics into essentially a struggle for power; the breakdown or absence of the rule of law; the breakdown or neglect of the common good; and the corruption of sound philosophy.¹⁸¹

It is striking how well the principles and conditions of the American Founding Era measured up to the above principles of a good political order (as can readily be noticed, the causes of decline are mostly the failure to uphold those principles). Religion, virtue, and morality were stressed, as noted above; the natural law was appealed to in the Declaration of Independence and in rhetoric of the American Revolution.¹⁸² Both American political thinking and culture viewed the pursuit of justice as important, and civility and a spirit of friendship were present. As stated, America was a middle class country almost from the start, and was in some sense a mixed government. Promoting the common good was an objective. While equality was stressed, egalitarianism was not embraced. The need for a natural aristocracy was emphasized. Education to shape good citizenship was understood as necessary. There was a strong commitment to the rule of law, and civil laws had to conform to natural law (that is, be “good” laws)—indeed, this was a major point of the American Revolution. Private property was strongly upheld. Prosperity was sought, but temperance and sobriety prevailed. American federalism was an expression of the principle of subsidiarity, and there was not an overly strong central government. Even the colonial governments permitted their local communities much autonomy.¹⁸³ Government and other institutions were simple, on a small scale, and played a limited role in the lives of citizens.¹⁸⁴ The stress on civilian control of the military and bias against even standing armies insured against any kind of militarism that some writers about decline point to as a cause. The American will was certainly strong, as witnessed by the staunch effort—carried out by political entities that previously had not acted in a united fashion—made against the British, and the uncompromising insistence on the rights and liberties of Americans.

With all of these positive features, what can be said about possible deficiencies of America’s parchment republic? When we consider the reflections of the thinkers above and the conclusions of realist philosophy, some points suggest themselves.

One of the most significant areas is what might be called the “privatization” of the means of creating or sustaining several of the important principles and conditions above (i.e., rendering the means informal or non-official). This is seen most vividly in the matter of natural law. Since the Founding Era probably realized that people learn their moral beliefs and practices from religion, and since the conduct of religion was outside of the reach of government, it saw natural law as something to be concerned with primarily in that realm. It clearly understood that natural law must underlie government, as we have seen, but essentially relied on the moral precepts that Christianity had traditionally taught. As a result, the Founders and their learned contemporaries engaged in no

serious, substantial philosophical reflection about natural law. In spite of what was said about many of them possibly having had a Scholastic education, they probably were not sufficiently enough formed philosophically so as to know all the principles of social ethics, or how these principles should apply to the American socio-political situation. They perhaps undersold the likelihood of commitment to certain moral principles weakening over time under the pressures of political or cultural circumstances or changing religious or intellectual movements. Indeed, they perhaps gave insufficient attention to the possibility that the hold of religion over people generally in time might weaken—not surprising in light of how the above shows the central place they saw for religion—with the ensuing weakening of traditional morality.¹⁸⁵

The lack of sufficient philosophical reflection—along with such other putative problems as too much concern with individual rights, resolving public questions through a balancing of factions, and too heavy of an emphasis on the mere working of the institutional activities of government (although by no means the excessive and almost exclusive stress on these that is found in much of contemporary political science)—perhaps resulted in an incomplete public philosophy for America. Some have referred to the problem of “public purposelessness” in America.¹⁸⁶ In early America, individual men knew what their final end was (i.e., Christianity taught that it is to be united with God), but perhaps they did not clearly see what the role of the political society is in helping them to achieve this.¹⁸⁷ We can appreciate this when we consider that, in spite of their stressing its importance, we do not see in the Founding Fathers’ writing a significant elaboration on or explanation of the notion of the common good (which is, at bottom line, an ethical notion and connected with man’s final end). We, again, perhaps discern an inadequate philosophical understanding and formation. This may have allowed too much of an individualistic emphasis to affect the Founding.

This seeming philosophical deficiency is probably partly due to the fact that from its earliest times America historically has been a nation of practical people—men of affairs—not philosophers. Perhaps it also betrays the influence of the Calvinist version of Christianity which was so strong in early America—whose fideism made it suspicious of and mostly uninterested in philosophical reflection—and of the Enlightenment, which like Calvinism downplayed the ability of reason to know moral truth and whose extolling of individualism emasculated such traditional notions as common good. Further, the Protestant notion of all religious truth coming from Scripture discouraged the consulting of anything but the Bible—e.g., classical philosophical texts—about matters dealing with or at least touching on the transcendent. Clearly, the Founding Fathers were not reluctant about philosophical reflection or unwilling to consult the classics, nor were they thoroughgoing imbibers of Enlightenment thought (although influenced by it to some degree).¹⁸⁸ Still, these factors might explain their failure to go *deeper* into certain philosophical and ethical principles.

Perhaps the Enlightenment influence that was present to at least some degree was also seen in the way that natural law in the Founding Era comes to be talked about so much in political discourse in terms of natural rights (even

while, of course, Christian morality—i.e., the natural law—was endorsed by the Founders and reigned supreme in the conduct of men’s lives). Almost certainly we see here the effects of the Enlightenment’s individualism. It seems as if in official public discourse there is a lessened tendency to speak about natural law as what it most fundamentally is: a set of moral obligations. Indeed, this individualism was probably at least somewhat responsible for the privatization mentioned above (i.e., because of government’s heavy concern with securing natural rights it was viewed as having a very limited formal role in the moral formation of men).

The Protestant Reformation, along with (again) the Protestant notion of individual interpretation of Scripture, insured the next aspect of privatization as related to natural law. That is, the decision about how to discern some of the more difficult points of natural law and how to apply them to current types of situations or circumstances—even as they concerned points of social morality and morally-charged social issues—was left essentially to private judgment. Even if ardent Protestants believed that a divinely-inspired source external to themselves—the Bible—was the source of morality, some points were not addressed by it, or not clearly addressed, or how to apply them was not apparent. It is a basic point of Catholic teaching that the Church’s magisterium—the Pope and the bishops in union with him—are the divinely-appointed interpreters/arbiters of the natural law and how to apply it (i.e., given the authority to do so by Jesus Christ Himself). Protestantism, of course, rejected this. It did so apparently without thinking that it would make any difference. The perspective seen in the Founding Era above that Christian morality would simply be permanently in place was apparently firmly believed throughout the early centuries of Protestantism. Without realizing it, early America perhaps was living off the accumulated moral capital of the Catholic Middle Ages, maintaining a commitment to natural law principles surprisingly well—in both private and public life—until the twentieth century in all areas except, after awhile (as will be discussed later in this book), economics. Actually, the multiplication of sects almost inevitably would lead to different moral teachings. Shades of difference in beliefs about ultimate things would certainly tend to result, at some point, in differences about the teaching concerning conduct and way of living needed to reach the ultimate. While empirical proof of causation may be difficult, one can certainly wonder if the absence of an authoritative moral interpreter did not finally catch up with America—that if the Church had been looked to for that purpose the erosion of traditional moral principles might have been attenuated. If this role of the Church had been widely acknowledged in America, it might have provided a “backstop” to check the erosion of sound morality. There was no provision for this—for even an informal consideration of the magisterium’s teachings—in the Protestant-generated American political order. The result over time was both the elevation—obviously this happened not just because of the original Protestant idea, but also because of other influences—of the law of the state as the determiner of social morality and of the private conscience (without any expectation of or certain provision for its proper formation) as its judge and, in a sense, its ultimate arbiter. Positive law

became the main formative force, but the stress given to individual conscientious objection both led to legal reform efforts and the tradition of civil disobedience. Reacting to the latter, the American Catholic political philosopher Orestes A. Brownson argued that the Protestant idea of individual conscience as the basic arbiter of social morality and the justice of positive laws, without reference to the authority of the Church, leads to chaos.¹⁸⁹

It could further be said that once the hold of natural law weakened and secularization advanced, the very fact of American religious pluralism—implicitly accepted as the model for political pluralism in Federalist 10, since it was viewed as promoting peace after the Age of Religious Wars—stimulated positivism. If a common morality was no longer accepted, and different sects now had different moral positions and could no longer speak with one moral voice—with the consequence that religion could play less of a role in insuring social order—then the law of the state had to play a more central role. It should be added that the state would have to become more powerful to enforce its law.

Actually, in spite of the embracing of this Protestant idea of the primacy of individual judgment, fairly quickly after the formation of the Republic—at least as soon as the U.S. Supreme Court case of *Calder v. Bull* (1798)¹⁹⁰—it became apparent that there would have to be, in effect, some authoritative interpreter/arbiter of the natural law (even if, over time, people preferred not to say that is what was happening or even that the natural law actually exists). By and large, the Supreme Court came to do this. This was, however, in fact not a true departure from the Protestant principle because the Court is a strictly human institution without any claim to a divine mandate. What happened was that instead of all people having the power of making private judgments—at least, those judgments that would be authoritative and of social consequence for the U.S.—it was a small, elite group. Apart even from the enhanced state power that would be necessary to maintain order as the interior restraint of religion eroded, the power of the state would certainly increase when one of its institutions became the *de facto* arbiter of the natural law!

The insufficient philosophical reflection, avoidance of publicly embracing theological precepts, and Enlightenment-inspired individualism of our Founding Era—to the extent that they existed—may have weakened America in another way. The Declaration of Independence mentions the pursuit of happiness as one of the central natural rights of men to be secured by government. Sound, serious philosophical reflection, especially when guided by Revelation, makes clear what true human happiness is: it pertains to higher things, and ultimately to man being united to God and thereby achieving his eternal happiness. What we suggest here is that although this was understood by a religious population at the Founding, the fact that it was perhaps not uppermost in the minds of our Founders or at least not brought enough into the Founding project may have opened the door to problems later on.

The Protestant foundations of the U.S. (and specifically their strong Calvinist component) in the later era of secularization would give rise to a different kind of morality and, more politically significant, a public moralism that would bring the threat of governmental despotism over the everyday things

of life that it was noted Tocqueville feared.¹⁹¹ Again, the absence of a truly authoritative moral arbiter—with the divine protection enjoyed by the Church’s magisterium—has perhaps made such moralism more likely, since there is nothing to restrain both substantive moral errors and excessive or immoderate moral claims.

As there was no formal means to interpret the natural law in our parchment Republic, there was none to insure that the crucial natural aristocracy would be brought forth. It has sometimes been said that the Founding Fathers realized that their political generation was an outstanding one and tried to insure that by fashioning a solid institutional framework the democratic republic they forged would survive lesser men in the future. Nevertheless, as we have seen, it is clear that they believed that capable and virtuous leaders were always needed. However, in another example of privatization, they seemed to believe—or hope—that these leaders would be spawned by the broader American culture. As they apparently believed that the extant moral framework would continue, they perhaps thought that the related cultural one would too—thereby insuring that this function would be successfully performed.

Not only was it a problem that there was no formal way to bring forth a natural aristocracy, but there was no formal mechanism in the new frame of government for shaping virtue in the citizenry overall. As we have seen, the Founders certainly believed virtue important—but thought that it would and should be done “privately” by the churches, family upbringing, community efforts, and to some extent the laws on the state level. To be sure, this perspective is valid in light of both the principle of subsidiarity in social ethics and the simple reality of how such a thing is best done. Indeed, the argument has even been made that “[f]ree institutions”—as in America—“go a long way to form the virtuous citizen.”¹⁹² It is also valid in light of the concern about individual liberty and the realization that government cannot impose virtue. This may all be so, but it probably presumes a strong culture behind the institutions and sees the inculcation of virtue as almost a side effect. The latter may not be enough, and when the nongovernmental forces above are not working effectively it almost certainly will not be enough. Moreover, even in regimes that are genuinely serious about liberty law always plays a role, in some sense, in shaping virtue (i.e., among other purposes, it seeks to redirect behavior in a manner that is deemed socially good and desirable)—even if it is understood that the state is not the primary means for doing this. The point is that removing the new national government from the shaping of virtue, and downplaying the role of government in it generally—indeed, effectively diminishing virtue as an avowed public or political concern—was perhaps a problem with the new republic.¹⁹³

Related to the question of natural law is popular sovereignty (which we said is essentially governmental decisionmakers embodying the will of their people and executing it). We saw above how popular sovereignty was a central—perhaps *the* most central—theme of the Founding. On one hand, this seems completely appropriate and utterly uncontroversial. What is a democratic regime if not one that embodies the notion of popular sovereignty? At the same time,

we saw above that America was not simply majoritarian (i.e., not simply a democracy). Regarding the nature of American constitutionalism, Corwin states the following: "The attribution of supremacy to the Constitution on the ground solely of its rootage in popular will represents...a comparatively late outgrowth of American constitutional theory. Earlier supremacy accorded to constitutions was ascribed...to their embodiment of an essential and unchanging justice."¹⁹⁴ So, the Founding Fathers did not simply embrace popular sovereignty as their unchallenged ruling principle; men were understood always to be subject to the limitations of natural law. Still, perhaps too much stress was put on popular sovereignty, instead of on the upholding of the truth irrespective of popular sentiments (or at least within the obvious limits of prudence, as Aristotle or Aquinas would have understood it) with the effect being a decline in the hold of natural law over time.

It is possible that this excessive stress on popular sovereignty in the Founders' thinking reflected the Enlightenment's emphasis on man as the center of things; at least this was one of the ways this general perspective may have influenced them—even if they did not embrace it wholesale. God as the source of political authority was downplayed; it was seen as being grounded completely in human consent. Indeed, Brownson made this point emphatically. He believed that the phrase, "Governments derive their just powers from the assent of the governed," in the Declaration of Independence was a telltale indication of this.¹⁹⁵

It was mentioned that, while early Americans were associational, there was a lack of more formalized social institutions at that time of the Founding—which almost certainly reflected the fact that this was a new nation carved out of the wilderness. As noted, this was to soon change. That the Founders' political thought is silent about the role of intermediary institutions or associations probably follows from their absence. Still, their knowledge of European history and the European situation means that they would have been familiar with guilds and the like, and one wonders if this silence in their writing and in the Constitution was the result of both insufficient philosophical reflection (i.e., on social ethics) and the undue influence of Enlightenment individualism.

At the core of any discussion of intermediary institutions is the only natural and specifically necessary one—the family.¹⁹⁶ As noted, the Founding Era had strong respect for family ties and conjugal morality, but the family does not figure sufficiently—and not directly, at all—into the political thought of the Founding Fathers. They perhaps failed to see clearly enough its centrality for a political order. Again, their (likely) insufficient formation in social ethics rendered them perhaps unable to appreciate *sufficiently* the family's foundational role for political life. Perhaps they just took the family's role for granted and so did not believe it necessary to mention¹⁹⁷ (as stated above, many things were simply assumed by them). Still, traditional ethical analysis and classical political philosophy—consider the discussions in Plato's *Republic* and Aristotle's *Politics*¹⁹⁸—both explicitly recognize the family as having a crucial importance for politics and all social life.

Federalist 10 embraces the notion of having numerous factions so they can

effectively balance themselves off, averting the possibility of any one of them becoming too powerful and endangering liberty. There is much truth to this, and it suggests the value of a pluralistic political society in the best sense of the word. Still—tied in with our suggestion that the Founders had an insufficiently developed notion of the common good—their strong stress on this may betray too minimal of a notion of what was needed for good government. Just as the notions of deterrence and balance of power among nations can help to secure international peace, they are minimal and probably by themselves cannot be successful for the long run.¹⁹⁹ To secure true, abiding international peace requires justice among nations. So, true good government—even perhaps a truly peaceful domestic political order—requires more than just a “balance of power” among factions; it requires a sound conception of the common good in which both justice and social charity prevail. We have shown that justice was indeed a concern of the Founders and that both justice and civility and friendship—tied in with social charity, as stated above—were etched into their culture. Perhaps the lack of an avowed emphasis on justice in the political and constitutional theory present in the Founding, however, was a shortcoming, and helped spawn the sense of public purposelessness mentioned above.

Perhaps the latter signals another possible deficiency in Founding thought: despite the fact that, as noted, Americans were communal, there is too little discussion of the importance of community and our constitutional framework does little to promote it or insure its vitality. This, again, may reflect the effects of Enlightenment individualism or, more likely, was something that was just taken as a given by the Founders. It may also reflect the fact, as Fr. John Courtney Murray, S.J. thought, that the religious pluralism above—even more as it advanced to a kind of moral pluralism, and aggravated by the aforementioned philosophical deficiency—meant disagreement about ultimate human questions, which in turn made deep-seated consensus and community very difficult.²⁰⁰ Regardless, we wonder if the lack of formal attention to community in the political reflection of the Founding Era, as with other points above, did not leave America susceptible to an intensified individualism over time.

While we do not notice in the Founding Fathers’ statements any mention about the value of good statesmanship, *The Federalist* suggests that they believed it important. Federalist 10 implicitly recognizes the value of statesmanship when it laments that in dealing with the problem of faction, “enlightened statesmen will not always be at the helm.”²⁰¹ The value of statesmanship is further implied in Federalist 10’s discussion of representatives. It says that when citizens can vote freely, they will be more likely to select “men who possess the most attractive merit and the most diffusive and established characters.”²⁰² It also speaks of the important role of representatives in a republic once they are selected: “the public views” will be “refine[d] and enlarge[d]” because they will “pass...through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations.”²⁰³ Still, the very paucity of the Founders’ direct discussion of statesmanship and their obvious stress on institutional

factors and the above balance of power among factions and interests to restrain excesses, protect liberty, and avert tyranny, shows that the Founders downplayed its role. Maybe this reflected their overriding concern about protecting liberty and the fact that this typically involves a negative conception of government (i.e., stop it from doing certain things, instead of insuring that it actively do certain other things for the good of the community). Statesmanship, on the other hand, implies essentially a positive conception of government's role. That is, the great statesman has a sound moral vision and, with much prudence, tries to guide his political order, however tentatively, toward it. He tries, with a humble instead of a crusading attitude, to nudge his political order toward the moral ideal, but realizes that it will never be attained fully.²⁰⁴ So statesmanship involves an understanding of the common good, which is most fundamentally a philosophical notion that we have noted our Founding Fathers may have lacked a clear, deep understanding of. Furthermore, while institutional restraints are crucial and to be sure take on a "life of their own" in making government and its accoutrements work as they should, ultimately government functions only as well as the people manning it. Thus, good statesmanship—as the above thinkers held—is a vital condition for truly good government, and the Founders' de-emphasis of it may have paved the way to future difficulties.

The Founders' confidence in the "new political science," featuring such notions as representation and the extended republic, probably reflected the influence of the Enlightenment. Men could now derive from reason and theorizing about politics new approaches that were more reliable than such old ones as statesmanship—while the "old" approaches were not dismissed, the new ones played the more prominent role.

The Founders' strong emphasis on institutional or structural factors seemingly laid the groundwork for another problematical development that is suggested by what is said above. The smaller scale governmental and other institutions, the greater willingness to operate informally, and the carrying out of even public tasks through personal contact gave way increasingly to an arms-length, impersonal, less flexible, and eventually bureaucratic regimen. Perhaps at the root of this was simply the very constitutional order built on institutional norms that they established.

The Founders' desire to check the dangers of faction was apparently behind their desire to have a large commercial republic. Federalist 10 says that there are many reasons for faction, but historically "the most common and durable source...has been the various and unequal distribution of property."²⁰⁵ They reasoned, it seems, that if property—economics—is the main culprit, then economics must be the main solution. The conflict between the rich and poor—the "haves" and "have-nots"—had been the kiss of death for republics—which had mostly been on a small scale—in the past. In a large commercial republic, as Martin Diamond puts it, "the hitherto fatal class struggle is replaced by a safe, even salutary struggle among different kinds of propertied interests....a man will regard it as more important...to further the immediate advantage of his specialized trade...than to advance the general cause of the poor or the rich." The result would be that larger, class-type economic interests would be

“fragmented into sundry narrow, more limited interests, each seeking immediate advantage.” The justification for this, from the standpoint of preserving republican government, was that it would render unlikely the emergence of a majority faction that would oppress the rest of the citizens and thwart the common good in order to advance itself. In the context of a federal system, it would be especially unlikely that a nationwide majority faction would emerge.²⁰⁶ Thus, the Founders essentially believed that if men would be diverted into commercial pursuits it would be conducive to the preservation of free government in this geographically large and federated nation. This notion presumed a regimen of equal opportunity to pursue commercial interests,²⁰⁷ in the manner of Franklin’s thinking above. The commercial republic’s notion of the common good being protected by individuals pursuing their own economic interest rings of Adam Smith’s invisible hand—and thus bears the influence of the Enlightenment. Diamond says that Madison shared Smith’s understanding of the connection between “a very large area of trade and the possibility of division of labor,” which forms the basis for the protective “multiplicity of faction.”²⁰⁸

One wonders if the Founders’ strong advocacy of the notion of the commercial republic did not open the door, as with other things mentioned, to an increasing individualism as time went on. It effectively liberated the passion of acquisitiveness (as associated with Franklin above). As a moderate desire this was acceptable enough and even helped men to develop certain virtues,²⁰⁹ but may ultimately have led to the destructive passions of greed and avarice—which, as we shall consider in this book, in turn may have later on led to a *laissez faire* social condition which still later spawned a reaction of tighter government control and regulation.²¹⁰

The commercial republic notion may also have signaled the transformation of economics from a moral to a utilitarian matter in the American mind. It may have weakened the late colonial era beliefs above of the social obligations accompanying property and the need to carry on economic activity in conformity with the general welfare that had considerable implications both for American economics and politics later on.

As far as early American culture was concerned, it was mentioned that people’s conception of themselves as “their brother’s keeper” led sometimes to a too-close monitoring of their fellow citizens.²¹¹ One wonders if this attitude did not pave the way, in secular times later, for an unwarranted or excessive intrusion of the state into people’s personal and family affairs.

Finally, we suggest possible deficiencies in two specific institutional areas. One is the understanding of federalism. As stated above, the Founding Fathers viewed the new national government as one of distinctly limited powers, and this is essentially what strong defenders of federalism in our own day insist upon. Precisely what the Founders meant by this and the point about the national government being concerned only about general matters, however, was not made—and probably *could not have been made*—completely clear.²¹² As soon as the Constitution was put into effect there was a debate between “strict” and “loose” or “liberal construction” positions.²¹³ The former “reads the grants [of powers to the national government] literally and attempts to adhere to the letter

of the express words of the document"; the latter "reads the grants in broader terms of ends desired, which allows a great latitude of implied powers."²¹⁴ The Founders believed that the new national government "was not to deal with the vast bulk of political matters,"²¹⁵ but also that its "governing powers" would have to be "broad" in order "to achieve the blessings of union."²¹⁶ According to Diamond, Fisk, and Garfinkel, "the country has never actually been governed under the strict constructionist view."²¹⁷ Still, as we go on to say in this book, problems have developed in some periods of American history because there has been an insufficiently flexible understanding of federalism, that did not acknowledge enough national power, and at other times—especially starting in the second half of the twentieth century—there has been a sharp imbalance in the opposite direction so that centralization has advanced rapidly and the limitations of federalism ignored. While forging the proper balance in practice between federal and state power is not without difficulty, one wonders if maintaining it would have been consistently easier and the historic clashes between the two sides in the loose versus strict constructionist debate narrowed if there had been a better sense of the principle of subsidiarity. It would have perhaps provided a better understanding from the beginning of both what areas government would have to become involved in and whether they could be addressed well or justly at the state or local level without federal government involvement. Since subsidiarity avers that matters should be dealt with at the lower level unless there is a clear need to do so at more distant levels, using it as a guideline would have provided a greater flexibility and reasonableness without violating the strong fundamental bias—on most matters—toward more localized action. As above, this deficiency may have been due to the Founders' insufficient philosophical reflection. Again, they may not have been schooled enough in social ethics or understood how such a principle applied in their situation.²¹⁸

Numerous people in our time have commented about the second institutional deficiency: that the Founding Fathers did not have a good sense about how powerful the independent, co-equal judicial branch—and judiciaries across the country, in general—could become (as seems clear in *Federalist 78*).²¹⁹ They certainly could not foresee how they would become major shapers of public policy under the color of constitutional interpretation. It is hard to fault the Founders for this, however, since at that time there had been little experience with judiciaries playing a political role or being leading governmental institutions. In a sense, though, it might have been foreseeable from what was said above about the Supreme Court becoming the American magisterium. If the Court, in effect, would be looked to as the interpreter of the natural law—since the Church's magisterium was not accepted to do this—should it be surprising that it and inferior judicial bodies that are called upon to play the same role but less definitively, would become so powerful?

This chapter has set out the principles and practices that America's Founding Fathers and their era believed necessary to sustain a democratic republic, explained the importance of religion at the time of the Founding, and

identified the important aspects of American culture in the Founding Era—all with the aim of providing the elements that will be used for the evaluation of whether the United States has been transformed from the democratic republic that was established by the Constitution. It has also identified possible areas of weakness in the Founding conception, as determined in large part by significant reflections about the elements of a good political order and the conditions that have resulted in the decline of political orders. As we progress through the various periods of American history in the coming chapters and find indications of transformation we shall look back on these areas and consider if they may not have influenced it.

Notes

1. James Madison, Federalist 10, in Alexander Hamilton, James Madison, and John Jay, *The Federalist* (N.Y.: Modern Library, n.d.), 58.

2. Martin Diamond, Winston Mills Fisk, and Herbert Garfinkel, *The Democratic Republic: An Introduction to American National Government* (2nd edn.; Chicago: Rand McNally, 1970), 89-91.

3. *Ibid.*, 11.

4. *Ibid.*, 10.

5. George Dargo, *Roots of the Republic: A New Perspective on Early American Constitutionalism* (N.Y.: Praeger, 1974), 52.

6. See James Madison, Federalists 48 and 49; Alexander Hamilton, Federalist 71, 73, and 78, in *The Federalist*.

7. Constitution of Virginia—1776. Source: Ben Perley Poore, compiler, *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the United States* (second edn.; Washington, D.C.: U.S. Government Printing Office, 1878), II, 1910-1920 and I, 957.

8. Madison, Federalist 47, in *ibid.*, 313.

9. Alexander Hamilton, “Speech on the Senate of the United States,” in *The Works of Alexander Hamilton* (ed. John C. Hamilton; N.Y.: Charles S. Francis, 1850), II, 444.

10. See Russell Kirk, *The Roots of American Order* (Malibu, Calif.: Pepperdine U. Press, 1974), 65.

11. Dargo, 52.

12. Hamilton, “Speech on Compromises,” in J.C. Hamilton, II, 44; remarks in the New York ratification convention, June 21, 1788, in Jonathan Eliot, ed. *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* (Philadelphia: J.B. Lippincott, 1901), II, 257, 258.

13. Alexis de Tocqueville, *Democracy in America* (ed. J.P. Mayer; Garden City, N.Y.: Doubleday [Anchor Books], 1969), I, i, 170.

14. See Madison, Federalist 10, 61-62; Hamilton or Madison, Federalist 51, 340-341; Tocqueville, I, i, 162-163. It should be pointed out that in asserting that a large, heavily populated political entity was more likely to sustain republican government than a small one, the Founding Fathers were going against the thinking of Montesquieu and the tradition of political thought before them (see Baron de Montesquieu, *The Spirit of the Laws* [tr. Thomas Nugent; N.Y.: Hafner, 1949], I, viii, 120). This perspective, along with such principles and practices as the notion of representation, separation of powers,

and checks and balances, was part of their new political science that they believed advances in political understanding had made possible.

19. See *ibid.*, II, iii, 671-674, 690-695.

20. John Locke, *Second Treatise*, in *Two Treatises of Government* (ed. Peter Laslett, rev. edn.; N.Y.: Cambridge University Press, 1960), xi, 138, 19-23, 407.

21. Locke makes an exception for what he calls the prerogative power, in which a political executive at his discretion, when the public good demands it, can act without sanction of the law and even against its provisions. The prerogative power is necessary because sometimes the laws may be too inflexible to address serious or exigent needs, or simply make no provision for doing so (see *ibid.*, xiv, 160, 1-14, 422).

22. Aristotle, *Politics*, IV, iv, 1292a; IV, vi, 1293a. The liberal learning of our Founding Fathers is briefly discussed in Peter V. Sampo, "Educating the Man and the Citizen in Higher Education," in Stephen M. Krason, ed., *The Recovery of American Education: Reclaiming a Vision* (Lanham, Md.: University Press of America, 1991), 101-110.

23. Discussed in George H. Sabine, *A History of Political Theory* (N.Y.: Henry Holt, 1937), 95.

24. Locke, xi, 5-10, 409. Emphasis is in the book.

25. Montesquieu, I, xi, 150. We talk about the meaning of "ordered liberty" in the text below.

26. See, e.g., Kirk, *The Roots of American Order*, 281, 315-316 (on Harrington); Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, Mass.: Harvard University Press [Belknap Press], 1967), 34-35, 45 (on Harrington and Milton).

27. John Milton, *A Defence of the People of England*, in *Political Writings* (ed. Martin Dzelaninis; Cambridge, Eng.: Cambridge University Press, 1991), 166-167; Sabine, 502-503.

28. John Adams, *Defence of the Constitutions of the United States of America*, in *The Works of John Adams* (Boston: Little & Brown, 1851), IV, 295.

29. Thomas Jefferson, First Inaugural Address, in Saul K. Padover, ed., *The Complete Jefferson* (N.Y.: Duell, Sloan and Pearce, 1943), 384.

30. On the civil law embodying natural law, see: Adams, *Defence*, in *Works*, IV, 293-295; Virginia Bill of Rights of 1776, Massachusetts Constitution of 1780 (incorporating natural rights notions), in Poore, II, 1908, 957; George Washington, *Farewell Address* (N.Y.: General Society, Sons of the Revolution, 1963, 1982), 24 (stating that morality—i.e., transcendent moral principles—is an "indispensable support" for good political life). Consider also the great stress on natural law in Blackstone (see Krason, *Preserving a Good Political Order and a Democratic Republic: Reflections from Philosophy, Great Thinkers, Popes, and America's Founding Era* [Lewiston, N.Y.: Edwin Mellen Press, 1998], 128-129), who was a significant influence on the American patriots and an even more overwhelming one on the early American legal profession (the latter is mentioned in Kirk, *The Roots of American Order*, 192, 369, 373-374).

31. Washington, 16; Adams, VI, 208.

32. Edward S. Corwin, *The President: Office and Powers 1797-1957* (4th rev. edn.; N.Y.: New York University Press, 1957), 14-15.

33. Tocqueville, I, ii, 200-201.

34. Kirk, *The Roots of American Order*, 94.

35. Diamond, Fisk, and Garfinkel, 363-366.
36. Hamilton or Madison, Federalist 63, in *The Federalist*, 410.
37. Bernard Bailyn, *The Origins of American Politics* (N.Y.: Alfred A. Knopf, 1968), 79.
38. Madison, Federalist 10, 57.
39. See Bailyn, *Origins of American Politics*, 125-127.
40. See Donald V. Weatherman, "Endangered Guardian: America's Two Party System and Progressive Reform," lecture at the Heritage Foundation, Washington, D.C., May 1, 1988, published as Heritage Lecture #156; available from <http://www.heritage.org/Research/GovernmentReform/HL156.cfm>; Internet; accessed Aug. 14, 2008.
41. See Washington, 18; Jefferson, First Inaugural Address, in Padover, 386; Hamilton, Federalists 23, 25, and 70, 141-146, 153-158, 454-463.
42. See, e.g., Diamond, Fisk, and Garfinkel, 36-42.
43. Hamilton or Madison, Federalist 51, 340.
44. Adams, *Defence*, in *Works*, Six, 208.
45. Tocqueville, II, ii, 511.
46. See James J. Walsh, *Education of the Founding Fathers of the Republic: Scholasticism in the Colonial Colleges, a Neglected Chapter in the History of American Education* (N.Y.: 1935), and Bernard Bailyn, *Education in the Forming of American Society: Needs and Opportunities for Study* (N.Y.: Vintage, 1960), 89-90 (he takes a more restrained view of the extent of Scholastic influence on colonial and Founding Era education than Walsh, but agrees that it was significant).
47. Jefferson, letter to Samuel Kercheval, July 12, 1816, in Padover, 287-288.
48. James Madison, letter to an unknown correspondent, 1833, in Marvin Meyers, ed., *The Mind of the Founder: Sources of the Political Thought of James Madison* (Indianapolis: Bobbs-Merrill, 1973), 530.
49. Bailyn, *Origins of American Politics*, 81.
50. Jefferson, First Inaugural Address, 386.
51. See U.S. Constitution, Art. I, Sec. 2.
52. See the discussion in Krason, *Preserving...*, 105-106.
53. Montesquieu, I, xi, 150; viii, 110.
54. Hamilton or Madison, Federalist 51, 337.
55. The notion of ordered liberty at the time of the Founding seems to have been very much tied up with "freedom from arbitrary, despotic, or autocratic rule or control"; it did not embrace extreme individualism. The eighteenth century view of liberty was in no way seen as exempting behavior from social oversight, and in fact the individual was understood as having to use his liberty within the context of and to further the public good (or his moral obligations as made known by religion). With the importance of the family at the time, it also involved a notion of familial independence, which meant in substantial part family economic independence. (See Barry Alan Shain, *The Myth of American Individualism: The Protestant Origins of American Political Thought* [Princeton, N.J.: Princeton University Press], 1994, 163, 170, 179, 186, 191. He takes the quoted phrase from the *Oxford English Dictionary*, which is referring to the meaning of liberty among Americans and Europeans at the time of the Revolutionary War.)
56. See, e.g., James Madison, Letter to Dr. Jacob de la Motta, Aug. 1820, in William J. Bennett, ed., *Our Sacred Honor: Words of Advice from the Founders in Stories, Letters, Poems, and Speeches* (N.Y.: Simon & Schuster, 1997), 333; Thomas Jefferson, First Inaugural Address, March 4, 1801, in William J. Bennett, 348; Jefferson, Letter to Samuel Kercheval, July 12, 1816, in Padover, 289.
57. Madison, Federalist 10, 55.

58. See Diamond, Fisk, and Garfinkel, 40-42.
59. Krason, *Preserving...*, 98.
60. Jefferson, Letter to Adams, Oct. 28, 1813, in Padover, 283; he responds to Adams's letters of July 9 and Sept. 15, 1813.
61. For a summary of these thinkers' comments about the need for a natural aristocracy, see Krason, *Preserving...*, 93-95, 123-124, 127.
62. Kirk, *The Roots of American Order*, 266-267.
63. Jefferson, First Inaugural Address, in Padover, 386; Washington, 12.
64. Washington, 30, 32.
65. Jefferson, Letter to Samuel Kercheval, July 12, 1816, in Padover, 290-291.. Emphasis is in the original.
66. For a more thorough discussion these rights, see Krason, *Preserving...*, 97-99.
67. Stephen M. Krason, "Higher Education in a 'Democracy of Worth': A Perspective and Some Proposals for Restoration," in Krason, *The Recovery of American Education*, 135-136. It must be understood that by the term "levels," we are not at all referring to anything like the grade or class levels that characterize institutional schooling.
68. Jefferson, "A Bill for the More General Diffusion of Knowledge," in Padover, 1048.
69. Adams, *Defence*, in *Works*, Six, 197-198.
70. Washington, 26.
71. Massachusetts Constitution of 1780, in Poore, I, 957.
72. Hamilton, "Speech on the Senate," in New York ratification convention, 1788, in J.C. Hamilton, II, 453.
73. Adams, *Defence*, in *Works*, Six, 208.
74. Montesquieu, I, ii, 34, 40-41.
75. Tocqueville, II, ii, 526-527.
76. Jefferson, Letter to Samuel Kercheval, July 12, 1816, in Padover, 288; Federalist 57 (Madison), 373.
77. Tocqueville, I, ii, 284.
78. Hamilton implemented a policy of aiding commerce as the country's first Secretary of the Treasury under Washington. Jefferson enunciated his "balanced" principle in his First Inaugural Address (see Padover, 386) and tried to follow it in his administration.
79. Tocqueville, I, ii, 280-281, 287-288, 306.
80. Tocqueville, I, ii, 292.
81. George Washington, *Farewell Address*, 24.
82. John Adams, Letter to Zabdiel Adams, June 21, 1776, in William J. Bennett, 371.
83. John Adams, Letter to Thomas Jefferson, June 28, 1813, in William J. Bennett, 377. Emphasis is in the original.
84. Benjamin Rush, "Of the Mode of Education Proper in a Republic" (1798), in William J. Bennett, 412.
85. Northwest Ordinance, Article 3 (July 13, 1787), in William J. Bennett, 383.
86. "The Question of Representation: Benjamin Franklin's Invocation for Prayer at the Constitutional Convention," June 28, 1787, in William J. Bennett, 385. There is some question about whether Franklin was a thoroughgoing deist (see Donald J. D'Elia, "We Hold These Truths and More: Further Catholic Reflections on the American Proposition," in Donald J. D'Elia and Stephen M. Krason, eds., *We Hold These Truths and More:*

Further Catholic Reflections on the American Proposition [Steubenville, O.: Franciscan University Press, 1993], 66).

87. Quoted in Donald J. D'Elia, *The Spirits of '76: A Catholic Inquiry* (Front Royal, Va.: Christendom Publications, 1983), 140. Emphasis is in the book. See the book for sources.

88. Jefferson, Notes on Virginia (1781), quoted in William J. Federer, *America's God and Country: Encyclopedia of Quotations* (Coppell, Tex.: Fame Publishers, 1994), 323.

89. Jefferson, quoted in: Michael Knox Beran, "Behind Jefferson's Wall," in *City Journal* (Spring 2003), available from http://www.city-journal.org/html/13_2_behind_jeffersonswall.html; Internet; and Joseph Loconte, "The Wall Jefferson Almost Built," (Dec. 27, 2001), available from <http://www.heritage.org/Press/Commentary/ed122701c.cfm>; Internet; both accessed Aug. 16, 2008.

90. Madison, June 20, 1785, quoted in Federer, 410.

91. Madison, 1778, quoted in *ibid.*, 411.

92. Madison, letter to Frederick Beasley (Nov. 20, 1825), quoted in *ibid.*, 412.

93. Madison, First Inaugural Address (March 4, 1809), quoted in *ibid.*

94. See, e.g., Walter Berns, "Religion and the Founding Principle," in *The Moral Foundations of the American Republic* (ed. Robert H. Horwitz; Charlottesville, Va.: University of Virginia Press, 1977), 157-182.

95. Tocqueville, I, ii, 293.

96. M.E. Bradford, *A Worthy Company: Brief Lives of the Framers of the United States Constitution* (Plymouth, Mass. & Marlborough, N.H.: Plymouth Rock Foundation, n.d.), viii.

97. M. Stanton Evans, *The Theme is Freedom: Religion, Politics, and the American Tradition* (Washington, D.C.: Regnery, 1994), 274.

98. M.E. Bradford, *Original Intentions: On the Making and Ratification of the United States Constitution* (Athens, Ga.: University of Georgia Press, 1993), 89-92.

99. See, e.g., Chuck Braman, "The Political Philosophy of John Locke and Its Influence on the Founding Fathers and the Political Documents They Created," available at: <http://www.chuckbraman.com/Writing/WritingFilesPhilosophy/locke.html>; Internet; accessed Aug. 16, 2008; Robert A. Goldwin, "John Locke," in Leo Strauss and Joseph Cropsey, eds., *History of Political Philosophy* (3rd edn.; Chicago: U. of Chicago Press, 1987), 510; Walter Berns, "American Presidency: Statesmanship and Constitutionalism in Balance," *Imprimis* (Jan. 1983), available from <http://www.hillsdale.edu/news/imprimis/archive/issue.asp?year=1983&month=01>; Internet; accessed Aug. 16, 2008; Morton G. White, *Philosophy, The Federalist, and the Constitution* (New York: Oxford University Press, 1987).

100. These results of the Lutz and Hyneman study appear in Robert R. Reilly, "The Truths They Held: The Christian and Natural Law Background to the American Constitution," in D'Elia and Krason, 87. For a discussion of the connection of Whig thinking with Protestant Christianity, see Ellis Sandoz, *A Government of Laws: Political Theory, Religion, and the American Founding* (Baton Rouge, La.: Louisiana State University Press, 1990), 130; Mark A. Noll, "The Bible in Revolutionary America," in *The Bible in American Law, Politics, and Political Rhetoric* (ed. James Turner Johnson; Philadelphia: Fortress Press/Chico, Calif.: Scholars Press, 1985), 43, 49-51.

101. Kirk, *The Roots of American Order*, 291-292.

102. *Ibid.*, 404. Jefferson is also often thought of as being a deist, "a child of the Enlightenment," in James David Barber's phrase (Barber, *The Presidential Character: Predicting Performance in the White House* [2nd edn.; Englewood Cliffs, N.J.: Prentice-

Hall, 1977], 14). Sandoz quotes historians Samuel E. Morison and Henry Steele Commager as saying, however, that Jefferson was "[d]eeply religious without being a churchman," and relates that he believed in God (although he would not assent to the Trinity), the moral teachings of Christ, and personal immortality, and in the last thirty or more years of his life made a "resolute study of the Bible, Biblical scholarship, and mastery of theological literature" in classical and modern languages (Sandoz, 148-149).

103. Sandoz, 136-138.

104. Kirk, *The Roots of American Order*, 435. Emphasis is in the book.

105. Bradford, *Original Intentions*, 92.

106. Evans, 270.

107. Evans, 270; D'Elia, "We Hold These Truths..." 110-112.

108. Gerard V. Bradley, *Church-State Relationships in America* (Westport, Conn.: Greenwood, 1987), 74-78.

109. See Stephen M. Krason, *The Public Order and the Sacred Order: Contemporary Issues, Catholic Social Thought, and the Western and American Traditions* (Lanham, Md.: Scarecrow Books, 2009), 206-214, for a brief discussion of the history of the drafting of the First Amendment that leads to this conclusion.

110. Quoted in Paul C. Ford, *Essays on the Constitution of the United States of America* (Brooklyn: 1892), 168-172, which is referred to in Chester James Antieau, Arthur T. Downey, and Edward C. Roberts, *Freedom From Federal Establishment: Formation and Early History of the First Amendment Religion Clauses* (Milwaukee: Bruce, 1964), 189, 195. The work of the conference committee is discussed in Krason, *The Public Order and the Sacred Order*, 210-211.

111. Antieau, et al., 62. It should be pointed out that there were few tax-supported schools at this time and that even the ones that were not religiously affiliated had curricula that emphasized the three R's and *religion*.

112. *Ibid.*, 72.

113. *Ibid.*, 73-74.

114. *Ibid.*, 75.

115. *Ibid.*, 78.

116. *Ibid.*, 80-81.

117. *Ibid.*, 67.

118. Charles C. Rice, *The Supreme Court and Public Prayer: The Need for Restraint* (N.Y.: Fordham University Press, 1964), 31; Antieau, et al., 75-77. For more specific examples of governmental assistance (both state and federal) to religion during the Founding Era, see Bradley, chaps. 2, 4.

119. Evans, 275-276.

120. Antieau, et al., 69; George Brown Tindall and David E. Shi, *America: A Narrative History* (5th edn.; N.Y.: W.W. Norton, 1999), 439.

121. Tocqueville, I, ii, 295.

122. *Ibid.*, II, i, 432.

123. Kirk, *The Roots of American Order*, 336-342.

124. D'Elia, "We Hold These Truths..." 67, 68.

125. Noll, 48-50.

126. Sandoz, 129, 131.

127. Tocqueville, I, ii, 303.

128. Kirk, *The Roots of American Order*, 343.

129. James R. Stoner, Jr., "Christianity, the Common Law, and the Constitution," in Gary L. Gregg II, ed., *Vital Remnants: America's Founding and the Western Tradition* (Wilmington, Del.: ISI Books, 1999), 204.

130. Tocqueville, I, ii, 290.
131. Stephen M. Krason, "The Murray Thesis, Abortion, and the American Political Order," in D'Elia and Krason, 209.
132. Russell Kirk, *America's British Culture* (New Brunswick, N.J.: Transaction, 1993), 72.
133. Tocqueville, I, ii, 291.
134. See *ibid.*, 291-292; II, iii, 594-603.
135. Curtis P. Nettels, *The Roots of American Civilization: A History of American Colonial Life* (2nd edn.; N.Y.: Appleton-Century-Crofts, 1963), 450.
136. Tocqueville, I, ii, 291. Still, writing primarily about colonial America, David Hackett Fischer argues that the severity of sexual morality, at least in practice, varied by region, with rates of pre-marital pregnancy and illegitimacy lowest in the Delaware Valley area (where Quakerism was strong) and New England (where Puritanism was predominant) and rather high in the Tidewater South and the frontier ("Backcountry") areas. (See Hackett, *Albion's Seed: Four British Folkways in America* [N.Y.: Oxford University Press, 1989], 813.)
137. Marvin Olasky, *Fighting for Liberty and Virtue: Political and Cultural Wars in Eighteenth-Century America* (Washington, D.C.: Regnery, 1995), 141-169.
138. For examples of these thinkers' views on sexual virtue, see Stephen M. Krason, *Abortion: Politics, Morality, and the Constitution—A Critical Study of Roe v. Wade and Doe v. Bolton and a Basis for Change* (Lanham, Md.: University Press of America, 1984), 478-481.
139. See John Locke, "First Treatise of Government," in *Two Treatises of Government* (ed. Peter Laslett; N.Y.: Cambridge University Press, 1963), sec. 59, 220.
140. Gordon S. Wood, *The Creation of the American Republic 1776-1789* (N.Y.: W.W. Norton, 1969), 52.
141. Kirk, *America's British Culture*, 72-76.
142. Wood, *The Creation of the American Republic*, 52, 53.
143. Kirk, *America's British Culture*, 75; Gordon S. Wood, *The Radicalism of the American Revolution* (N.Y.: Vintage, 1991), 41.
144. Nettels, 452.
145. Wood, *The Radicalism of the American Revolution*, 44.
146. Tocqueville, II, ii, 513-517. Even if associations were not abundant in late colonial and immediate post-revolutionary America, they seemed to multiply in number fairly quickly as the Republic got underway. (See Robert A. Nisbet, *The Social Impact of the Revolution* [Washington, D.C.: American Enterprise Institute for Public Policy Research, 1974], 19.)
147. Wood, *The Creation of the American Republic*, 61, 118; Harold Underwood Faulkner, *American Political and Social History* (6th edn.; N.Y.: Appleton-Century-Crofts, 1952), 55. Wood specifically says that the root of this concern for the general welfare was the religion of the people.
148. Wood, *The Radicalism of the American Revolution*, 59.
149. Wood, *The Creation of the American Republic*, 68-69.
150. Barry Alan Shain, "Liberty and License: The American Founding and the Western Conception of Freedom," in Gregg, 212.
151. Kirk, *The Roots of American Order*, 270, 274.
152. Shain, 215-216, 220.
153. This is the upshot of Wood's discussion in *The Creation of the American Republic*, 60-62.
154. See Aristotle, *Politics*, IV, xi, 1295b.

155. William J. Bennett, 147 (commentary on the chapter on "Civility and Friendship").
156. Wood, *The Radicalism of the American Revolution*, pp. 57-58.
157. *Ibid.*, 57-58.
158. Jack P. Greene, "Introduction," in Jack P. Greene, ed., *The Reinterpretation of the American Revolution 1763-1789* (N.Y.: Harper and Row, 1968), 30.
159. Wood, *The Radicalism of the American Revolution*, 112.
160. Greene, 29.
161. William J. Bennett, 146 (commentary on the chapter on "Civility and Friendship").
162. *Ibid.*, 152-155.
163. William J. Bennett, 146 (commentary on the chapter on "Civility and Friendship").
164. Wood, *The Creation of the American Republic*, 194. For a good discussion of the nature of the republican-oriented "American gentleman," see Kirk, *The Roots of American Order*, 312-323.
165. Nettels, 383.
166. Wood, *The Creation of the American Republic*, 71.
167. Nettels, 454-455, 415.
168. Wood, *The Radicalism of the American Revolution*, 111, 59.
169. Nettels, 413-415.
170. *Ibid.*, 454-455.
171. William B. Scott, *In Pursuit of Happiness: American Conceptions of Property from the Seventeenth to the Twentieth Century* (Bloomington, Ind.: Indiana University Press, 1977), 9-11.
172. Nettels, 456.
173. Scott, 22-23. About the earlier Christian notion that there were ethical limits to wealth accumulation, seen vividly in medieval times, see Amintore Fanfani, *Catholicism, Protestantism, and Capitalism* (Notre Dame, Ind.: University of Notre Dame Press, 1984 [originally published by Sheed and Ward, 1953]), 21-26.
174. Olasky, 216; Wood, *The Creation of the American Republic*, 108-110.
175. William J. Bennett, 314-316 (commentary on the chapter on "Justice").
176. Daniel J. Sullivan, *An Introduction to Philosophy* (rev. edn.; Milwaukee: Bruce, 1964), 159.
177. D.W. Brogan, *The American Character* (N.Y.: Vintage, 1954), 79.
178. Krason, *The Public Order and the Sacred Order*, 67.
179. The classic definition of the principle of subsidiarity is as follows: "It is an injustice and at the same time a grave evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate organizations can do." (See E.F. Schumacher, *Small Is Beautiful: Economics as if People Mattered* [N.Y.: Perennial Library, 1973], 244; Pope Pius XI, encyclical *Quadragesimo Anno* [*Reconstructing the Social Order*], 1931, #79-80.) Thus, if some activity *needs* to be done and can be successfully carried out by the private sector—starting with the individual and the family, and then going on to other private associations—it should be before any level of government should become involved in it, and if the private sector can do it and can do it on a local level this should be attempted instead of doing it at some more distant level. If government must undertake a needed task in order to successfully complete it, it should do so at the level of government closest in proximity to the people affected. It is only when this is not possible that levels of government more distant from the people should

carry out the task. It is understood that some activities by their nature—like national defense—have to be carried out by the highest level of government.

180. Krason, *Preserving...*, 5-29.

181. *Ibid.*, 135-172.

182. See Kirk, *The Roots of American Order*, 402-412; Robert P. George, “Natural Law, the Constitution, and the Theory and Practice of Judicial Review,” in Gary L. Gregg II, ed., *Vital Remnants: America’s Founding and the Western Tradition* (Wilmington, Del.: ISI Books, 1999), 160. For numerous examples of the rhetorical references to the natural law in the period of the Revolution, see Charles S. Hyneman and Donald S. Lutz, *American Political Writing during the Founding Era, 1760-1805* (2 vols.; Indianapolis: Liberty Press, 1983).

183. Kirk, *The Roots of American Order*, 330.

184. Wood, *The Radicalism of the American Revolution*, 81-82, 111, 128.

185. It is a basic teaching of the Catholic Church—which, of course, very few of the Founding Fathers would have known about—that man does not keep the natural law for long without the benefit of religion (see *General Catechetical Directory* #61).

186. See Benjamin R. Barber, “The Compromised Republic: Public Purposelessness in America,” in Horwitz, 19-38.

187. Essentially, the state must: maintain order; help in the securing of justice; encourage religion; help in the moral formation of the individual by good laws, sound education, and fashioning a good public moral atmosphere; help bring about public prosperity (this basically means making available equal opportunity—it is up to the individual and the family to secure private prosperity or personal/family temporal well-being); and promote the common good. It does not just focus on man’s temporal well-being or satisfaction, but is concerned—within the limits appropriate to it—with his spiritual good broadly understood. For a further explanation of realist philosophy’s understanding of the state’s role, see Thomas J. Higgins, *Man As Man: The Science and Art of Ethics* (rev. edn.; Rockford, Ill.: TAN Books, 1992), chaps. XXI (discusses the notion of human society—of which the state is a natural one), XXIV, XXV.

188. Scholars such as Henry F. May trace the various dimensions and degrees of the Enlightenment’s influence in America, even on American religion (see Henry F. May, *The Enlightenment in America* [N.Y.: Oxford University Press, 1976]). As indicated above, the case that the Enlightenment was not the overwhelming influence on the thinking of the Founding Fathers is made ably by writers such as Russell Kirk and Robert R. Reilly (see: Kirk, *The Roots of American Order*, 291-293; Reilly, 87-89).

189. See Orestes A. Brownson, “The Higher Law,” *The Works of Orestes A. Brownson* (ed. Henry F. Brownson; Detroit: Thorndike Nourse, 1885), XVII, 7-16.

190. 3 Dall. 386. *Calder v. Bull* was one of the Supreme Court’s first cases involving constitutional limitations on governmental power. The Court’s decision limited the application of the constitutional prohibition of ex post facto laws to criminal matters, excluding civil matters from its reach. There was a debate among the justices, as seen in their opinions, about whether unenumerated rights or natural law should be resorted to by the Court in making decisions because of a concern about men disagreeing about the content of natural law or principles of justice. (See H. Jefferson Powell, “*Calder v. Bull*,” in Kermit Hall, ed., *The Oxford Companion to the Supreme Court of the United States* [N.Y.: Oxford University Press, 1992], 174-175.)

191. Tocqueville, II, iv, 691-695.

192. Sampo, 105.

193. Martin Diamond argues that this absence of focus on the new government securing virtue and, as we go on to say, justice was deliberate on the part of the Founding

Fathers: "The American political order was deliberately tiled to resist, so to speak, the upward gravitational pull of politics toward the grand, dramatic, character-ennobling but society-racking opinions about justice and virtue" (Martin Diamond, "Ethics and Politics: The American Way," in Horwitz, 56).

194. Edward S. Corwin, *The "Higher Law" Background of American Constitutional Law* (Ithaca, N.Y.: Cornell University Press, 1955), 4.

195. Orestes A. Brownson, "The Democratic Principle," in Russell Kirk, ed., *Orestes Brownson: Selected Political Essays* (New Brunswick, N.J.: Transaction, 1990), 195. This essay was originally published in *Brownson's Quarterly Review*, April 1873.

196. For a discussion of the natural character of the family, see Austin Fagothey, *Right and Reason: Ethics in Theory and Practice* (St. Louis: C.V. Mosby, 1953), 428-435. We have already seen Tocqueville's comments about the importance of conjugal stability to the political order. For further brief discussions, see Krason, *Abortion*, 458 (referring to Aristotle's thought) and E. Cahill, *The Framework of a Christian State* (Fort Collins, Colo.: Roman Catholic Books, n.d., [reprint of 1932 edn.]), 320-324. The state, of course, is also a natural institution, but it is not—by the very definition of the term—an *intermediary* institution (i.e., one that stands between the state and the individual). By the way, the Church is not a natural institution, but a *supernatural* one.

197. Allan C. Carlson seems to have this interpretation. He says, "the family was deeply embodied in the unwritten constitution of the new United States, in the social views that the Founders held." (Allan C. Carlson, *From Cottage to Work Station: The Family's Search for Social Harmony in the Industrial Age* [San Francisco: Ignatius Press, 1993], 7.)

198. Regarding *The Republic*, see Allan Bloom's discussion of Plato's understanding about the importance of the family for the city in his "Interpretive Essay" at the back of his translation of that dialogue (Allan Bloom, ed., *The Republic of Plato* [N.Y.: Basic Books, 1968], 379-389), and also Leo Strauss, "Plato," in Leo Strauss and Joseph Cropsey, eds., *History of Political Philosophy* (3rd edn.; Chicago: University of Chicago Press, 1987), 48-52. Regarding Aristotle's view, see Aristotle, *Politics*, II, iii, 1261b; II, iv, 1262a-1262b.

199. On this point about the balance of power and international peace, see Pope John Paul II, "Negotiation: The Only Realistic Solution to the Continuing Threat of War" (speech to the UN General Assembly, read for the Pope by Cardinal Agostino Casaroli, June 11, 1982), #8, 11.

200. See the discussion in Peter Augustine Lawler, "Murray's Transformation of the American Proposition," in D'Elia and Krason, 103.

201. Madison, Federalist 10, 57.

202. *Ibid.*, 60.

203. *Ibid.*, 59.

204. We have discussed this more elsewhere. See: Krason, *Abortion*, 493-501; Stephen M. Krason, "Toward a Catholic-Realist Perspective for International Political Life," in *The Catholic Social Science Review*, vol. iv (1999), 291-295.

205. Madison, Federalist 10, 56.

206. Martin Diamond, "The Federalist," in Strauss and Cropsey, 677.

207. *Ibid.*, 678.

208. *Ibid.*, 677.

209. To satisfy acquisitiveness requires what have been called "bourgeois" virtues, such as venturesomeness, hard work, the ability to still immediate desires to achieve long-term goals, honesty in commercial relations, and some sense of justice in order to accommodate oneself to others' interests in a political society where acquisitiveness

reigns widely. These are more examples of virtues, even if not the highest ones—a further expression of Tocqueville’s “self-interest properly understood.” (See Diamond, in Horwitz, 63-65.)

210. Daniel J. Sullivan writes that “the ‘liberal,’ laissez-faire state...has never been realized except at the cost of exploitation, and its issue is either in some form of economic totalitarianism or in social anarchy. Both these tendencies are compensated for...by such a complicated series of social structures—laws, price controls, cartels, trade unions, employer associations, government bureaus, etc.—that in time the citizen becomes a slave to the very machinery set up to ensure his freedom.” (Sullivan, 138-139.) Sullivan here echoes Pope Pius XI’s assessment of the course of modern economic life (see Pope Pius XI, *Quadragesimo Anno* [*Reconstructing the Social Order*], #101-110).

211. This likely was reflected in such things as the child-saving philosophy and efforts that have characterized, in one fashion or another, most of American history. (See Allan C. Carlson, *Family Questions, Reflections on the American Social Crisis* [New Brunswick, N.J.: Transaction, 1988], 241-256.)

212. Diamond, Fisk, and Garfinkel, 138.

213. Harry V. Jaffa, “The Case for a Stronger National Government,” in Robert A. Goldwin, ed., *A Nation of States: Essays on the American Federal System* (Chicago: Rand McNally, 1961), 120. Jaffa uses the term “liberal construction,” and Diamond, Fisk, and Garfinkel (at 139) the term “loose construction.”

214. Diamond, Fisk, and Garfinkel, 139.

215. Martin Diamond, “What the Framers Meant by Federalism,” in Robert A. Goldwin, ed., *A Nation of States: Essays on the American Federal System* (2nd edn.; Chicago: Rand McNally College Publishing Co., 1974), 31.

216. *Ibid.*, 39.

217. Diamond, Fisk, and Garfinkel, 141.

218. It should be pointed out that the principle of subsidiarity did not exist under that name in social ethics at the Founders’ time—and, for that matter, the philosophical sub-field of social ethics did not exist either—but the notion was present in ethical reflection.

219. Good examples of the abundant literature on this topic are: Edward S. Corwin, *The Doctrine of Judicial Review: Its Legal and Historical Basis and Other Essays* (Princeton, N.J.: Princeton University Press, 1914); Alexander M. Bickel, *The Least Dangerous Branch: The Supreme Court at the Bar of Politics* (Indianapolis: Bobbs-Merrill, 1962); and Christopher Wolfe, *The Rise of Modern Judicial Review: From Constitutional Interpretation to Judge-Made Law* (N.Y.: Basic Books, 1986).