

THE AMERICAN DEMOCRATIC REPUBLIC: REFLECTIONS ON ITS ORIGINAL CHARACTER AND POSSIBLE INHERENT WEAKNESSES

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This article traces the principles and practices that characterized the American democratic republic and American culture at its Founding and suggests possible inherent weaknesses in our Founding thought and outlook that may have paved the way for a later transformation and decay of the American political order.

What socio-political principles and practices prevailed in the Founding era in America (i.e., late colonial times, the Revolutionary War-Confederation era, and the early Republic under the Constitution)? In a previous book, we discussed at length the principles and practices that the Founding era believed necessary to sustain a democratic republic.¹ Here we treat more briefly and in a less detailed fashion what we wrote there, with enhanced attention to certain subjects, and then suggest some possible weaknesses in our Founding conception with the aim of providing a starting point for future inquiry about: how American culture and politics have changed (in many respects, we believe, quite dramatically) from what they originally were, the forces that brought about the changes over time, and the extent to which elements of our Founding themselves led to or encouraged the changes. We characterize the U.S. as a “democratic republic,” following the lead of political scientists Martin Diamond, Winston Mills Fisk, and Herbert Garfinkel, who say that that term implies both of the major political principles it was intended by the American Founding Fathers to embody. The American political order was “democratic”—in the representative, not pure, sense—because it features majority rule, and was “republican” because it was intended to demonstrate such characteristics as restraint, sobriety, competence, and liberty,” which they say, following Alexis de Tocqueville, are “the very qualities democratic government needs to be its best self.”² We might say further that, contrary to the loose contemporary usage, the U.S. could never have been considered a democracy in the classical sense. This implied outright majoritarianism—i.e., uninhibited rule by the majority—whereas we have historically talked about the U.S. as following the principle, very simply stated, of majority rule but with minority rights.

We make no attempt to overembellish the Founding era. Still, since it set out the principles of our parchment Republic, it inevitably must be used as the measuring rod. As great as the Founding Fathers were (and since nothing comes forth from a vacuum and all men are shaped to at least some degree by their times, we must say that their very greatness means that their era must also have been extraordinary), however, they were men, so they were not perfect—and the frame of government that was brought forth by them could not have been perfect either. So, in the last part of this article, we try to point out the possible deficiencies, weaknesses, and shortcomings of the political philosophy and principles of the Founding era.

The Views of the Founding Era and Its Philosophical Background about the Principles, Practices, and Conditions Needed to Sustain a Democratic Republic

The principles and practices that we consider fall into four categories: 1) those that relate strictly to the nature of governmental institutions; 2) those that involve a mixture of institutional factors and democratic (i.e., democratic republican) practices; 3) those that relate strictly to democratic principles and practices; and 4) those involving social conditions that are necessary to sustain republican government. The factors that emerge as especially important in each of these categories can be seen by examining the views of the individual Founding Fathers, major political documents of the 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. We primarily consider the principles and practices that appear most frequently in the writings of the Founding Fathers and major philosophers of republican government.

Regarding the first category, institutional arrangements, we find that separation of powers, checks and balances, an independent judiciary, and federalism are 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.³ The abuses of institutionally unchallenged legislative power became readily apparent, however, as the Federalist Papers make clear.⁴ 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. Perhaps James Madison sums it up in Federalist 47: “No political truth is certainly of greater intrinsic value.”⁵

Checks and balances, of course, is a concomitant of separation of powers. Alexander Hamilton, another prominent Founder, speaks of the need for “mutual checks.”⁶ Historian 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.⁷

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 a pre-existing reality. Hamilton, representing well the general views of the Framers, 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.⁸ Later, Tocqueville mentioned the federal system as crucial to American democracy (“one of the most powerful combinations favoring human prosperity and freedom”).⁹ Both the Framers and Tocqueville speak 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 argue that this helps protect liberty because within it dangerous factions (see below) and intense political passions are more likely to be geographically contained.¹⁰

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 will be concerned only with matters of general concern to the whole country.¹¹ Tocqueville speaks of “the extreme evils which centralization can produce.”¹² 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.¹³ While admiring democratic republics, Tocqueville is concerned that while they will continue to allow their citizens to help

shape important affairs—e.g., they will have the vote and it will even be extended to more and more people—they will increasingly regiment the particular everyday aspects of their lives.¹⁴ 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.¹⁵

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 Locke¹⁶ 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.¹⁷ This was something that obviously distinguished a constitutional regime from, say, a traditional monarchy.

Closely related to this principle, of course, is 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),¹⁸ 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); government is carried out by general regulations instead of arbitrary decrees; and government is carried out by willing citizens instead of by force-wielding despots.¹⁹

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...*,” “to have one Rule for Rich and Poor”...[and] be designed for no other end ultimately

but *the good of the People*.”²⁰ Montesquieu says that a democratic republic requires ordered political liberty within law.²¹ Such thinkers as John Milton and James Harrington, who influenced the Founders but less directly than Locke and Montesquieu,²² also stressed the rule of law.²³ John Adams writes, “the laws . . . are the only possible rule, measure, and security of justice.”²⁴ Thomas Jefferson insists on the need for “equal laws” to protect the “equal rights” of all, even minorities.²⁵

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).²⁶ One hardly hears today about natural law, and the notion that a transcendent morality should shape our laws readily ignites controversy. Still, when reference is made in the writing of the Founding era and in the philosophers of democratic government from the seventeenth century to Tocqueville to “good laws,” what is meant is the upholding of the rule of law (as defined above) and the upholding of natural law in the civil laws. The other notion about 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*.²⁷

The notion of the mixed government or 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 required the ruling activity to involve a monarchical, aristocratic (usually, in practice, oligarchic), and a popular element (i.e., 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.²⁸ 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 somewhat closer to the people—as might be expected by the fact that it comprised part of the legislative body—because it was elected by the people’s representatives in 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.²⁹ 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.³⁰ 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 (see below).³¹

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 such Founders 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 above of a majority faction). As Federalist 63 observes, “history informs us of no long-lived republic which had not a senate.”³²

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.³³

The classic statement of the notion of 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 focused on furthering the good of their political order), Federalist 10 clearly downplays its capability to control faction.³⁴

It was only shortly before the Founding era that the principle of Federalist 10 gained credence. Before the 1730's, parties and factions were seen as destructive of liberty and strongly discouraged.³⁵

Finally in this 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.³⁶ 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.

The other 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 liberty; political equality, but with limitations; respect for private property; and the guarantee of various political and legal rights, the most important of which were 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. It is seen vividly in the Virginia Bill of Rights of 1776 and the Massachusetts Constitution of 1780. Actually, natural rights language is abundantly observed in the political discussion of the Founding era. The sources surveyed, however, make clear that the protection of men's natural rights was not the only object of government. The Virginia Bill of Rights specifically speaks of attaining the common good as the other

object. Federalist 51 states, “Justice is the end of government. It is the end of civil society.”³⁷ Adams stresses the need for a democratic republic to motivate the citizens to “prefer the public good before their own.”³⁸ Tocqueville says that the Founding Fathers commendably understood how the federal system would motivate citizens to take an interest in the public good.³⁹ The term “public good” and “common good” are treated interchangeably here. One wonders if the Founding Fathers and their era still maintained the traditional philosophical meaning of “common good” as the good of the community and of each individual person in the community. Since the education of many Founders acquainted them with Scholastic philosophy,⁴⁰ they probably had this definition at least roughly in mind. They almost certainly were implying by 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.

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.”⁴¹ The latter says that the vital principle of republican government is the *lex majoris partis*, the will of the majority.⁴² 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 in the political thinking—and practice—of the late colonial and early Republican period was required to correspond to population levels and to be apportioned fairly equally among geographical areas.⁴³ At least Jefferson, who was distinctly pro-democratic in his sentiments, believes it is also essential to conduct government in the open.⁴⁴ Interestingly, this is in opposition to the closed-door Constitutional Convention of 1787, at which Jefferson was not present.

On the question of the limitation of the franchise, as indicated 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 where these typical requirements were enforced.⁴⁵ There are indications that the Founders wanted to leave open the issue of the further democratization of the franchise.⁴⁶

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 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."⁴⁷ 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."⁴⁸ The Declaration of Independence literally cries out with the theme of ordered liberty. While liberty is an unalienable right, and Americans would no longer tolerate putative English despotism, the order provided by government is so crucial 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.

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.⁴⁹ There was no question at all about the Founders being like contemporary egalitarians. Madison says this 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 . . ." ⁵⁰ 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.⁵¹ The right of private property and the incidents thereof was fundamental for the Founding era.⁵² 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 to which they pointed).⁵³ 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 including such moderns as Montesquieu, Milton, and Harrington.⁵⁴

By short duration in office, the Framers did not seem to mean what we call today “term limits,” but instead that the terms should be for short duration. The exception would be the Senate 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.⁵⁵ Jefferson called for “a well-disciplined militia,” and Washington cautioned that “overgrown military establishments . . . are inauspicious to liberty.”⁵⁶ 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.⁵⁷

The Framers 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 debts, “and in its train wretchedness and oppression.”⁵⁸

Concerning the guarantee of the political and legal rights listed above, 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. The fact that these 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 the most important rights.⁵⁹

Finally, in terms of needed social conditions, our sources most frequently point to the following as particularly essential: religion (which is treated at length shortly), education, morality (implied further by the 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 also treated shortly), 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).

While the Founding Fathers and Tocqueville stress education as 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—probably more formally—an education in basic subjects and citizenship, and the minority that will go on to become leaders requires an advanced study in the liberal arts that would enable them to 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).⁶⁰ In his “Bill for the More General Diffusion of Knowledge” in Virginia, Jefferson endorses education as the means of preventing even the best form of government from degenerating into tyranny.⁶¹ Adams says that, “[e]ducation is more indispensable, and must be more general, under a free government than any other.”⁶² 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.”⁶³

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 similarly says, “the good order and preservation of civil government essentially depend upon piety, religion, and morality.”⁶⁴ Hamilton insists that free government requires that “the virtue of . . . [the] rulers” be “strongly connected” “with their interest.”⁶⁵ Adams says that “virtue, honor, and fear of the citizens” is required to secure liberty.⁶⁶ 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 would seem to relate at least in part to what was said above about government debt), and good maxims to direct people’s lives.⁶⁷ 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. It is not the noblest notion of virtue, but is virtue nonetheless.⁶⁸

Next, Jefferson and Madison both speak about the need for a spirit of commitment to republican principles.⁶⁹ Similarly, Tocqueville says the people need a taste for personal freedom.⁷⁰

Finally, economic questions could be put into the realm of social conditions. 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.⁷¹ 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.⁷² This is obviously related to the presence of a substantial middle class, discussed above.

Religion in the Founding Era

Russell Kirk says the following: “All the aspects of any civilization arise out of a people’s religion: its politics, its economics, its arts, its sciences, even its simple crafts are the by-products of religious insights and a religious cult.”⁷³ How important religion or a religious outlook is to a political society was demonstrated by our earlier book where, after examining the conditions needed to sustain both a good political order of any type and a democratic republic specifically, we considered leading Western thinkers who investigate the question of what causes political orders to decline and collapse. The most commonly mentioned factor among these thinkers was a nation’s turning away from God or its traditional religious belief⁷⁴ (we list the thinkers and the other factors in the concluding section of this article). Many writers have noted the centrality of religion in early America, but few have expressed it as powerfully as Tocqueville. He says 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.”⁷⁵

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.”⁷⁶ John Adams similarly wrote that “it is religion and morality alone, which can establish the Principles upon which Freedom can securely stand”⁷⁷ 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.”⁷⁸ 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.”⁷⁹ The Northwest Ordinance, adopted by an Articles of Confederation Congress that included the Constitution’s Framers in it, declared, “Religion, morality, and knowledge [as] being necessary to good government.”⁸⁰ 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.”⁸¹ He also said, “If men are so wicked as we now see them *with religion*, what would they be if *without it*?”⁸²

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.⁸³ While the above quotations make clear that they believed it indeed was necessary for this, they did not just have a utilitarian view of religion. While as Tocqueville says, no one can know for certain what is in the human heart,⁸⁴ 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.”⁸⁵ 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.”⁸⁶ Bradford recounts the religious utterances, without reference to political concerns, and religious writings and efforts of many of them.⁸⁷ They did not just hold these beliefs privately, but they shaped their political thought and efforts. Lutz and 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 stood the natural law and Christianity. In spite of the view of many writers that the American Founding was simply Lockean, 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.⁸⁸ Russell Kirk observes, “The Americans would make use of Locke, but they would not worship him.”⁸⁹

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 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 made 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.⁹⁰

The practices of the Second Continental Congress, which included a number of the latter 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, was quite evident in them.⁹¹

There was not a great deal of talk about religion at the Philadelphia Constitutional Convention of 1787, probably because the Founders knew their task was forging a workable frame of government, and because they viewed any significant governmental involvement with religion as a state matter. For example, as Kirk states, "no one of importance in America desired to establish a *national* church."⁹² 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 with) because any oath was such a test as it was taken before God who was the acknowledged source of political authority and ready to punish perjury. In effect, simply including an oath was implicitly a statement of the God-fearing attitudes of the Founders.⁹³ The other significant point of the Convention was when Franklin asked for prayers due to the impasse between the large and small states. Hamilton opposed this, and the Convention agreed. While some claim that this demonstrates the Framers' secularism, Hamilton's reasoning was that he did not want to give the impression to their countrymen—behind the locked Convention doors—that things were going badly.⁹⁴ 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 would not permit it.⁹⁵ 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.⁹⁶

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. 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."⁹⁷

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;⁹⁸ the Continental Congress authorized the Commissioners of Indian Affairs to employ ministers to preach and teach among the Indians;⁹⁹ 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;¹⁰⁰ both the federal and state governments employed

and paid chaplains in their conventions, legislatures, armed forces, and hospitals;¹⁰¹ laws made blasphemy a serious offense¹⁰² and punished those who labored on Sunday or otherwise disrupted the Sabbath observance;¹⁰³ governmental officials frequently proclaimed days of thanksgiving to God, fasting, and prayer;¹⁰⁴ and prayers were also a regular feature in the Continental Congress and in the state legislatures.¹⁰⁵

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.¹⁰⁶ It is clearly illustrative 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 Massachusetts' established church continued until 1833 without constitutional controversy.¹⁰⁷

Having discussed the official recognition of the importance of religion in the Founding Era, we now ask what role it played in the life of the American people generally. Tocqueville, writing in the 1830's, speaks about "the quiet sway of religion" over America,¹⁰⁸ 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."¹⁰⁹ The Christian influence obviously continued on from early colonial times, and was rejuvenated by the Great Awakening.¹¹⁰ 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.¹¹¹ Evangelical Protestantism had a strong hold on much of American culture,¹¹² and reading of the Bible was widespread with no other book approaching it in importance.¹¹³ Tocqueville commented that even people on the isolated frontier typically had a Bible,¹¹⁴ and as Kirk says, "it was a biblical Christianity, this American faith, securely rooted in popular conviction."¹¹⁵

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,"¹¹⁶ and except in the area of economics, continued to do so until the twentieth century.¹¹⁷ As Kirk writes, the Americans had "the Ten Commandments at the back of their

minds, when not in the forefront.”¹¹⁸ While men in early America, as at all times, fell short in practice, they accepted without much question the moral *standards* of Christianity.

Largely connected to, and sometimes interchangeable with, morals are mores (i.e., aspects of culture, patterns of behavior). 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 early republic. Tocqueville mentioned “the great severity of mores which one notices” in the U.S.¹¹⁹ Nowhere were these morals/mores stricter than in sexual matters.¹²⁰ 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.”¹²¹

Tocqueville was not alone among the sources surveyed that make clear that the concern about morality includes 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.¹²² They are also not reluctant to repudiate wayward sexual activity, as Locke implicitly does with adultery, incest, and fornication.¹²³

There were other mores that, while not so directly preached by Christianity, were nevertheless rooted in the Christian and usually the classical virtues as well. Kirk lists the major ones: “high courage in danger or adversity”; willingness to practice present sacrifice 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.¹²⁴

Factors Causing the Decline of Political Orders and Problems about the Founding Conception of the United States

In previous writing, we examined numerous thinkers from the ancient, modern, and contemporary periods 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. By listing factors these thinkers set forth as causing the decline of regimes, we fashion a framework for future consideration of the question of American decline. We list those factors (after religion) receiving most mention to least mention, and the least were mentioned by at least two thinkers. These factors are: 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.¹²⁵ One should note that several of these involve the corruption of conditions that the Founding era (above) held necessary to sustain republican government.

In the remainder of this article, we raise some questions of potential weakness in America's "Parchment Republic," or areas that may have been particularly prone to decline. Perhaps the most significant area is, in effect, 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 just 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 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 with the ensuing weakening of traditional morality.¹²⁶

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.¹²⁷ Men knew what their final end was as individuals (i.e., Christianity taught that it is to be united with God), but perhaps they did not sufficiently appreciate the guiding role of the political society.¹²⁸ Also, the Founding Fathers did not elaborate on the common good (which is connected with man’s final end), perhaps due to an inadequate philosophical understanding and formation.

This alleged philosophical deficiency might be due to the fact that from its earliest times America historically has basically 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 at least touching on the transcendent.

Perhaps the Enlightenment influence—which was there 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 merely natural rights (even while 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. 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 should play a very limited formal role in the moral formation of men).

The Protestant Reformation, along (again) with 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. 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. Protestantism jettisoned this, thinking that Christian morality would simply be permanently in place. Without realizing it, early America 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 (except, after awhile, in the area of economics). One wonders if the absence of an authoritative moral interpreter did not finally catch up with America, and if, with the guidance of the Church, the erosion of traditional moral principles might have been attenuated. There was no provision for this—for even an informal consideration of the magisterium’s teachings—in the Protestant-generated American political order. Protestantism, along with the growing influence of modern philosophy and a secularly-generated positivism, elevated 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 led to both 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.¹²⁹

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)¹³⁰—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. Instead of all people having the power of making private judgments—at least, those judgments which would be authoritative and of social consequence for the U.S.—it was a small, elite group.

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 serious problems later on.

The Protestant, specifically Calvinist, foundations of the U.S., 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 Tocqueville feared.¹³¹ Again, the absence of a truly authoritative moral arbiter—with the divine protection of the Church's magisterium—has perhaps made such moralism more likely, since there is nothing to restrain 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 critical natural aristocracy discussed above 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 they 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—insuring that this function would be successfully performed.

Not only was there 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, by family upbringing, community efforts, and to some extent the laws on the state level. To be sure, this perspective is valid in light of the principle of subsidiarity in social ethics.¹³² The argument has even been made that “[f]ree institutions”—as in America—go a long way to form the virtuous citizen.”¹³³ This may be so, but perhaps it 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. The point is that by removing the new national government from the shaping of virtue, and downplaying government’s role in it generally—indeed, by effectively diminishing virtue as an avowed public or political concern—there is arguably an inherent weakness in our parchment republic.

Individualism in the Founders’ thought is possibly seen also in their strong stress on commerce (even to the point of believing that if men would be diverted into commercial pursuits it would be conducive to the preservation of free government¹³⁴). They perhaps needed to give more emphasis in their thought to the role of intermediary institutions or associations, in economics (where they would have known of the experience of the medieval guilds) and in society in general. Tocqueville speaks of the substantial amount of associational activity in America;¹³⁵ perhaps the Founders just accepted, without comment, the extant social arrangements which encompassed these. One wonders, however, if the failure to explicitly note associational activity in their writing and in the Constitution betrays a deficiency perhaps inspired by the Enlightenment’s individualism and the often isolated character of people in a vast, still developing nation, that invited an ever more extreme and unreasonable individualism as time went on.

At the core of any discussion of intermediary institutions is the only natural and specifically necessary one, the family.¹³⁶ 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) formation in social ethics rendered them perhaps unable to appreciate *sufficiently* the family's role and implications for political life. Perhaps they just take the family's role for granted and so do not believe it is necessary to mention¹³⁷ (as stated above, many things were simply assumed by them). Still, traditional ethical analysis and classical political philosophy (despite the fact that so much is left unsaid about many things in the latter) both explicitly recognize the family as a central institution for politics and all social life; the fact that the Founders do not, at least avowedly, is a possible blind spot.

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. Regarding the nature of American constitutionalism, Corwin states: “The attribution of supremacy to the Constitution on the ground solely of its roorage 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.”¹³⁸ 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 possible effect over time that a positivistic regime emerged.

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. Even though the notion of balance of power among nations can help to secure international peace,

it is minimal and probably alone cannot be successful for the long run. 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.¹³⁹

Perhaps this signals another possible shortcoming in the Founding: there is 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 just taken as a given by the Founders. We saw how communal life was one of the American mores and Tocqueville observed it abundantly in the country. Nevertheless, we wonder if the lack of formal attention to it in political reflection, as with other points above, did not leave America susceptible to an intensified individualism over time.

As we have noted, the Founders acknowledged the need for statesmanship, but they relied more on institutional factors to restrain excesses, protect liberty, and avert tyranny. They perhaps too much downplayed statesmanship and the need for good statesmen (see Federalist 10). 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 does certain other things for the good of the community). Statesmanship, on the other hand, implies 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. Statesmanship involves an understanding of the common good, a clear, deep understanding of which we have noted our Founding Fathers may have lacked. 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 is a vital condition for truly good government.

Finally, we suggest possible deficiencies in two institutional areas. One is the understanding of federalism. As stated above, the Founding Fathers seem to have viewed the new national government as one of distinctly limited powers, and strong defenders of federalism in our own day follow this. They advocate simply turning matters over to

the states without even addressing them or perhaps without considering if they can be addressed well or justly at that level. The principle of subsidiarity, however, avers that matters should be dealt with at the lower level unless there is a clear need to do so at more distant levels.¹⁴⁰

A second deficiency, noted by many, is 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). It is hard to fault them for this, however, since at that time there had been little experience with judiciaries playing a political role or being leading governmental institutions.

In this article, we have inquired into the principles, practices, and conditions that the American Founding era believed necessary to sustain the kind of political order it brought forth, a democratic republic. We have considered what factors great thinkers have identified as causing political orders to be transformed, decline, and even eventually collapse. We have also suggested what might have been the “weak points” in the principles of the Founding itself that could have presaged the latter. This, again, lays the groundwork for future study to determine the later thought, trends, developments, and events that effectuated changes and transformations in American culture and political life and to consider the extent to which they may be traced back to foundational weaknesses.

NOTES

1. Stephen M. 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), chap. 4.
2. Martin Diamond, Winston Mills Fisk, and Herbert Garfinkel, *The Democratic Republic: An Introduction to American National Government* (second edn.; Chicago: Rand McNally, 1970), 89-91.
3. George Dargo, *Roots of the Republic: A New Perspective on Early American Constitutionalism* (N.Y.: Praeger, 1974), 52.
4. See Federalists 48 (Madison), 49 (Madison), 71 (Hamilton), 73 (Hamilton), and 78 (Hamilton), in Alexander Hamilton, John Jay, and James Madison, *The Federalist* (N.Y.: Modern Library, n.d.).
5. Federalist 47 (Madison), 313.
6. 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.
7. Dargo, 52.
8. 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.
9. Alexis de Tocqueville, *Democracy in America*, ed. J.P. Mayer (Garden City, N.Y.: Doubleday [Anchor Books], 1969), I, i, 170.
10. See Federalist 10 (Madison, 61-62; Federalist 51 (Hamilton or Madison), 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], One, 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.

11. Federalist 14 (Madison), 82.

12. Tocqueville, II, iv, 693.

13. Ibid., II, I, 279.

14. Ibid., II, iv, 693-694.

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

16. 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.

17. 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).

18. Aristotle, *The Politics*, ed. Ernest Barker (Oxford, Eng.: Clarendon Press, 1946; London: Oxford University Press, 1987), 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.

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

20. Locke, XI, 5-10, 409. Emphasis is in the book.

21. Montesquieu, *One*, XI, 150.

22. See, e.g., Russell Kirk, *The Roots of American Order* (Malibu, Calif.: Pepperdine University Press, 1974), 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).
23. John Milton, A Defence of the People of England, in *Political Writings*, ed. Martin Dzelzaninis (Cambridge, Eng.: Cambridge University Press, 1991), 166-167; Sabine, 502-503.
24. John Adams, Defence of the Constitutions of the United States of America, in *The Works of John Adams* (Boston: Little & Brown, 1851), Four, 295.
25. Thomas Jefferson, First Inaugural Address, in Saul K. Padover, ed., *The Complete Jefferson* (N.Y.: Duell, Sloan and Pearce, 1943), 384.
26. On the civil law embodying natural law, see Adams, Defence, in *Works*, Four, 293-295; Virginia Bill of Rights of 1776, Massachusetts Constitution of 1780 (incorporating natural rights notions), in 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), Two, 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*, 128-129), who was a significant influence on the American patriots and an even more overwhelming one on the early American legal profession (see Kirk, *Roots*, 192, 369, 373-374).
27. Washington, 16; Adams, Six, 208.
28. Edward S. Corwin, *The President: Office and Powers 1797-1957* (4th rev. edn.; N.Y.: New York University Press, 1957), 14-15.
29. Tocqueville, I, ii, 200-201.
30. Kirk, *Roots*, 94.
31. Diamond, Fisk, and Garfinkel, 363-366.

32. Federalist 63 (Hamilton or Madison), 410.
33. Bernard Bailyn, *The Origins of American Politics* (N.Y.: Alfred A. Knopf, 1968), 79.
34. Federalist 10 (Madison), 57.
35. See Bailyn, *Origins of American Politics*, 125-127.
36. See Washington, 18; Jefferson, *First Inaugural Address*, in Padover, 386; Federalists 23, 25, 70 (all Hamilton), 141-146, 153-158, 454-463.
37. Federalist 51 (Hamilton or Madison), 340.
38. Adams, Defence, in *Works*, Six, 208.
39. Tocqueville, II, ii, 511.
40. 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 (for a more restrained assessment of this, although not disputing the Scholastic philosophy influences in colonial higher education) Bernard Bailyn, *Education in the Forming of American Society: Needs and Opportunities for Study* (N.Y.: Vintage, 1960), 89-90.
41. Jefferson, letter to Samuel Kercheval, July 12, 1816, in Padover, 287-288.
42. 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.
43. Bailyn, *Origins of American Politics*, 81.
44. Jefferson, First Inaugural Address, 386.
45. See U.S. Constitution, Art. I, Sec. 2.
46. See the discussion in Krason, *Preserving*, 105-106.
47. Montesquieu, *One*, XI, 150; VIII, 110.

48. Federalist 51, 337.

49. See, e.g., James Madison, Letter to Dr. Jacob de la Motta, Aug. 1820, in William J. Bennett, ed., *Our Sacred Honor* (N.Y.: Simon & Schuster, 1997), 333; Thomas Jefferson, First Inaugural Address, March 4, 1801, in Bennett, 348; Jefferson, Letter to Samuel Kercheval, July 12, 1816, in Padover, 289.

50. Federalist 10 (Madison), 55.

51. See Diamond, Fisk, and Garfinkel, 40-42.

52. Krason, *Preserving*, 98.

53. Jefferson, Letter to Adams, Oct. 28, 1813, in Padover, 283; he responds to Adams's letters of July 9 and Sept. 15, 1813.

54. For a summary of these thinkers' comments about the need for a natural aristocracy, see Krason, *Preserving*, 93-95, 123-124, 127.

55. Kirk, *Roots*, 266-267.

56. Jefferson, First Inaugural Address, in Padover, 386; Washington, 12.

57. Washington, 30, 32.

58. Jefferson, Letter to Samuel Kercheval, July 12, 1816, in Padover, 290-291. Emphasis is in the original.

59. For a more thorough discussion of these rights, see Krason, *Preserving*, 97-99.

60. Stephen M. Krason, "Higher Education in a 'Democracy of Worth': A Perspective and Some Proposals for Restoration," in Stephen M. Krason, ed., *The Recovery of American Education: Reclaiming a Vision* (Lanham, Md.: University Press of America, 1991), 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.

61. Jefferson, "A Bill for the More General Diffusion of Knowledge," in Padover, 1048.

62. Adams, Defence, in *Works*, Six, 197-198.
63. Washington, 26.
64. Virginia Bill of Rights, in Poore, 957.
65. Hamilton, "Speech on the Senate," in New York ratification convention, 1788, in J.C. Hamilton, II, 453.
66. Adams, Defence, in *Works*, Six, 208.
67. Montesquieu, One, II, 34, 40-41.
68. Tocqueville, II, ii, 526-527.
69. Jefferson, Letter to Samuel Kercheval, July 12, 1816, in Padover, 288; Federalist 57 (Madison), 373.
70. Tocqueville, I, ii, 284.
71. 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.
72. Tocqueville, I, ii, 280-281, 287-288, 306.
73. Kirk, *Roots*, 14.
74. See Krason, *Preserving*, chap. 6.
75. Tocqueville, I, ii, 292.
76. George Washington, Farewell Address, 24.
77. John Adams, Letter to Zabdiel Adams, June 21, 1776, in Bennett, 371.
78. John Adams, Letter to Thomas Jefferson, June 28, 1813, in Bennett, 377. Emphasis is in the original.

79. Benjamin Rush, “Of the Mode of Education Proper in a Republic” (1798), in Bennett, 412.

80. *Northwest Ordinance*, Article 3 (July 13, 1787), in Bennett, 383.

81. “The Question of Representation: Benjamin Franklin’s Invocation for Prayer at the Constitutional Convention, June 28, 1787, in Bennett, 385. There is some question 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).

82. 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.

83. 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.

84. Tocqueville, I, ii, 293.

85. 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.

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

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

88. 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; and 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.

89. Kirk, *Roots*, 291.

90. *Ibid.*, 404. Jefferson is also often thought of as being a deist, "a child of the Enlightenment," in James David Barber's phrase. 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).

91. Sandoz, 136-138.

92. Kirk, *Roots*, 435. Emphasis is in the book.

93. Bradford, *Original Intentions*, 92.

94. Evans, 270.

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

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

97. Quoted in Paul C. Ford, *Essays on the Constitution of the United States of America* (Brooklyn: 1892), 168-172, 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. For a further discussion of the forging of the religion clauses of the First Amendment, see also: Stephen M. Krason, *The Public Order and the Sacred Order: Reflections on Contemporary Socio-Political Problems and Prospects, in Light of Catholic Social Teaching, Philosophy, and the Western and American Traditions* (Otsego, Mich.: PageFree Publishing, 2003), 264-275 (the conference committee is discussed on 270).

98. 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.

99. Ibid., 72.

100. Ibid., 73-74.

101. Ibid., 75.

102. Ibid., 78.

103. Ibid., 80-81.

104. Ibid., 67.

105. 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.

106. Evans, 275-276.

107. Antieau, et al., 69; Evans, 278.

108. Tocqueville, I, ii, 295.

109. Ibid., II, i, 432.

110. Kirk, *Roots*, 336-342.

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

112. Noll, 48-50.

113. Sandoz, 129, 131.

114. Tocqueville, I, ii, 303.

115. Kirk, *Roots*, 343.

116. Tocqueville, I, ii, 290.

117. Stephen M. Krason, “The Murray Thesis, Abortion, and the American Political Order,” in *D’Elia and Krason*, 209.

118. Russell Kirk, *America’s British Culture* (New Brunswick, N.J.: Transaction, 1993), 72.

119. Tocqueville, I, ii, 291.

120. See *Ibid.*, 291-292; II, iii, 594-603.

121. *Ibid.*, I, ii, 291.

122. 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.

123. See John Locke, “First Treatise of Government,” in *Two Treatises of Government* (ed. Peter Laslett; N.Y.: Cambridge University Press, 1963), sec. 59, p. 220.

124. Kirk, *America’s British Culture*, 72-76.

125. For the discussion of the thought of these writers, see Krason, *Preserving*, chap. 6.

126. Indeed, 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).

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

128. 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; 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.

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

130. 3 Dall. 386.

131. Tocqueville, II, iv, 690-695.

132. The principle of subsidiarity is stated 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. For every social activity ought of its very nature to furnish help to the members of the body social and never destroy and absorb them" (E.F. Schumacher, *Small Is Beautiful: Economics as if People Mattered* [N.Y.: Perennial Library, 1973], 244; almost identical language appears in Pope Pius XI, *Quadragesimo Anno* [*Reconstructing the Social Order*] #79-80).

133. Sampo, 105-106.

134. See Martin Diamond, "The Federalist," in Leo Strauss and Joseph Cropsey, eds., *History of Political Philosophy* (third. edn.; Chicago: University of Chicago Press, 1987), 677-678.

135. Tocqueville, II, ii, 513-517.

136. 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 only other natural institution is the political association, the state. It is not an intermediary institution, however, which by its very definition is one that stands between the individual and the state.

137. 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.)

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

139. When we talk about justice we mean that commutative, distributive, social, and legal justice must all prevail. For a brief discussion of each, see Krason, *Preserving*, 25-27. Social charity is defined as an attitude of love toward and active concern for one’s community, country, and fellow citizens. It makes one ready to sacrifice for the common good, if needed, and motivates different groups in a political society to resolve differences peacefully and work together for the common good. (See Krason, *Preserving*, 27-28.)

140. 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.