THE AMERICAN FOUNDERS AND THEIR RELEVANCE TODAY

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Many people today are rediscovering the American Founding Fathers. The interest can be seen among both scholars and ordinary citizens. Books by historians and political scientists have continued to pour forth—Pauline Maier's *American Scripture* (1997) on the Declaration of Independence; Joseph Ellis's *Founding Brothers* (2000) and *First Family: Abigail and John Adams* (2010); Michael Novak's book on religion at the founding, *On Two Wings: Faith and Reason at the American Founding* (2002), and Gregg Frazer's *The Religious Beliefs of America's Founders* (2012); and the great American historian Gordon Wood continues his lifelong work on the founding with *Revolutionary Characters: What Made the Founders Different* (2006) and *Empire of Liberty* (2009).

The general public is also very interested in rediscovering the Founders and in bringing their ideas to contemporary political debates, as we see in the Tea Party movement or learn on Constitution Day, September 17, each year. I think one can say that this is a recurring pattern in America: every generation "rediscovers" the American Founders and interprets them for its own age. What explains this perennial fascination?

One explanation is that the founding period seems like a Heroic Age in which great statesmen were performing great deeds for the greater glory of our country and debating great issues at the highest level of political discourse. Its heroes include the leaders of the American Revolution in 1776 and the framers of the U.S. Constitution in 1787 and the first generation of leaders of the American republic—Washington, Jefferson, Madison, Hamilton, Franklin, John Adams, as well as lesser figures like John Witherspoon, Samuel Adams, and Patrick Henry. We also sometimes include the earlier generations of colonial leaders, such as William Penn and John Winthrop of Massachusetts.

This fascination with greatness and heroes will never die, despite the efforts of

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revisionist historians to demythologize the Founders and cut them down to size. Americans simply love to compare later politicians to the Founders—and to bemoan the lack of greatness in the present crop of leaders who "don't measure up." Such comparisons are especially popular when politics turns petty, nasty, and personal—although this behavior is nothing new, since the Founders too could be petty, nasty, and personally ambitious (as Ellis's book on the sibling rivalry of the founding "brothers" vividly demonstrates, as does Gordon Wood's description of the election of 1800 between Adams and Jefferson, one of the most divisive and nastiest in our history). The difference is that the Founders were more than small-minded partisans; they also faced heroic challenges and overcame them, giving a certain objective basis to the comparisons of the great statesmen of the past with the petty politicians of today. But there is more to the study of the Founders than the game of comparative rankings.

A second and deeper reason for the perennial fascination with the American Founders is the need to justify our political principles today—to explain why the principles we live by are "legitimate" in the ultimate sense of being right, just, or true. The search for legitimizing principles takes many forms, but one form is to try to prove that "the Founders are on your side"—meaning, your view of government and vision of America are in accordance with the Founding Fathers' view, or with one of their members.

The assumption is that the founding period of a nation is a time when the fundamental principles of a new political order are openly contested and then settled or established. These founding periods are dangerous, but they are also the most exciting and formative times: the founders are the ones who lay down the principles of legitimate authority for new laws and institutions and create a new regime that lasts for generations (until they are contested again, usually provoking a civil war). This makes the founding period authoritative and explains why it matters today if one can show, for example, that Madison or Jefferson understood the "separation of church and state" in a certain way, or that the "original intention" of the Constitution supports a certain view of the federal government's power to provide for the welfare of the people.

Of course, our attitude toward the Founding Fathers is more complicated than simple hero worship or deference to original authority. We actually have two schools of thought in American history and constitutional law regarding the Founders: the "originalists" and the "progressives." The originalists want to stick with the Founders, whereas the progressives want to move beyond them in order to modernize and develop them into something new. Yet the authority of the Founders is so great that even the progressives wind up appealing to one Founder against another—for example, by playing off the more radical side of Jefferson's "all men are created equal" in the Declaration against the more conservative U.S. Constitution, which limits federal power. Or they combine the two, as Herbert Croly did in formulating the progressive vision of activist government at the beginning of the twentieth century. In *The Promise of American Life* (1909), Croly famously defined the philosophy of progressivism as using "Hamiltonian means for Jeffersonian ends," by which he meant using the powers of a strong national government to advance the equality of people against big business.

In various ways, then, the American Founders remain the most important authority for deciding which principles of American government are legitimate, for their times as well as for our own. They established a new regime with a moral vision

that, despite certain flaws and inner tensions, possessed an overall coherence and defined American political life for more than two centuries. The crucial questions are, therefore, What was the moral vision of the American Founders? And what issues of today lead us back to the Founding Fathers for understanding the legitimate course for twenty-first-century America? And to what extent are we still bound by the Founders?

Regarding the first question, one can say that the Founders' moral vision centers on a special kind of freedom or liberty. George Washington referred to this idea in his Farewell Address as "republican liberty." The phrase I like best to capture the moral vision of the American Founders is "the American experiment in ordered liberty"; it is an expression that opens up the broadest vision of the American founding. What does it mean to say that the founding principle of the American polity is republican liberty or ordered liberty?

By republican liberty, the Founders meant something new: a historic test of whether human beings could actually govern themselves without a king or a military ruler or a high priest or tribal chieftain or some kind of authoritarian "father-figure" to keep the people in line and to decide for them how best to preserve their safety and happiness. Abraham Lincoln later captured the essence of the Founder's vision in his memorable pronouncement that America is a test of "the capability of a people to govern themselves."

The central point of the American founding was a notion of liberty that seems simple but actually is quite complicated. It meant more than independence from Great Britain, although it implied that we were a sovereign nation in a separate territory. It also meant more than individual rights, although it included protections for personal rights and freedoms from arbitrary power. In other words, it included the notion of "negative liberty," meaning the absence of restrictions (made famous in the slogan "Don't Tread on Me"). But it also included the notion of "positive liberty," meaning freedom goes together with responsibility as well as with duties and obligations to others and to the common good.

Positive liberty included moral and civic duties, or what the Founders called "republican virtue," which they took from the classical tradition of citizenship and statesmanship. This rich and complex notion of liberty is different from the libertarianism and collectivism of today, and it required more than the democracy or populism of earlier democratic movements. Their idea of ordered liberty meant a people living in an independent nation, uncoerced by a king and enjoying their rights, so that they could prove they had the moral maturity to govern themselves—in both the personal sense of self-government as virtuous individuals and in the political sense of self-government as a civic-minded people.

To clarify the American Founders' idea of ordered liberty, I would like to list and briefly explain four key elements that went into their moral vision—elements that were sometimes in tension but nevertheless blended into a new political ideal. The four elements are republicanism, constitutionalism, natural law, and cultural traditions.

According to the first idea, the American Founders sought to establish a republican form of government, which they often compared to the ancient Roman republic. They loved to invoke the symbols of classical Rome, such as the names of Roman heroes like Publius Publicola, Cincinnatus, Brutus, and Cato. They employed the neoclassical style of architecture, the Palladian style, for

their state buildings; and they named the building that housed Congress Capitol Hill (spelled with an *o*), after Rome's Capitoline Hill. And, of course, the terms *Republic* and *Senate* were derived from the Roman Republic. The designers of Washington, D.C., even named a small river off the Potomac "the Tiber," after Rome's main river. Stylistically, the American founding sometimes resembles a giant toga party.

Despite the echoes of ancient Rome, the American Founders understood that the American regime was a modern republic, different from the ancient republic of Rome. Both types of republic defined themselves in opposition to kingship, but the ancient Roman was an *aristocratic* republic, governed by the patricians of the Senate (with some mixture of popular will through the tribunes of the people). America was different because it was a *democratic* republic, deriving its authority from the people. But it too included the idea of a mixed regime, with "we the people" as the source of authority mixed with elitist and quasi-aristocratic elements to check majority rule and to elevate the common people's views on politics. Hence, they incorporated undemocratic features into the original American republic, such as the election of senators by state legislatures, the Electoral College, and the unelected judiciary. Modern republicanism meant representative democracy in which the people are sovereign but have no direct participation in governing. It also meant a commercial republic, not a military republic like ancient Rome, which was set up for war and imperial conquest. In other words, the Founders were symbolically Romans but in reality their republicanism was new, modern, American—its authority came from the people mixed with representatives, and its strong protections for property rights promoted a commercial society that would raise civilization to a more enlightened and peaceful stage of history.

The second feature of the Founders' moral vision was constitutionalism, based on the idea of a written constitution. This too was new and different, since the influential English constitution was unwritten (although the Founders borrowed many particulars of the U.S. Constitution from the English common law tradition). The purpose of a written constitution was to put limits on the power of the national government and to spell out the shared system of power between the national government and the separate states in a decentralized federal system. Hence, the most important features of the U.S. Constitution of 1787 were not only the checks and balances of the three branches of government (Articles I, II, and III) but also the power sharing between the national and state governments (Articles IV, V, and VI). The other crucial feature was the enumeration of Congress's powers in Article I, sections 8–9, spelling out the scope and range of national powers—taxation, regulating commerce among the states, coining money, establishing post offices and patents, declaring war, raising armies, navies, and militias, governing federal districts, along with the "necessary and proper" means to these ends. The implication is that republicanism required constitutionalism because its essence is self-government under law, and this ideal requires self-imposed limitations on power.

The third element of the Founders' moral vision is largely forgotten or misunderstood today: above the written constitutional law was an unwritten, intangible higher law called natural law. The Founders recognized that the liberty embodied in the republican constitution had to be justified by a universal ideal of justice that was rooted in the moral order of the universe, not merely created by

man. Hence, the importance of the Declaration of Independence, which asserts that our liberty and rights come from "the laws of nature and of nature's God." The natural law doctrine of the Declaration is the moral, philosophical, and theological underpinning of the Constitution and the republican form of government. It states that "all men are created equal" in the sense of possessing certain inalienable rights that come from the Creator who put them in human nature and created a natural universe with a rational moral order. It shows that freedom is grounded in God-given natural rights and would make no sense if the universe were meaningless or indifferent (if the cosmos is "absurd," as existentialists later said) and if there were no objective standards of right and wrong.

This view is quite different from the predominant beliefs of today. The Founders believed that liberty was based on moral order, not on moral relativism, and they derived this idea from the natural law principles of Locke, Cicero, Aristotle, Vattel, Blackstone, and others. Without natural law—meaning, an objective moral law inscribed in nature and human nature by the Creator—the ideal of republican liberty lacks an ultimate foundation. Natural law explains why such a life is just and accords with the moral order of the universe.

The fourth element, cultural traditions, extends the idea of moral order to social practices. The American Founders believed that liberty required not only natural law (an objective standard of justice) but also customs, habits, and manners derived from the heritage of Western civilization and from English and American history. I use the phrase "cultural traditions" as a catch-all phrase to refer to the values and beliefs handed down over centuries from several ancient sources—from classical Greek and Roman ideals of republican virtue and patriotic citizen-soldiers; from the English heritage of common law jurisprudence; from the ideal of gentlemen statesmen (possessing the gentleman's code of honor); from Protestant Christianity and its biblical beliefs about America as a "city on a hill" charged with moral duties, such as the work ethic, the struggle against sin, and charity for the poor; and from the historical experience of local self-government in colonial assemblies and the harsh self-reliance of frontier life. The implication is that liberty was embedded in cultural traditions that gave it higher and nobler purposes than mere self-expression or the values of a consumer-entertainment society. The American Founders assumed that such customs and traditions would provide a set of moral virtues for the exercise of responsible liberty by citizens and leaders.

In sum, the four elements of republicanism, constitutionalism, natural law, and cultural traditions made up the moral vision of the American Founders. These were the crucial elements of ordered liberty that made the Founders' ideal of freedom different from the contemporary notion of libertarianism, which focuses on individualism, and from collectivism, which focuses on empowering people through the centralized state. The moral vision of the American Founders was neither individualist nor collectivist. It was intended to inspire citizens to exercise their God-given natural rights along with the virtues of courage, moderation, justice, and prudence at the local and personal level. It meant making political decisions through representatives at the national level who possessed a certain antique Roman sense of civic duty and an English gentleman's code of honor. And it was a way of proving to the world that the people and their leaders have the moral maturity to govern themselves freely and virtuously without degenerating into anarchy or corruption.

These elements gave the founding generation a sense of "American exceptionalism"—a belief that America was special as a new and noble experiment in self-government, a belief that would serve the nation for good and for ill. The good side was the universal message of freedom and high expectations to succeed. The bad side was the arrogance and presumption of a nation that sometimes treated other peoples with contempt and that did not live up to its own ideals by excluding women, the original native peoples, and black slave populations from participating in the American experiment in ordered liberty.

If we fast-forward from the founding period to the contemporary world and ask, What is the relevance of the Founders' moral vision today?, we can identify some of the major issues in American politics and determine if the Founders' vision still provides guidance and is still binding on later generations. I would argue that three of the most hotly debated issues in America today are related to the moral vision of the American Founders.

First, there are questions about the size and scope of government, in particular the role of the federal government in people's lives: How big or how limited should government be? Are liberty and responsibility endangered by a large central government that is driven by expansive notions of social welfare and by concerns about national security during the war on terror? How much national debt is compatible with a free society?

Second, there is the perennial debate about American exceptionalism. In the present context, it pertains to America's role in the world as the sole superpower: Are we still a moral example to all the world? Do we have a duty to use American power and influence to lead the world to freedom and self-government? What special conditions does freedom have that make it difficult to spread our ideals to other nations and cultures that do not have the crucial elements of republican liberty, such as the heritage of Anglo-American constitutionalism and the belief in natural law?

Third, we are in the midst of "culture wars" where the essential meaning of freedom or liberty is at stake: Is freedom the same as libertarianism or moral relativism, in which "anything goes" that does not harm others or break the law? Or does freedom require virtue and cultural traditions? Does liberty include gay marriage and abortion, or permit the legalizing of drugs, gambling, and prostitution? How should we balance liberty with other values, such as equality and security; and which value is supreme—liberty or equality or security?

To bring some of these debates into sharper focus, I would like to speculate on how the moral vision of the American Founders might be applied today—with the awareness that all these issues are highly controversial and open to legitimate debate. These are *my judgments* on how we might draw on the wisdom and experience of the American Founders to illuminate contemporary politics. The striking feature of our debates today is how much they arise (sometimes without acknowledging it) from the Founders' central idea of finding the proper balance for exercising ordered liberty—testing once again for our generation the "capability of a people to govern themselves."

On the first issue, of the size and scope of government, we can learn a great deal from the Founders. There is little doubt that the Founders' view of republican liberty implied limited government, because it meant that the people had to assume responsibility for their personal and civic lives. Of course, they disagreed about how extensive the powers of the central government should be, leading

to the first great partisan disputes between Hamiltonian Federalists and Jeffersonian Republicans. Despite this disagreement, I think one can say the common ground was a vision of a strong but limited central government.

The powers and limitations were clearly spelled out in the U.S. Constitution, Article I, sections 8–9 (listed above), and were meant seriously. The national or federal government had to be strong enough to overcome states' rights, factions, and sectionalism and unified enough to protect the nation and to create the infrastructure for a dynamic national economy. Today's idea of a centralized government—the modern welfare state that provides security from "cradle to grave"—was not envisioned by the Founders. It comes from the Progressive Era's redefinition of the meaning of "rights"—from protections against arbitrary power to entitlements from the state—requiring a vastly expanded view of the constitutional powers of the central government (even to the point of subordinating "constitutionalism" itself to personal leadership, as Woodrow Wilson famously argued in *Constitutional Government in the United States* [1908]).

These developments raise precisely the issue of republican self-government that concerned the Founders: Do we have the discipline and virtue to govern ourselves by limiting spending on welfare policies and national defense in order to live within our means to pay for them? Today the threat to responsible self-government no longer comes from kings or imperial rulers but from the ideologues of expansive government. Yet the challenge is the same: if "we the people" through our elected leaders cannot govern ourselves responsibly, then some external "master" will have to do it for us, whether it is the IMF, or the Chinese government, or a super–Federal Reserve chairman. Hence, it is not unreasonable when movements like the Tea Party use the rallying cry, "Read the Constitution." They are trying to connect republican self-government with constitutional limits on power and with moral virtue, in this case fiscal discipline exercised by its citizens and leaders. It is a way of invoking the Founders and reapplying their ideal of republican liberty in a modern context.

On the second major issue of today, American exceptionalism, we have to be more careful about reapplying the Founders' vision. They had a complex view of the message of the American Revolution for the world: it had universal implications, but America was a weak power at the founding compared to the European empires. As president, George Washington was an "isolationist" for prudential reasons, but he thought America had a universal message. The Founders were also aware of the tension between the universality of natural rights proclaimed in the Declaration and the special conditions of freedom found in Anglo-American-Protestant cultural traditions.

Today this tension emerges in U.S. foreign policy as well as in immigration issues. We sense a need for both the universalism of the Declaration's natural law and for the particularism or exclusiveness of "English-only" cultural conditions in America, as Samuel P. Huntington has forcefully argued in his book *Who Are We? The Challenges to America's National Identity* (2004). We also recognize the need to spread freedom to other nations, like Iraq and Afghanistan, but we need to be aware of limits imposed by cultural traditions that are unfavorable to republican liberty. The most prudent policy lies somewhere between the demands of neoconservatives and the retreat of isolationists—a policy that might be called "great power nationalism." It would recognize America's role as a global leader of the free world, but

it would be coldly realistic about the limits of military power and honestly admit the impossibility of regime change and nation building in countries with unfavorable historical conditions.

On the third major issue of today, the culture wars, we confront all the problems of balancing the ideal of a free society with the cultural traditions that make it possible and desirable. The American Founders were unusual as eighteenth-century leaders because they were shaped by both the old world of aristocracy and the new world of democracy. They believed in progress, enlightenment, and "a new order of the ages"; but they also revered the ancient Romans, English traditions of the gentleman statesman and common law, the religious basis of morals, and practical experience.

I would describe the Founders, somewhat paradoxically, as "enlightened traditionalists." They understood the special preconditions of ordered liberty, which distinguished liberty from license because it was based on certain God-given truths about the human person and the moral order of social life. They took for granted (perhaps naively) that the cultural preconditions of ordered liberty would always be there—in churches and stable family life, in local communities and social manners, in competitive economic life, in public education as well as in the arts, literature, and theatre. In today's moral climate, I think they would be deeply disturbed by the degeneration of the culture and would be on the conservative side of the culture wars, since responsible liberty is not moral relativism or libertarianism or mere self-expression. Ordered liberty needs the classical and biblical heritages of Western culture, and it is undermined by practices like banning displays of religion in the public square or redefining marriage and family to however the "equality of all lifestyles" is defined. The confusion of freedom with moral relativism is the most serious threat to the republic in the present age.

The main concern we should have today is losing the complex balance of political, legal, and social elements that the American Founders thought were essential for ordered liberty. We are moving toward a destructive mixture of centralized state power and permissive freedom—an irrational combination of the all-powerful state and rootless individualism that undermines ordered liberty at both ends by rejecting limited government and vital cultural traditions. My fear is that the elements of true freedom are being lost. My hope is that every generation will rediscover the American Founders and restore the balance they considered necessary for the proper exercise of republican liberty. †