

Creed & Culture in the American Founding

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The nature and implications of the American founding are notoriously matters of dispute. Within various schools of American conservative thought, there are those who claim that America was founded upon a principled understanding of natural rights, and those who maintain instead that America grew primarily from a set of inherited or customary understandings. The former group finds the roots of American order and liberty in philosophic principle, the latter in an historically evolved tradition. Or, more simply, the former emphasizes the creedal or universal side of America, the latter the cultural or particular side. The creedal understanding relies heavily on Locke's plain teaching, while the cultural understanding relies on America's inheritances from, most broadly, the Judeo-Christian tradition and, more specifically, the English common law tradition.¹

It is not my purpose here to rehash the details of this long-running dispute, or to take sides with or against any of its estimable participants. Rather, I want to suggest that America and Americans have been, and continue to be, formed by both creed and culture. By integrating to the extent possible these sometimes hostile positions, we can begin to see more clearly the true nature of America—and the nature of the intellectual resources we might bring to bear to offer a sustained defense of American principles and practices. The American founders themselves borrowed freely and non-dogmatically from both creedal and cultural sources, and so should we.²

The founders relied most notably on ideas articulated by John Locke and David Hume, the leading philosophical exponents, respectively, of principled and historical arguments about the foundations of political life. Reconsidering the American founding in light of the relationship between these two philosophers—rather than dilating on one or another of their arguments independently—allows us to address a question of central concern to all politics: the vexing relationship between freedom and order. It also allows us to address the extent to which America is a nation defined by universals—that is to say, ideas or principles, including natural rights, which apply to all men everywhere—or a nation defined by a much more particular and historically situated moral, political, religious, and cultural inheritance.

I will first deal with the meaning and significance of our creed, then of our cultural inheritance, and I will suggest two ways in which America might be seen as culturally constituted.

Our Creed and Its Critics

The word “creed” derives from the Latin for “belief” (credo) and is commonly understood to mean a formal and authoritative statement of doctrine. In the present context, I use it to refer to a philosophic, systematic account of fundamental principles that define America, because they are ideas to which Americans look in order to understand and articulate their purposes as a nation. Used in this sense, we can indeed say that the American experience, especially at the founding—but also since—has in fact been quite principled or creedal. The American creed, by the common assent of supporters and detractors both, is most notably expressed in the second paragraph of the Declaration of Independence with the assertion that we “hold these truths to be self-evident, that all men are created equal.”

Of course, there have been many disputes over the meaning of this formulation of American principles, the most notable one centering around understandings of the Civil War. Whatever one might think of the rectitude of the various positions on the Civil War, it is impossible to deny that a creedal or principled interpretation of America was central to the thinking of Abraham Lincoln, and that in some important respects, this interpretation triumphed, at least temporarily.

For Lincoln, we are a people—as are all people—endowed with certain inalienable natural rights. Natural rights stem from a fact of nature—our being equal as human beings. By equal, we can only mean politically equal, not the self-evident falsehood that men are equal in all respects. But how do we know we are politically equal? We use our reason to observe ourselves and others, and hence to come to the rational conclusion that no man is so markedly superior to another, or specifically marked out by God, so as to be entitled to rule without the consent of the ruled. We exist as in-between beings, neither beasts nor gods. Consent—and therefore, the legitimate formation of government by means of a social contract—is an inexorable conclusion of an observable fact of nature, independent of all customs, conventions, traditions, and cultures. And indeed, all liberal democratic forms of government recognize, if not explicitly then at least implicitly, the fundamental fact of human equality. Not to recognize such equality is to argue for another form of government, a non-liberal-democratic form.

All this, of course, can be gleaned from John Locke’s Second Treatise. The influence of Lockean ideas is quite evident not only in the Declaration of Independence and Jeffersonian thought, but also in the thinking of most other prominent founders, representing a wide spectrum of views in the founding era. It is also evident in some sermons of the period, in various ratification debates leading up to state constitutions, and in various state constitutional documents.³

None of this is to deny that particular grievances, and Protestant piety, moved the hearts of Americans during the founding era. But at the same time, the intellectual coherence of the political actions of Americans in this era is provided by a principled social-contractarian formulation. One way to express this principled formulation is that America is a nation of Lockean natural rights. That America, and many of the most prominent Americans, have dedicated themselves to this proposition is clear: it remains the 800-pound gorilla in the living room of American politics. We see its influence even today. George W. Bush’s claim that freedom is not America’s gift to the world, but God’s gift to all mankind, might to some sound a note of Wilsonian progressivism. But as a statement of principle, duly limited by prudent statesmanship as to what is actually attainable, it is quite compatible with the American creed—and in particular, with a theory of natural rights that shows rights exist by nature, the bequest not of a government but of a just and omnipotent God.

Lockean social contract theory was stillborn in Europe, due in no small part to the

intellectual assault launched upon it by David Hume, its greatest critic. In America, by contrast, the doctrine lived—albeit fighting for its life at times—through the early twentieth century. It succumbed (notwithstanding occasional restatements by figures as diverse as Calvin Coolidge, Martin Luther King, Jr., Ronald Reagan, and the current president) only to a dogma of historical progress marshalling the combined forces of social Darwinism, pragmatism, twentieth-century Progressivism, and modern liberalism. Such longevity and resilience is difficult to account for except by recourse to the importance of the creed to the American founding, and the importance of the founding to later Americans.

The natural rights interpretation of the American founding has many critics, on both the left and right. Common to the left liberal critiques are several intertwined concerns. Political and economic statisticians fear natural rights doctrines because they see them tied up with property (as Locke indeed says they are), and therefore as standing in the way of the growth and flourishing of the administrative state. Multiculturalists attack natural rights doctrines because natural rights emphasize what is common to human beings, showing further that human commonalities have priority over human differences. Moral skeptics, in alliance with multiculturalists, claim that natural rights simply do not exist, because no common or universal morality does. Meanwhile, the atheist strain of left-liberalism will not countenance anything being God-given, much less rights that might stand as principled bulwarks in the path of certain political, economic, and cultural goals.

Conservatives evince other suspicions of natural rights doctrines. For many traditionalist conservatives, natural rights language has a revolutionary appeal (which they see in the rhetoric of George W. Bush). In this view, universal natural rights principles applying equally to all quickly lead away from the preservation of the existing rights of citizens in actual political communities to a kind of unlimited, French-Revolutionary style of politics dedicated to radical theoretical abstractions. These traditionalists prefer to see America as a continuation of a certain religious inheritance and of Anglo-American traditions and governmental forms. For them, continuities—not discontinuities—are what define the American founding, and therefore America. They see American rights as outgrowths of distinctly British (as opposed to natural) rights. Another, overlapping type of conservative critique—what we might call the “classical republican” variant of conservatism—sees an emphasis on rights, natural or otherwise, as undermining something more important to the maintenance of a decent civil society: namely, virtue, and indeed citizenship, as opposed to mere aggressive individualism.⁴

Our Culture as an Intellectual Inheritance

“Culture” derives from the Latin (*cultura/ colo*), meaning to care for, refine, grow, or raise up, especially in an agricultural sense. When applied to public questions, culture is commonly understood to have an organic or historical as opposed to a philosophic or creedal connotation. Cultural conditions are the soil and fertilizer in which political systems take root and grow and out of which they define themselves with reference to particulars: this land and this people, as opposed to the cosmos.

We cannot gloss over the fact that our creed reveals itself in the context of a particular history and culture. Indeed, if we grant that natural rights principles are universal, this by no means implies that they can be implemented universally, or even recognized by all. Cultural traditions often cut against the acknowledgment of natural rights. Even in the United States, one can say that constitutional democracy was by no means inevitable. The American founders thought and acted with great originality and boldness, and they had broad sympathy for the

nascent principles of liberty. But had America not been settled largely by Englishmen, or at least those familiar with the English conception of liberty, it would, without question, have been a very different country. American understandings and institutions simply would not have taken the shape they did had not the founders been profoundly influenced by the constitutional history, political philosophy, and common law doctrines that came from England.

For many of the founders, the constitutional history of England was the story of the gradual limitation of royal power, from Magna Charta (1215), to the Petition of Right (1628), to the development of the common law and independent courts, to the “Glorious Revolution” of 1688-89. Of this latter event, Locke’s Second Treatise gave a theoretical account, arguing that legitimate sovereign power comes only from a compact between the people, acting through parliament, and the king.⁵ By the mid-1760s, this social compact theory was explicitly influencing many members of the founding generation, from the pulpits to the pamphlets. As Henry Steele Commager has argued, what united the founders— even a Jefferson and Hamilton—far outweighed what divided them. ⁶ Beyond English

constitutional history, they were steeped in a uniquely American Enlightenment, which drew on a great wellspring of common ideas and historical events, from classical to modern times. This background was the soil in which a vigorous Whig history took root.

In expounding and institutionalizing certain principles, the founders relied on an historically situated narrative, which led to their—our—creed. Natural rights and social compact theory do not exhaust the founders’ understanding of founding.

And there is a lesson in this for the present, a cultural imperative of the highest order. A reinvigorated history of the kind the founders were exposed to would help us get our story straight. To get it straight, we do in fact need to know where we came from, not simply what our philosophical premises are. For the founders understood well that these premises could inform the American experiment only because they were made plain in a particular tradition. And the founders knew yet more: that in the here-and-now, the realization of natural rights does not happen merely in accordance with philosophical reasoning. Rather, the extent and limits of rights—and obligations— are marked out in time, organically as it were, as a society grows.

Our Culture as Accretion

We are thus led to another sense of culture, one that has particular appeal to many conservatives. That is, culture or tradition not as an explicit intellectual borrowing and building, but as a more inchoate set of inheritances, and incremental articulations of these inheritances. Here, I am speaking of traditions that are understood, in many cases, pre-rationally. That is, they are understood as things that are given, imbibed, or revealed, rather than argued for. They might well have a kind of collective rationality arising from usage and long experience, but they are not understood this way by most people—they are simply accepted. They include traditions that predate Lockean natural rights liberalism, or anything that directly led up to it, and they do not necessarily argue—at least unequivocally—for equality and consent as organizing principles of just societies.

One way to express this cultural or organic formulation is to suggest that America is less a Lockean, and more a Humean nation, i.e., one that can be understood along the customary lines suggested by David Hume.⁷ Hume claims that man’s moral and political sense come not from reason but from sentiment rooted in long experience with the moral and political things—with culture. There are few if any absolutes or universal principles that can define our loyalties or guide our actions. We rely less on reason than on cultural memory for our sense of the just.

Therefore, the act of political founding relies on the fixing of sentiments around certain ideas and political forms rather than on abstract philosophic reasoning—and certainly the maintenance of these forms depends on unity of sentiment, or cultural consensus. Hume notes that most people actually experience their allegiances in terms of historical accident rather than rational principles. To hold open the possibility of uprooting habitual ways of thinking and being by recourse to an abstract principle is radically destabilizing, not only for politics or public morality, but for private morality as well. Government's job is to tame the most destructive passions rather than to inflame them by reliance on abstractions. For a decent politics, spontaneous order is far more crucial than philosophic reason.

There is indeed something to be said for the importance of this view to the founders' way of thinking. One can find universal, liberal principles embedded through and through the founding, but so can one find genuinely conservative principles. Reason and custom were blended in a set of ideas and institutions that were understood to rely on prescription for their force.

Even the Declaration of Independence itself pointedly notes that "Prudence, indeed, will dictate that Governments long established should not be changed for light and transient Causes; and accordingly all Experience hath shewn, that Mankind are more disposed to suffer, while Evils are sufferable, than to right themselves by abolishing the Forms to which they are accustomed." (The emphases are mine.) If there be outrage in the Declaration, it comes not from a dangerous attachment to abstractions, but from a set of very particular grievances that are grievous only by comparison with customary expectations. A particular notion of constitutionalism—only later to be written down—is embedded in the Declaration. As James R. Stoner has noted, "The outrage comes from a hidden premise: the English constitutional tradition, or at least the common law rights and liberties of that tradition, which the Americans claim as their rightful heritage."⁸ This is a tradition that contains within it something it has not yet fully achieved, and what it has achieved, it has not yet transferred to America. The Declaration looks forward only because it also looks backward.

In the second Federalist we also find arguments quite far from social compact theory. There, John Jay claims that, "This country and this people seem to have been made for each other, and it appears as if it was the design of Providence that an inheritance so proper and convenient for a band of brethren, united to each other by the strongest [historical and cultural] ties, should never be split into a number of unsocial, jealous, and alien sovereignties." Here we see a markedly Humean understanding of founding: one that emphasizes culture and de-emphasizes reason, or at least suggests that our creed cannot be separated from our culture.

In the constitutional scheme, the founders attach great importance to the slow development of public sentiments, sometimes uniting for common purposes, other times placing checks on destructive passions. Reason, or high philosophic principle, cannot much aid in this process, which occurs by the coalescing and dividing of public opinion in a large republic that is suspicious of hastily arrived at or shoddily interpreted absolutes. We might be created equal, but society naturally articulates itself into interests, opinions, and passions that require tempering by allowing them to compete for a hold on the public attention.⁹ Private rights and the public good are promoted not through immediate recourse to high principle, but organically. Destructive impulses are controlled, and collective reason asserts itself incrementally. In Federalist 49, Madison argues against Jefferson's plan to turn constitutional controversies over to the people because agitating the popular passions would make constitutional government

unlovable. Despite the apparent consonance of Jefferson's plan with the principle of consent, the Constitution recognizes that all functioning consensual mechanisms require the support of prejudice and habit. There are many other particular mechanisms and institutions (such as the Senate) that were designed to act as decisive checks on immediate, unreflective popular sovereignty, with the aim, among other things, of preventing radical swings of public mood from affecting public policy.

And apart from, or rather assumed by, the constitutional framework are all the things the founders did not change, despite their "new science of politics." The founders rarely doubted the centrality of Christian religion and morality to the success of the American experiment. They believed that reason and revelation were true guides to human affairs, both pointing in the same direction on questions of natural rights and moral conduct. Despite this comity, George Washington in his Farewell Address makes plain his view that traditional religion, more than philosophy, can reliably instruct and discipline the many.

The English common law also was accepted by most of the founders, who were steeped in it through their readings of Sir Edward Coke and William Blackstone. In his *Institutes of the Laws of England*, Coke saw the common law as a working out and application of fundamental law in English circumstances. Law emerges slowly, incrementally, but the law of nature—God's law—is always in the background, preceding, grounding, and restricting all human law. Human law grows out of the soil—out of the culture of the nation—as it confronts practical problems. But long experience and the prescriptive wisdom of past generations move the law toward perfection, such that English positive law, rooted in this wisdom, reflects divine reason. Hence the glory of the common law—it confronts problems individually and specifically without excessive reliance on grand philosophical theorizing. For Coke, law does not rely on an unrooted "natural" reason that can be used to upend traditional arrangements. Rather, the reason of things reveals itself in the details. For the founders, the inherent value of the rule of law comes to sight through this deeply conservative understanding of the common law.¹⁰

By the 1790s, Blackstone's relatively new *Commentaries on the Laws of England* outstripped Coke as the definitive expositor of common law principles for the Americans. Blackstone, unlike Coke, concerned himself with modern rights theory and its relationship to the common law. In other words, there is more Enlightenment liberalism in Blackstone, who was writing a century later. The point of political community for Blackstone is to preserve the rights of each individual member—though he does not subscribe to a state of nature theory as does Locke. Blackstone is able to put Lockean and Humean ideas together and weave them into a common law constitutionalism. In reading Blackstone, the founders came to see natural rights and the social compact as congruent with the common law. As Michael Zuckert has argued, they therefore did not, like the French, feel the need to throw out their ancient legal code, for it was at once both ancient and modern, protecting the rights not only of Englishmen, but of men simply. "Partly because of Blackstone, the Americans could at once think of political society as a rationalist product of a social compact and as an entity shaped and governed by a law built on custom, deriving its authority from its antiquity and 'grown' character."¹¹

Conclusion

All these things point to the inherent caution and prudence of the founders, and their understanding of the necessity to rely to some degree on Burke's wisdom of the species. The founders intentionally, and sometimes unintentionally, blended and blurred Lockean individualism and Humean traditionalism. At the very end of *The Federalist*, Alexander Hamilton

is moved to quote Hume: “To balance a large state or society...on general laws, is a work of so great difficulty that no human genius, however comprehensive, is able, by the mere dint of reason and reflection, to effect it. The judgments of many must unite in the work: Experience must guide their labor: Time must bring it to perfection: And the feeling of inconveniences must correct the mistakes which they inevitably fall into in their first trials and experiments.”¹²

Hamilton then immediately goes on to exalt as a prodigy the establishment of the Constitution with the consent of the whole people.

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Notes:

1. Those who see America in creedal terms, though they disagree over the nature and significance of the creed, include Michael Zuckert and Thomas G. West. See, for example, Zuckert's *The Natural Rights Republic* (Notre Dame: University of Notre Dame Press, 1996), and his “Natural Rights and Protestant Politics,” in Thomas S. Engemann and Michael P. Zuckert, *Protestantism and the American Founding* (Notre Dame: University of Notre Dame Press, 2004): 21-75, and West's *Vindicating the Founders* (Lanham, MD: Rowman & Littlefield, 2001), and his “The Transformation of Protestant Theology as a Condition of the American Revolution,” in Engemann and Zuckert, *Protestantism*: 187-223. Those who emphasize cultural continuities, and particularly religious continuities, include Barry Alan Shain and Peter Lawler. See, for example, Shain's *The Myth of American Individualism* (Princeton: Princeton University Press, 1994), and Lawler's “Religion, Philosophy, and the American Founding,” in Engemann and Zuckert, *Protestantism*: 165-185. James R. Stoner has made the case in these pages that there is much more to the Declaration than its most famous lines. It contains a list of grievances—not much read anymore—indicting the king for acts contrary to the common law rights and liberties of Englishmen. See Stoner, “Is There a Political Philosophy in the Declaration of Independence?” *The Intercollegiate Review*, vol. 40, no. 2 (Fall/Winter 2005): 3-11. These readings are merely the tip of a very large iceberg.

2. The debate over the founding is to some extent a debate over who the founders were and therefore the kinds of documentary evidence one should rely on to understand the nature of the founding moment or moments. Those who favor the creedal interpretation tend to understand the founders as the most prominent statesmen and opinion leaders of the day, who expressed their understanding in public documents, pronouncements, and sermons, and in private correspondence. They were the “authors” of important state papers, including the Constitution. Those who favor cultural interpretations tend to see the founders more as the ordinary citizens of the day, whose lives and correspondence seem on the whole markedly unphilosophical. They were the “ratifiers” and “receivers” of the founding texts. I am here concentrating on the former group in order to avoid the myriad problems associated with reducing the political to the subpolitical. Yet at the same time, I hope, I am giving culture its due—even in the understandings of America's greatest founding statesmen.

3. For example, the Delaware and Maryland Declarations of Rights (1776) assert that, “All government of right originates from the people and is founded in compact only”; the Virginia Declaration of Rights (1776) claims that “all men are by nature equally free and independent,” with certain “inherent rights” that they cannot by “compact” divest themselves of; the Pennsylvania constitution (1776) asserts that “all men are born equally free and independent”; the New Hampshire constitution (1776) claims, “All men are born equally free and independent; therefore, all government of right originates from the people, is founded in consent, and instituted for the general good,” while the New Hampshire constitution of 1784 asserts that “All men have certain natural, essential, and inherent rights—among which are, the enjoying and defending of life and liberty; acquiring, possessing, and protecting property; and, in a word, of seeking and obtaining happiness”; and the Massachusetts constitution of 1780 asserts that, “The body politic is formed by a voluntary association of individuals: it is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good.... All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.”

4. The other side of this argument is that Lockean theory as the founders understood it serves not as an accelerator but as a brake on demagogic egalitarianism or individualism—as Lincoln argued in his Lyceum and Temperance addresses. Natural rights are self-limiting in that they invoke nature. One needs first to know what human nature is—what type of creature one is referring to, or what is appropriate to this type of creature by nature. This knowledge is necessary to begin, and ultimately to end, the discussion of rights and their corresponding duties. And these are things that can be reasoned about. They do not, and cannot, depend on mere will, or tradition, for will is fickle and tradition sometimes indefinite and sometimes simply wrong. Even the most strident critics of some of the founders do not accuse them of moral libertinism. One can, of course, make the case that the founders were steeped in the notion of virtue, public and private, from their reading of the classics. But natural rights too provide the ground for a manly assertiveness in pursuit of something beyond individual satisfaction. See Harvey C. Mansfield, “Democratic Greatness in the American Founding,” *The Intercollegiate Review*, vol. 40, no. 2 (Fall/Winter 2005): 12-17.

5. Hume too praised the Glorious Revolution, but emphasized its moderation and conservative nature as a reassertion of established practices.

6. Henry Steele Commager, “Leadership in Eighteenth Century America and Today,” in *Excellence and Leadership in a Democracy*, ed. Stephen R. Graubard and Gerald Holton (New York: Columbia University Press, 1962): 25-46.

7. I develop this argument at greater length, concentrating on its specific connection to David Hume, in “Hume, Historical Inheritance, and the Problem of Founding,” in Ronald J. Pestritto and Thomas G. West, eds., *The American Founding and the Social Compact* (Lanham, MD: Lexington Books, 2003): 75-94.

8. “Is There a Political Philosophy in the Declaration of Independence?": 5.

9. This is an idea that Madison, in *Federalist 10*, borrows in part from Hume, especially his essay on the “Idea of a Perfect Commonwealth.”

10. For a good short summary of this conservatism, see Kevin Ryan, “Coke, the Rule of Law, and Executive Power,” *The Vermont Bar Journal*, vol. 31, no. 1 (Spring 2005).

11. Michael Zuckert, "Social Compact, Common Law, and the American Amalgam: The Contribution of William Blackstone," in Pestritto and West, eds., *The American Founding and the Social Compact*, 42-43.

12. See Hume, "Of the Rise and Progress of the Arts and Sciences," in *Essays, Moral, Political, and Literary*, ed. Eugene F. Miller (Indianapolis: Liberty Fund, 1985), 124.

Significant Excerpts

"And there is a lesson in this [the founders understanding of what they were doing] for the present, a cultural imperative of the highest order. A reinvigorated history of the kind the founders were exposed to would help us get our story straight. To get it straight, we do in fact need to know where we came from, not simply what our philosophical premises are. For the founders understood well that these premises could inform the American experiment only because they were made plain in a particular tradition. And the founders knew yet more: that in the here-and-now, the realization of natural rights does not happen merely in accordance with philosophical reasoning. Rather, the extent and limits of rights—and obligations— are marked out in time, organically as it were, as a society grows."

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