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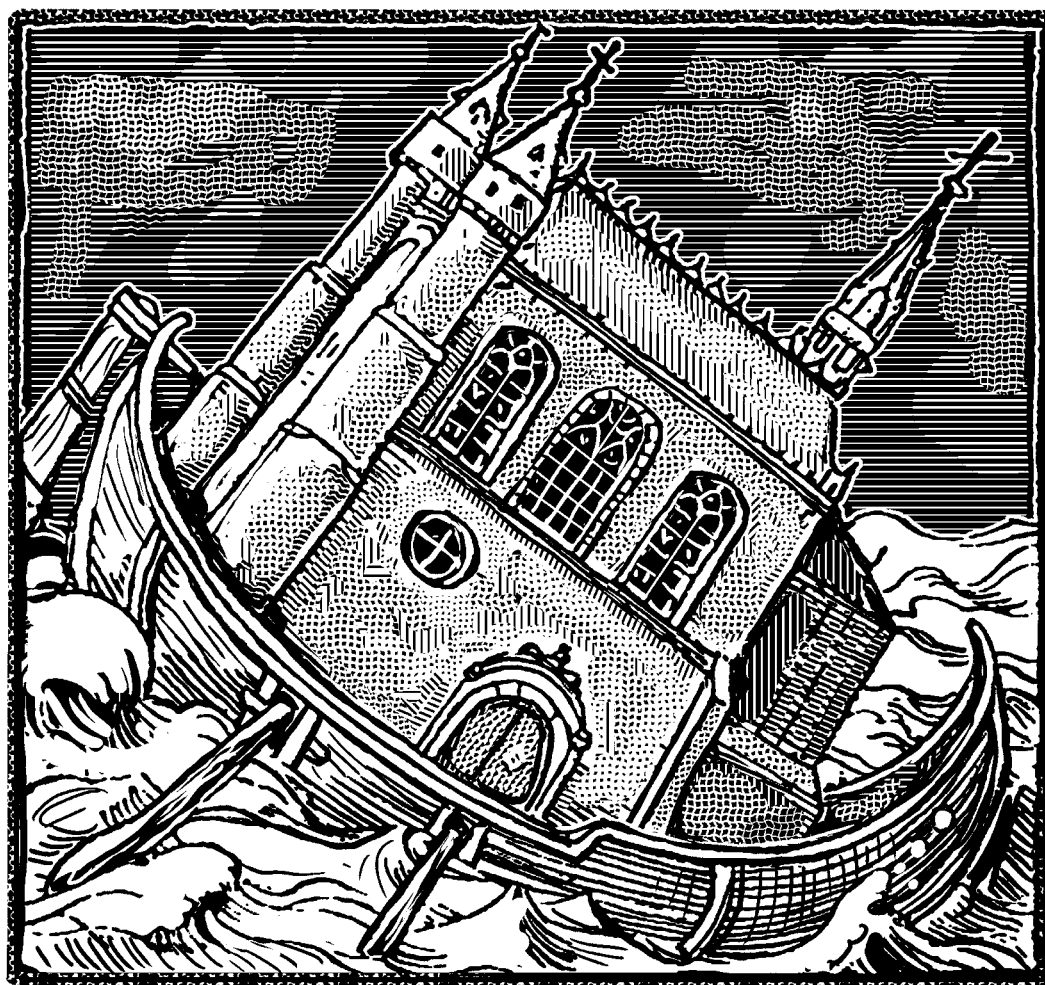
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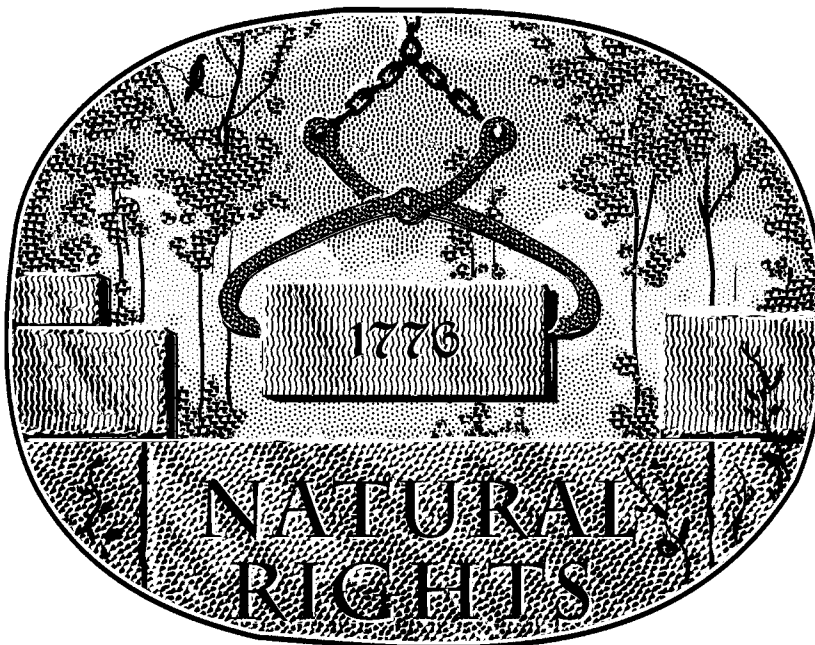
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THE FOUNDERS IN FULL

The Political Theory of the American Founding: Natural Rights, Public Policy, and the Moral Conditions of Freedom,
by Thomas G. West. Cambridge University Press, 428 pages, \$34.99



AS DISCUSSED BY ROBERT REILLY IN THE CRB's summer issue ("For God and Country"), it has become fashionable in certain conservative intellectual circles to blame our current social and political pathologies on the American Founding. In his widely discussed 2012 essay in *First Things*, "Unsustainable Liberalism," to take a leading example, my Notre Dame colleague Patrick Deneen suggested America's liberal experiment has failed and, in fact, was always doomed to fail. Influenced in part by Alasdair MacIntyre, Deneen and other critics interpret America to be a part of the modern project of unrestrained emancipation: rights without duties, autonomy without morality, freedom without responsibility. The principles of the American Founding are not worth conserving, they suggest, because those very principles have led to spiritual, moral, and political decay.

In his sweeping new book, *The Political Theory of the American Founding: Natural Rights, Public Policy, and the Moral Conditions of Freedom*, Thomas G. West ably demonstrates that those critics badly misunderstand the founding. The Paul Ermine Potter and Dawn Tibbets Potter Endowed Professor in Politics at Hillsdale College and a senior fellow at the Claremont Institute, West articulates the founders' shared political philosophy

and explains how it animated their public policy. In doing so, he reveals the *moral* foundations of America's natural rights republicanism and uncovers the founders' underappreciated efforts to sustain a good and decent regime through the cultivation of moral character and economic justice. West's aim is one of recovery, not advocacy—he likens his effort to archaeology—but in rediscovering America's intellectual heritage, he also provides a basis for conservative patriotism as well as the outline of a public policy based on natural rights.

THE BOOK OPENS WITH A SUBSTANTIAL seven-chapter presentation of the founders' political philosophy. West wisely focuses on official public documents, including state constitutions and bills of rights, to avoid overemphasizing the private thought of Thomas Jefferson or James Madison or any other individual founder. West's stated goal—in which he largely succeeds—is to "bring out the agreement" among the founders and to explain "why the founders set up the regime they did."

Rejecting a version of the "amalgam" thesis suggested by Michael Zuckert in *Natural Rights and the New Republicanism* (1994) and *The Natural Rights Republic* (1997)—that the founders blended disparate elements of liberalism (individual rights, freedom), republican-

ism (common good, equality, morality) and Protestant Christianity into a workable mixture—West holds that, "the natural rights doctrine—including the concepts of equality, the laws of nature, and the social compact basis of government—is the core of the founders' political theory." And at that core of the core is the principle of natural human equality. Following the late Harry V. Jaffa, West holds that the founders understood equality to mean that no human being is born inferior in the sense of being naturally subject to the dominion of another. All adult individuals, in other words, have a natural and equal title to govern themselves. The principles of equality and liberty thus understood do not contradict each other but, rather, form two sides of the same coin. To say "all men are created equal" (Declaration of Independence) is to say "all men are born equally free and independent" (1784 New Hampshire Bill of Rights).

Natural rights, the idea of the state of nature, and social compact theory follow from the principle of natural equal liberty. Because all men are equally free by nature, they have moral claims vis-à-vis one another, i.e., natural rights. Among those rights is the right not to be compelled to be a member of a political community. Just government, accordingly, must be instituted via the consent of the

governed, and if an individual is born into an existing social compact, he or she has a natural right to emigrate. If a government fails to respect natural rights and consent, then the people may exercise their right to alter or abolish it.

WEST HELPFULLY AND CLEARLY explains that the founders advanced these concepts as moral doctrines. Their state-of-nature social compact theory is not falsifiable by demonstrating its historical shortcomings or even the founders' own failures to meet its demands. To suggest as much, as leading Progressive-era political scientists did and many political scientists still do, is to fail to understand the type of argument it is. The founders' political philosophy offers itself as a theory of justice, not a scientific or historical account of state formation. That theory certainly informed the founders' practice, but the theory itself stands (or falls) on its own. Indeed, the founders' failures in practice—most notably, the continuation of slavery in a regime based on equality—are most clearly seen in light of their principles.

Those principles, West confidently concludes, are not derived from Thomas Hobbes. The founders believed in an objective moral law springing not from the passion for self-

preservation, but rather from "nature and nature's God." The orderly structure of nature, including human nature, which reflects the Creator's will and design, was understood to include a moral law of which natural rights were a part. West cites the following passage from Alexander Hamilton's "Farmer Refuted" essay as an example of the founders' understanding:

Good and wise men...have supposed, that the deity, from the relations, we stand in, to himself and to each other, has constituted an eternal and immutable law, which is, indispensably, obligatory upon all mankind, prior to any human institution whatever. This is what is called the law of nature.... Upon this law, depend the natural rights of mankind.

West states candidly that without a sovereign God the notion of a morally obligatory law of nature is not possible. This would seem to suggest that the moral obligation to respect others' natural rights requires the sanction of divine authority. Yet he holds that even absent belief in a divine legislator, philosophical reflection about the essential role of freedom in human happiness—not to mention the sober realization that we are governed by men, not

angels—sufficiently supports the founders' natural rights doctrine. Mixing the precepts of ancient and modern political philosophers, West teaches that individual freedom is an essential aspect of political justice, and that following the dictates of justice is its own reward.

WHETHER OR NOT WEST'S OWN amalgam is correct, all agree that the founders did not rely on philosophy alone to sustain their natural rights republic. When the book turns to the founders' political practice, it takes an unusually interesting turn. Rather than examine the Constitution's design or the arguments presented in *The Federalist*—as scholars typically do—West explores what might be called natural rights public policy. In doing so, he uncovers long neglected evidence of the founders' efforts to cultivate citizens' moral character through public education, government support of religion, and the promotion of the traditional family.

Public education, especially university education, was designed to promote knowledge of natural rights and obedience to the law of nature. The purpose of pre-university education, Jefferson wrote, is "to instruct the mass of our citizens in these, their rights, interests, and duties, as men and citizens." The 1789 act

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chartering the University of North Carolina declared that “it is the indispensable duty of every legislature to consult the happiness of a rising generation, and endeavor to fit them for an honorable discharge of the social duties of life, by paying the strictest attention to their education.” In his First Annual Message to Congress, President Washington encapsulated the founders’ concern with education and how they understood it to be essential to the maintenance of political liberty:

Knowledge is, in every country, the surest basis of public happiness.... To the security of a free constitution it contributes in various ways: by convincing those who are entrusted with the public administration, that every valuable end of government is best answered by the enlightened confidence of the people; and by teaching the people themselves to know and to value their own rights; to discern and provide against invasions of them; to distinguish between oppression and the necessary exercise of lawful authority; between burdens proceeding from a disregard to their convenience, and those resulting from the inevitable exigencies of society; to discriminate the spirit of liberty from that of licentiousness—cherishing the first, avoiding the last; and uniting a speedy but temperate vigilance against encroachments, with an inviolable respect to the laws.

Within a generation or so after the founding, West reports, most of the Northern states and a few in the South funded public schools, privately owned “academies” (high schools), and universities. The federal government funded education in the federal territories where it had authority to do so.

BECAUSE NOT ALL WOULD ATTEND UNIVERSITIES and because university education, even then, did not always result in moral virtue, the founders took steps to encourage religion, too. West notes, correctly, that none of the original 13 states held state endorsement of religion to violate the rights of religious freedom. Insofar as religion fostered the common good of morality, it was believed

to be a legitimate object of public concern. Indeed, several founding-era state constitutions explicitly authorized tax support of religious ministers as a way to cultivate an educated and moral citizenry. Religious liberty required only that individuals not be coerced to practice religion or penalized for not practicing it. West acknowledges that Jefferson and Madison held somewhat contrary views to what he presents as the founders’ common position. He could have reconciled some of those differences by recognizing that while Madison believed religion could help cultivate citizen virtue, he also was deeply skeptical of government’s ability to cultivate sound religion—a point on which it’s not so clear Madison was wrong.

The most fundamental way the founders sought to cultivate morality, however, was through healthy marriages and intact families. West writes that the founders understood traditional marriage to be part of the natural rights republic for the same reason religion is—it’s necessary to cultivate the moral citizenry necessary for a successful free society. Hence, the founders adopted state laws punishing fornication and sodomy, and promoting traditional marriage. They sought to constrain sexual licentiousness and protect the family because through intact families, parents (especially fathers) are most likely to fulfill their natural duties to their children. Quoting John Witherspoon’s *Lectures on Moral Philosophy*, West concludes, “From the perspective of the social compact, the main purpose of the ‘union of parents’ is the ‘common care’ of the children.”

Interestingly, West reports that the founders were lax in enforcing their prohibitions against homosexual activity. In practice, he says they adopted the original “don’t ask, don’t tell” policy, an approach that basically lasted until Progressive-era visionaries, inspired by utopian notions of moral perfection, sought to use the force of law to eliminate human vice. Nonetheless, given contemporary mores, the book’s portrayal of the founders as moderate social conservatives is bound to be scorned. West should be applauded, though, for uncovering and articulating the founders’ “political theory of the family,” a topic that has received scant

attention (one notable exception being Scott Yenor’s 2013 report for the Heritage Foundation, “The True Origins of Society: The Founders on the Family”).

ATENTION TO MORALITY ALSO ANIMATES West’s treatment of the founders’ political economy, the other major area of natural rights public policy he examines. An inherent aspect of mankind’s equal natural liberty, he explains, is the individual’s ownership of his own labor, which includes the right to use his talents to acquire property and the right to enjoy the fruits of his labor. Natural justice, then, demands that political communities recognize individuals’ rights to 1) own and use property in land and other goods and 2) sell or give property to others on terms of their own choosing. Respect for the natural rights of property also demands 3) government support of sound money. These basic elements of a free market economy all follow from our natural human equality.

West emphasizes how much governmental action is needed to protect the natural rights of property. Government must survey land so it can be divided and sold, establish a nonmanipulable medium for exchange, prohibit monopolies, recognize and protect intellectual property, establish rules and regulation to facilitate commerce, and create courts of justice to adjudicate disputes. Libertarians may favor free markets, but West argues that free markets would not have thrived in America without government.

By reintroducing the moral underpinnings of the founders’ natural rights republic, Thomas West has made an extraordinary contribution to our understanding of American political thought. He shows that the founders’ republicanism is *a part of* their liberalism; that duties and rights, properly understood, are not at odds. In doing so, *The Political Theory of the American Founding* not only helps us better understand America’s principles, it explains why we ought to cherish them and fight to restore them to their rightful place in our political life.

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