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16th Jefferson Lecture in the Humanities

THE INTELLECTUAL WORLD OF THE FOUNDING FATHERS

by
Forrest McDonald

It has been suggested by various intellectuals that the best thing Americans could do to commemorate the 200th anniversary of our Constitution would be to rewrite it to reflect the realities of the twentieth century. It has been suggested by various jurists that the Supreme Court is, and should be, doing just that. The assumption underlying both notions is that our pool of knowledge and understanding about human nature and political institutions is far more sophisticated than any that could have been available in the simple frontier society of eighteenth-century America.

That assumption is as presumptuous as it is uninformed. To put it bluntly, it would be impossible in America today to assemble a group of people with anything near the combined experience, learning, and wisdom that the fifty-five authors of the Constitution took with them to Philadelphia in the summer of 1787. As an appetizer, I offer a couple of corroborative tidbits. Thirty-five of the delegates had attended college. Just to enter college during the eighteenth century -- which students normally did at the age of fourteen or fifteen -- it was necessary, among other things, to be able to read and translate from the original Latin into English (I quote from the requirements at King's College -- now Columbia -- which were typical) "the first three of Tully's Select Orations and the first three books of Virgil's Aeneid," and to translate the first ten chapters of the Gospel of John from Greek into Latin, as well as to be "expert in arithmetic" and to have a "blameless moral character." I ask you, how many Americans today could even get into college, given those requirements?

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Moreover, though the Framers were, as Jefferson called them, a group of demigods, it would have been easy in America in 1787 to have assembled another five, possibly ten, constitutional conventions that would have matched the actual convention in every way except for the incomparable lustre of George Washington. After all, neither Jefferson nor John Adams was in the Great Convention, nor was John Hancock, Noah Webster, Richard Henry Lee, Sam Adams, David Rittenhouse, Benjamin Rush, Fisher Ames, John Taylor or John Jay. Indeed, the state convention which ratified the Constitution in Virginia in 1788 included among its members (not counting five who had sat in the Philadelphia Convention) John Marshall, Patrick Henry, Edmund Pendleton, Light-Horse Harry Lee, Bushrod Washington, William Grayson, and James Monroe, along with thirty or forty less prominent but no less able men.

In fine, this was America's Golden Age, the likes of which we shall not see again. I shall attempt, in the observations that follow, to describe for you how that Age came to be, to outline the Founders' understanding of the nature of man and society, and to persuade you that departing from what they bequeathed to you and to me is a departure from the path of wisdom and virtue.

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The roots of America's eighteenth-century flowering are to be found in part in the interplay between the physical environment and the cultural and institutional baggage that immigrants from the British Isles had brought with them to the New World. Nature's bounty was rich in the areas settled by the British, though scarcely more than in those settled by the French and the Spanish. But whereas the French kept their colonies under rigid political control from Paris, and the Spanish transplanted entire institutional superstructures in theirs, the British suffered their colonies to develop for more than a century and half under what has been called benign neglect.

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As a consequence, British-Americans could pick and choose among the institutions of the mother country, adapting those that were useful and casting off the rest. Among those that were never successfully planted in America were Britain's hereditary class structure, the bishopric and (except on a local basis) mandatory religious conformity, an economic order in which upward mobility was difficult at best and impossible for most, and a Parliament whose power was theoretically unlimited. Among the English institutions and attitudes that were firmly planted in America were the traditional idea that government must be lawful; the common law, which was adopted selectively, colony by colony; the practice of settling disputes through juries; reliance upon militias of armed citizens for defense and the preservation of order; and the belief that the ownership of land, or possession of other property sufficient to ensure an independent livelihood, was a prerequisite to full rights and duties of citizenship. These, together with the development of such indigenous creations as the town meeting, virtually indigenous practices such as the responsibility of church ministers to their congregations, and the ready availability of land, bred a citizenry that was at once self-reliant and interdependent. What is more, the scheme of things required widespread participation in public affairs through face-to-face mechanisms, largely outside the framework of formal government. The daily business of life thus schooled Americans for responsible citizenship and for statesmanship.

Next in importance was that Americans were literate. Precisely what the literacy rate was cannot be determined -- even to talk about "rates" is misleading, for they were literate but not numerate, which is to say that they had not fallen victim to the modern delusion that quality can be measured in numbers -- but it is clear that, thanks to the public school systems in the North and the proliferation of private academies and Scottish tutors in the South, a greater percentage of citizens could read and write than was true of any other nation on earth, and a

greater percentage than can do so today. Furthermore, Americans who had had any schooling at all had been exposed to eight- and ten-hour days of drilling, at the hands of stern taskmasters, in Latin and Greek. This was designed to build character, discipline the mind, and instill moral principles, in addition to teaching language skills. (Educated French military officers who served in the United States during the Revolution found that, even when they knew no English and Americans knew no French, they could converse with ordinary Americans in Latin.)

Some indication of what reading meant to Americans can be seen by reference to the newspapers of the day. Nearly four times as many newspapers were published in the United States as were published in France, though France had six times as many people and was the most literate nation on the European continent. American papers rarely carried local news, on the assumption that everybody knew what was happening locally; instead, they reported what was taking place in other states and nations. Into New York and Philadelphia alone, two thousand ships a year arrived, bearing information as well as goods from all parts of the Atlantic world, and that information was routinely recorded in the newspapers, so that ordinary farmers and shop-keepers and craftsmen were kept abreast of affairs from Vienna to Venezuela, from Madrid to Moscow, from London and Paris to Martinique and Jamaica.

And the readers were sophisticated as well as cosmopolitan. Let us recall that the Federalist essays, the classic analysis of the Constitution and one of the most profound treatises on political theory ever penned, were originally published as a series of articles in a New York newspaper and were so popular that they were reprinted in other papers throughout the country. Moreover, Hamilton, Madison, and Jay, in signing the essays with the pseudonym Publius, could assume that readers would know they were identifying themselves with the ancient Roman who, following Lucius Brutus's overthrow of the last king of Rome, had established the republican foundation of the Roman government. Let me offer a somewhat more esoteric

example. In 1786 Isaiah Thomas, printer of a weekly newspaper in Worcester, Massachusetts, called the Massachusetts Spy, was seeking ways to amuse his readers in the absence of pressing news. There had been some controversy over Alexander Pope's translation of the Iliad -- Samuel Johnson is reported to have said, "It is beautiful, sir, but is it Homer?" -- and Thomas gave his readers the opportunity to decide for themselves by printing Pope's translation and the original Greek in parallel columns.

Complementing the habit of reading was the leisurely pace of life, which gave Americans time to reflect upon and discuss what they read. This is an important point to understand. In the modern era of instantaneous communication we are so continuously bombarded with sights and sounds and information that, to retain our sanity, we have to develop ways of filtering out or ignoring the bewildering array of attacks upon our senses. Many of you are aware of the study showing that the average Congressman has something in the order of twelve minutes a day to be alone and think. It was quite otherwise in the eighteenth century. There was no need to hurry in a world in which exchanging letters between Philadelphia and London took twelve weeks, between Boston and Savannah four to six. Besides, Americans had access to only a limited number of books -- the library available to the Framers, one of the nation's largest, the Library Company of Philadelphia, had 5,000 -- and thus one could read them again and again, savor them and brood over them, and absorb even the most profound and abstruse of them wholly into one's being.

The content of their reading, cushioning as it did their perceptions of the monumental events of the Revolutionary epoch, also helped make the founding generation such a remarkable lot of men. Contrary to a persistent notion, Americans were all but untouched by the writers of the French Enlightenment, unless Montesquieu be so considered. (They did read Montesquieu, though I suspect only selectively.) Some exotic and omnivorous readers, Benjamin Rush for instance, did

read Rousseau, and many had at least heard of Voltaire and Diderot. But Americans by and large did not read the philosophes -- in no small measure, it should be added, for the reason that Americans were immune to the anti-religious virus that infected the French.

Instead, all public men could be expected to be versed in a half-dozen general categories of writings in addition, of course, to the Holy Bible. (They cited the Bible more than any other source, and, unsurprisingly, the most cited Book of the Bible was Deuteronomy.) Of the secular categories, the first was also law, comprehending both what was called "natural law" and the laws of England. The foremost treatises on natural law were those of the Genevan Jean Jacques Burlamaqui and his pupil, Emmerich de Vattel; natural law principles, at least in theory, governed the conduct of international relations, including the rules of war. Readers could in fact become familiar with Burlamaqui's thinking as they studied English law, for it is summarized in the first volume of Blackstone's Commentaries on the Laws of England -- a work which, according to Madison, was "in every man's hand." Madison doubtless overstated, but there were considerably more copies of Blackstone sold in America than there were lawyers, and Blackstone was the second most widely cited author in all the American political literature from the 1760s through the 1780s.

Another category was the ancient classics. Among the widely read Romans were Cicero, Tacitus, and Livy; among the Greeks, Demosthenes, Aristotle, and Polybius. By far the most generally read, however, was Plutarch's Lives of the Noble Grecians and Romans, in the Dryden translation. (Few Americans, it should be added, appreciated Plato. To John Adams, Jefferson described Plato's Republic as a mass of "whimsies ... puerilities and unintelligible jargon." Adams facetiously replied that the only two things he had learned from Plato were a cure for the hiccups and where Ben Franklin had plagiarized some of his ideas.)

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From the classical authors and from Blackstone, Americans derived an understanding of history and a profound respect for its value; but from other writers they also learned a peculiar version of history which became a fundamental part of their world view and, indeed, an enduring feature of American political discourse. This was the so-called Whig interpretation of history, which they learned from, among others, John Trenchard, Thomas Gordon, and Viscount Bolingbroke: it taught that history was an endless alternation between conspiracies of a few wicked and designing men to destroy popular liberties and the discovery and frustration of those plots by champions of the people. In accordance with that perception, American Patriots "discovered" in the 1760s and 1770s that a sinister combination of money men and ministers of the Crown was plotting to enslave them; and in the 1780s and 1790s a succession of equally monstrous plots was denounced by one political group or another. (Nor did it stop there: Andrew Jackson and his followers discovered the Monster Banking Monopoly, the Populists discovered Wall Street and the Gold Conspiracy; and in the twentieth century, we have had the Trusts, the Malefactors of Great Wealth, the Military-Industrial Complex, and, more recently, the Imperial Presidency.)

Yet another body of literature studied by public men was that concerning "political economy," the newly discovered "science" that began to emerge when men started to realize that economic activity need not be a zero-sum game, and that government policies might profoundly influence the growth or decline of the wealth of nations. A number of writers treated the subject, but only three, all Scots, reached sizable audiences in America: Sir James Steuart, advocate of a managed economy whose work had a powerful impact upon Hamilton, and David Hume and Adam Smith, advocates of a free-market economy who were most appreciated south of the Mason-Dixon line.

Finally, there were works that bore directly upon the task at hand -- that of

erecting institutions to preserve free government -- namely, treatises on political theory and upon the nature of man and society. Obviously the ancients, along with Bolingbroke, Montesquieu, and Blackstone, had a great deal to offer. Another potent influence was John Locke, whose Second Treatise of Civil Government provided the theoretical underpinnings for the Declaration of Independence, and whose Essay Concerning Human Understanding was even more widely read. In addition, there were the Scottish Common Sense philosophers who held that all men are equally endowed with a moral sense -- an inborn sense of what is right and what is wrong, of what is good and what is evil -- with a disposition to do good, and with equal capacities to judge whether their rulers are good or bad. It was but a short step from that position to radical democracy and none at all to the conclusion that slavery is evil. A considerably different, though not opposite, view was that of Hume and Smith, whose theory of moral sentiments held that men are inspired to do good by peer pressure rather than by the voice of conscience.

Before turning to the practical applications the Framers made of all this -- and they insisted that they were interested solely in "useful" knowledge, not that which was merely ornamental, speculative, or abstract -- I should like to offer a couple of observations about what has been said so far. Those who are familiar with the literature will be aware that the lessons it taught were far from perfectly compatible, one with another. The Framers were quite aware of this, but not concerned by it. They were politically multilingual, able to speak in the diverse idioms of Locke, the classical republicans, Hume, and many others, depending upon what seemed rhetorically appropriate to the argument at hand. When the order of the day was loyal opposition to measures of Parliament, as it was in the 60s and 70s, Bolingbroke was suitable; when time came to break with the mother country Bolingbroke was inadequate and Locke filled the bill; and upon the winning of independence Locke became obsolete -- because subversive. The inference to be

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drawn, clearly, is that the Framers (with some exceptions) were not ideologues, slavishly addicted to one political theory or another, but men who were accustomed to use political theorists to buttress positions that they adopted for experiential and prudential reasons.

My other somewhat digressive observation concerns those of the founding generation who did not do much reading. Among the Framers themselves, the obvious example is George Washington, who was not a bookish man; nor, as far as I can tell, were such other luminaries in the Constitutional Convention as Robert Morris, Nathaniel Gorham, and Roger Sherman. Moreover, large numbers of ordinary Americans rarely read anything but the Bible and the newspapers; the German traveler Johann David Schopf recorded that he met many people in Virginia who told him that a great man named Thomas Jefferson had written an important book, but none who could tell him what was in it. But one did not need to read extensively to become versed in the ideas of the various authors I have mentioned, for their ideas permeated the very air Americans breathed. In addition to the learned polemics that appeared regularly in newspapers, Americans imbibed large draughts of history and philosophy from plays -- Washington was an inveterate theater-goer -- and from oratory. Oratorical powers were especially respected and were genuine sources of popular entertainment, particularly adapted to commemorative occasions and to judges' charges to grand juries. Americans could listen to good orators (and they were connoisseurs as well as aficionados) literally for hours on end. In one oration delivered on the eleventh anniversary of the Boston Massacre, for example, Thomas Dawes, Jr., harangued a large crowd with a learned history of republics in which he quoted, among others, Marcus Aurelius, Ovid, Pope, Seneca, Newton, Blair, Juvenal, Addison, Blackstone, and the Bible. Thus it was that Jefferson could honestly say, many years later, that he had written the Declaration of Independence without reference to any book, for the language of Locke's Second Treatise was common

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currency of the realm.

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Let us now turn to the question of how the Framers applied what they knew and understood. Their aim was to secure liberty and justice -- and for some, to attain greatness as a nation -- through the instrumentality of a lawful and limited system of government. In the undertaking, they were guided by this principle: the extent to which limited government is feasible is determined by the extent to which the people, socially and individually, can govern themselves. I can put that more simply for the sake of emphasis: if citizens can behave themselves and make do for themselves, they need little government; if they cannot, they need a great deal of government. (Is it necessary to add the corollary, that the more government does for them, the less able they become to do for themselves?)

Americans were well endowed institutionally and experientially to manage the social aspects of self-government; but the matter of each individual's government of himself was more problematical. After a burst of naive enthusiasm in 1776, Patriots -- and especially Patriots who were actively engaged in the struggle for independence -- rapidly ran out of faith in the civic virtue of the American people. Embezzlement, profiteering, trade with the enemy, and local jealousies plagued the public councils from the Continental Congress to the state houses and infested private life from the merchants in their counting houses to farmers in their fields.

The Framers could and did comprehend this triumph of self-interest over the public interest in terms of the prevailing understanding of the workings of the human psyche. That understanding was grounded in the theory that men are governed by their passions -- not passions in the sense of violent emotions, but in the sense of drives for self-gratification, the seeking of pleasure and the avoidance of pain. Some passions, hunger and lust, grief and joy, hope and fear, were direct

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passions; others, pride and humility, love and hatred, were indirect; but either way, though this period of history is sometimes called the Age of Reason, it was generally believed that reason itself is rarely if ever a motive force. Rather, reason was regarded as a morally neutral instrument whose usual function was to serve the passions. It was also generally believed that every person had one ruling passion that tended to override the rest, and it was a cliché that the passions motivating most men in government were avarice and ambition, the love of money and the love of power. Accordingly, when Americans as individuals behaved badly, they were only following the dictates of human nature.

The theory of the passions would seem to have impaled the Framers upon a dilemma; but some few had contrived to escape its horns. For some, indeed, no contrivance was necessary. Men are driven by a variety of passions, and many of these -- love of country, desire for glory, hunger for Fame (which was defined as immortality earned through the remembrance of a grateful posterity) -- are noble. When any noble passion becomes a man's ruling passion, which was true of a considerable number of the Framers, he must necessarily live his life in virtuous service to the public.

Whatever their passions, men could meliorate their baseness through religion -- which nearly every American believed was a necessary, but almost none believed was a sufficient, condition of morality. In an ultimate sense moral accountability was to God; and in a society in which belief in a future state of eternal rewards and punishments was nearly universal (and in which reminders of one's own mortality were almost continuous, since half the population died before coming of age) that was no trivial abstraction. Moreover, American religion was Protestant, and even those few who professed themselves to be Deists, or whose religious observances seemed to be pro forma, consciously or unconsciously shared a Protestant Christian world view. A telling example is seen in the Virginia Bill of Rights of 1776,

which declared that "all men are equally entitled to the free exercise of religion, according to the dictates of their conscience," but went on to say "that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other." (Similarly, the First Congress, which approved the religious establishment clause of the First Amendment, also appointed a Protestant chaplain.)

The common viewpoint was expressed by Richard Henry Lee when he said that "Refiners may weave as fine a web of reason as they please, but the experience of all times shows Religion to be the guardian of morals" -- an attitude that Washington made explicit in his Farewell Address. Yet the Founders' religion itself, postulating as it did a Great Chain of Being in which men stand between the beasts and the angels, precluded the acceptance of any belief in the perfectibility of man; and it was that, man's sinful nature, which made religion insufficient to control men's behavior in this world.

There were, however, secular means of self-improvement; all of which, philosophically, rested on the premise that the social instinct is one of the primary passions governing mankind: the desire to have the approval, or at least to avoid the animosity, of one's peers ranks with the physical appetites as a motivating force in human affairs. It was in this other-directed spirit that the adolescent George Washington could record in a copy-book 110 "Rules of Civility and Decent Behaviour in Company and Conversation," rules which comprehended a manual of etiquette for circumstances ranging from being at the dinner-table ("Being Set at meat Scratch not neither Spit Cough or blow your Nose except there's a Necessity for it") to being "In Company of those of Higher Quality than yourself" ("Speak not till you are ask'd a Question then Stand upright put off your Hat & Answer in a few words"). Nor was young Washington alone, as the enormous popularity of Lord Chesterfield's Letters to His Son and his Principles of Politeness attests. Every

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kind of social interaction -- from ballroom dancing to warfare, from forms of address to the complimentary closings of letters -- became mannered, structured, and stylized. And thereby, through the studious cultivation of civilized behavior the eighteenth century became the most civilized of all the ages. Every person learned the norms that attended his station, and anyone who violated those norms forfeited the esteem of his peers and betters.

How well such principles of etiquette led one to behave would vary, of course, with the quality of the persons whose approval one sought. Among the harshest criticisms levied at Jefferson by his political enemies was that he courted "popular" favor -- a charge that is mystifying until it is understood that "the populace" comprehended the vulgar herd, and thus that a popular politician was a demagogue. Far better was it to disregard both popular favor and its opposite, the foolish advice that Polonius gave to Laertes, "to thine ownself be true," and instead conduct one's self always with a view toward meriting the esteem of the wise and the just. And better yet, for public men, was to seek the approval of posterity, of generations of discerning and virtuous people yet unborn.

There was one more important means by which men could improve upon the baseness of their nature, and this was through the concept of character. The term "character" was rarely used in the eighteenth century to refer to internal moral qualities. Rather, in its most general usage it referred to reputation: this man or that had a character for probity or fickleness or rashness. But it also, in polite society and among people in public life, meant a persona that one deliberately selected and always wore: one picked a role, like a part in a play, and contrived to act it unflinchingly, ever to be in character. If one chose a character with which one was comfortable, and if one played it long enough and consistently enough, by little and little it became a "second nature" that in practice superseded the first: one became what one pretended to be.

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The results, for good or ill, depended upon the character chosen and upon how well one acted it. Benjamin Franklin played a large and often contradictory array of characters during his long career, making it difficult for contemporaries (and for historians) to discern the true features of the man behind the masks. Jefferson essayed a succession of characters -- he went so far as to change his handwriting several times -- and though he played many of them with consummate skill, he never found a public character with which he was comfortable. (When he retired from the presidency, he told a friend, revealingly, that "The whole of my life has been at war with my natural tastes, feelings and wishes Like a bow long bent I resume with delight the character and pursuits for which nature designed me.") Washington, by contrast, played a progression of characters, each grander and nobler than the last, and played each so successfully that he ultimately transformed himself into a man of almost extra-human virtue.

Not least among the advantages of the practice of role-playing was that -- in America's open society, though not in Europe -- it made possible aspiration to greatness, and made greatness attainable. Where else, and how else, could an illegitimate orphan named Alexander Hamilton -- the bastard brat of a Scots pedlar, John Adams called him -- aspire to and win military glory, then high social status, then exalted office, and in time, the immortal Fame of the Lawgiver, on the order of Solon and Lycurgus: one of those who, in Sir Francis Bacon's expression of Plutarch's conception, are "called perpetui principes or perpetual rulers, because they govern by their ordinances after they are gone."

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Given everything I have said, one could imagine that the task of establishing an acceptable and durable frame of government would have posed few difficulties for the Founders. It might in fact have posed few difficulties, except that the Patriot leaders of Seventy-six, in their enthusiasm for defending American rights

and their revulsion against the supposed excesses of their king, committed the nation to two doctrines which, willy-nilly, ensnared the Americans in ideological thickets which were alien to their very being and contrary to their heritage, their experience, and their understanding of the nature of man. It took some time for the Framers to devise ways -- and find the opportunity -- to disentangle the nation from these snares.

The first of the doctrines was the natural rights philosophy proclaimed in the Declaration of Independence. The Declaration asserted that all men are equally endowed by God with certain unalienable rights; that governments are instituted for the protection of those rights, and derive their legitimate powers from the consent of the governed; and that if government becomes destructive of the ends for which it was established, the people reserve a right to alter or abolish it. Whatever the merits of these theories as philosophic abstractions, they are scarcely the stuff of which stable, lawful governments are made. As Blackstone put it, "no human laws will...suppose a case, which at once must destroy all law," nor will they make legal "provision for so desperate an event, as must render all legal provisions ineffectual."

Indeed, translated into the language of the multitude, the arguments of the Declaration could -- and did -- impede the winning of independence. The Massachusetts radical Benjamin Hichborn expressed a popular view when he declared in an oration in Boston in 1777 that civil liberty was not a "'government of laws,' made agreeable to charters, bills of rights or compacts, but a power existing in the people at large, at any time, for any cause, or for no cause, but their own sovereign pleasure, to alter or annihilate both the mode and essence of any ... government." Acting on that understanding, farmers in the back-country from New Hampshire to Georgia disrupted and hampered government throughout the war. Afterward, public men gradually stopped talking about the doctrines of the

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Declaration, allowing them to be muffled by a shroud of silence. Thus it was not by coincidence that the first edition of John Locke's Two Treatises published in America appeared in 1773, and that there was no new American printing for 164 years; nor was it coincidental that, after the Constitution was adopted, the next favorable reference to the Declaration to appear in an official document in America was (as far as I am aware) in the South Carolina ordinance of secession in 1860.

Less easily escaped and more pernicious, though in an opposite way, was an ideological commitment to republicanism. Though the United States more or less stumbled into republicanism by default -- Americans had no hereditary aristocracy and had disowned their king -- the "ism" comprehended a thoroughly developed system of political theory, drawn from the ancients and reformulated during the seventeenth and eighteenth centuries. It was synonymous neither with popular government nor with popular liberty, as is attested by the fact that it was embraced (at least in the abstract) by various petty "benevolent despots" among the German principalities and by no less grand a despot than Catherine the Great of Russia.

The vital -- which is to say life-giving -- principle of republics was public virtue. The word virtue in this phrase did not connote what is suggested by Christian virtue, with its emphasis upon humility and charity; nor did "the public" include everybody. Both public and virtue derive from Latin roots signifying manhood: the public included only free, independent adult males. Public virtue entailed discipline, strength, courage, endurance, industry, frugal living, and above all, unremitting devotion to the weal of the public's corporate self, the community of virtuous men. It was at once individualistic and communal: individualistic in that no person could be dependent upon another and still be counted as a member of the public, communal in that every man gave himself totally to the good of the public as a whole. Ultimately it was based upon the tradition

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of civic humanism, upon the Aristotelian notion that man is a political being whose highest form of self-realization can take place only through virtuous participation in public life. But the tradition of civic humanism, though meaningful to a goodly number of Americans -- Hamilton and Madison, for instance -- was foreign to the genius of the American people as a whole, who sought no salvation in politics. When they participated in government at all they did so from a sense of duty (most commonly to help prevent government from encroaching upon their private lives), and when they returned to private station they returned as Jefferson did, gladly and with a profound sense of relief.

Ideological republicanism was alien to Americans in other ways as well, for in addition to demanding eternal militance it was both egalitarian (among those who qualified as part of the public) and totalitarian. As for the first, Montesquieu, who was regarded as the weightiest modern authority on the subject, insisted that virtue could be preserved only if the public was characterized by a "mediocrity" of "abilities and fortunes." Indeed, he wrote, if equality broke down "the republic will be utterly undone." Thus it was "absolutely necessary there should be some regulation in respect to ... all ... forms of contracting. For were we once allowed to dispose of our property to whom and how we pleased, the will of each individual would disturb the order of the fundamental law." And if that does not sound totalitarian enough, hear the words of the New England republican Nathaniel Niles: "Every one must be required to do all he can that tends to the highest good of the state Every thing, however trifling, that tends, even in the lowest degree, to disserve the interest of the state must ... be forbidden." These notions were scarcely compatible with Americans' conviction that government existed to protect people in their lives, liberties, and property; or with their conception of liberty as (in the words of John Dickinson, drawing upon the Bible) "every man under his vine and under his fig tree, and none shall make him afraid."

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One more part of the dogma wants notice: it was held that republics could be viable only in small territories, and that if larger units were involved they were best defended and held together through loose confederations. Hence the peculiar allocation of powers under the Articles of Confederation and the first state constitutions, whereby a unicameral Congress was given large responsibilities in international and interstate affairs but virtually no substantive powers for carrying out those responsibilities; and on the opposite side the several states were vested with almost unlimited powers. The bumbling and ineffectual way in which Congress managed is fairly well known. ("It is a melancholy truth," as Hamilton remarked, "that there is not so much wisdom in [Congress] as there ought to be.") What the real governments of the several United States were doing is less known.

They were oppressing American citizens under a burden of taxation and regulation greater than any they had ever experienced, greater than any coveted by the wickedest minister who had ever advised the British Crown. The level of taxes during the 1780s was ten to twenty times prewar norms, and the increase in the volume of legislation -- despite ostensible constitutional checks on the legislative power -- dwarfed the increase in taxes. Quite in addition to the wholesale wartime persecutions of those who remained loyal to England, legislation was enacted to regulate what people could produce and sell and what they could charge for it; to interfere systematically with private commercial transactions and suspend the obligations of private contracts; to prohibit the purchase of luxuries, prescribe what people could eat and drink, and govern what they could wear; to regulate private morality, indoctrinate the citizens with official dogmas, and suppress contrary opinions; to inflate the currency deliberately to pay for the ever-mounting costs of government. All this, and more, was imposed upon a people so unaccustomed to taxation that they had been willing to rebel against their king

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rather than submit to even nominal taxes levied by Parliament; so unaccustomed to governmental intrusion upon their private lives as to be willing to fight and die to preserve their personal liberties; and so conservative that they could perceive the encroachments of Crown and Parliament only as violations of the ancient constitution. In sum, swept up by a temporary infatuation with ideological purity, Americans lost their moorings in history. And as is common in such circumstances, there arose an abundance of popular leaders to catch the winds of ideology in cynical pursuit of power and profit.

Thus it was that, though we usually think of the Constitution as having been designed to overcome the weaknesses of the Articles of Confederation by establishing new power, the vast majority of the Framers viewed the crisis of 1787 as having arisen from an excess of state government, a wanton and inept use of all governmental power, and a collapse of authority resulting from efforts to govern overmuch.

The members of the Great Convention sought to reestablish limits upon government and restore it to the rule of law. Fully twenty percent of the body of the Constitution is devoted to specifying things that government (state and/or federal) may not do. By contrast, only eleven percent of the text is concerned with positive grants of power. Of the powers granted, most were already vested in the old Confederation Congress, and of the ten new powers, all had previously been exercised by the states. Consequently, the sum total of powers that could thenceforth be legitimately exercised was reduced, not enlarged. The main body of the Constitution -- more than two-thirds of it -- addresses the other part of the Framers' conception of their task, that of bringing government under the rule of law: the Constitution is primarily a structural and procedural document, specifying who is to exercise what powers and how. It is a body of law, designed to govern not the people, but government itself, and it is written in language

intelligible to all, that all might know whether it is obeyed.

In devising these arrangements, the Framers were guided by principles but not by formulas. They aimed high, seeking as Washington said "a standard to which the wise and honest can repair"; but as Pierce Butler of South Carolina put it, they worked in the spirit of Solon, who gave the people of Athens not the best government he could contrive in point of abstract political theory, but the best they would receive. Thus rigid adherence to the doctrine of the separation of powers yielded to a system of checks and balances, and absolute dicta about the indivisibility of sovereignty were transmuted into a brilliant invention, federalism. The commitment to republicanism was similarly honored by instituting a form of government that redefined the term. Madison could now declare that a republic was a representative "government which derives all its powers directly or indirectly from the people" and no offices are hereditary, and as America flourished "republic" would come to mean precisely that.

And yet, even as the Framers were rejecting doctrine as formula, they faithfully adhered to the principle underlying Montesquieu's work -- to its spirit. For Montesquieu's grand and abiding contribution to the science of politics was that no form or system of government is universally desirable or workable; instead, if government is to be viable, it must be made to conform to human nature and to the genius of the people -- to their customs, morals, habits, institutions, aspirations. The Framers did just that, and thereby used old materials to create a new order for the ages.

Let me end where I began, with those who would either new-model the Constitution through another convention or continue to stand idly by while government refashions it for us. I ask this: Are we better off, now that government at all levels is doing just what the Constitution was designed to prevent? And this: Has human nature changed so drastically, or has the genius of

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America? Was it folly or was it wisdom in the Framers to suppose that the people will govern themselves best if left to govern themselves? Was it folly or was it wisdom to maintain that there are limits upon what government can do, and limits upon what it should attempt to do? Was it foolish or was it wise to insist that government by fiat is inherently oppressive, no matter how well-intentioned its officers may be? These questions are of awesome portent, for the Framers legislated not only for themselves and their posterity but, by example, for all mankind. As George Washington said in his inaugural address, "the sacred fire of liberty" is deeply and perhaps finally "staked upon the experiment entrusted to the hands of the American people." That fire was 3,000 years in the kindling. Let not our generation be the one to extinguish the flame.

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