

# *Vindicating the Founders*

RACE, SEX, CLASS, AND JUSTICE  
IN THE ORIGINS OF AMERICA

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7

## **Immigration and the Moral Conditions of Citizenship**

*A*merica has a long and generous tradition of welcoming as equal citizens a larger number of immigrants, from a greater variety of national and religious origins, than any other nation in history. Shortly before the Civil War, Abraham Lincoln gave a beautiful speech in Chicago on the tie that binds American citizens together and makes them one people. There are many Americans, he said, who are not blood descendants of the American Founders:

If they look back through this history to trace their connection with those days by blood, they find they have none, they cannot carry themselves back into that glorious epoch and make themselves feel that they are part of us, but when they look through that old Declaration of Independence, they find that those old men say that "We hold these truths to be self-evident, that all men are created equal," and then they feel that that moral sentiment taught in that day evidences their relation to those men, that it is the father of all moral principle in them, and that they have a right to claim it as though they were blood of the blood, and flesh of the flesh, of the men who wrote that Declaration—and so they are. That is the electric cord in that Declaration that links the hearts of patriotic and liberty-loving men together, that will link those patriotic hearts as long as the love of freedom exists in the minds of men throughout the world.

Although Lincoln was speaking to European-Americans, there is nothing in his account of citizenship that is limited to Europeans. Any human being is capable of becoming an American, because the equality principle that defines America, as Lincoln wrote on another occasion, is "an abstract truth, applicable to all men and all times."<sup>1</sup>

Despite this understanding of American citizenship, the United States has always set limits on immigration or naturalization. Until 1870, only whites were eligible for citizenship, and almost all immigration came from northern and western Europe. After the huge 1880–1914 immigration

wave, of which southern and eastern Europeans made up a large proportion, numbers were kept relatively low by the restrictive immigration legislation of the 1920s. The 1965 Immigration Act tremendously increased the numbers and changed the sources of immigrants. This law in effect made it harder for Europeans and easier for non-Europeans to come to America. Between 1990 and 1994, over 1.2 million people per year—80 percent of them non-Europeans—immigrated into the United States. This does not include the 275,000 or more who enter and remain illegally each year. In 1997 the government estimated that there were 5 million immigrants residing in the United States in violation of the law.<sup>2</sup>

Most Americans think these levels are too high. A 1989-90 survey found that 74 percent of non-Hispanic white citizens and 75 percent of Mexican-American citizens agreed with the statement, "There are too many immigrants." In 1994, California voters approved Proposition 187, which bars illegal aliens from receiving welfare benefits or free public education. In 1995 the U.S. Commission on Immigration Reform recommended that immigration be reduced by one-third, and that immigration policy be changed to bring in more skilled and fewer unskilled workers.<sup>3</sup>

This raises the question: Are Americans' historical and current attitudes on immigration somehow un-American? Or are immigration limits in accord with American principles?

The prevailing view among mainstream scholars and in the popular media is that if we believe in human equality, it is unfair to deny entry to anyone. Especially objectionable, in their view, was the earlier American practice of considering the potential immigrants' national origin in determining immigration policy. Yale political scientist Rogers Smith, for example, believes that this practice was "quite obviously . . . inconsistent with the ideals of liberty and equality professed in . . . the nation's 'Creed.'" Anything less than large-scale immigration is "undemocratic," *Time* magazine writes.<sup>4</sup>

Opponents of today's high levels of immigration generally accept the view that the equality principle requires open borders or something close to them. Therefore, to make the case for limits, they tend to talk about economics or culture or ethnicity rather than liberty and equality. When they do address principle, they often embrace what may be called an ethnocultural conception of America that rejects or severely qualifies Lincoln's thesis, quoted above, that what defines America is the idea of equality in the Declaration of Independence. For example, M. E. Bradford, a conservative traditionalist, wrote that when immigration policy is founded on "natural rights imperatives," it is "certain to boil over into a demand for less and less restriction" on immigration. John O'Sullivan, editor of the conservative

journal *National Review*, agrees. He rejects the view that "Americans are defined by their allegiances to a set of liberal political principles, notably liberty and equality, outlined in the Declaration of Independence and embodied in the Constitution."<sup>5</sup>

The American Founders would reject both of today's dominant views. They would agree with those who say that America is based on the principle that all human beings are born free and equal. But they would reject the conclusion that this requires minimal or no restraints on immigration. The Founders supported the view that a nation may, and sometimes must, set limits on immigration, even to the point of considering national origin. But they based this view on the equality principle, not on its rejection.

### Washington on Immigration

George Washington frequently commented on immigration and citizenship. His approach, shared by most of the founding generation, had two main features. First, America should generously welcome as equal citizens people from many nations and religions. Second, the numbers and kinds of immigrants may need to be limited with a view to the qualities of character required for democratic citizenship.

Washington wrote, "The bosom of America is open to receive not only the opulent and respectable stranger, but the oppressed and persecuted of all nations and religions." His openness to non-Protestant citizenship is evident in his letter to the Hebrew congregation in Newport, written just after he had been elected America's first president:

The citizens of the United States of America have the right to applaud themselves for having given to mankind examples of an enlarged and liberal policy worthy of imitation. All possess alike liberty of conscience and immunities of citizenship. It is now no more that toleration is spoken of as if it were by the indulgence of one class of citizens that another enjoyed the exercise of their inherent natural rights, for happily the Government of the United States, which gives to bigotry no sanction, to persecution no assistance, requires only that they who live under its protection should demean themselves as good citizens in giving it on all occasions their effectual support.<sup>6</sup>

In Washington's account, America is different from, and superior to, countries based on a common ethnic or racial background, or a common religion, because its government protects the "inherent natural rights" of all

human beings. As a result, for the first time since ancient Israel, Jews could become full citizens of a political community.

Washington's generous (the older meaning of *liberal*) conception of citizenship was widely held in America. In spite of a strong aversion to Catholicism among a fervently Protestant American people, the Continental Congress of 1774 invited the French-speaking Catholics of Quebec to "unite with us in one social compact, formed on the generous principles of equal liberty." On the potentially explosive religious question, Congress wrote,

We are too well acquainted with the liberality of sentiment distinguishing your nation to imagine that difference of religion will prejudice you against a hearty amity with us. You know that the transcendent nature of freedom elevates those who unite in her cause above all such low-minded infirmities.

The common ground of "natural and civil rights," taught in the writings of "your immortal countryman, Montesquieu," would be the basis of the union.

Some are inclined to dismiss this episode as a cynical move born of desperation, considering the strong anti-Catholic sentiments voiced against the earlier Quebec Act. But the view stated in the letter to Quebec proved to be the authentic expression of the American mind in the founding era. Its principles became the basis for extending religious liberty to all Americans in the early state constitutions and laws.<sup>7</sup>

Washington's openness to common citizenship with those who were neither Protestants nor descended from Englishmen did not, however, lead him to favor unlimited immigration. He believed that immigrants of the wrong sort and in the wrong quantity would endanger American liberty. The purpose of government is to secure the rights to life, liberty, and the pursuit of happiness. Immigration policy, like all public policy, must be tailored to that end. When Washington affirmed American openness to immigrants "of all nations and religions," as quoted above, he continued by saying, "we shall welcome [them] to a participation of all our rights and privileges, if by decency and propriety of conduct they appear to merit the enjoyment."<sup>8</sup> Likewise, he did not say to the Newport Jews that people of all religions were welcome in America regardless of their conduct. He said that the government requires "that they who live under its protection should demean themselves as good citizens in giving it on all occasions their effectual support."

Whenever he discussed immigration, Washington linked his "liberal"

vision of a multinational and multireligious America with a "conservative" concern about the character of those who would become Americans. To Jefferson in 1788 he wrote that the new U.S. Constitution "would render this country the asylum of *pacific and industrious characters* from all parts of Europe . . . by giving security to property, and liberty to its holders." Washington's hope that America might become an "asylum to the *virtuous* and persecuted part of mankind, to whatever nation they may belong," led him to go out of his way to encourage immigration from the Netherlands. To a Dutch preacher recently arrived in New York, Washington wrote: "This country certainly promises greater advantages, than almost any other, to persons of moderate property, who are determined to be sober, industrious, and virtuous members of society." The Dutch, he said, had these qualities, and they were also known to be "friends to the rights of mankind." They would be "a valuable acquisition to our infant settlements."<sup>9</sup>

Besides being concerned about immigrants' character, Washington also noted the problem created when too many foreigners settle at one time in one location. In a letter to Vice President John Adams, he wrote:

the policy or advantage of [immigration] taking place in a body (I mean the settling of them in a body) may be much questioned; for, by so doing, they retain the language, habits, and principles (good or bad) which they bring with them. Whereas by an intermixture with our people, they, or their descendants, get assimilated to our customs, measures, and laws: in a word, soon become *one people*.<sup>10</sup>

Benjamin Franklin had worried about the problem of immigrant numbers as an obstacle to assimilation in the 1750s, when a large number of German settlers threatened to transform the character of Pennsylvania:

Those who come hither are generally of the most ignorant stupid sort of their own nation. . . . Not being used to liberty, they know not how to make a modest use of it. . . . [In elections] they come in droves, and carry all before them, except in one or two counties. . . . In short, unless the stream of their importation could be turned from this to other colonies, . . . they will soon so outnumber us, that all the advantages we have will not in my opinion be able to preserve our language, and even our government will become precarious. . . . Yet I am not for refusing entirely to admit them into our colonies; all that seems to be necessary is to distribute them equally, mix them with the English, establish English schools where they are now too thick settled.

As it happened, restrictions on immigration from Europe did not become

necessary. War between Britain and France greatly reduced the influx, and the German population stabilized at about one-third of Pennsylvania. Except for the Amish, whose numbers were too small to affect the character of the state, they gradually took on the ways of the English-speaking majority.<sup>11</sup>

Franklin expressed his cautious view of immigration again in "Information to Those Who Would Remove to America" (1784). When Jefferson was ambassador to France in the late 1780s, he showed his approval of Franklin's pamphlet by reprinting and distributing it. America had evidently gotten a reputation among some Europeans as a place of loose and easy living. Franklin warned them that "America is the land of labor, and by no means what the English call Lubberland, and the French *pays de Cocagne*, where the streets are said to be paved with half-peck loaves, the houses tiled with pancakes, and where the fowls fly about ready roasted, crying, *Come eat me!*" The absence of wealth obliges most Americans "to follow some business for subsistence." "Industry and constant employment are great preservatives of the morals and virtue of a nation."<sup>12</sup> Jefferson and Franklin wanted to discourage would-be immigrants who were not prepared to adopt what is now called the work ethic.

Other leading Founders held opinions similar to those of Washington and Franklin. In a speech in the first Congress of 1790, James Madison welcomed immigrants to citizenship, but "believed it necessary to guard against abuses. They should induce the worthy of mankind to come, the object being to increase the wealth and strength of the country. Those who would weaken it were not wanted." Therefore Madison favored the law, which was soon approved, establishing a residency requirement for foreigners wishing to become citizens.<sup>13</sup>

Three years earlier, at the Constitutional Convention, Madison said, "He wished to maintain the character of liberality which had been professed in all the constitutions and publications of America. He wished to invite foreigners of merit and republican principles among us. America was indebted to emigration for her settlement and prosperity."<sup>14</sup>

### Jefferson and Hamilton on Immigration

Historians sometimes place Washington on the conservative and Thomas Jefferson on the liberal end of the Founders' political spectrum. Actually, almost all the prominent men of the founding era agreed on the fundamental principles of natural rights on which America was based, although they often disagreed among themselves on the best way to secure the rights

of mankind consistently with government by consent. Washington and Jefferson (along with Franklin and Hamilton) held very similar views of immigration, except for an episode that we will mention shortly.

The need for immigration to fill a sparsely populated land occasioned one of the complaints against the British king that Jefferson included in the Declaration of Independence: "He has endeavored to prevent the population of these states; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither." But Jefferson did not favor unlimited immigration any more than Washington. In Query 8 of his book, *Notes on Virginia*, Jefferson questioned "[t]he present desire of America . . . to produce rapid population by as great an importation of foreigners as possible." In doing so he gave one of the fullest explanations of the principles shared by the founding generation guiding their thoughts on immigration.

Jefferson's point of departure was his concern for liberty:

Every species of government has its specific principles. Ours perhaps are more peculiar than those of any other in the universe. It is a composition of the freest principles of the English constitution, with others derived from natural right and natural reason.

"Natural right and natural reason" refer to the "laws of nature and of nature's God" of the Declaration of Independence. These laws, discovered by reason, teach us "truths" that are "self-evident": that "all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness."

Jefferson was saying that America's principles are the principles of the Declaration, combined with only that part of the British tradition which is fully compatible with liberty and equality. Jefferson was not saying that America is defined by its ethnocultural British heritage, as some conservatives now argue. (Russell Kirk went so far as to entitle one of his books *America's British Culture*.)<sup>15</sup> Jefferson was glad that America had repudiated those aristocratic and monarchical parts of its English heritage that are incompatible with political liberty. But this does not mean that America can afford to be indifferent to the character and numbers of its immigrants. He wrote that "nothing can be more opposed" to the principles of American government

than the maxims of absolute monarchies. Yet, from such, we are to expect the greater number of emigrants. They will bring with them the principles of the governments they leave, imbibed in their early youth; or, if

able to throw them off, it will be in exchange for an unbounded licentiousness, passing, as is usual, from one extreme to another. It would be a miracle were they to stop precisely at the point of temperate liberty. These principles, with their language, they will transmit to their children. In proportion to their numbers, they will share with us the legislation. They will infuse into it their spirit, warp and bias its direction, and render it a heterogeneous, incoherent, distracted mass.

Jefferson feared that people accustomed to despotism will lack the vigilant spirit of self-assertion to resist the natural tendency of government toward oppression, while those whom despots have forbidden to control their own lives will be licentious when given free rein, lacking the self-control to live in "temperate liberty." From these reflections, Jefferson did not conclude that there was any need to restrict immigration; in moderate numbers, additional population was good for America, especially "useful artificers" with the right skills. He did think it imprudent to promote it: "If they come of themselves, they are entitled to all the rights of citizenship: but I doubt the expediency of inviting them by extraordinary encouragements."<sup>16</sup>

Jefferson changed his mind about immigration, at least temporarily, after his election to the presidency. However, short-term partisan calculation, not a principled rethinking of his earlier position, seems to have been at work. The votes of recent immigrants had been important, perhaps decisive, in the narrow Jefferson-Burr victory of 1800 (as they have generally been for the Democratic Party ever since). In his First Annual Message to Congress, Jefferson proposed immediate naturalization of foreigners instead of the fourteen-year residency then required. He argued that this lengthy period discouraged desirable immigration; that it refused hospitality to "the unhappy fugitives from distress"; that a mere declaration of "a *bona fide* purpose of embarking his life and fortunes permanently with us" should be sufficient for admission to citizenship.

Jefferson's old opponent, Alexander Hamilton, criticized this proposal in two newspaper editorials. Hamilton was no opponent of immigration from Europe; he had strongly commended it in his 1791 *Report on Manufactures*, which he had written when he was secretary of the treasury under President Washington. But Hamilton did not think citizenship should be given as cheaply as Jefferson recommended in 1801. He quoted at length the passage from Jefferson's *Notes on Virginia* on the dangers of too rapid an admixture of foreigners into America. Hamilton then went on to say, in his own name:

The safety of a republic depends essentially on the energy of a common national sentiment; on a uniformity of principles and habits; on the

exemption of the citizens from foreign bias and prejudice; and on the love of country which will almost invariably be found to be closely connected with birth, education, and family. The opinion advanced in *Notes on Virginia* is undoubtedly correct, that foreigners will generally be apt to bring with them attachments to the persons they have left behind; to the country of their nativity, and to its particular customs and manners. They will also entertain opinions on government congenial with those under which they have lived; or if they should be led hither from a preference to ours, how extremely unlikely is it that they will bring with them that *temperate love of liberty*, so essential to real republicanism?

In sum, Hamilton wrote:

In the recommendation to admit indiscriminately foreign emigrants of every description to the privileges of American citizens, on their first entrance into our country, there is an attempt to break down every pale which has been erected for the preservation of a national spirit and a national character; and to let in the most powerful means of perverting and corrupting both the one and the other.<sup>17</sup>

Hamilton, like the earlier Jefferson, was arguing that "real republicanism"—based, as Hamilton said elsewhere, echoing the Declaration, on "the unalienable rights of mankind,"<sup>18</sup> held equally by all—can only be sustained by a "temperate love of liberty." That, in turn, requires that immigrants leave behind their "foreign bias and prejudice" and acquire republican "opinions on government" and republican habits of moderation.

In spite of Jefferson's call for immediate naturalization, Congress, dominated by Jefferson's party, sided with Hamilton (and the earlier Jefferson) against President Jefferson. They voted to return to the pre-1798 requirement of a five-year residency before admission to citizenship.

### The Equality Principle and the Right to Exclude

None of the Founders gave a theoretical account of the right of a political community to exclude would-be immigrants. That is because such a right was obvious to all as an inference from the general principles they all shared. No one in the early debates in Congress on naturalization laws doubted the government's right to determine exclusionary criteria for citizenship. It is possible, however, to understand the principled basis of the Founders' understanding by reflecting on the equality principle announced in the Declaration of Independence and in the declarations of

rights in several of the early state constitutions.

The Declaration of Independence says that "all men are created equal." Virginia and Pennsylvania declared, "All men are by nature equally free and independent." Massachusetts said, "All men are born free and equal." Each of these formulas has the same meaning. All human beings are equal in the sense of possessing the same natural rights to life, liberty, and the pursuit of happiness. But when men live outside of government (in a "state of nature," as Madison calls it in *Federalist* No. 51), "the weaker individual is not secured against the violence of the stronger." Therefore, says the Declaration, "to secure these rights, governments are instituted among men." That happens when one part of mankind, one people, separates itself from the rest and establishes a political community. The government of that community secures the people's life, liberty, and property against those who might threaten them. It does not attempt to secure the inalienable rights of people outside of that community. In the sense of the Declaration, a people is any self-selected group which agrees to live together as a political community. If the government so formed is to be consistent with the natural right to liberty, it must be formed by, and operate by, consent and do its best to secure the natural rights of all citizens. As a practical matter, that means majority rule through a government of elected representatives.

One people can become two peoples (as almost happened in America in the 1860s), and two peoples can become one (as in the former Czechoslovakia). The original draft of the Declaration said, "We might have been a free and a great people together," implying that Americans and British had been, or could have become, one people.<sup>19</sup> But the Declaration called the United States "one people" that is about to "dissolve the political bands which have connected them with another." A people, in the sense of the Declaration, is not defined by a common religion, language, location, or ethnicity, although it usually shares some or all of those things. It is not some organic growth in which a person's individuality is dissolved in the larger unit. It is constituted by the free choice of each member.<sup>20</sup>

The preamble of the Massachusetts Constitution of 1780 expresses the Founders' understanding perfectly: "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." If the community does not wish to covenant with a particular individual, or if an individual refuses to covenant with the rest of the community, the condition of citizenship is not met. In other words, one obvious meaning of the right to liberty is that all people are free to associate with—to form a compact with—whomever they wish. Before two persons enter the marriage

contract, they are free to marry whomever they please; before individuals enter the social compact, they are free to become fellow citizens with whomever they choose.<sup>21</sup>

The crucial point for the question of a *right to exclude* newcomers from citizenship is this: Once a people forms itself, no one has a right to join it without the consent of those being joined. No outsider has any more right to claim membership in an already existing people than he has a right to intrude himself into a household where he has not been invited.

In accordance with this understanding, Gouverneur Morris observed at the Constitutional Convention of 1787 that "every society from a great nation down to a club had the right of declaring the conditions on which new members should be admitted."<sup>22</sup> The Constitution therefore lays down citizenship requirements for officers of the national government and grants Congress the right "to establish a uniform rule of naturalization." There is no natural right to immigrate or to become a citizen of a country of one's choice where one has not been invited.

Today, however, it is frequently said that it is wrong to deny foreigners the blessings of American liberty. This leads Roger Mahoney, the Catholic cardinal of Los Angeles, to assert, "The right to immigrate is more fundamental than that of nations to control their borders."<sup>23</sup> The Founders would answer: The purpose of government is to secure the rights of the people, that is, the citizens, the people who form the government. The Declaration of Independence was issued "in the name, and by authority of the good people of these colonies." When government fails to secure the rights of the people, it is their right and duty "to alter or abolish it" for the sake of "their safety and happiness." "We the people of the United States" established the Constitution of 1787 to "secure the blessings of liberty to ourselves and our posterity." To say that there is a fundamental right to immigrate is as much as to say that the government of one country is obliged to secure the rights of every person in the world who presents himself and demands it. Such an obligation is by nature both impossible and unjust. It is a violation of the liberty of a people to live with those they choose to associate with, and therefore a violation of the fundamental terms of the social compact. In the Founders' understanding, Americans are no more responsible for securing the rights of Mexicans and Haitians than Mexicans and Haitians are for securing the rights of Americans. Each people must undertake the task of securing its natural rights by and for itself.

This does not mean that Americans may treat foreigners unjustly. In *Federalist* No. 43, Madison touched on the delicate question of what would be the relation of the states that ratify the new Constitution (the new "United States of America") with states that refuse to ratify it. America, he

wrote, will have "no political relation" with the nonratifiers (or with other foreign countries). But the "claims of justice, both on one side and on the other, will be in force, and must be fulfilled; the rights of humanity must in all cases be duly and mutually respected." We must not harm foreigners' lives, liberty, or property. But when we refuse to admit foreigners to our community, we do not treat them unjustly or deny them their rights. We simply leave them in the same condition they were in before.

The natural right to liberty also means that individuals are free to emigrate. Otherwise, a child, who does not choose what country he is born in, could never exercise his right to consent to become a member of a people. In his 1774 *Summary View of the Rights of British America*, Jefferson wrote that there is

a right which nature has given to all men, of departing from the country in which chance, not choice, has placed them, of going in quest of new habitations, and of there establishing new societies, under such laws and regulations as to them shall seem most likely to promote public happiness.

Pennsylvania's 1776 Declaration of Rights made explicit the right to depart from the country of one's birth: "All men have a natural inherent right to emigrate from one state to another that will receive them, or to form a new state in vacant countries, or in such countries as they can purchase, whenever they think that thereby they may promote their own happiness."<sup>24</sup> By implication, this affirms the right of any people to exclude immigrants, because people may emigrate only to an inhabited place "that will receive them."

### The Equality Principle and the Duty to Exclude

Just because the equality principle permits a people to decide which outsiders should be admitted and which excluded, should this right be exercised? If so, when and how?

The Declaration of Independence states the principles of just government based on the equality principle. First, the purpose of government is to secure the citizens' equal rights to life, liberty, and the pursuit of happiness. Second, government must derive its just powers from the consent of the governed. These two principles were repeated over and over again in the founding era. All of the leading American Founders believed them to be true.

These two requirements of the Declaration are not necessarily in harmony. Government by *consent* does not always secure individual rights. In the course of the Revolutionary War, and even more so afterwards, thoughtful Americans became increasingly aware of how hard it is to reconcile consent with rights. The majority, as Madison wrote in *Federalist* No. 10, may become a faction, violating minority rights. For example, a long recession after the Revolutionary War led to the intentional inflation of the currency by several state governments in order to relieve debtors. In the worst instance, Rhode Island passed laws requiring merchants to accept its almost worthless currency for their goods. The economy came to a standstill as stores were closed throughout the state. Mobs attacked businesses and farmers who refused to sell their goods at a loss. Rhode Islanders had consented to a policy that deprived individuals of their liberty, which includes the right to keep the property they earn through their own efforts.

*The Federalist* answers this challenge by showing how a sound institutional structure makes it hard for representative democracy to violate the rights of the minority. The Constitution's framers placed much of their trust in these structural devices: a government by elected representatives, spread out over a large country; a two-house legislature; a strong one-man executive; and a judiciary with lifetime appointments. But they also knew that devices alone are not enough. At least a minimally good character is also needed.

In his First Inaugural address, Jefferson pointed to this tension between consent and rights when he spoke of "this sacred principle, that though the will of the majority is in all cases to prevail, that will, to be rightful, must be reasonable; that the minority possess their equal rights, which equal laws must protect, and to violate would be oppression." Jefferson went on to praise the religious and moral convictions of Americans. He implied that they helped to make the will of the people rightful and reasonable. Americans, he said, are "enlightened by a benign religion, professed, indeed, and practiced in various forms, yet all of them inculcating honesty, truth, temperance, gratitude, and the love of man."<sup>25</sup> These qualities, he implied, are necessary for a people to remain free. So also is the belief that God favors liberty over tyranny, so that they will defend their own freedom and respect that of others. In Query 18 of *Notes on Virginia*, Jefferson had written that the "only firm basis" of the liberties of a nation is "a conviction in the minds of the people that these liberties are of the gift of God."

Founders like Jefferson, Madison, Washington, and Adams supported public education for the same reason that they expressed concern about unlimited immigration: A people must have the right character and beliefs if it is to sustain a free government. The purpose of public education, wrote

Jefferson, is to make the people "the safe, as they are the ultimate, guardians of their own liberty. . . . And to render even them safe their minds must be improved to a certain degree. This indeed is not all that is necessary, though it be essentially necessary."<sup>26</sup>

All human beings have a right to be free. But the wrong habits and beliefs can make a particular people, at a particular time, incapable of freedom. Since those who lack the qualities of republican citizenship cannot be "safe . . . guardians of their own liberty," a free society should regulate the admission of new citizens with a view to the danger they might pose to liberty, to the extent that they have not yet acquired the political principles and minimal morality of freedom.

There is no *a priori* formula that says how many immigrants, from what countries, and with what habits and talents, should be permitted at a given time. That is a matter for sensible statesmen to decide, weighing all the relevant factors.

We conclude that every people has a *right* to exclude aliens that it deems undesirable, and a *duty* to exclude aliens whose excessive numbers or questionable character might endanger the citizens' liberty.

### The Virtues of a Free People: Self-Control and Self-Assertion

We have stated the general problem. There are certain virtues, and certain convictions, that are necessary for a people to be free. What are those virtues and convictions?

The Founders understood the term *self-government* in a double sense: (1) governing oneself morally, controlling one's own tendency to indulge the selfish and violent passions unreasonably; and (2) governing oneself politically, through democratic institutions that provide a wide scope for self-governing private associations such as families, churches, private schools, and businesses. The second sense is obvious. The first—self-government as self-control—is indicated in *Federalist* No. 63, where Madison spoke of the Athenian people being dominated by "the tyranny of their passions" when they condemned Socrates to death.

The Founders had to ask themselves what qualities sustain self-government in these two senses. The Northwest Ordinance of 1787 was the first federal law governing the western territories—the future states of Ohio, Michigan, Indiana, Illinois, and Wisconsin. Article 3 provided, "Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."<sup>27</sup>

Several state constitutions went into greater detail. Virginia's 1776 Declaration of Rights said: "That no free government, or the blessings of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles." The Massachusetts Constitution of 1780 stated: "the happiness of a people, and the good order and preservation of civil government, essentially depend upon piety, religion, and morality." The Massachusetts Constitution particularly encouraged public and private education, to "inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings; sincerity, good humor, and all social affections, and generous sentiments among the people." Pennsylvania's 1776 constitution listed the same virtues as Virginia, and further stated: "Laws for the encouragement of virtue, and prevention of vice and immorality, shall be made and constantly kept in force, and provision shall be made for their due execution."<sup>28</sup>

The virtues mentioned in these quotations are the "nice" ones, that is, those qualities that enable fellow citizens to get along with each other in peace and good will. Let us give these virtues the general name of *moderation* or *self-restraint*.

Another set of qualities, less "nice" but more spirited, more noble, is also needed: those that enable free men to establish and defend their liberty against its enemies. These qualities were alluded to by Congress in its Declaration of Causes of Taking Up Arms in 1775:

Honor, justice, and humanity forbid us tamely to surrender that freedom which we received from our gallant ancestors, and which our innocent posterity have a right to receive from us. We cannot endure the infamy and guilt of resigning succeeding generations to that wretchedness which inevitably awaits them, if we basely entail hereditary bondage upon them. . . . [We are] with one mind resolved to die freemen, rather than to live slaves.<sup>29</sup>

The same noble sense of manly honor was stressed by George Washington in a message to his soldiers on the eve of independence in 1776:

Our cruel and unrelenting enemy leaves us no choice but a brave resistance, or the most abject submission. This is all we can expect. We have therefore to resolve to conquer or die. Our own country's honor, all call upon us for a vigorous and manly exertion, and if we now shamefully fail, we shall become infamous to the whole world. . . . Let us therefore animate and encourage each other, and show the whole world, that a freeman contending for liberty on his own ground is superior to any slavish mercenary on earth.<sup>30</sup>



The Declaration of Independence concludes with these words, expressing the same choice for honorable freedom over shameful enslavement: "We mutually pledge to each other our lives, our fortunes, and our sacred honor."

Let us give this second set of virtues the general name of *manliness* or *self-assertion*.

These two sets of virtues—moderation or the right kind of self-restraint, and manliness or the right kind of self-assertion—complement each other. They enable citizens to respect each other's rights, to limit their irrational passions in a way that promotes decency in family and private life. They also enable citizens to be tough and feisty where it counts, namely, whenever liberty is threatened, either at home by excesses in the rulers, or abroad by nations who might want to rule Americans without their consent. In our earlier quotation from the *Notes on Virginia*, we saw that Jefferson worried that immigrants would lack both republican self-restraint and republican self-assertion.

The qualities in question have long been discussed by political philosophers. Plato's *Statesman*, for example, concludes by arguing that the great task of statesmanship is to weave moderation and manliness together, in the right proportion, in the souls of the citizens. These are the same two qualities we have seen, under various names, in important documents of the founding era.

In *Federalist* No. 51, Madison writes that a well-constructed government will make use of the passions to control the passions of the people: "Ambition must be made to counteract ambition." Madison calls this the "policy of supplying, by opposite and rival interests, the defect of better motives." However, this policy, while indispensable, has its limits, as he acknowledges in *Federalist* No. 55:

As there is a degree of depravity in mankind which requires a certain degree of circumspection and distrust, so there are other qualities in human nature which justify a certain portion of esteem and confidence. Republican government presupposes the existence of these qualities in a higher degree than any other form. [If people were as bad as some opponents of the Constitution say they are,] the inference would be that there is not sufficient virtue among men for self-government; and that nothing less than the chains of despotism can restrain them from destroying and devouring one another.

In this passage Madison is speaking of *moderation*. Two papers later he speaks of our complementary virtue, *manliness*. There he writes that freedom can

be maintained only by "the vigilant and manly spirit which actuates the people of America." Without this spirit, "the people will be prepared to tolerate anything but liberty."

In his First Annual Address to Congress, Washington too spoke of these twin themes of republican restraint and republican assertiveness: the people must be taught

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; . . . 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.<sup>31</sup>

However cleverly the institutions of government are constructed, republican liberty requires, at least in some degree, the citizen virtues spoken of and praised since antiquity by the philosophers, ancient and modern alike. Thus Madison's desire, noted earlier, that "foreigners of merit and republican principles" be particularly sought out as future citizens.

### France in the 1790s: Unfit for Liberty

The failure of the French Revolution gives us a vivid example of why the character of the citizens is a necessary element of liberty.

Gouverneur Morris was a leading framer at the Constitutional Convention of 1787 and a resident of France in the early 1790s. He was named U.S. ambassador in 1792. During these years, Morris kept a diary and wrote frequent letters to his superiors in America. Very early in the French Revolution, Morris saw that its end would not be good for France.

The French, he wrote, were trying to set up "an American constitution . . . without reflecting that they have not American citizens to support that constitution":

I wish much, very much, the happiness of this inconstant people. I love them. I feel grateful for their efforts in our cause and I consider the establishment of a good constitution here as the principal means, under divine providence, of extending the blessings of freedom to the many millions of my fellow men who groan in bondage on the continent of Europe. But I do not greatly indulge the flattering illusions of hope, because I do not yet perceive that reformation of morals without which liberty is but an empty sound.<sup>32</sup>

Morris's prediction that the French Revolution would fail proved correct. It ended in terror and tyranny.

Morris commented frequently on the French lack of the virtues of self-control:

Everybody agrees that there is an utter prostration of morals, but this general position can never convey to an American the degree of depravity. It is . . . from such crumbling matter that the great edifice of freedom is to be erected here. . . . [T]here is one fatal principle which pervades all ranks. It is a perfect indifference to the violation of engagements. Inconstancy is so mingled in the blood, marrow, and every essence of this people, that when a man of high rank and importance laughs today at what he seriously asserted yesterday, it is considered as in the natural order of things. . . . The great mass of the common people have no religion but their priests, no law but their superiors, no moral but their interest.<sup>33</sup>

Paris in particular was "perhaps as wicked a spot as exists. Incest, murder, bestiality, fraud, rapine, oppression, baseness, cruelty." A lack of self-control among the politicians made deliberation impossible in the French Assembly. "One half of the time is spent hallowing and bawling," while those who do try to speak are often shouted down by "a continual uproar till the orator leaves the pulpit." The French were constantly "crying down and even ridiculing religion," but Morris believed "that religion is the only solid base of morals and that morals are the only possible support of free governments." In contrast, "America in the worst of times was much better because at least our criminal law was executed, not to mention the mildness of our manners."<sup>34</sup>

Besides their deficiency in self-restraint, the French also lacked, in Morris's view, appropriate self-assertion. That is evident in the following conversation between Morris and a prominent Frenchman, occasioned when the Frenchman "mentioned the necessity of fleets and armies to secure us [America] against invasion."

Morris: Nothing would be more difficult than to subdue a nation, every individual of which in the pride of freedom thinks himself equal to a king, and if, sir, you should look down on him would say: "I am a man, are you any thing more?"

Frenchman: All this is very well, but there must be a difference in ranks, and I should say to one of these people: "You, sir, who are equal to a king, make me a pair of shoes."

Morris: Our citizens, sir, have a manner of thinking peculiar to

themselves. This shoemaker would reply: "Sir, I am very glad of the opportunity to make you a pair of shoes. It is my duty to make shoes and I love to do my duty. Does your king do his?"

In his diary, Morris entered this comment: "This manner of thinking and speaking however is too masculine for the climate I am now in." Few French commoners would have spoken in this way. They had too little "pride of freedom" to keep the haughty upper classes in line. When the Revolution began, Morris wrote, "as to public spirit, it cannot exist among a people so lately emancipated." In other words, the French were incapable of the kind of vigilant self-assertion necessary to establish and sustain a free government.<sup>35</sup>

Morris was not claiming any congenital defect in the French race. He thought that one day France might show herself as capable of liberty as America, as he implies in this statement:

In effect, time is needful to bring forward slaves to the enjoyment of liberty. Time. Time. Education. But what is education? It is not learning. It is more the effect of society on the habits and principles of each individual, forming him at an early period of life to act afterwards the part of a good citizen and contribute in his turn to the formation of others. Hence it results that the progress towards freedom must be slow.<sup>36</sup>

Morris's observations, and the reflections of other Founders that we saw earlier, have definite implications for immigration and naturalization policy. Potential citizens should be judged by their "habits and principles," their capacity for republican citizenship, based on national character and other considerations. The deliberation of politicians will decide what precise policy would be best. Perhaps, as in the early republic, no special restrictions would be needed on immigration as long as the character and number of immigrants was such that they could be assimilated into the body of citizens without great difficulty. Limits on naturalization, however, might be useful. Perhaps, as happened later in American history, immigration restrictions would have to be established as well. Whatever the policy, it should be based on an accurate awareness that the character of citizens (and therefore of outsiders who will become citizens) is an indispensable condition of freedom. If the will of the majority is consistently unreasonable, as it must when citizens lack the minimal virtues of republican self-restraint and self-assertion, freedom must eventually give way to despotism.

## History of Immigration and Naturalization Policy

By 1776 over a third of American citizens were from countries other than England. In a famous passage of his *Letters from an American Farmer* (1782), Crèvecoeur asked, "What then is the American, this new man? . . . Here individuals of all nations are melted into a new race of men." Most newcomers became citizens merely by satisfying a residency requirement. In the first federal naturalization law in 1790, the term was two years. In 1795 it was raised to five years, then to fourteen during the near-war with France in 1798. In 1801 it was set back to five years, where it remains to the present day. In spite of partisan differences contributing to the controversy over these laws, Americans of every party, as historian James Kettner writes, shared the assumption that "the national government had a legitimate interest in controlling the character of potential citizens" through naturalization policy.<sup>37</sup>

It should be noted that we speak here of the Founders' policy on naturalization (becoming a citizen) rather than immigration (entering the country). The Constitution was silent on the latter, assigning Congress the power "to establish a uniform rule of naturalization." In practice, for the first century of American history, naturalization policy was used to encourage or discourage immigration, as indicated in this typical early argument: "The power to naturalize," said a petition to Congress in 1837, "was given to Congress to add to the physical strength of the United States." Few came to America to stay unless they were eligible for citizenship. It is therefore technically correct, but misleading, to say, as is commonly said, that the United States had an open door policy on immigration before the 1880s.<sup>38</sup>

After the Civil War, American-born children of immigrants began to be granted automatic citizenship as a result of the Fourteenth Amendment ("All persons born . . . in the United States, and subject to the jurisdiction thereof, are citizens"). Those who came to America knew that if they did not become citizens, their children would. Therefore naturalization law gradually became less important as a means to regulate immigration. The first federal law limiting immigration, the Chinese Exclusion Act, was passed in 1882.

It appears, however, that the citizenship clause of the Fourteenth Amendment has long been misunderstood. Edward J. Erler points out that the author of the clause, Senator Jacob Howard, emphatically stated that those "subject to the jurisdiction" of the United States "will not, of course, include persons born in the United States who are foreigners" or "aliens." In other words, the Fourteenth Amendment was never intended to grant automatic citizenship to American-born children of foreigners, and the

Supreme Court erred in 1898 when it ruled otherwise. (The Court has never ruled that American-born children of *illegal* aliens are citizens, although that too is current federal policy.) Senator Howard's reading, endorsed by Senator Lyman Trumbull, chairman of the Senate Judiciary Committee, and by the Supreme Court in the *Slaughter House Cases*, is the only reading of the amendment that is consistent with the equality principle, according to which, as we showed above, no one can justly become a citizen of a nation without its consent.<sup>39</sup>

The nation's first naturalization law of 1790 reflected the Founders' concern for republican character. It required would-be citizens to apply "to any common law court of record in any of the states wherein he shall have resided, . . . and mak[e] proof to the satisfaction of such court that he is a person of good character." (This could ordinarily be done by having a citizen sponsor testify on one's behalf.) They also had to take "the oath or affirmation prescribed by law to support the Constitution of the United States." Most states had similar requirements for state citizenship. Remnants of this concern for the character of newcomers survive today. According to a 1989 government brochure, federal law generally forbids entry to any person who is a "beggar," has "committed a serious crime," is "coming for immoral sexual acts," or is otherwise morally objectionable. Those being naturalized must learn the elementary facts of American government and declare their allegiance to the Constitution.<sup>40</sup>

The law made national origin or race a condition of citizenship through most of American history. The first naturalization law (1790) stated, "That any alien being a free white person, who shall have resided within the limits and under the jurisdiction of the United States for the term of two years, may be admitted to become a citizen thereof on application to any common law court." Naturalization remained limited to whites until 1870, when, in the aftermath of the Civil War, "aliens of African nativity" were also made eligible. Filipinos became eligible after the Spanish-American War. Chinese were made eligible for naturalization only in 1943. It was not until 1952 that all national-origin restrictions on naturalization were removed. (As we noted earlier, however, the American-born children of these excluded groups became citizens at least as early as 1898.)<sup>41</sup>

The growing openness to members of all the world's races was always possible under the terms of the Declaration of Independence, which, as Lincoln noted, made a transracial principle—the equal natural rights of all men—the basis of citizenship. For that reason, America from the beginning was always a multinational and multiracial society. As early as 1776, as we saw in the first chapter, some blacks were citizens, as were many non-British Europeans.

The huge immigration wave of 1880 to 1914 was followed by five decades of very little immigration. A series of laws, culminating in the Immigration Act of 1924, limited total immigration to 150,000 per year, and the actual numbers were usually much less than that. (Between 1881 and 1920, annual immigration had averaged almost 600,000.) Each country was assigned a quota in proportion to its percentage of the American population in 1890. Northern and western Europe received 82 percent of the quota, southern and eastern Europe 16 percent, with 2 percent left for the rest of the world. The last national-origins provisions of American immigration law were repealed in 1965.<sup>42</sup>

### Why Was National Origin or Race Considered?

Today this history of exclusion by race and national origin in immigration and naturalization law is considered an embarrassment and an injustice. But if we consider the earlier law charitably, we can see that Americans were struggling, however clumsily, with a real problem: how to maintain a population with the moral and religious qualities to keep itself free.

When Americans used rough categories like national origin to determine who should be eligible for entry or citizenship, they did not believe that every member of a given nation was perfectly suited or absolutely unsuited for citizenship. They were far from believing that every white man was virtuous, or that every black, Indian, or Asian was vicious. They resorted to these crude categories because characteristics shared by *many* (not all) of a given group in the past were judged likely to affect their future capacity, *as a group*, for assimilation and for developing, at least in some measure, the republican qualities of self-control and self-assertion.

From the standpoint of the Founders' principles, the perfect immigration policy would judge people as individuals, not as groups. It would be based on an exact knowledge of the moral and political habits and attitudes of every person who might wish to enter and become an American. The difficulty, as Aristotle observed long ago, is that virtue, unlike beauty, is invisible. In an individual it becomes manifest through his deeds over a long time. Many nonwhites would obviously have qualified in the 1790s and afterwards under a policy that was able to discern individual differences in character. A great many whites would have been excluded. But such knowledge is beyond human capacity. Officials cannot look into the individual souls of thousands of immigrants. They have to make do, as Tocqueville observed, with general categories that "permit human minds to pass judgment quickly on a great number of things." Tocqueville was well

aware that when we judge people or things in light of general ideas, "what is gained in extent is always lost in exactitude." But we cannot do without such categories, for "if a human intelligence tried to examine and judge all the particular cases that came his way individually, he would be lost in a wilderness of detail."<sup>43</sup>

To understand why the Founders would write a law limiting naturalization to whites, we do not have to dismiss them as mindless bigots. We need only to recall that in those days white was practically equivalent to European. (In the year following the first naturalization law, Hamilton spoke of the general benefits of "emigration from abroad" in his *Report on Manufactures* (1791), but he mentioned only emigrants "from Europe.")<sup>44</sup> Europe was the realm of what we now call Western civilization. The words we quoted earlier from Washington, Jefferson, and other Founders show that they were thinking of civilization, not whiteness, when they reflected on the positive qualities (such as sensible political convictions, along with the virtues associated with self-assertion and self-restraint) that at least some European immigrants would bring with them to America. Europeans as a group shared with Americans a heritage that made them, in the Founders' view, the most likely candidates for successful assimilation into democratic citizenship.

George Washington paid his respects to this European (not just British) heritage and its importance for the success of America's experiment in self-government when he wrote,

The foundation of our empire was not laid in the gloomy age of ignorance and superstition, but at an epoch when the rights of mankind were better understood and more clearly defined than at any former period; . . . the free cultivation of letters, the unbounded extension of commerce, the progressive refinement of manners, the growing liberality of sentiment, and above all, the pure and benign light of revelation, have had a meliorating influence on mankind and increased the blessings of society. At this auspicious period, the United States came into existence as a nation.<sup>45</sup>

The Founders' respect for European civilization was not tied to a belief in the superiority of the white race per se. If they had believed in some sort of automatic equation of "white" with "virtue," they would not have worried about whether some Europeans—whether Frenchmen in France or immigrants to America—were capable at that time of living in "temperate liberty." If they had been racists in the sense of believing that some races are destined to be rightfully enslaved by other races, they would not have denounced black slavery and passed laws for its abolition in eight of the

original thirteen states during the founding era after it had existed without controversy for a century and a half in colonial America. In fact, as we saw in chapter 1, no Founder believed in racial differences with respect to the natural rights of mankind. Jefferson wrote, "Whatever may be their degree of talent, it is no measure of their rights. Because Sir Isaac Newton was superior to others in understanding, he was not therefore lord of the person or property of others."<sup>46</sup> Human beings of every race are created equal in the sense of the Declaration.

Morris's claim that the French of the 1790s lacked the right "habits and principles" to sustain a regime of liberty was not racist. It was not a claim that every individual Frenchman lacked elementary self-control. Many of them, including the Revolutionary War hero Lafayette, were people of outstanding virtue. Nor was it a *stereotype*, because a stereotype by definition is an image in the mind that is, in the words of Harvard social scientist Thomas Pettigrew, "acquired culturally rather than through personal experience,"<sup>47</sup> and Morris reached his opinion of the French through personal experience, through his own observation and reflection. Mistaken or not, it would have been a reasonable basis for deciding not to admit large numbers of Frenchmen to American citizenship over a short period of time.

Finally, it would be wrong to leave the impression that only high-minded arguments about the moral conditions of liberty were advanced to justify the pre-1965 preference for European immigrants. Benjamin Franklin bluntly stated that he preferred English immigrants because other Europeans "are generally of what we call a swarthy complexion; as are the Germans also, the Saxons alone excepted." Franklin justified his feelings with an all-too-human remark: "But perhaps I am partial to the complexion of my country, for such kind of partiality is natural to mankind."<sup>48</sup> From the point of view of the Declaration of Independence, this kind of preference for one's own, the love of one's own kind, is a permissible and understandable, although not a particularly noble, basis for immigration and citizenship policy.

It is one thing to decide whom to admit to America on the basis of personal preference. It is quite another to deny to Americans already living here the privileges or immunities of citizenship and the equal protection of the laws. In his letter to the Hebrews in Newport, Washington wrote, "Happily the Government of the United States . . . gives to bigotry no sanction, to persecution no assistance." In the Old South, well into the twentieth century, government gave its sanction to bigotry, and its assistance to persecution. This was not a matter of people innocently associating with those of their own choice. Quite the contrary. The laws forced private parties to

discriminate even when they preferred not to. In the famous *Plessy* case, the railroad company was compelled by Louisiana law to set up separate cars for whites and blacks. Governments in the South also tacitly allowed private individuals such as the Ku Klux Klan to do violence to innocent blacks and whites who wanted to associate or do business together in unapproved ways. This Jim Crow regime contradicted the principles of the founding. It was abolished by the civil rights acts of the 1960s.<sup>49</sup>

Nor should we equate the innocent preference for one's own with the ugly claim that some races do not possess the rights to life, liberty, and the pursuit of happiness. Before the Civil War, Lincoln complained that Americans both North and South were beginning to argue that the equality of men was a "self-evident lie." Darwinism and German political thought persuaded many American intellectuals after the Civil War to reject the equality principle. In his 1895 presidential address to the American Association for the Advancement of Science, anthropologist Daniel Brinton argued that knowledge of inherited racial differences could "supply the only sure foundations for legislation; not a priori notions of the rights of man." Sociologist John Commons' influential 1909 book on immigration began with an explicit attack on the Declaration of Independence. The Founders would have rejected these views with indignation.<sup>50</sup>

### The Moral Conditions of Citizenship

As we saw earlier, the most serious reason for encouraging immigrants from some places and discouraging them from others is to sustain responsible republican citizenship. This purpose, however, is promoted by many policies, only one of which is regulating the character and number of new citizens. Far more important, from the Founders' viewpoint, was the role of law and government in promoting the moral conditions of citizenship among those who already are or will soon become Americans. I mention four examples.

First, public education was considered one of the most effective means to teach both immigrants and native-born Americans the rights and duties of a free people. Two quotations from leading Founders may illustrate the consensus of their generation. Earlier we quoted George Washington's First Annual Address to Congress, in which he spoke of teaching the people respect for the law and avoidance of licentiousness (self-restraint), along with vigilance against invasions of their rights (self-assertion). Washington continued:

Whether this desirable object will be best promoted by affording aids to seminaries of learning already established; by the institution of a national university; or by any other expedients, will be well worthy of a place in the deliberations of the Legislature.<sup>51</sup>

Sharing Washington's belief in the role of public education in maintaining freedom, James Madison once wrote:

The liberal appropriations made by the legislature of Kentucky for a general system of education cannot be too much applauded. . . . Learned institutions ought to be the favorite objects with every free people. They throw that light over the public mind which is the best security against crafty and dangerous encroachments on the public liberty. . . . What spectacle can be more edifying than that of liberty and learning, each leaning on the other for their mutual and surest support?<sup>52</sup>

Second, government promoted knowledge of and respect for the moral obligations of free men not only in schools but also through the speeches of politicians. George Washington's First Inaugural address set an example that was long followed:

There exists in the economy and course of nature, an indissoluble union between virtue and happiness; between duty and advantage; between the genuine maxims of an honest and magnanimous policy, and the solid rewards of public prosperity and felicity; since we ought to be no less persuaded that the propitious smiles of Heaven can never be expected on a nation that disregards the eternal rules of order and right, which Heaven itself has ordained.<sup>53</sup>

Third, state and local governments continued to enforce those parts of the common law, inherited from Britain, that support the virtue and duty of which Washington spoke. These included laws against public immorality (such as public nudity and prostitution), against licentious speech (vulgar and obscene publications), in support of enduring marriage (making divorce rare and discouraging sex outside of marriage), and encouraging public respect for the prevailing religious opinions of the nation (through Sunday-closing laws, for example).

Fourth, government used many other laws to promote self-restraint and self-assertion. Taxes on liquor were intended from the beginning, as Hamilton wrote in *Federalist* No. 12, to foster "the morals, and . . . the health of the society." States and towns were careful in their poor laws to

promote decent conduct and discourage laziness and irresponsibility. Welfare was given conditionally and sparingly, so that men would be discouraged from becoming shiftless, women discouraged from bearing children outside of marriage, and both sexes encouraged to get married and stay married. (See chapter 6, on welfare.) As for self-assertion, Congress passed a militia law in 1792 requiring that almost every male citizen between the ages of eighteen and forty-five be enrolled in the militia of his state, and "provide himself with a good musket or firelock" and "not less than twenty-four cartridges." They were also required to "appear, so armed, accoutred and provided, when called out to exercise, or into service."<sup>54</sup>

I mention these four means by which government supported the moral conditions of freedom in order to put immigration and naturalization policy into perspective. That policy is one element, but by no means the most important element, in a free government's indispensable efforts to combine *consent* with *protection of rights*. The Founders aimed to form a body of citizens who would be capable of governing themselves *democratically* through elected representatives, while also governing themselves *reasonably* through policies that secured their own rights while respecting those of others.

28, 59, 62–63, and 37; and Robert E. Cray Jr., *Paupers and Poor Relief in New York City and Its Rural Environs, 1700–1830* (Philadelphia: Temple University Press, 1988), 199. Trattner's first seventy-five pages tell the story of welfare in early America; see also Katz, *In the Shadow*; and Benjamin J. Klebaner, *Public Poor Relief in America, 1790–1860* (1952; reprint, New York: Arno, 1976). Marvin Olasky, "The Early American Model of Compassion," in *The Tragedy of American Compassion* (Washington: Regnery Gateway, 1992), chap. 1.

11. The 59 percent figure is from U.S. Department of Commerce, *Survey of Current Business*, vol. 44, no. 4 (April 1964), 11 (percent of American families with less than \$3,000 annual income in 1954 dollars). This figure is comparable to the "below poverty level" numbers that the government began to report in 1947, because the below-\$3,000 percentage in 1947 was 35, close to the 32 percent officially reported poor in that year. *Economic Report of the President* (Washington: Government Printing Office, 1965), 210. *Statistical Abstract of the United States: 1996* (Washington: Government Printing Office, 1996), 472.

12. Quotations are from Trattner, *From Poor Law to Welfare State*, 102–4. See also Robert H. Bremner, *The Discovery of Poverty in the United States* (1956; reprint, New Brunswick: Transaction Publishers, 1992), chap. 2; Olasky, *Tragedy of American Compassion*, 116–50.

13. Christopher Jencks, *Rethinking Social Policy: Race, Poverty, and the Underclass* (Cambridge: Harvard University Press, 1992), 2. Robert B. Stevens, *Statutory History of the United States: Income Security* (New York: Chelsea House, 1970), 152. Katie Louchheim, ed., *The Making of the New Deal: The Insiders Speak* (Cambridge: Harvard University Press, 1983), 175. George W. Liebmann discusses AFDC, unwed motherhood, and the case for maternity homes in "The AFDC Conundrum: A New Look at an Old Institution," *Social Work* 38 (January 1993): 36–43.

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17. Franklin, *Writings*, 588.

## Chapter 7

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7. Continental Congress, "Appeal to the Inhabitants of Quebec" (1774), in *American Political Writing during the Founding Era, 1760–1805*, ed. Charles S. Hyneman and Donald S. Lutz (Indianapolis: Liberty Press, 1983), 1:235–8. See Thomas G. West, "Religious Liberty: The View from the Founding," in *On Faith and Free Government*, ed. Daniel Palm (Lanham, Md.: Rowman & Littlefield, 1997).

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## Index

- Abernathy, Ralph, 19, 21–22  
 abuse: of children, 92, 95–97, 100, 105, 109, 142; lesbian, 92–93; of women, 73–74, 91–93, 97, 101–2, 104–9, 142, 144  
 Adams, Abigail, 94, 97, 102–4  
 Adams, John, 124, 131, 135, 137, 151, 159; and commerce, 66–67; and the property requirement for voting, 122–23, 128; and reason and passion, 99; and slavery, xiii, 5, 13; and women, 80, 83, 86–87, 94, 97, 102  
 Adams, Samuel, 20  
 Adams, Willi Paul, 49  
 Africa, Africans, 3, 8–10, 14, 22, 34, 99, 167. *See also* blacks  
 Alabama, 12  
 aristocracy, 42, 50, 64, 66, 115, 126, 136, 153  
 Aristotle, 68, 97, 168  
 Asia, Asians, 54, 99, 168  
 Bailyn, Bernard, 32  
 Baldwin, Abraham, 31  
 Bartky, Sandra, 78  
 Beard, Charles, 58, 111–12  
 Berkin, Carol, 81  
 Berman, Larry, 112, 131  
 Bible, the, 67, 104. *See also* Christianity; Judaism; religion  
 Bill of Rights, 75  
 blacks, 141, 179; and citizenship, 25–28, 167–69, 171; and slavery, xi–xv, 1–36, 39–40, 46, 60, 71, 73; and voting rights, 75, 77, 113  
 Blankenhorn, David, 94  
 Bloom, Allan, 95, 177  
 Bone, Robert, 53  
 Boorstin, Daniel, 121  
 Bork, Robert, 176–77  
 Bradford, M. E., 148  
 Bradshaw, John, 92  
 Brennan, William, 61–62  
 Brinton, Daniel, 171  
 Britain, 44, 127, 152; and the American Revolution, 3, 6–7, 15, 55, 72, 81–82, 117, 124, 156; and British tradition, 72, 153, 169, 172; and property rights, 52; and slavery, 12; as source of American immigration, 150–52, 166, 170; and voting rights, 81, 115; and welfare policy, 107, 133, 135, 143, 145  
 Burns, James MacGregor, 73, 75, 131, 137  
 Bushman, Richard, 2, 5–6, 45, 72  
 Calhoun, John C., 10, 33  
 California, 143, 148  
 capitalism, 40, 46, 57, 127–28  
 Carnegie, Andrew, 40  
 Catholicism, 150, 157. *See also* Christianity  
 Central America, 29  
 China, Chinese, 151, 166–67  
 Chipman, Nathaniel, 51  
 Christianity, 13, 102–4. *See also* Bible; Catholicism; Protestantism; religion  
 Churchill, Winston, xv  
 citizenship, xii, xiv, 4, 25–29, 67–68, 112, 121, 147–73, 177, 179  
 Civil War, xiv, 10–12, 14, 16, 19, 24–29, 32–36, 45, 147, 166–67, 171, 175