

The Transformation of the American Democratic Republic



Stephen M. Krason

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**The Transformation ^{of} the
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This book is dedicated to the memory of my father-in-law and mother-in-law, Joseph and Catherine Walter, who were the kind of salt-of-the-earth, religious people upon whom the restoration of the American democratic republic especially depends.

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INTRODUCTION

THE AIM OF THIS STUDY

We live in a time when there has been much criticism about the United States Constitution being subverted in many ways and about the country deviating from the constitutional framework established by the Founding Fathers and having changed its character in some significant way. Is the American political order still, fundamentally, the one that was established by the Founders, or over the course of nearly two hundred and twenty-five years has it changed into something different? It is easy to make assertions about this question, but what we attempt in this book is a serious historical study and analysis in light of the thinking of the Founders themselves if, indeed, there has been such a change. Most specifically, we have considered the following: 1) Whether the Founders' thinking about the principles, practices, and conditions they believed were necessary to sustain the kind of political order they established, a democratic republic, have been upheld throughout U.S. history; and 2) If the cultural conditions of the Founding Era, when they launched the American democratic republic and that were the foundation upon which their enterprise was established, have been maintained. We believe that there has been a transformation of the American democratic republic. Our study progresses through the history of the American Republic under the Constitution from 1789 to the present, examining each historical period and considering how it compared to this thinking of the Founders and their era's cultural conditions and identifying the events, developments, and thought during each period that helped influence an ultimate reshaping of the nature of the political order. The areas of analysis in the various historical periods concern political, constitutional, and legal developments; economic and technological developments; the role of government and relations among the three branches of the federal government and between the federal government and the states; popular movements; socio-cultural (including religious) developments; demographic developments and relations among social groups; war, foreign affairs, and territorial expansion; and philosophical perspectives and currents in socio-political thought. We weigh the effects that these and other factors have had on affecting the deviation of the respective historical period from the

Founding, and which developments and periods were particularly crucial in changing the character of the American political order in the long run.

The book is divided into ten chapters, eight of which concern the historical periods and go into considerable detail. We believe that the detail is necessary to give the reader a good understanding of the respective period and to be able to secure enough information in the different topical areas to make a reasonable evaluation of the period in light of the Founding. To be sure, we do not claim to be providing a thorough, in-depth historical study of each period. We present the major events and trends, but our concern is garnering the kind of information needed to do our particular analysis. This is not the work of a historian, employing the typical method of historians of carefully studying documents and other original sources of a period to set or reset the historical facts and influences. Instead, we have tried to assemble primarily sound, respected secondary sources to give us as good and accurate of a picture of the historical periods—including the culture of the Founding Era itself—as possible to do our analysis (more general sources are sometimes used for specific factual information and statistical data). This book is the work rather of a political scientist and scholar of American politics and political thought who has sought to come to some critical conclusions about the American political order in light of historical realities. Where original sources are used it is in the manner that a scholar of political philosophy and American political thought would use them: in studying the writings of the leading Founding Fathers and other pertinent political thinkers in the beginning of the book to understand precisely and clearly their thought as it is pertinent to our inquiry. It must be kept in mind that the subject focused on here is *what the Founders thought was necessary in order to sustain a democratic republic, the kind of political order they were establishing under the Constitution—and the actual conditions, beliefs, and practices of their culture that implicitly made possible such a political order.*

The chapters proceed as follows: Chapter 1 explores the views of the Founders and the character of their culture to conclude what the standards are that we then go on to use for our analysis of the various historical periods. It gives some special attention to the crucial question of the Founding Era's understanding of the role of religion in a democratic republic. It also introduces the question of the decline of political orders, a topic focused on by many thinkers over the last two and a half millennia, which we *very briefly* consider with regard to each historical period (i.e., to determine the extent to which the factors those thinkers identify as causing decline are present). It is interesting to see that many of the very principles, practices, and conditions that the Founding upheld as needed to sustain a democratic republic are coincident with those of a good political order per se, and how departures from them signal decline. The chapter also reflects at some length on possible weaknesses in the Founders' thought and understanding that may have helped to encourage developments throughout American history that led to the undoing of their handiwork (i.e., the democratic republic of the Constitution) over time. We suggest, at the end of each historical chapter, which of these possible weaknesses may in light of developments have been operative, and consider which may have been most

influential in affecting the transformation of the American political order over time. Again, there is just *brief* reflection on this subject. The prime focus of this book is the evaluation of each historical period to see its deviation from the norms of the Founding, how they led to an eventual transformation of the character of the American political order, and what the nature of that change finally has been.

Some might argue that we have painted an idyllic picture of the Founding Era. We are aware of the shortcomings of that Era—like any period and place in human history it had them, and one of its most evident ones was the existence of slavery—but it is difficult to say that its principles and ideas for the structuring of free government were anything but magnificent and had reverberating effects for the entire world over time. It is also difficult to say that the convictions and practices of its culture were, on balance, anything but exemplary in matters of social morality, community, and personal and inter-personal norms.

Chapter 2 begins the examination of the periods of American history in light of the Founding. It covers the period from 1789 to 1817, from the beginning of the new Republic after the Constitution was ratified through the first four presidents—the eras of the Federalists and the Jeffersonians. We see there what tendencies counter to the Founding may have developed very early.

Chapter 3 focuses on what we identify as a very critical period in the transformation of the American political order, the time from the end of the Jeffersonian period until the end of the Jacksonian Era (1817-1840). The key word to describe this time was democratization and, as we shall see, it features the beginnings of many crucial trends that have significant effects in the long run on the political order's character.

Chapter 4 explores the period from 1840 to 1877—a time of a major crisis in American ideals with the Mexican War and westward expansion, and then the greatest political struggle and upheaval in American history with the slavery question and Civil War and the bitter aftermath of Reconstruction. In spite of the turmoil, it is not a period where the activity of transformation gains momentum (although certain quiet cultural trends take deeper hold).

Chapter 5 focuses on the period from 1877 to 1920—the Gilded Age, Progressive Era, and First World War—when profound political, economic, cultural, and constitutional changes and changes in thought reshaped the country and markedly advanced the cause of transformation of the character of the American political order. The changes of this period served as a springboard to the more decisive changes that followed in the twentieth century.

Chapter 6 discusses the “roaring twenties,” the Great Depression, and World War II (1920-1945), a time of abiding cultural changes, especially as affected the role of religion in American life and attitudes of the intelligentsia and opinion-making strata. Economic trauma and then global war, however, constrained the spread of the new secular way of thought and life among the general populace, however. The most sweeping political change was inauguration of the ongoing, substantial domestic role of the federal government by the New Deal.

Chapter 7 considers the decade and a half after World War II (1945-1960), which was mostly defined by the American role in the Cold War and as a result saw a further permanent growth of federal power. It was a time, however, that in many respects measured up well in comparison to the Founding, even while the cultural changes of the 1920s were quietly becoming more deeply implanted and spreading.

Chapter 8 examines the 1960s and 1970s, the age of veritable socio-cultural revolution, political turmoil, and the next great leap in federal and general governmental power. While many developments over a long period of time led up to this, it was a time when old certainties evaporated and ways of living were turned on their heads. It was the time when the welfare state and the activity of social engineering became permanent features of American life, and liberalism—the driving force of American politics for most of the century—was decisively transformed, with profound consequences for the character of the American political order. The transformation of the American democratic republic clearly takes place at this time.

Chapter 9 covers the period from 1980 to the present, when there is a simultaneous reaction to the developments of the previous two decades and a further ingraining of them into the American frame of life and government—capped off by an attempt at the present to carry the changes of the 1960s and 1970s even further and more sweepingly transform American politics and culture.

Chapter 10 reviews the analysis throughout the book and considers what, with the subversion of the democratic republic of the Founders, the new character of the American political order is. It makes conclusions about how the transformation happened, and what were the crucial periods and developments. It considers what the evidence of the different historical periods brought together indicates about which putative weaknesses in the Founding were particular factors in the transformation, and what can be concluded about the state of decline of the political order *per se*. Finally, it reflects about what might be done to restore the democratic republic of the Founders.

While our study, writing, and teaching about American politics for many years gave us a strong sense that a transformation had occurred before we started this book, a scholar must go where the evidence and sound analysis leads him. That is what we kept in mind in the course of our research. Although after nine chapters we were sure a transformation has occurred, we only resolved in the course of writing the tenth chapter what the new character of the American political order is. The evidence mustered and the argument made is clear and troubling, and all those concerned about the American Founding, our Constitution, and the future course of our political life should examine and ponder it.

“I yield slowly and reluctantly to the conviction that
our constitution cannot last.”

- Chief Justice John Marshall to Justice Joseph Story (September 22, 1832)

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CHAPTER 1

AMERICA'S "PARCHMENT REGIME": THE ORIGINAL CHARACTER OF THE AMERICAN DEMOCRATIC REPUBLIC AND THE CULTURE SUPPORTING IT

Introduction

We hear it said often that the practice of something does not measure up to the theory behind it. This is the case with political orders as with other types of entities, as well as with individual persons.

In Federalist 10, James Madison says that in "a pure democracy...there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence and contention...and as short in their lives as they have been violent in their deaths."¹ With such an utterly unflattering assessment by the main author of the Constitution, one wonders how we might be able to refer to the United States as a *democratic* republic? Martin Diamond, Winston Mills Fisk, and Herbert Garfinkel, in their book entitled *The Democratic Republic*, say that the U.S. is "democratic"—in the representative, not pure, sense—because it features majority rule, and is "republican" because it was intended to demonstrate such characteristics as restraint, sobriety, competence, and liberty.² There was intended to be majority rule, to be sure, but within the context of preserving minority rights; that is, the minority could not be suppressed or its liberty destroyed. As Diamond, et al. say, our Constitution is "faithful to the spirit and form of democracy...[but] guards against its dangerous propensities." The latter are not just the tyranny referred to by Madison, but also folly, feebleness, and ineptitude.³ It seeks to "reconcile the advantages of democracy with the sobering qualities of republicanism," and "to render a democratic regime compatible with the protection of liberty and the requisites of competent government."⁴ The consent of the governed, then, is at the heart of the American

political order, but its force is mitigated by the restraints of representative institutions, the rule of law, and social, cultural, and moral influences. This insures that the majority's will not only is not abusive, but also that the common good of the political order will be promoted.

The View Prevalent at the Time of the American Founding Fathers about the Principles and Practices Needed to Sustain a Democratic Republic

We can identify at the time of our Constitution's adoption widely held views about the principles and practices that have to be prevalent to sustain a democratic republic. They represent: 1) a mixture of institutional factors and democratic (i.e., democratic republican) practices; 2) those that relate strictly to democratic principles and practices; and 3) those involving social conditions that are necessary to sustain republican government. We can identify these views in writings of the individual American Founding Fathers (i.e., the leading figures at the 1787 Constitutional Convention and Thomas Jefferson, who is often also reckoned a "Founding Father"), major political documents of the constitutional (i.e., Founding) era, the thought of the philosophers of republican government who especially influenced the thinking of the Founders, and the retrospective assessment of the greatest commentator on the American democratic republic, Alexis de Tocqueville. These are principles and practices that from learned reflection and actual experience the leading political thinkers and statesmen of the Founding Era concluded should be present to call a political order a "democratic republic."

Regarding the first category (institutional arrangements), separation of powers, checks and balances, an independent judiciary, and federalism were particularly emphasized. Separation of powers did not happen automatically in early America, even though it was a staple of the thinking of such influential political philosophers as John Locke and Baron de Montesquieu. Indeed, after the outbreak of the Revolutionary War legislative supremacy was the order of the day in the American states, an outgrowth of the bitterness about the overbearing royal-appointed colonial governors in the years before.⁵ The abuses of institutionally unchallenged legislative power became readily apparent, however, as the Federalist Papers make clear.⁶ The writings of numerous Founding Fathers underscore the centrality of the notion of separation of powers. In spite of the movement toward legislative supremacy in the period 1776-1789, it also appears as a basic principle in such prominent new state constitutions as those of Virginia and Massachusetts.⁷ James Madison sums it up in Federalist 47: "No political truth is certainly of greater intrinsic value."⁸

Checks and balances, of course, is a concomitant of separation of powers. Alexander Hamilton, another prominent Founder, speaks of the need for "mutual checks."⁹ It had roots going back at least to Solon in ancient Athens.¹⁰ George Dargo writes that "separation of powers, mixed with an elaborate system of

checks and balances among roughly equal branches" became the cornerstone principle of American government.¹¹

Probably the most famous Founding Era argument for an independent judiciary is Hamilton's Federalist 78, although the Declaration of Independence also pointedly speaks about it when it includes among the colonists' grievances against King George III that "[h]e has made judges dependent on his will alone for the tenure of their offices, and the amount and payment of their salaries."

The federal system was not something established in the Founding Era; the Constitution was erected upon the long-existing reality of it. Hamilton, representing well the general views of the Founders, insisted that the state governments had to be strong and a balance of power between them and the new federal government was as essential as the forging of a strong union.¹² Later, Tocqueville mentioned the federal system as crucial to the American democratic republic ("one of the most powerful combinations favoring human prosperity and freedom").¹³ Both the Framers and Tocqueville spoke about how the federal structure in conjunction with the large land mass and population of the U.S.—large even then with many fewer states—gives rise to the notion of the extended republic. They argued that this helps protect liberty because within it dangerous factions (see below) and intense political passions are more likely to be geographically contained.¹⁴

It is clear that both the Founding Fathers and Tocqueville were suspicious of excessive centralization of government. The Founders state that the national government under the Constitution only has a limited range of powers and would be concerned only with matters of general concern to the whole country.¹⁵ Tocqueville speaks of "the extreme evils which centralization can produce."¹⁶ His conclusion that it is good for the American democratic republic that the nation (at that time) had "no great capital" seems to be connected with this concern about centralization.¹⁷ Despite his admiration for democratic republics, he was concerned that what might happen as time goes on is that while they would continue to let individuals have some role in shaping "important affairs"—for example, by extending them the franchise—they would increasingly regiment the particular everyday aspects of their lives.¹⁸ He sees equality as preparing men for this kind of "gentle" despotism, with enhanced centralized governmental authority, since it makes them so independent of one another that they will be only too ready to turn to the state as protector and provider.¹⁹

There are several factors that combine institutional arrangements and democratic practice, not fitting neatly into simply one or the other. These include the following: the notion that the makers of the laws must be subject to them like everyone else; the need for a "mixed" government, where both the propertied or leading elements of the political society and the much more numerous popular elements are represented; the presence of parties and factions to check each other so as to preserve liberty, not allowing any one group to become so powerful that it threatens the common good; and also that the laws and not the mere arbitrary whim of rulers control public affairs (i.e., "a government of laws and not of men").

The applicability of the laws to their makers was stressed by the political philosopher John Locke²⁰ and was commonly accepted in the political life of America almost from the beginning. Locke saw this, along with rotation in office, as being a major means of avoiding political arbitrariness.²¹ This was something that obviously distinguished a constitutional regime from, say, a traditional monarchy.

Closely related to this principle, of course, was the notion that there must be a government of laws or, in other words, the rule of law must prevail. This was certainly not a new idea in the Founding period; we can find it as far back as Aristotle's writing (which indirectly influenced the liberally-educated Founding Fathers through their learning),²² although for the most part we find that it took root in customary practice only after centuries of political struggle and constitutional development. Indeed, Aristotle delineated the fundamental elements of the rule of law (he also called it "constitutional rule"): it furthers the common interest of the community as against individualistic or singular group interests (even though the former is *mostly* derived by compromise among different specific interests); governance proceeds by means of general regulations instead of arbitrary decrees; and government is carried out by willing citizens instead of by force-wielding despots.²³

We see many emphatic endorsements of the rule of law in the Founding Era and the thought that influenced it. Locke says that men must be "govern[ed] by *promulgated establish'd Laws...*," "to have one Rule for Rich and Poor"...[and] be designed for no other end ultimately but *the good of the People.*"²⁴ Montesquieu says that a democratic republic requires ordered political liberty within law.²⁵ Such thinkers as John Milton and James Harrington, who influenced the Founders but less directly than Locke and Montesquieu,²⁶ also stressed the rule of law.²⁷ John Adams writes, "the laws...are the only possible rule, measure, and security of justice."²⁸ Thomas Jefferson insists on the need for "equal laws" to protect the "equal rights" of all, even minorities.²⁹

In the writing of the Founding Era and the thinkers who inspired it, we find frequent references to two other points relating to law, which are part of the notion of the rule of law. While these fit more appropriately into our other categories, for the sake of continuity we relate them here. Most crucial is that the civil laws embody natural law or principles of morality not made by men (this is in the category of democratic principles and practice, without any institutional dimension; that is, it is a principle for lawmakers in a democratic republic to put into practice in their activity of lawmaking).³⁰ When reference is made to "good laws" in the writing of the Founding Era and in the philosophers of constitutional or republican government from the seventeenth century to Tocqueville, what is meant is the upholding of the rule of law (as defined above) and of the notion of the civil laws embodying natural law. The other point pertaining to law fits into the category of social conditions and attitudes. It is that in a democratic republic, all citizens—rulers and ruled alike—must have a respect for law. Washington and Adams say that the laws must not just be respected, but *revered*.³¹

The notion of the mixed government or mixed regime is the foundation for

separation of powers. Mixed government as it appeared in the American colonies was different from the classical understanding of it and even the version that prevailed in England. The classical notion called for involving in the ruling activity monarchical, aristocratic (usually, in practice, oligarchic), and popular elements. (The latter referred to the many who were poor). This was approximated in England with the particular governmental institutions that took shape: the king or queen, the House of Lords (which represented the traditional landed aristocracy), and the House of Commons (which represented the majority who were not in the royal family or aristocracy, the commoners). The arrangement that took shape in the American colonies was necessarily somewhat different since there was no American aristocracy, and the king was present only vicariously in the person of the colonial governor (although these governors typically did not have anything like kingly powers). The U.S. Constitution also established an untraditional kind of mixed regime, although not completely different. The presidency is, in effect, the monarchical part, apparently intended to have power rivaling that of the English king—but, as the great constitutional scholar Edward S. Corwin says, without the hereditary aspect or the corruption.³² The Senate and the Supreme Court were intended to be something like an aristocratic part, with neither elected directly by the people (this was the case with the Senate until the Seventeenth Amendment). The Senate was closer to the people—as might be expected by the fact that it comprised part of the legislative body—because it originally was elected by the people's representatives in the state legislatures. The House of Representatives was meant to be the popular body in the U.S. government, directly elected by the people. Although the U.S. had no hereditary aristocracy, the fact that this means of selecting senators brought forth the more eminent and distinguished men is clearly seen from Tocqueville's discussion of it.³³ Essentially, though, the American mixed government could not be like the English or classical one because the social framework within which the government operated was different. As Russell Kirk points out, the U.S. was a middle class country, and this helped to moderate people's attitudes and in some sense to build community. In colonial and early republican America, virtually everyone was middle class.³⁴ This is not to say that early America viewed property as irrelevant to politics because having the franchise was generally conditioned on either the holding of a certain amount of real property—normally quite low—or some other showing of attachment to the community.³⁵

Further, in the context of mixed government, a senate—which by indirect election, long terms, or both is somewhat shielded from immediate democratic pressures—was held to be especially critical. We see this clearly in the writing of such Founding Fathers as Madison, Hamilton, and Adams. Although, as Hamilton puts it, a "broad democratic branch" is crucial in a republic, the democratic impulse must not be allowed to go unchecked (recall above the danger of a majority faction). As Federalist 63 observes, "history informs us of no long-lived republic which had not a senate."³⁶

The eminent historian of the American Founding, Bernard Bailyn, writes that the early state constitutions derived the principle of separation of powers not