



# FOUNDING FEDERALIST

*The Life of Oliver Ellsworth*

MICHAEL C. TOTH



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THE LIFE OF OLIVER ELLSWORTH



*Michael C. Toth*



WILMINGTON, DELAWARE

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LIVES OF THE FOUNDERS

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*Author's Note:*

Unless the original usage is easily recognizable, the spelling and punctuation of all quotations have been modernized.

## PREFACE

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OLIVER ELLSWORTH PARTICIPATED IN THE FRAMING, RATIFICATION, and implementation of the early American government, yet this founder has been very much forgotten. He is obscure, in part, because he was neither a partisan firebrand nor the leader of a powerful faction. He was a moderate, a conciliator, a principled man who often sought compromise. Nevertheless, as a forger of consensus he played a significant role in creating our union. His clout was not lost upon his peers. Aaron Burr commented ruefully that the influence of his Connecticut colleague over his fellow senators was so great that “if Ellsworth had happened to spell the name of the Deity with two d’s, it would have taken the Senate three weeks to expunge the superfluous letter.”<sup>1</sup> Indeed, few men of the founding generation mustered the intellectual courage to go toe-to-toe with James Madison in debate. At the Constitutional Convention, with the future plan of the U.S. government hanging in the balance, Ellsworth did just that. And he won.

Prior to the Constitutional Convention, Ellsworth was, in the phrase of the historians of the era, one of the “young men of the Revolution.” Before turning thirty-five, Ellsworth was already a veteran of the Connecticut government as well as the Continental Congress. Returning to Philadelphia in the summer of 1787, Ellsworth emerged as a crucial actor in the camp that successfully argued for measured constitutional change. Following the Convention, supporters of the Constitution within Connecticut enlisted Ellsworth to present the case for the new plan of government to his state’s ratification delegates. Connecticut ratified by a lopsided margin.

Throughout the 1790s, Ellsworth’s involvement in all three branches of the federal government marked the apex of his political influence. During his service in the first Senate, Ellsworth drafted the historic legislation that created America’s judicial system. In 1796, he became the chief justice of the United States. Only two men had held the post before Ellsworth. Four years later, John Adams turned to Ellsworth to carry out the “most decisive action” of Adams’s presidency. He dispatched Ellsworth to France on a peace mission that many in Adams’s own administration bitterly opposed.

While Ellsworth often managed to find compromise between competing political camps, unanimity was rarely the natural state of affairs in the early republic. In historian Thomas P. Slaughter’s assessment,

conflict was at the heart of the Revolution, and conflict among Americans was at least as important a part of the story as cooperation against a common enemy. In the aftermath of the violent international struggle that virtually ended in 1781, conflict remained the body and soul of American politics through the

end of the century. . . . Political change from 1780 through 1800—the victory of particular politicians, ideologies, and interests—was not understood by many participants as progressive, inevitable, or consistent with the principles of the Revolution.<sup>2</sup>

Against the backdrop of the genuine strife that characterized early American politics, Ellsworth's success in fashioning lasting political compromises, such as the Judiciary Act of 1789 (under which today's federal court system retains the same basic structure that Ellsworth designed for it two centuries ago), is all the more impressive.

This book is not a study of religious faith among the Founding Fathers. But it does raise one point about religion's role in the early American government. Whether most of the Founding Fathers were Christians or deists, Ellsworth was a devout Calvinist. His theological formation, moreover, was the source of his political pragmatism. For modern readers, Ellsworth's political pragmatism presents the following paradox. How was it that Ellsworth, who viewed politics largely through the lens of theology, was able to assert the moderate view while his more secular-minded colleagues frequently opted for more contentious policy agendas? Today, religion, often viewed as divisive, is considered an impediment to political compromise. Things were different at the founding. Amid the early debates over the role of the federal government, the future of slavery, and the conduct of foreign policy, to cite a few examples, it was Ellsworth's Calvinist faith that steered him—and often his colleagues with him—toward a lasting consensus.

Modern audiences may be accustomed to the marginalizing effect of theological beliefs on contemporary political leaders. Yet if holding deep-seated theological views makes a politician

today unable to garner widespread support, Ellsworth's theological formation had much the opposite effect. Far from hampering his ability to shape the answers to the questions that vexed early American politicians, Ellsworth's theological convictions were often the very reason why he proved to be politically influential. His form of Calvinism provided a profound reason to seek broad compromises that protected the nation from external threats and internal strife. God's will, his particular creed told him, was to preserve America's harmony.

Beyond motivating his political pragmatism, Ellsworth's religious convictions also contributed to his enthusiasm for federalism. For some of America's founders, the division of power between the state and national governments was dangerously inefficient. For Ellsworth, by contrast, federalism was quasi-sacred. In his home state, towns formed independent political units, which, in turn, elected representatives to serve in Connecticut's General Assembly. Moreover, many of Connecticut's towns were originally organized around churches. Not only, then, was Connecticut's government a federal one, but its federalism had religious roots. None of this was lost upon Ellsworth, who, after three decades of service to the federal government, returned happily to his home in Windsor, where he would devote the final years of his life to, among other things, compiling a regular newspaper column on the latest agricultural techniques.

What follows, in short, is a study of a religious pragmatist, a devoted Federalist, who was responsible for making possible the lofty designs of better-known founders. Ellsworth's legacy, as we shall see, if not his name, endures.

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## CHAPTER ONE

# THE EDUCATION OF A PURITAN POLITICIAN

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*Righteousness exalteth a nation.*

—Reverend Joseph Bellamy, Election Sermon, 1762

### “CONNECTICUT WAS A RELIGIOUS COMMUNITY”

Oliver Ellsworth was born on April 29, 1745, in a small British colony, “essentially isolated from the main currents and forces of the Anglo-American world,” as one historian has put it.<sup>1</sup> Tucked into the backwater of North America, mid-eighteenth-century Connecticut consisted predominantly of middling farmers of English ancestry and Puritan religious convictions who raised large families and lived in remarkably homogeneous communities, none of which were much larger or smaller, richer or poorer, than the others.<sup>2</sup>

Founded in 1633 by Pilgrims from the Plymouth Colony in Massachusetts, Ellsworth’s birthplace, sometimes called “Ancient Windsor,” was Connecticut’s first English settlement. Windsor soon became the domain of Englishmen from another colony also in present-day Massachusetts. By 1637, the initial settlers from

Plymouth sold most of their land in Windsor to émigrés from the Massachusetts Bay Colony. Other cadres from the Massachusetts Bay Colony laid claim to the Connecticut River Valley villages of Hartford and Wethersfield.<sup>3</sup>

In theology, the second wave of English settlers to Connecticut were Puritans, a descriptive that refers to the “broad fabric” of sixteenth- and seventeenth-century English Protestants who sought to reform the Church of England while remaining within the Anglican fold.<sup>4</sup> The Puritans who settled the Massachusetts Bay Colony and Connecticut were thus different from the Pilgrims who founded the Plymouth Colony. The latter included among their ranks separatist and semiseparatist dissenters, who sought to sever all ties with the Church of England, or were at least more inclined to favor such a break.

In many ways, the foundations laid by Connecticut’s Puritan forefathers shaped the policies that Ellsworth supported during his various stints in federal office. Speaking of the Constitutional Convention, where Ellsworth would ably and successfully advance the interests of his home state, historian Forrest McDonald comments that the determining factor for the maneuvers of most of the delegates was “the interests and outlooks of the states and local areas they represented.”<sup>5</sup> In particular, Connecticut’s Puritan heritage established several pillars in the colony’s political landscape, most importantly a preference for democratic elections of political leaders and orderly constitutional governance guided by the principle of federalism.

Among the reforms that they sought most, Puritans preferred that ministers be chosen by their congregations and not appointed by bishops, as was the practice in the Church of England.<sup>6</sup> Connecticut’s early settlers considered the election of civil leaders

also to be a moral duty. Soon after arriving in Connecticut, for example, Reverend Thomas Hooker (1583–1646), whose leadership of the “last and most famous” exodus of approximately one hundred Puritans from the Massachusetts Bay Colony to the village of Hartford has earned him the honorific title “the father of Connecticut,” preached a famous sermon in which he contended that the formation of a civil government rested in “the free consent of the people,” and that “the choice of public magistrates belongs unto the people, by God’s own allowance.”<sup>7</sup> The defense by Connecticut’s Puritan founders of democratic elections for the colony’s civil and religious leaders alike may be due to the fact that the distinction between secular and ecclesiastical governments was not nearly as widely drawn in pre-Revolutionary Connecticut as in present times. The colony’s earliest settlers came largely as organized religious congregations, and the church buildings where they worshiped often served as the venue for the meetings of the town’s elders, who were also, almost exclusively, respected members of the town church. “In the early years of the colony’s existence,” notes one historian, “an individual’s chances of becoming either an admitted inhabitant or a freeman,” referring, respectively, to those who could participate in town- and colony-wide affairs, “were nonexistent if he was not a member of the Congregational Church.”<sup>8</sup> “From the beginning,” remarks another, “Connecticut was a religious community.”<sup>9</sup>

Connecticut’s Puritan founders were responsible for setting in motion the colony’s long history of orderly government. In 1639, representatives from Windsor, Hartford, and Wethersfield agreed to the Fundamental Orders. Because they were not ratified popularly and did not explicitly protect individual rights, the Fundamental Orders cannot be considered a constitution in the modern

sense of the term. However, they did establish the rudimentary frame for Connecticut's first colonial government. And remarkably so. The drafters of the Orders had only a few years earlier arrived in Connecticut. Still, they managed in short order to establish a quasi-federal system of government that remained largely intact throughout the state's colonial history.

As for the federalist favor of the Fundamental Orders, the early plan of government recognized Connecticut's towns as the foundation of the colony's political life with authority over local matters. Issues that pertained to the "good of this comon welth," on the other hand, were to be handled by Connecticut's General Assembly.<sup>10</sup> There was most likely a religious imperative behind this division of power. Connecticut's earliest Puritan settlers were Congregationalists. In contrast with Presbyterians, who favored a more hierarchical church structure with some degree of coordination between individual congregations, Connecticut's Congregationalists preferred that their churches be led by their elected minister without much interference, if any, by other religious bodies.<sup>11</sup> One political manifestation of Connecticut's Congregationalism can be seen in the establishment of the colony's towns as distinct and equal units. Along with relegating the administration of local affairs to the towns, the Orders also set forth that the colony's towns would have an equal voice at the General Assembly, with each town entitled to send the same "three or four delegates" regardless of the town's population.<sup>12</sup>

In 1662, Great Britain formally granted Connecticut a royal charter, which became the colony's official governing document. The royal charter, however, only solidified the distribution of power already in effect under the Orders. Connecticut's towns remained the fundamental elements of the colony's political infrastructure.

These independent local units remained responsible for determining the state's electorate and sending thenceforth no more than two deputies to the colony's General Assembly, which directed the colony's general government.<sup>13</sup>

Connecticut's method of governing itself produced a remarkable degree of tranquility. Throughout the state's long colonial history, extended political strife was rare. Connecticut's electorate routinely reelected the same politicians. "Of the 111 men who served as governors, deputy governors, and members of the Council (the upper house of the Assembly)," tallies historian David M. Roth, "between the early 1660s and 1776, the average individual was elected and reelected fourteen times."<sup>14</sup>

While Connecticut used elections to fill the upper echelons of its colonial government, the colony's most important posts came to be held to a significant extent by members of a few families, the Pitkins, Allyns, Trumbulls, and Wolcotts among them. "The state of Connecticut has always been governed by an aristocracy," John Adams would later quip. "Half a dozen families, or at the most a dozen, have controlled that country when a colony, as well as since it has become a state."<sup>15</sup> While Connecticut was led by relatively few, the larger electorate was not completely excluded from the reins of government. Noah Webster, the compiler of the famous dictionary, remarked that Connecticut's political stability was a consequence of the colony's republican practice of holding annual elections for members of the state's lower house.<sup>16</sup>

Whatever the cause, Connecticut's politicians largely managed to retain the public's esteem, governing the state with due respect for the autonomy of the colony's various towns according to the protofederal principles that the Congregationalist-minded negotiators of the Fundamental Orders and the royal charter had long