

Immigration and the American Founding

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By the time then-President George W. Bush made a nationally-televised address from the Oval Office on May 15, 2006, immigration was already one of the most divisive issues in American politics.¹ The Minuteman Project had begun recruiting volunteers in 2004, and they began patrolling America's border with Mexico in April 2005.² Although Bush was not able to secure passage of the comprehensive immigration reform legislation he desired, neither were opponents able to enact enforcement-based reform. Instead, the debate has continued, recently focusing upon Arizona's immigration enforcement law, the Supreme Court's review of that law, and President Barack Obama's order that the federal government to halt, under certain conditions, the deportation of certain young illegal immigrants.³

Throughout these debates, supporters and opponents of various measures and actions have sought support from any available source. The works and words of America's Founding Fathers have been no exception, and those works and words have proven a fruitful field for partisans on all sides. Alex Nowratesh of the Competitive Enterprise Institute recently wrote that the 1790 naturalization act "had *zero* restrictions on immigration. You read that right, the first immigration law in the United States, by the Founders themselves, supported *open immigration*." Nowratesh concluded that, if America wanted to follow the Founders, America "would legalize almost all immigration, hearken back to our traditions of individual liberty, and confer vast wealth on Americans.... It is the right thing to do."⁴ Muhammed Ali Hasan, the founder of Constitutionalists for Gays and Immigrants and Muslims for Bush, claims that "I believe

¹ George W. Bush, Address to the Nation on Immigration Reform, May 15, 2006, in Gerhard Peters and John T. Woolley, *The American Presidency Project*, <http://www.presidency.ucsb.edu/ws/index.php?pid=72891&st=&st1=> (accessed September 13, 2012).

² "Illegal Immigration Timeline", *Fresno Bee*, November 14, 2010, http://media.fresnobee.com/smedia/2010/11/14/01/a1_g1114_timeline_for_web.source.prod.affiliate.8.pdf (accessed September 13, 2012); "As Reform Falters, Immigration Battle Rages in Arizona", *New York Times*, July 29, 2010, <http://www.nytimes.com/interactive/2010/06/20/opinion/immigration-editorials.html>, (accessed September 13, 2012).

³ Arizona Legislature, S.B. 1070 (2010), <http://www.azleg.gov/legtext/49leg/2r/bills/sb1070s.pdf> (accessed September 13, 2012); *Arizona v. United States*, No. 11-182 (2012); Tom Cohen, "Obama Administration to Stop Deporting Some Young Illegal Immigrants", *cnn.com*, <http://www.cnn.com/2012/06/15/politics/immigration/index.html> (accessed September 13, 2012);

⁴ Alex Nowratesh, "The Founders' Immigration Policy", *The Huffington Post*, http://www.huffingtonpost.com/alex-nowrastesh/the-founders-immigration-_b_1382311.html (accessed August 1, 2012).

most Founding Fathers would actively encourage immigration, especially for those who arrived here as innocent minors.”⁵

Conversely, advocates of greater immigration controls have sought to appropriate the Founding Fathers for their own purposes. Thomas Woods, the author of *Nullification: How to Resist Federal Tyranny in the 21st Century* and *The Politically Incorrect Guide to American History*, writes that “in fact, the Founding Fathers were by and large skeptical of immigration,” citing Jefferson, Hamilton, Washington and Rufus King.⁶ These conflicting assertions demand a resolution to the question of what America’s Founding Fathers really thought about immigration. This article attempts to answer that question with a principled approach, examining their ideas and their actions together. It will examine the Founders’ principles and assess how they relate to the immigration question. It will also assess the major legislative actions of the Founding era on immigration, so as to see how those actions were influenced by principles. Both truth and distortion are present in many efforts to enlist the Founding Fathers in the immigration debate; this article seeks to provide a more complete portrait of the Founding Fathers thought and actions on a complex, divisive issue.

Consent and the Right to Emigrate

The fundamental principles of the American Founding are espoused in numerous public and private documents, but perhaps nowhere more notably than in the Declaration of Independence. The authors and signers of that document assert that “all men are created equal” in their right and duties under “the laws of Nature and of nature’s God.”⁷ The political corollary of the principle of natural equality in the Declaration is the principle of consent. As Jefferson famously noted in the last extant letter of his life that if all men are created equal, then “the mass of mankind has not been born with saddles on their backs, nor a favored few booted and spurred, ready to ride them legitimately, by the grace of God.”⁸ No one has an inherent right to rule, and no one has an indefeasible obligation to submit to rule. Political obligation is the consequence of the voluntary consent of individuals. The 1780 Massachusetts Constitution holds that “The body-politic

⁵ Muhammed Ali Hasan, “Why the Founding Fathers Would Support the DREAM Act”, *The Huffington Post*, http://www.huffingtonpost.com/muhammad-ali-hasan/why-the-founding-fathers-_b_797670.html (accessed September 13, 2012). Thomas G. West has excellent collections of sources similar to Nowratesh and Hasan in West, *Vindicating the Founders: Race, Sex, Class, and Justice in the Origins of America* (Lanham, MD: Rowman & Littlefield, 1997), 148, 206-207n2; West, “Immigration: The Founders’ View and Today’s Challenge”, in Edward J. Erler, Thomas G. West, and John Marini, *The Founders on Citizenship and Immigration: Principles and Challenges in America* (Lanham, MD: Rowman & Littlefield, 2007), 75-76.

⁶ Thomas Woods, “Founding Fathers Were Immigration Skeptics”, *Human Events*, <http://www.humanevents.com/2007/07/20/founding-fathers-were-immigration-skeptics/> (accessed August 1, 2012). Woods notes that immigration is the first topic covered in his book, *33 Questions About American History You’re Not Supposed to Ask*.

⁷ U.S. Declaration of Independence.

⁸ Jefferson, Letter to Roger Weightman, June 24, 1826, in *Writings*, 1517.

is formed by a voluntary association of individuals: It is a social compact.”⁹ The formation of political society is thus predicated on the assent of those, who will compose the society.

It is on the basis of the Declaration’s understanding of consent that Jefferson formulated a radical new conception of the relationship between the British crown and her American colonies. In *A Summary View of the Rights of British America*, which was adopted by the First Continental Congress, he concluded his review of the founding of the colonies by stating

That settlements having been thus effected in the wilds of America, the emigrants thought proper to adopt that system of laws under which they had hitherto lived in the mother country, and to continue their union with her by submitting themselves to the same common sovereign, who was thereby made the central link connecting the several parts of the empire thus newly multiplied.¹⁰

The British monarch does not have the right, according to Jefferson, to rule the American colonies by the grace of God, whatever he might claim. His power over them derives from the fact that the American colonists have consented to his rule. The corollary of Jefferson’s logic is that, had the colonists not consented, not even the king would have a legitimate claim to rule. Instead of being God’s representative on earth, the king is merely the first magistrate of the nation, placed in office and power by laws, which were made by the people. It also follows that, because the colonists have only consented to the rule of the British king, that Parliament has no rightful power over them. They had not given their consent to be ruled by Parliament, but have erected their own legislatures to make laws for them.

The idea that each individual must consent to the government, under which he lives, implies an entirely new relationship between government and the individual. The consent principle is an attack on the English understanding of political obligation, which was a legacy of European feudalism. This older view was clearly expressed by the English jurist Sir Edward Blackstone in his *Commentaries on the Laws of England*:

Allegiance, both express and implied, is however distinguished by the law into sorts or species, the one natural, the other local; the former being also perpetual, the latter temporary. Natural allegiance is such as is due from all men born within the king’s dominions immediately upon their birth. For immediately upon their birth, they are under the king’s protection; at a time too, when (during their infancy) they are incapable of protecting themselves. Natural allegiance is therefore a debt of gratitude; which cannot be forfeited, cancelled, or altered, by any change of time, place, or circumstance, nor by anything but the united concurrence of the legislature.... For it is a principle of universal law, that the

⁹ Massachusetts Constitution of 1780, Preamble, in Philip B. Kurland and Ralph Lerner, eds., *The Founders’ Constitution, volume 1: Major Themes* (Chicago: University of Chicago Press, 1987; Indianapolis: Liberty Fund, 2000), 11.

¹⁰ Jefferson, *A Summary View of the Rights of British America* (1774), in *Writings*, 106-107.

natural-born subject of one prince cannot by any act of his own, no, not by swearing allegiance to another, put off or discharge his natural allegiance to the former...¹¹

Political obligation is derived from the place of one's birth; the individual has no choice in the matter. If one is born in a particular kingdom, one is automatically subject to that rule. He owes allegiance to his lord from birth, because the lord protects him when he is unable to protect himself. He cannot repay that debt in his minority; when he reaches adulthood, James Wilson explains, "he owes obedience, not only for the protection, which he then enjoys, but also for that, which, from his birth, he has enjoyed." The debt is so massive that "nothing but the performance of the duties of citizenship, during a whole life, will discharge."¹² He is a subject for life, unless and until his ruler chooses to release him from his obligation.

The theory of the American Founding stands in direct opposition to the feudal notion of obligation. Jefferson again holds in the *Summary View* that it is the intent of the colonists

To remind [King George III] that our ancestors, before their emigration to America, were the free inhabitants of the British dominions in Europe, and possessed 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.¹³

Obligation, for Jefferson, is the result of free choice on the part of the individual. One is not bound to a ruler, to whom he has not given his free consent. Thus if an individual chooses to depart from the regime of his birth and to associate with a new one, he has an inherent right to do so. This is not a right of Englishmen under English law, but an inherent right under "the Laws of Nature and of Nature's God." It inheres in all individuals as individuals, simply by virtue of their humanity, and may not be rightfully curtailed and destroyed. The individual only owes allegiance to those, to whom he has freely given his consent.

Under the doctrine of feudal obligation, one is bound from birth to the place where he is born. He owes perpetual allegiance to the ruler of that place in gratitude for the protection he has been given. He is a subject, in the sense that he is involuntarily and perpetually subjected to a lord, and has no choice in the matter. The doctrine of feudal obligation, Wilson notes, leads to a variety of unjust and bizarre applications. Those who are born in one country yet live their entire lives in another, for instance, are treated as

¹¹ Sir Edward Blackstone, *Commentaries on the Laws of England*, Book 1, Chapter 10 (1765), in *The Founders' Constitution*, 2:557.

¹² James Wilson, *Lectures on Law* (1791), in *Collected Works of James Wilson*, ed. Kermit L. Hall and Mark David Hall (Indianapolis: Liberty Fund, 2007), 641.

¹³ Jefferson, *A Summary View of the Rights of British America* (1774), in *Writings*, 105-106.

rebels by the former if captured by them in war, rather than as legitimate enemy combatants, “and are liable to the punishments ordinarily inflicted on rebels.” It also results in the policy of holding certain persons to be permanent alien enemies, simply by virtue of their birth. If they are born to under a non-Christian ruler, for example, then they can never be anything but enemies. This is strange logic, condemning a man, not for his individual actions, but for the accident of his birth: “A man is deemed a dangerous enemy or a suspicious friend...because he is previously deemed an appurtenant or a slave to that country in which he chanced to be born.”¹⁴ Feudal obligation condemns a man as an enemy because he was forced to serve an enemy master without his consent.

Under the natural law principle of consent, an individual has the right to choose the regime that will govern him, even if that means removing himself from the land of his birth. The consent principle means that the individual is not a subject but a citizen, with inherent rights that exist independently of his land or birth, and that as a citizen he cannot be involuntarily bound to any political rule. The liberty to choose one’s regime and one’s rulers separates subjects from citizens.¹⁵

This concept of consent prevailed in the United States for many decades after the American Founding. In framing the Fourteenth Amendment, which guaranteed citizenship to “All persons born or naturalized in the United States, and subject to the jurisdiction thereof”, the amendment’s authors and sponsors believed that they were expunging a relic of European feudalism.¹⁶ The nature of political obligation under American chattel slavery very closely resembles European feudal obligation. Slaves were bound from birth to a master, and could only be released from their obligation with the master’s assent. They sought to transform subjects, slaves in this case, into citizens. The author of the citizenship clause and its supporters consciously and vocally rejected the doctrine of feudal obligation. One representative “expressed the general sense of the Congress when he concluded that ‘[i]t is high time that feudalism were drive from our shores and eliminated from our law, and now is the time to declare it.’”¹⁷ The author of

¹⁴ Wilson, *Lectures on Law*, in *Collected Works*, 1049.

¹⁵ To conclude thus is not the same as asserting that all people immediately understood and accepted the arguments made by men like Jefferson and Wilson. Even so venerated a jurist as James Kent fails to understand the implications of equality and consent on immigration and citizenship. James Kent, *Commentaries* (1826-1827), in *The Founders’ Constitution*, 2:600. Another early American legal commentator, William Rawle, is unwilling to confront the potential implications of social compact theory to the children of citizens. William Rawle, *A View of the Constitution of the United States* (1829), in *The Founders’ Constitution*, 2:606, 608.

¹⁶ U.S. Constitution, Amend. XIV, Sec. 1.

¹⁷ Rep. George Woodward, quoted in Edward J. Erlar, “American Citizenship and Postmodern Challenges”, in *The Founders on Citizenship and Immigration*, 50. This is an excellent of the American rejection of feudal obligation, as is John C. Eastman, “From Feudalism to Consent: Rethinking Birthright Citizenship”, Heritage Foundation Legal Memorandum No. 18, March 30, 2006.

the citizenship clause, Senator Jacob Howard of Ohio, affirmed that “the right of expatriation...is inherent and natural in man as man.”¹⁸

The feudal concept of obligation did not return to American law until the Supreme Court’s 1898 ruling in *U.S. v. Wong Kim Ark*.¹⁹ In this case the Supreme Court concluded that the Fourteenth Amendment conferred automatic citizenship on all persons born on American territory. This decision, both Erler and John C. Eastman persuasively argue, resurrected the feudal notion that citizenship is tied to the soil, and that one is automatically bound to the place of one’s birth. *Wong Kim Ark* rejects the principle of consent and maintains that citizenship is the product of one’s birth. The idea of “birthright citizenship” is now widely accepted as the proper interpretation of the Constitution. Citizenship in the United States is once again defined by the location of one’s birth. Under the title of “birthright citizenship” the feudal concept of obligation has defined American citizenship ever since, but in defiance of the Founders’ constitutionalism.

Consent and the Right to Immigrate

In arguing that the principles of the American Founding conferred a right to emigrate from the land of one’s birth, one should not make the mistake of assume that the principle of consent also conferred an inherent right to immigrate to any place of one’s choosing. If “all men are created equal” then consent must be reciprocal among the parties involved. Return to the 1780 Massachusetts Constitution: “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.”²⁰ Every member of a political community must consent to live, not just with the laws of that political community, but with the other members of the community. Failure to do so would mean that no political community is formed between the parties.

Wilson describes the social contract as “an assemblage equal, in number, to the number of individuals who form the society; and that, to each of those agreements, a single individual is one party, and all the other individuals of the society are the other party.”²¹ Just as the individual must consent to live within the community, the community must consent to the membership of each individual. Once this is accomplished, each of the contracting parties becomes a citizen. Wilson maintains that a citizen is one “who acts a personal or a represented part of the legislation of his country. He has other right; but his legislative I consider as his characteristick right.”²² All human beings possess

¹⁸ Sen. Jacob Howard, quoted in Erler, 50.

¹⁹ 169 U.S. 649.

²⁰ Massachusetts Constitution of 1780, Preamble, in *The Founders’ Constitution* 1:11.

²¹ Wilson, *Lectures on Law*, in *Collected Works*, 1038.

²² Wilson, *Lectures on Law*, in *Collected Works*, 1039.

natural rights, but as a party to the social contract that forms a people, a citizen is distinguished by his power to participate in the political decision-making of that nation. He has a right to share in rule, but he obtains this share only by virtue of his consenting to the social contract, and the fact that the other parties to the contract have consented to his having a share in this rule.

It follows from this theory of consent that the whole people must consent to each individual's membership in that society. As Gouverneur Morris argued in the Convention, "every society from a great nation down to a club had the right of declaring the conditions on which new members should be admitted."²³ The United States Constitution grants to Congress the power "to establish an uniform Rule of Naturalization." The people have delegated to Congress the power to fix the terms under which America will consent to an immigrant become a member of the American political community. If the immigrant wishes to become a citizen and chooses to abide by those conditions, then citizenship shall be conferred upon him. The American people are collectively represented by their government, which speaks for them, through the law, in deciding who shall be admitted as a new member of the political community.

Mutual or reciprocal consent is dictated by the principle of natural equality. If an immigrant can successfully impose himself on a political community, in violation of its laws, then the relation between the immigrant and the community is not a relationship of equals. The immigrant is establishing himself as the rightful superior, as he has the power to dictate, unilaterally, the terms of the contract between himself and the community, without the community's consent. It is the functional equivalent, to use a parallel example, of entering a stranger's home, handing him an arbitrary sum of money (or perhaps none at all), and moving into his home. If the home is to be sold, or the interloper permitted to lodge there, the owner must consent to the transaction. If he does not, there is no agreement, and the interloper has no right to remain. Legitimate political contracts, like business contracts (of which home purchases are an example), must be based on the free assent of all parties to the contract. They presume equality between the parties, and anything less than mutual consent is simply an act of force, not free consent.

Moreover, refusal to admit a person into a political community does not constitute a violation of his rights. A person who is denied entrance into a country is not denied any inherent natural right. He is perfectly free to go elsewhere, or even to form his own political community, and to take any necessary and proper measures to secure his own rights. Consider Madison's comments on the unusual situation created by the non-simultaneous ratification of the new Constitution by the several states in *Federalist* 43. What if one or more states refused to ratify? What would be the relationship between the nation under the Constitution and the refractory states? This was not a speculative question: at the time *Federalist* 43 was published two states, North Carolina and Rhode Island, had failed to ratify. Madison held that "although no political relation can subsist between the assenting and dissenting states, yet the moral relations will remain uncanceled. The claims of justice... must be fulfilled; the rights of humanity must in all

²³ Gouverneur Morris, quoted in West, *Vindicating the Founders*, 157. I rely heavily on West's excellent argument here and in the subsequent section.

cases be duly and mutually respected.”²⁴ The various parties, though not connected by contract, will still be bound by “the Laws of Nature and of nature’s God”, and must therefore respect each other’s rights. There is no thought, however, of compelling any party to submit, or that any party’s rights are violated by failure to enter into a contract. While the Founders’ principles contain a right to emigrate from one’s native country, those principles do not confer an inherent right to immigrate to any particular political community.

The Obligation to Restrict Immigration

According to the Declaration consent is essential, but the purpose of government is “to secure these rights”, that is, the rights of the people who are members of the community formed for that purpose. Madison asserted that “the great desideratum” of government is “To secure the public good, and private rights...and at the same time to preserve the spirit and form of popular government.” Jefferson would concur, stating in his First Inaugural Address “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 law must protect, and to violate would be oppression.”²⁵ Government must operate by the consent of the governed, but it must also secure the rights of all people. Under many of the state governments of the 1770s and 1780s, the Founders gained first-hand experience in consensual government that did not secure rights, and they meant not to repeat it under the Constitution.²⁶

Not only do the Founders’ principles confer a right to restrict immigration, they also confer an obligation to do so under certain circumstances. As a self-governing regime, America must be particularly concerned about the character and beliefs of its citizens. As George Washington famously told the Hebrew Congregation of Newport, Rhode Island, citizenship is not a free gift of rights without responsibilities. In order to enjoy one’s natural rights, “the United States...requires only that they who live under its protection should demean themselves as good citizens in giving it on all occasions their effectual support.”²⁷ Americans must support the regime and its principles. As Madison notes, however, “Public opinion sets bounds to every government, and is the real sovereign in every free one.”²⁸ Public opinion, that is, the beliefs of Americans, must be

²⁴ *Federalist* 43 (1788), in *The Federalist*, Jacob E. Cooke, ed. (Middletown, CT: Wesleyan University Press, 1961), 298.

²⁵ *Federalist* 10 (1787), in Cooke, ed., 61; Jefferson, First Inaugural Address, March 4, 1801, in *Writings*, 492-493.

²⁶ See Madison, “Vices of the Political System of the United States” (1787), in *Writings*, 69-80. Two excellent scholarly summaries may be found in Gordon Wood, *The Creation of the American Republic, 1776-1787* (New York: W.W. Norton & Co., 1969), 403-413, and Joseph M. Bessette, *The Mild Voice of Reason: Deliberative Democracy & American National Government* (Chicago, University of Chicago Press, 1994), 6-13.

²⁷ Washington, Letter to the Hebrew Congregation of Newport, Rhode Island, August 1790, in *George Washington: A Collection*, ed. William B. Allen (Indianapolis: Liberty Fund, 1988), 548.

on the side of Founding principles. If they are not, then the government based on those principles cannot endure. Regardless of the language of the Constitution, if the American people do not believe in limited self-government and equal liberty, then they are unsustainable.

Not only must Americans share a common set of fundamental political principles, they must also be possessed of a certain character. Madison asserts in *Federalist 55* that “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.”²⁹ Political self-government is impossible in the absence of personal self-government. Americans must possess the characteristics of self-governing citizens. The 1776 Virginia Declaration of Rights, itself a model for the Declaration of Independence and a representative sample of the Founders’ thinking, proclaimed “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.”³⁰ Among these are self-control, or respect for the rights of others, and self-assertion, or the willingness to assert and defend one’s own rights.³¹ A people, which does not have these characteristics will be incapable of correctly identifying their own rights, incapable of living with others in peace, and unwilling to protect their rights from encroachment.

To promote proper beliefs and moral character, the Founding Fathers place an enormous emphasis on the education of children. The Northwest Ordinance actively sought to promote education, declaring that “Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.”³² Some states, like Massachusetts and New Hampshire, made provision in their constitutions for moral and religious instruction.³³ The commissioners appointed to fix the site of the University of Virginia, among them Jefferson and Madison, reported that among the purposes of even the most basic education were “To improve by reading, his morals and faculties; To understand his duties to his neighbors and country...; To know his rights; to exercise with order and justice those he retains; to choose with discretion the fiduciary of those he delegates, and

²⁸ Madison, “Public Opinion”, December 19, 1791, in Madison, *Writings*, ed. Jack N. Rakove (New York: Library of America, 1999), 500.

²⁹ *Federalist 55* (1788), in Cooke, 378.

³⁰ Virginia Declaration of Rights, June 12, 1776, in *The Founders’ Constitution* 1:7.

³¹ West, *Vindicating the Founders*, 160-163.

³² Northwest Ordinance, July 13, 1787, in *The Founders’ Constitution* 1:28.

³³ Massachusetts Constitution of 1780, Article III, in *The Founders’ Constitution* 1:12; New Hampshire Constitution of 1784, Article VI, in *The Founders’ Constitution* 5:81.

to notice their conduct with diligence, with candor, and judgment.”³⁴ The education of youth was essential to the republican project. The republic had, and has, an active interest in developing citizens who are capable of political self-government.

Immigrants present a different, yet related challenge. Many immigrants will come to the United States as adults, with fully-formed ideas about politics, which were decisively shaped by their native regimes. Jefferson states that we have “peculiar” principles, by which he means “a combination of the freest principles of the English constitution, with other derived from natural right and natural reason. To these nothing can be more opposed than the maxims of absolute monarchies.”³⁵ Many will come to the United States as refugees from tyranny, but tyranny will have shaped their ideas about politics. They are unlikely to have learned either how to live peaceably, respecting the rights of others, or how to be vigilant in the assertion and defense of their own rights. They are unlikely even to have a clear idea about the meaning and content of rights themselves.

Admitting persons who are not prepared poses a fundamental problem for the American experiment. Jefferson continues: “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.” Having no experience with, or understanding of, liberty, it will be difficult for immigrants to conduct themselves in a manner befitting a free citizen of a republic. They will either continue to be servile, lacking in self-assertion or, freed from the shackles of tyranny for the first time, will exceed the proper bounds of republican liberty and act licentiously, lacking in self-control. If they are admitted as citizens, “they will share with us the legislation.”³⁶ In sufficient quantities, they could undermine the free character of the republic, thereby endangering the rights of all.³⁷ In such a situation, the government would be derelict in its primary responsibility, “to secure these rights.”

³⁴ [Thomas Jefferson, James Madison, et al.,] Report of the Commissioners Appointed to Fix the Site of the University of Virginia, August 4, 1818, in *The Founders' Constitution* 1:689. There are also countless examples of individual Founding Fathers emphasizing the relationship between education and citizenship. See Washington, First Annual Message, January 8, 1790, in *Washington: A Collection*, 469; Washington, Farewell Address, September 19, 1796, in *Washington: A Collection*, 522; Benjamin Franklin, “Proposals Relating to the Education of Youth in Pensilvania”, 1749, in Benjamin Franklin, *Writings*, ed. J.A. Leo Lamay (New York: Library of American, 1987), 324; Madison, Letter to William T. Barry, August 4, 1822, in *Writings*, 790-794; Letter to Thomas Jefferson, February 8, 1825, in *Writings*, 807-809.

³⁵ Jefferson, *Notes on the State of Virginia*, Query 8: The number of its inhabitants?, in *Writings*, 211.

³⁶ Jefferson, *Notes on the State of Virginia*, Query 8: The number of its inhabitants?, in *Writings*, 211. Alexander Hamilton resurrected Jefferson’s arguments fifteen years later, in order to criticize one of Jefferson’s proposals as President for the liberalization of naturalization laws. See Alexander Hamilton, “The Examination”, nos. 7-9 (1802), in *Papers of Alexander Hamilton*, ed. Harold C. Syrett (New York, Columbia University Press, 1961-), 25:491-501.

The problem of the potential effects of large-scale immigration was a concrete problem, with which the Founders had actual experience. For instance, during the 1750s, Benjamin Franklin expressed great concern regarding the massive influx of German immigrants into Pennsylvania. Franklin laments that Pennsylvania “will in a few Years become a *German* Colony. Instead of their Learning our Language, we must learn their’s, or live as in a foreign country.”³⁸ Washington was also concerned about the isolation that differences of language bred. He told his Vice President that “the advantage of [immigration and settlement] 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.”³⁹ The Founders worried that large numbers of immigrants, isolated by linguistic differences, would have a dangerous effect on policy and the character of the regime. They could exercise of controlling influence in policymaking, and use it to the detriment of the Founders’ principles of public good and individual rights.

An Asylum for Oppressed Peoples

Concern about the character and beliefs of immigrants was not, however, the sole factor governing the Founders’ minds on immigration. America’s perception of herself as an asylum for the oppressed of the world did not begin with “The New Colossus” the famous poem by Emma Lazarus that adorns the Statue of Liberty. Thomas Paine depicted America as a refuge in his popular and influential pamphlet *Common Sense*.⁴⁰ The poet-turned-Jeffersonian editor Philip Freneau waxed poetic about the subject in 1784, writing

From Europe’s proud, despotic shores
Hither the stranger takes his way,
And in our new found world explores
A happier soil, a milder sway,
Where no proud despot holds him down,
No slaves insult him with a crown.⁴¹

Americans believed that a land of free men, with no kings and no slaves, would be a beacon to all who longed for freedom. Perhaps no one held this view more prominently

³⁷ West advances this argument in greater detail, with specific contemporary examples and sources, in *The Founders on Immigration and Citizenship*, 93-101.

³⁸ Franklin, Letter to James Parker, March 20, 1750, in *Writings*, 445 (italics original).

³⁹ Washington, Letter to the Vice President, November 15, 1794, in Fitzpatrick, *Writings*, 34:23.

⁴⁰ Thomas Paine, *Common Sense* (1776), <http://teachingamericanhistory.org/library/index.asp?document=38> (accessed September 17, 2012).

⁴¹ Philip Freneau, “On the Emigration to America and Peopling the Western Country” (1784), in Fred Lewis Pattee, ed. *The Poems of Philip Freneau* (Princeton: Princeton University Press, 1903), 280.

than George Washington, who repeatedly described America in these terms. Washington told a group of Irish refugees that “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.” To an immigrant Mennonite minister he declared that he “had always hoped that this land might become a safe and agreeable Asylum to the virtuous and persecuted part of mankind, to whatever nation they might belong.”⁴² Jefferson articulated a nearly identical theme in 1795.⁴³ These men sought to portray America as a refuge where the oppressed of the world could go and live in freedom.

Many foreigners came to a similar conclusion about America’s potential. Those that emigrated often wrote of their experiences for European audiences. The French-born immigrant J. Hector St. John de Crèvecoeur, in his *Letters from an American Farmer*, praised the political liberty and economic prosperity of America, saying

Europe contains hardly any other distinctions but lords and tenants; this fair country alone is settled by freeholders, the possessors of the soil they cultivate, members of the government they obey, and the framers of their own laws, by means of their representatives.... It is here that the idle may be employed, the useless become useful, and the poor become rich.⁴⁴

The English expatriate Joseph Priestley wrote to a friend in 1796 that “Every account I have from England makes me think myself happy in this peaceful retirement, where I enjoy almost everything I can wish in this life, and where I hope to close it.... The advantages we enjoy in this country are very great.”⁴⁵ Works like these and numerous others fueled the perception that America was a desirable destination for political, as well as economic reasons.

Practical Problems and Policy Solutions

⁴² Note that Washington does not see America as an asylum to all, but rather “the virtuous and persecuted part of mankind.” Those lacking in virtue, who are slavish or have the desire to dominate, are both undesirable to Americans and would themselves be repulsed by a regime of equal liberty, in which everyone must provide for himself. Washington, Letter to the Members of the Volunteer Association and Other Inhabitants of the Kingdom of Ireland Who Have Lately Arrived in the City of New York, December 2, 1783, in *The Writings of George Washington*, ed. John C. Fitzpatrick (Washington, DC: United States Government Printing Office,), 27:254; Washington, Letter to Francis Adrian Vanderkemp, May 28, 1788, in *Writings*, 29:504. See also Washington, Letter to Lucretia Wilhemina Van Winter, March 30, 1785, in *Writings*, 28:120; Letter to Marquis de Lafayette, July 25, 1785, in *Writings* 28:2063-207; Letter to Jefferson, January 1, 1788, in *Writings*, 29:348-351.

⁴³ Jefferson, Letter to Jean Nicolas Demeunier, April 29, 1795, in *Writings*, 1028.

⁴⁴ J. Hector St. John de Crèvecoeur, *Letters from an American Farmer* (1782), excerpted in Edith Abbott, ed., *Historical Aspects of the Immigration Problem: Select Documents* (Chicago: University of Chicago Press, 1926), 16. Crèvecoeur’s work, Abbott notes, was enormously influential in Europe, and even led to responses by Europeans, less sanguine about the new nation. *Historical Aspects*, 16n1.

⁴⁵ Joseph Priestley, A Letter from America, October 4, 1796, in *Historical Aspects*, 22. See also *Historical Aspects*, 28-49 for numerous examples of praise, and some less praiseworthy writings, by European emigrants to America for the benefit of European audiences left behind.

The willingness to admit foreigners into the country is reflected in the laws enacted during the Founding era. The Articles of Confederation made no provision immigration and naturalization, except to declare that “the free inhabitants of each of these states... shall be entitled to all privileges and immunities of free citizens of the several states.”⁴⁶ Immigration and naturalization were thus left to the states. In *Notes on the State of Virginia*, Jefferson reports that, in order to become a citizen of Virginia in the 1780s, one only needed to be a resident and swear an oath of loyalty.⁴⁷ The legal commentator St. George Tucker notes that Virginia, Vermont and Pennsylvania affirmed the right of emigration.⁴⁸

The aforementioned arrangement in the Articles of Confederation, however, created a serious problem. Each state had its own naturalization laws, but each state was also required to extend the privileges and immunities of their own state to any citizen of any other state. The result, Madison lamented, was that “An alien therefore legally incapacitated for certain rights in [one state], may by previous residence in [a second state], elude his incapacity; and thus the law of one State, be preposterously rendered paramount to the law of another, within the jurisdiction of the other.”⁴⁹ The solution, Madison argued, was the provision in the Constitution giving Congress power “to establish an uniform Rule of Naturalization.” One uniform rule would prevent abuses of state laws whereby people might become citizens of a state with liberal naturalization laws, and then move to a more desirable state which had stricter naturalization laws. This clause was included in the Constitution without any debate in the Convention.⁵⁰

No federal law enacted under the Constitution placed any restriction on who could migrate to the United States; restrictions were only codified when it came to the question of citizenship. The Founders sought to define the terms under which one would be permitted to become a full member of the political community. Even then the standards varied. The first federal naturalization law passed by Congress under the Constitution required two years’ residency in the United States, one year’s residency in the state, wherein he is applying for citizenship, an oath of loyalty, and that the applicant be a “free

⁴⁶ Articles of Confederation, Article VI.

⁴⁷ Jefferson, *Notes on the State of Virginia*, Query 14: The administration of justice and description of the laws?, in *Thomas Jefferson: Writings*, ed. Merrill D. Peterson (New York: Library of America, 1984), 260.

⁴⁸ St. George Tucker, *Blackstone’s Commentaries* (1803) in *The Founders’ Constitution* 2:587. See also Wilson, *Lectures on Law*, in *Collected Works*, 644.

⁴⁹ *Federalist* 42 (1788), in Cooke, ed., 286.

⁵⁰ *The Records of the Federal Convention of 1787*, ed. Max Farrand (1911; 1937), 1:245, 2:144, 158, 167, 182, 445, 483, 486, 489, 569, 570, 595. Despite the plain language of the naturalization clause and Madison’s explanation of its purpose, controversies continued to arise as the clause was misinterpreted. See *Collet v. Collet*, 2 Dall. 294 (1792). James Kent realizes that this case was decidedly incorrectly, noting “If each state can naturalize on one year’s residence, when the act of congress requires five, of what use is the act of congress, and how does it become an uniform rule”, as stated in the Constitution? Kent, *Commentaries*, in *The Founders’ Constitution*, 2:597-598.

white person”.⁵¹ Subsequent statutes increased the length of time to as much as 14 years, but by 1802 Congress settled on the five year residency requirement that persists to this day.⁵² No other restrictions were imposed.

The most important policy pursued by the Founding Fathers was absence of an affirmative policy. The failure of the immigrant settlement at Gallipolis in the Scioto River valley “ended all hopes of large-scale land promotion in Europe...as a promising method of peopling the vacant West.”⁵³ Whatever Hamilton may have mused in his *Report on Manufactures*, America offered no incentives to particular professions for immigration.⁵⁴ Washington believed that such persons would need no positive encouragement, and therefore saw no need to provide it.⁵⁵ Franklin told prospective European immigrants that “With Regard to Encouragements for Strangers from Government, they are really only what are derived from good Laws & Liberty.” America is a place where noble birth is not regarded and where government jobs do not abound. “In short,” he concluded, “America is the Land of Labour.” This policy would discourage those who would come to America hoping to live a life of ease at public expense, while encouraging those who wanted to work. This was crucial, for according to Franklin “Industry and constant Employment are great Preservatives of the Morals and Virtue of a Nation.”⁵⁶ The opportunity to labor freely, in a land where honest labor is honorable, would be incentive enough for the type of immigrant America hoped to attract: industrious and virtuous.

The near-total lack of restrictions on immigration, coupled with the lack of affirmative incentive to immigrate, meant that actual immigration was largely driven by events and policies beyond America’s shores. For instance, the abatement of hostilities culminating in the Treaty of Amiens in 1802 was coupled with crop failures and the attempt to manage those failures, “and as a result the summer of 1801 beheld a

⁵¹ An Act to establish an uniform Rule of Naturalization, March 26, 1790, 1 *Statutes at Large* 103. The “free white person” requirement is discussed at greater length below.

⁵² An Act to establish an uniform rule of Naturalization; and to repeal the act heretofore passed on that subject, January 29, 1795, 1 Stat. 414-415; An Act supplementary to and to amend the act, intituled “An Act to establish an uniform rule of naturalization; and to repeal the act heretofore passed on that subject”, June 18, 1798, 1 Stat. 566-569; An Act to establish an uniform rule of Naturalization; and to repeal the act heretofore passed on that subject, April 14, 1802, 2 Stat. 153-155.

⁵³ Jones, *American Immigration*, 69-70.

⁵⁴ Alexander Hamilton, *Report on the Subject of Manufactures* (1791), in *Alexander Hamilton: Writings*, ed. Joanne B. Freeman (New York: Library of America, 2001), 647-734. Interestingly, Jefferson also once supported encouraging certain kinds of immigrants. See Jefferson, *Notes on the State of Virginia*, Query 8: The number of its inhabitants?, in *Writings*, 212. This policy never gained wide acceptance.

⁵⁵ Washington, Letter to the Vice President, November 15, 1794, in Fitzpatrick, *Writings*, 34:23.

⁵⁶ Franklin, “Information to Those Who Would Remove to America” (1784), in *Writings*, 977-978, 982. See also, William Rawle, *An Address Delivered before the Philadelphia Society for Promoting Agriculture* (1819), reprinted in Oscar Handlin, ed., *Immigration as a Factor in American History* (Englewood Cliffs, NJ: Prentice-Hall, 1959), 6-10

phenomenally heavy immigration.”⁵⁷ Conversely, Britain in 1803 passed the Passenger Act passed a law restricting the number of migrants that could be carried on one vessel, which slowed immigration rates.⁵⁸ So too did the British efforts to prevent skilled artisans from leaving the British Isles in order to protect Britain’s industrial superiority. The War of 1812 effectively ended all immigration from Europe for the duration of the war.⁵⁹

The one event that had the most dramatic effect on immigration, and on American attitudes toward immigration and naturalization was the French Revolution. The Revolution, which had initially drawn the approbation of almost all prominent Americans, eventually became a litmus test for party affiliation, with Republicans supportive and Federalists suspicious of events in France.⁶⁰ By 1793 the majority Federalists began to express grave doubts about the French Revolution. Gouverneur Morris, then in France, noted in his diary on October 21, 1789 that “Paris is perhaps as wicked a spot as exists. Incest, murder, bestiality, fraud, rapine, oppression, baseness, cruelty; and yet this is the city which has stepped forward in the sacred cause of *liberty*.”⁶¹ Hamilton described revolutionary France in 1793 as “a state of things the most cruel sanguinary and violent that ever stained the annuals of mankind” and lamented the “gloomy persecuting and desolating atheism” of the revolution.⁶² These concerns materialized in the 1795 naturalization law, which increased the residency requirement from two years to five.⁶³ As America moved rapidly toward open war with France in 1798, Congress again raised the residency requirement, this time to fourteen years. When President Jefferson called for the elimination of the residency requirement in 1802 Congress demurred. The requirement was returned to five years, but it was retained.

This is not to say that America did nothing to restrict immigration by law. The Constitution permitted Congress to abolish the slave trade effective January 1, 1808, a power which Congress exercised to the fullest. The indentured servant trade, which had

⁵⁷ Hansen, *The Atlantic Migration*, 67.

⁵⁸ Hansen, *The Atlantic Migration*, 69-70.

⁵⁹ For a more detailed recounting of the effect of foreign events and laws on migration to America, see Hansen, *The Atlantic Migration*, 53-78, and Jones, *American Immigration*, 64-91

⁶⁰ See Stanley Elkins and Eric McKittrick, *The Age of Federalism: 1788-1800* (New York: Oxford University Press, 1993), 308-329, 354-365; Gordon Wood, *Empire of Liberty: A History of the Early Republic, 1789-1815* (New York: Oxford University Press, 2009), 174-185.

⁶¹ Gouverneur Morris, Diary, October 21, 1789, in *The Diary and Letter of Gouverneur Morris, volume 1*, ed. Anne Cary Morris (New York: Charles Scribner’s Sons, 1888), 200-201.

⁶² Hamilton, “Memorandum on the French Revolution” (1794), in Hamilton, *Writings*, 835.

⁶³ The extent of concern over the impact of the French Revolution was pointedly expressed in the debate over the 1795 naturalization bill when Federalist Rep. Samuel Dexter declared that he “was as averse to titles as any man in the House, but he did not like to make laws against them. An alien might as well be obliged to make a renunciation of his connexions with the Jacobin club. The one was fully as abhorrent to the Constitution as the other.” House of Representatives, Naturalization, December 31, 1794, in *The Founders’ Constitution*, 2:574.

survived Revolution and the War of 1812, was devastated when Congress passed its own Passenger Act in 1819 and never recovered.⁶⁴ Third, the Immigration Act of 1790 restricted naturalization to “free white” persons. The clause was not debated by the First Congress, nor did subsequent Congresses consider the issue when they repealed or amended American naturalization law. There is thus no direct evidence in the legislative history to support the conclusion that mere animus, or any other factor, motivated their action.⁶⁵ It is possible, however to consider this provision through the arguments elaborated herein. Americans had no experience with African regimes, could not determine with certainty those regimes, like many European despotisms, were incompatible with liberty. Finally, the same prudential need for accommodation that drove the Constitution’s compromises over slavery may have induced Congress to compromise on this subject. Some Americans harbored doubts about the capacity of blacks for self-government, and were unwilling to risk their own liberty in what they would have considered an experiment.⁶⁶ Moreover, new African immigrants would be surrounded by enslaved Africans, whose loyalty was (justifiably) suspect.⁶⁷ Southerners lived in perpetual fear of slave revolt in general, and, in particular, of slave revolts led by free blacks.⁶⁸ Finally, as West notes, “nothing in the Founders’ principles had to be changed for blacks to be admitted to full citizenship, as they were after the Civil War.”⁶⁹

⁶⁴ Hansen, *The Atlantic Migration*, 68. For a more substantial discussion on the indentured servant trade and immigration in America, see William Miller, “The Effects of the American Revolution on Indentured Servitude”, *Pennsylvania History* 7, no. 3 (July 1940), 131-141.

⁶⁵ Debate surrounding the naturalization bill of 1790 was chiefly concerned with the length of the residency requirement. House of Representatives, Naturalization, February 3-4, 1790, in *Annals of Congress* 1:1109-1125. The debate leading to the passage of the 1795 act was dominated by debate over the clause requiring the renunciation of titles of nobility. The extent of concern over the impact of the French Revolution was pointedly expressed in this debate. House of Representatives, Naturalization, in *The Founders’ Constitution*, 2:570-579. Later, in 1798, mindful of the distinct possibility of war with France over the XYZ Affair, members debated whether or not it was lawful to remove aliens without trial, whether the President should be empowered to order such removals unilaterally, and whether or not the word “migration” in Article I, Section 9, clause 1 of the Constitution referred to immigration from abroad. House of Representatives, Naturalization, May 3, 1798, *Annals* 8:1570-1582; Aliens, June 19-21, 1798, *Annals*, 8:1974-2029.

⁶⁶ Jefferson, *Notes on the State of Virginia*, Query 14: The administration of justice and description of the laws?, in *Thomas Jefferson: Writings*, ed. Merrill D. Peterson (New York: Library of America, 1984), 270. It is important to note that this position was far from universal. See, for example, Hamilton, Letter to John Jay, March 14, 1779, in Hamilton, *Writings*, 56-58.

⁶⁷ Jefferson, *Notes on the State of Virginia*, Query 18: The *particular* customs and manners that may happen to be received in that state?, in *Writings*, 288-289. Whether these beliefs are consistent with reality is not the sole issue.

⁶⁸ The extent of southern concern about free blacks is discussed in Don E. Fehrenbacher, *The Dred Scott Case: Its Significance in American Law and Politics* (New York: Oxford University Press, 1978), 64-73. Due to the absence of evidence, these explanations are speculative, based on the most plausible interpretation of the Founders’ ideas and words possible.

⁶⁹ West, “Immigration: The Founders’ View and Today’s Challenge”, in *The Founders on Citizenship and Immigration*, 90-91.

The “free white person” language of the 1790 was a prudential response to the particular situation that faced America at that time. The Civil War overcame that situation, and made it possible for America to bring their policy more closely into line with their principles, which they did with the Fourteenth Amendment.

The United States government did not keep record of immigration statistics before 1820, so it is difficult to ascertain the results of these policies with precision. In 1872 the U.S. Bureau of Statistics concluded that immigration to the United States from 1790 to 1815 was slightly less than a quarter of a million.⁷⁰ The immigration historian Maldwyn Allen Jones uses the 250,000 number for the period 1783-1815, and no new evidence has materialized to challenge these claims.⁷¹ The U.S. Census for 1790 holds that America’s population at that time was 3,929,326,⁷² so that the crudest of calculations reveals that immigrants for the quarter-century beginning in 1790 represented approximately 6-7% of America’s 1790 population. The primary sources of immigration to the United States during this period were Great Britain, Ireland, France, Holland, Germany, and Switzerland.⁷³ This data suggests, first, that Americans were willing to act on their principles, allowing foreigners to migrate and become citizens. Second, it reveals that, relative to the total population of the United States in 1790, a fairly significant number did so.

Assimilation

With all of this information, it would be intellectually dishonest simply to appropriate the Founding Fathers for either the restrictionist or open-borders positions. Jefferson, while worried about the character of the regime, held that “If they come of themselves, they are entitled to all the rights of citizenship.”⁷⁴ Franklin, concerned about mass immigration in Pennsylvania, nevertheless admitted that

⁷⁰ U.S. Bureau of Statistics, *Special Report on Immigration* (1872), v., cited in Marcus Lee Hansen, *The Atlantic Migration, 1607-1860* (Harvard University Press, 1940; New York: Harper & Brothers, 1961), 77. Hansen claims that the government’s conclusion “rests upon the slimmest of evidence”, but that “the impression created by an intensive study of the period and of fragmentary contemporary data substantiates this estimate.” *The Atlantic Migration*, 77-78

⁷¹ Maldwyn Allen Jones, *American Immigration* (Chicago: University of Chicago Press, 1960), 64-65. More precise calculations of the annual flow of immigrants, and the causes thereof, are discussed below.

⁷² *Return of the Whole Number of Persons within the Several Districts of the United States* (Philadelphia, 1793), 3, downloaded from U.S. Census Bureau, <http://www.census.gov/prod/www/abs/decennial/1790.html> (accessed September 13, 2012). This figure does not include population of the Northwest Territory, as no data was available.

⁷³ Hansen, *The Atlantic Migration*, 53-78; Jones, *American Immigration*, 64-91; Lawrence Guy Brown, *Immigration* (New York: Longmans, Green and Co., 1933), 63-67.

⁷⁴ Jefferson, *Notes on the State of Virginia*, Query 8: The number of its inhabitants?, in *Writings*, 212.

Yet I am not for refusing entirely to admit them into our Colonies: all that seems to be necessary is, to distribute them more equally, mix them with the English, establish English schools where they are now too thick settled, and take some care to prevent the practice lately fallen into by some of the Ship Owners, of sweeping the German Goals to make up the number of their Passengers. I say I am not against the Admission of Germans in general, for they have their Virtues, their industry and frugality are exemplary; They are excellent husbandmen and contribute greatly to the improvement of the Country.⁷⁵

Washington adopted a similar position. In the same paragraph that he voiced concerns about mass immigration, he concluded that “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.”⁷⁶ The Founders’ general position on immigration was one of assimilation, facilitated by dispersion of immigrants among the general population and adoption of the English language.

Symbolic of the Founders’ belief in assimilation was the requirement in all the naturalization legislation passed in the first years of the Constitution, that naturalized citizens swear an oath to support the Constitution of the United States. This requirement was strengthened in the 1795 naturalization law, so that a naturalized citizen must declare in court that “he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state or sovereignty whatever, and particularly by name, the prince, potentate, state or sovereignty, whereof he was before a citizen or subject.” This absolute renunciation had to be preceded by a declaration in a court of competent jurisdiction, at least three years previous to becoming of citizen, making the same renunciation.⁷⁷ The requirement of absolute renunciation of all other loyalties was retained in the 1798 and 1802 naturalization laws. The Founders would seem to reject the modern concept of “dual citizenship”; one can only be a citizen of one regime. One’s entire loyalty must be placed in a single regime, to the exclusion of all others.

The Founders policy was a substantial success. As the immigration historian Robert Feer notes, “The German immigrants and their descendants were tenacious of their native language, but their intransigence can be and has been exaggerated.”⁷⁸ Despite Franklin and Washington’s concerns about immigrants, it soon became clear that assimilation was proceeding with acceptable, though not uniform speed. Jones reports that “The decline of the French, Swedish, and Welsh tongues was already far advanced before the Revolution.... [B]y 1815 the public use of Dutch and German was decidedly

⁷⁵ Franklin, Letter to Peter Collinson, May 9, 1753, in *Writings*, 473-474.

⁷⁶ Washington, Letter to the Vice President, November 15, 1794, in Fitzpatrick, *Writings*, 34:23.

⁷⁷ An Act to establish an uniform rule of Naturalization; and to repeal the act heretofore passed on that subject, January 29, 1795, 1 Stat. 414.

⁷⁸ Robert Feer, “Official Use of the German Language in Pennsylvania”, *The Pennsylvania Magazine of History and Biography* 76, no. 4 (October 1952), 397.

on the wane.”⁷⁹ Over time, politics, economics, and distance separated groups like the Germans from the homelands, clearing the way for full assimilation.⁸⁰

Matthew Spalding, in an excellent essay in *Policy Review*, makes precisely this argument. Spalding asserts that the Founders were “torn” between their belief in America as a refuge for the oppressed and their concern for the character of immigrants. He asserts that “The Founders resolved this problem by insisting on the rapid assimilation of newcomers. Men and women would be free to come to America from every country in the world, but only if they became Americans.”⁸¹ They had to adopt American virtues and political principles, so that they truly became part of the American regime. By becoming one with America in principles, differences of national origin and ethnicity would be overcome.

This was the policy of the Founders, but is it appropriate for our time? In considering this question, two factors must be considered. First, immigration to America during the Founding era was fairly small, and was interrupted by periods in which little to no immigration took place.⁸² Maldwyn Allen Jones notes that “The limited scale of immigration during the first generation of national independence enabled those immigrants who had still been imperfectly assimilated at the time of the Revolution to take a long stride toward Americanization.” The old customs and loyalties were not refreshed by new arrivals from the Old World, so immigrants began to lose their connection to that world. American principles and practices would fill that void. American immigration policy assumed its current contours in 1965; since then, large-scale immigration has proceeded almost apace.⁸³ The country has undergone no periods of light immigration that would put some distance between recent immigrants and their homelands, the kind of distance that might facilitate assimilation. Constant infusions of new immigrants have served to maintain connections and contact with those homelands.

More importantly, the American Founding was a time when the great body of the populace was united upon, and strongly devoted to, Founding principles.⁸⁴ New arrivals in the United States would be immersed in an environment where Founding principles were pervasive and widely accepted. America’s commitment to those principles today is tenuous at best. As Ron Lipsman very aptly observes

⁷⁹ Jones, *American Immigration*, 76.

⁸⁰ Andreas Dorpalen, “The German Element in Early Pennsylvania Politics, 1789-1800: A Study in Americanization”, *Pennsylvania History* 9, no. 3 (July 1942), 176-190.

⁸¹ Matthew Spalding, “From Pluribus to Unum: Immigration and the Founding Fathers”, *Policy Review* 67 (Winter 1994), 35.

⁸² Jones, *American Immigration*, 64-65; Hansen, *The Atlantic Migration*, 71.

⁸³ See U.S. Department of Homeland Security, Office of Immigration Statistics, *2011 Yearbook of Immigration Statistics* (Washington, DC, 2012).

⁸⁴ Jefferson, Letter to Henry Lee, May 8, 1825, in *Writings*, 1501.

It is not that the new immigrant is from Latin America or Asia or the Middle East instead of Europe; it is not that he speaks Spanish instead of German or French; it is not that his work ethic is weaker than those of previous immigrants – it's not; and it is not that she is not steeped in American history – my grandmothers couldn't distinguish John Adams from Samuel Adams. It is that we the people, or at least a sizeable segment of us, have lost faith in our own ideals. You cannot inculcate newcomers into your way of life if *you* no longer subscribe to its tenets.⁸⁵

America's immigration problem is not with immigrants, but with Americans. In order for the Founders' policies to be intelligible and effective, America must return to the Founders' principles of justice. If America is not based on those principles, then it is like the other nations, and the idea of America as an asylum becomes muddled and incoherent. If we accept feudal obligation and its modern incarnation, birthright citizenship, then the ideas of government by consent and the right to emigrate become obscured. If we forget that consent is reciprocal and that the purpose of government is to protect the inalienable natural rights of its citizens, then the right and duty to restrict immigration and naturalization becomes nothing an expression of racism and nativism. If we forget our heritage as a refuge for the virtuous and oppressed of the world, then we lose a significant part of what makes America exceptional. If we deny all these things, then the very idea of assimilation becomes incomprehensible.

America cannot be a refuge for the oppressed if it refuses to allow for immigration, but America today cannot effectively absorb new immigrants and retain those characteristics that make it exceptional. The elements of America's original understanding of immigration have been brought into conflict. There is only one way for America to reconcile American exceptionalism with the preservation of that exceptionalism. The key to resolving the immigration problem is for Americans to re-adopt the principles of the American Founding as their first principles and as the best practical guide for their politics and policy.

⁸⁵ Ron Lipsman, "America's Immigration Problem", *The American Thinker*, February 19, 2011, http://www.americanthinker.com/2011/02/americas_immigration_problem.html (accessed August 1, 2012).