

# Oversights, Leaps, and Confusions

*Barry Alan Shain*

**Vindicating the Founders: Race, Sex, Class, and Justice in the Origins of America**, by Thomas G. West, *Lanham, Maryland: Rowman and Littlefield, 1997. xv, 211 pp.*

THOMAS WEST HAS WRITTEN a courageous book in which he attempts to defend the natural rights doctrine of America's political leaders during the years 1765 to 1800. He argues that these "Founders" deserve to be defended against their many and varied critics. In addition, he ambitiously examines contemporary problems and turns with enthusiasm to these men for guidance on how best to handle our social and political difficulties. Not far removed from such concerns is his effort to shape American conservatism in a manner sympathetic to the demands of abstract natural rights, a doctrine usually associated with liberalism.

Though West correctly understands that the Founders' critics hail from both the political left and right, his book is organized around a defense from leftist-inspired attacks. But in evaluating his defensive efforts, it is hard to know how to judge them because with remarkable

honesty he provides copious evidence that contradicts many of his claims. By the end of most chapters, in fact, he demonstrates the opposite of what he putatively has set out to show. Indeed, given how complete his failure is, one must question if his declared intention is real. Under the guise of defending the Founders against contemporary slights, West may have cleverly found a way to advance their illiberal views and this might be his true goal. It is difficult to know which goal, his desire to vindicate the Founders or to advance their reactionary social and political teachings, is most truly West's. Let us take a closer look, then, at his argument to see if he provides any guidance in this matter.

In his first chapter on the racial attitudes of the Founders, West attempts to clear them of the charge of racism. He concedes, however, that the Constitution can correctly be viewed as "giving substantial protection to slavery," even "as a proslavery document," and that "most Americans, including most of the Founders, opposed black citizenship and political equality." "Jefferson and Madison's opposition to black citizenship was shared by most (but not all) Americans...free blacks were excluded, by custom or law, from voting, jury service, and public schools in almost every state. Some states forbade the immigra-

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tion of free blacks." West holds that the Founders' Declaration of Independence awarded equality and abstract rights to blacks, but the right of blacks to vote, to go to public schools, to move freely between states are not entailed in West's understanding of equality, liberty, or universal rights. West asks if "it was inconsistent for those who believed in human equality to favor colonization," and answers that "it was not." "All human beings have a right to liberty. But a right to liberty does not include a right to live in a country of one's choice, without the consent of those already citizens in that place. The plan to colonize blacks would not have violated their human rights." In other words, the natural rights theory defended by West, and putatively held by the Founders, made chattel slavery unconscionable, but had neither bearing on whether political inclusion was racially determined nor whether African-Americans might be forcibly removed from America.

Being the bearer of natural rights also fails to make illegitimate racial prejudice. It is therefore unproblematic for West that Jefferson and most other Founders believed that blacks had child-like minds and simple but devious characters so that even in the North they were opposed to the presence of blacks, free or slave. The claim that one race is in salient aspects inferior and repugnant to another and must be removed from their land of birth is, in West's mind, unrelated to their possessing natural rights and not a matter of racism.

What is left then of his defense of the Founders from the contemporary charge of racism (and remember this is the contested issue, not their views of slavery)? And if the Founders cannot be vindicated from the charge that they were racists, what is gained by his passionate defense? The reader is left baffled, for while West claims to be defending the Founders, he has convincingly shown that they were

racist and viewed blacks as probably inferior and surely undesirable as fellow citizens.

In the most confused chapter, the second, West wants to defend the Founders against those who challenge their views on private property. This is difficult, he admits, because contemporary scholars do not attack them in this regard, but instead "denounce capitalism and free markets as they evolved later in American history," such as among the "robber barons." The integrity of this chapter is undercut not only by a lack of coherent focus but also by West's own admission that the Founders were not enthusiastic supporters of the cult of private property. In a lengthy section near the end of the chapter, "Is Private Property Corrupting?" West explores their understanding of property as a potential form of corruption. In this chapter, too, we are left puzzled as to West's intention regarding the Founders' views of property and against whom he is vindicating them.

The same pattern continues through the remaining chapters, but nowhere more glaringly than in the chapters defending the Founders from the charge of sexism. We learn there that, according to West, "almost all of the men and women of the founding generation believed that all men and women are created equal." But as with blacks, we are mistaken if we believe that egalitarian implications must be drawn from such a claim, for the same Americans "rejected the inference that equal natural rights require equal voting rights." West also shows that Richard Henry Lee, James Madison, and Washington did not believe women to be "inferior," but only limited in their ability to reason abstractly, and too physically and morally delicate to take an active role in worldly affairs. In the words of John Adams, "women are naturally 'fittest for domestic cares'" and "men are fittest for non-domestic activities like politics and war." And in case we are confused con-

cerning the meaning of male and female "equality," West closes the chapter with the hortatory suggestion that, following the teaching of the Founders, "the typical woman must accept the fact that she will spend most of her adult life managing a household, including cooking and cleaning for her husband and children." How are we to understand this as rebutting the charge that the Founders were "sexist"? Rather, the reader is left confident of the Founders' sexism and puzzled as to West's intention.

In the final two chapters we confront more of the same. Thus, in his sixth chapter in which welfare policy is discussed, West wishes to show the Founders to be sensitive towards the needs of the poor, drawing his confident assertions from only two passages, one from Jefferson and the other from Franklin. West commends the Founders' insistence on "tough love," their discriminating between the deserving and undeserving poor, and their insistence that welfare neither create nor foster dependency. In regard to "tough love," West cites Jefferson's proposal that the overseers of poorhouses must not be allowed to correct "any of them with more stripes than ten, at one time." Surely, this is not the kind of "sensitivity" that will lead contemporary elites to view more positively the ways of the Founders.

When West finally turns to the Founders' views on immigration, it is impossible to avoid concluding that they held to an ethnocentric policy of racial and ethnic exclusion. Consider West's summary in which he writes that the first naturalization law (1790) stated that "any alien being a free white person, who shall have resided within the limits and under the jurisdiction of the United States for the term of two years, may be admitted to become a citizen." Eligibility for naturalization would be extended to blacks in 1870, to Filipinos after the Spanish-American war, and to Chinese in 1943. Focusing

on Benjamin Franklin, among the most cosmopolitan and enlightened of the Founders, West reminds us of his distaste for Germans and those Europeans with "a swarthy complexion" while defending a policy that encouraged the immigration of only those with white and pink complexions. West concludes that this kind of corporate intolerance and self-direction was common and, "from the point of view of the Declaration of Independence, this kind of preference for one's own, the love of one's own kind, is a permissible and understandable, although not a particularly noble, basis for immigration and citizenship policy." Again, we are left confused by the disjunction between his declared intention of vindicating the Founders from the charge of nativism and his convincing demonstration that this description is fitting.

At this point, then, we must conclude that West is unable to vindicate, in contemporary terms, the Founders from the charge of being racist, sexist, elitist, and nativist. Can we also infer that this "failure" was intentional? One must tentatively answer, yes. This is most likely true not only because of the one-sided nature of his evidence, but more particularly because West passionately believes that the Founders' social and political teachings are true for all time and that, accordingly, we must return to the wisdom of their ways. Without having to defend normatively that African-Americans would have been better served by being escorted back to Africa or that most women are unfit to vote or engage in activities that demand abstract reasoning or upper-body strength, under the cover of doing the opposite, West is able to introduce into the reader's mind, quite likely a high-school student or college undergraduate, such completely unfashionable, but for him absolutely true, social and political ideals.

Recognition of West's likely, though

guarded, intentions still leaves open for discussion his simultaneous defense of the Founders' theory of individual natural rights as historically true, normatively good, and prudentially useful. It is this range of issues which appropriately separates West from most conservatives. Putting aside for the moment the scholarly question of how individual rights (and equality and liberty) may have been variously understood at any one time, let alone across a forty-year period of vast economic, social, and political dislocation, let us now consider West's defense of the Founders against conservatives who attack the salutary nature of the theory of natural rights that he believes was promulgated by the "Founders."<sup>2</sup>

Conservatives view an abstract theory of rights with great distrust. In fact, most believe that many of the private and public ills which West wants to ameliorate by returning to the practices and values of the Founders, result from the theory which West ascribes to them and defends. Accordingly, the list of those West challenges on this matter reads like a who's who of conservative luminaries. West begins his counterattack by criticizing M.E. Bradford for holding that public policies "founded on 'natural rights imperatives'" are "certain to boil over into a demand for less and less" personal responsibility and more and more individual freedom. West also finds the quintessential American conservative, Russell Kirk (and implicitly Hume and Burke), mistaken in having argued against abstract rights in defense of others grounded in a people's concrete history and experience.

West faults not only the traditionalist wing of conservatism, but also many prominent neo-conservatives, including Robert Bork, James Q. Wilson, Mary Ann Glendon, Leon Kass, and even the late Allan Bloom. He finds Judge Bork particularly mistaken when he laments that the equality idea in the Declaration

of Independence became "the single most powerful and radical ideological force in all of American history." And again, West finds Bork wrong when he speaks for most conservatives and finds "that America's 'rage for liberty' and 'passion for equality' are responsible for today's problems, including seemingly endless demands for bigger government, higher taxes, and ever more explicit public expression of the most degraded passions." He similarly dismisses Bloom's fears that "in modern political regimes, where rights precede duties, freedom definitely has priority over community, family, and even nature." For West, conservatives just do not understand the salutary nature of abstract claims of equality, liberty, and natural rights.

Conservatives are confused, according to West, because they "misunderstand the Founders, who rejected the amoral understanding of liberty and rights so common today." He rightfully reminds us that the Founders understood the difference between "liberty and license and encouraged responsibility toward family and community." The problem, hence, "does not spring from the mistaken principles of the founding. It springs from the mistaken twentieth-century rejection or distortion of those principles." West is in part right, but he nonetheless fails to understand that ideas do not have an existence free from the interpretive frameworks within which they and those who make use of them reside. What in one fragile universe of meaning may be largely innocuous, may prove invidious in another context.

West is right in claiming that the language of liberty, equality, and rights was understood by the founding generation of Americans differently from their twentieth-century descendants, but his conservative opponents are more on target when they hold that the natural rights theory celebrated by West is importantly responsible for those changes in politi-

cal, moral, and religious thought that have done so much to undermine the traditional social practices that he admires. West admits as much. Consider his recognition that the modern feminist “movement for equal political rights for women is compatible with the founding principles,” or his holding that in spite of the Founders’ insistence that only certain people had the requisite qualities to maintain freedom, America’s continuing “openness to members of all the world’s races was always possible under the terms of the Declaration of Independence,” regardless of their preparation for citizenship or potentially incompatible cultural or religious practices.

Not only does West ignore the contradictory evidence he provides, but also he fails to take account of the effects of his own hagiographic depiction of the development of the Founders’ natural rights discourse. His ignoring the forced development of “rights talk” during the imperial crisis leading up to the American War of Independence can only add to the dangerous halo surrounding this language. West fails to appreciate that this language has greatly changed in meaning and that the cosmological structure within which it made sense is no longer available to most American elites. In the arid secularism of his remarks, he makes no mention of the God-centered universe of the late-eighteenth century that contained it. Liberty, then, could be discriminated from license for there were agreed upon God-given standards of what constituted the legitimate use of freedom beyond which liberty became license. Today the language of rights is uncontrollable and supports those twentieth-century political experiments that West otherwise finds loathsome.

West’s transformation of the boilerplate jargon of the Declaration’s second paragraph into a complete philosophy capable of guiding all aspects of social and political thought is central to the

problem that conservatives have rightfully identified in contemporary liberal (and West’s) thought. The language of inalienable natural rights no longer contains its God-centered original limits, which cannot be recovered in a secular elite world intoxicated with the demands of human autonomy and licentious freedom. West is surely wrong to believe “that there is no need to go beyond the Declaration, or to reject the Founders’ principles, in order to justify limits on the abuse of liberty.” His attempt to extract corporate duties and responsibility from the abstract formalism of the Declaration ignores that it was written as a polemic to defend America’s War of Independence and that much more is needed for social and individual well-being than the conflicting claims of individuals defending their abstract and largely limitless rights. What is called for is a return to a richer teaching of social, political, and moral life that recognizes the necessity of individual duty, responsibilities, and sacrifice even when in conflict—as they frequently are—with the rights claims of individuals. And in the Western tradition of thought, so well embodied in eighteenth-century American sermons and other expository writing when not read out of context, this was well understood. Rights, with the exception of religious conscience, were historically situated and were necessarily reciprocal with religious, social, and familial duties and responsibilities. West fails to recognize this.

Such language as found in the Declaration’s second paragraph cannot be cavalierly endorsed, as West does, without exacerbating the problems he hopes to ameliorate. Instead, we need to recover the full richness of the eighteenth-century’s still traditional understanding of the human good, individual and corporate duties, and as well of liberty and rights. In this way, such ideas can once again be used to strike a balance with



America's now dominant natural rights tradition. But this can only be accomplished in works of scholarship attuned to nuanced differences, not polemical texts concerned with contemporary issues and that argue that concepts like liberty, equality, and rights each had one simple meaning for all Americans during a forty-year period of enormous change.

By showing that the Founders' use of rights language and claims of equality was done with remarkable trepidation and was highly qualified, West might have shown just how distant most of the Founders' moral, political, and religious commitments are from those embraced by today's liberal elites. Most importantly, by exploring the wide difference between claims of natural and civil liberties and rights, his readers might have realized that natural-law claims like those found in most Revolutionary War documents, including the Declaration, were relegated to the periphery of social and political discourse (though not moral) and were not trumps which individuals or minorities could exploit. As West himself reports, the Mississippi Supreme Court in 1818 had held that "slavery is condemned by reason and the laws of nature. It exists and can only exist, through municipal regulations," but exist it did within the realm of human law and the perceived needs of Southern planters. Even at this late date, the necessary distance between natural law and rights and that of civil law and rights was still recognized as it had been for two millennia in Western thought. Indeed, at the Founding, natural law and rights only had full standing in three situations: in pre-social theory and, as described in the American Declaration and that of Virginia, between distinct polities and generations. Only later, under the careful tutelage of nineteenth-century radicals (earlier in Europe), would these claims develop into potent wrecking bars that could be used by dissatisfied indi-

viduals or minorities against healthy, intact societies. Of course, such a careful exploration of the meaning of these terms would do little to lessen conservatives' concern with the meaning these terms would come to have during the two centuries following the American Revolution.

Not only is West unpersuasive in rebutting liberal and conservative critics of the Founders, negligent in never offering a normative defense of abstract rights, and confusing in his endorsement of liberalism to support reactionary public policies, but also he writes in a manner that frequently undermines his scholarly credibility. Too often his remarks appear to be the work of a trusted teacher who expects his students to treat with appropriate deference his confident assertions. Conservatives, living in a world of hostile values, ideas, and institutions, must insist on the necessity of measured argument and plentiful evidence as the basis of judgment, not the self-satisfied agreement of the reader with what is being contended.

For example, in his longest chapter, that on slavery, West conflates opposition to the international slave trade with that to the domestic trade, to the extension of slavery, to chattel slavery in the abstract, and lastly with a belief in the equality of Africans and Caucasians. Additionally, opposition to the continued importation of slaves from Africa is claimed to be wholly moral in character rather than a mixture of economic and moral concerns. West ignores that Jefferson freed only seven of his hundreds of slaves and that they were all related to him by birth or marriage, and that Virginians, with 40 percent of the slave population, were opposed to the continued importation of slaves, for these additions would have depressed domestic prices. Virginia's tidewater shift to wheat production and changing labor patterns is also ignored, as are Northern

concerns with the ability to attract white labor and of those workers to bolster the price of their labor. With indefensible confidence, West writes that "John Adams was simply wrong when he said that opposition to slavery in Massachusetts came from 'the multiplication of laboring white people, who would no longer suffer the rich to employ these sable rivals so much to their injury.'" This chapter is marred by West's avoidance of historical features that do not neatly fit with his desire to ascribe, in post-Revolutionary America, changed attitudes towards slavery to ideological currents derivative from the Declaration of Independence. Thus, almost all of the period's rich political, economic, and social history is ignored or distorted.

Throughout the book similar oversights and logical leaps abound. In the second chapter, West claims to find in the Declaration of Independence a principled defense of "the liberty to acquire property." This, he writes, is contained in the famous second paragraph. But where in this passage (or elsewhere in the Declaration), the reader must ask, is property defended as an inalienable right? Also, this chapter (like most others) lacks temporal, conceptual, and contextual clarity. Different ideas such as the inalienability of rights versus a high regard for them are treated as equivalent, just as are the utterances of Lincoln in 1860 or an author in 1790 to indicate the public mind in 1776. Indeed, Lincoln is treated as a dispositive source for a correct understanding of Revolutionary-era thought. West concludes that those who, like the respected historian John Hope Franklin, accuse the Founders of being bigots are wrong because they are contradicted "above all by the testimony of Abraham Lincoln, who appealed again and again to Jefferson's Declaration of Independence." The possibility that Lincoln, a politician as well as a respected President, may have gotten his history

wrong or manipulated it for contemporary ends, West never considers.

But matters even further afield make their appearance in this curious chapter. Much of it vacillates between laudatory remarks on the benefits of private property, sweeping generalizations on the evils of European feudalism, select features of nineteenth-century American law, and critical commentary on twentieth-century land use policy such as wetland concerns, building patterns in Peru, Roosevelt's public policies, and American farm policies in the 1930s.

Although such digressions in scholarly works are usually subject to sharp criticism, in *Vindicating the Founders*, they are almost welcome because they are often instructive and challenge much that is held dear by contemporary liberal elites. Thus, we learn that in the 1996 American Presidential election there was no "gender gap," only a "marriage gap." Concerning contemporary welfare policy, we learn that in 1995 a single mother of two in New York City received benefits equal to \$40,000 per year, or \$19.24 per hour; and that in a 1972 Stanford study of females androgenized in utero, the subjects as children disliked dolls and preferred trucks and continued to act in ways normally associated with males as adults. We also learn that female bisexuals are more likely to be victimized by their lesbian lovers than by their male lovers. Indeed, chapter four (from which the above remarks are drawn) is a virtual treasure trove, but not on the views and practices of the Founding elite. Similarly, in the sixth chapter, West leaves the eighteenth-century behind in his provocative proposal that Americans must reinstitute work houses which "show society's disapproval of women bearing children outside of marriage and of able-bodied men refusing to work." Encountering such asides, even if not directly related to the Founders, may make this book worth exploring.

On balance, though, this is a deeply disappointing book. Contrary to its own claims, West demonstrates the illiberal ways of the Founders. Progressive forces in the academy are sure to make much of West's own evidence in this matter. Conservatives should also be troubled by West's defense of the liberal language of equality, liberty, and rights as being the essential one of the American experience. They should be disturbed by his claim that America has always been liberal and that the only historical discourse available today is that same liberalism. Conservatism, by his lights (and earlier critics like Louis Hartz), must necessarily seem un-American. Accordingly, his confused endorsement of reactionary public policies and a monolithic liberal history and political theory should leave readers on both sides of the political spectrum dissatisfied. But as to how one should view his various policy prescriptions and asides that might be cleverly used in a classroom to challenge liberal social and political orthodoxies, must be left to the individual teacher's judgment and understanding of the goals of education.

1. See Forrest McDonald, *Novus Ordo Seclorum: The Intellectual Origins of the Constitution* (Lawrence, 1985), 53-54, for his accounting of five different political meanings of equality; and Barry Alan Shain, *The Myth of American Individualism: The Protestant Origins of American Political Thought* (Princeton, 1994) for a description of twelve different meanings of liberty in the late-18th century. 2. I part company with both West and many of his critics in their estimation of the prevalence and importance of this doctrine in the eighteenth century.

## ***Martyrs and Communities***

IAN BOYD

**Fools, Martyrs, Traitors: The Story of Martyrdom in the Western World,**  
by Lacey Baldwin Smith, *New York: Knopf, 1997. 433 pp.*

THOUGH THIS BOOK CLAIMS to be a history of the concept of martyrdom in the Western world, few of the important questions that it asks are ever adequately answered. Each of the dozen or so lives that are discussed is supposed to contribute something to an understanding of what it means to be a martyr, and each of them does. The etymological meaning of the word *martyr* is "witness"; Lacey Baldwin Smith uses the term to describe anyone who is willing to endure death for a cause. Beginning with Socrates and the Maccabean martyrs of the Old Testament, he goes on to discuss the deaths of Jesus and of the early Christian martyrs, before turning to Thomas Becket as the representative medieval martyr, and to Thomas More, the Marian Martyrs, and King Charles I as representative examples of martyrdom in the era of the Reformation and the Renaissance. His modern "martyrs" include, among others, John Brown, Gandhi, and Julius and Ethel Rosenberg. The conventional questions that he raises and the jarringly breezy tone of much of his writing betray the book's origins in an undergraduate seminar. Nevertheless he is right in thinking that a narration of the lives and deaths of

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