

Good Government in the U.S. Political Tradition

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Introduction

"Good Government" is a normative description of how government ought to be constituted. Governance describes "the process of decision-making and the process by which decisions are implemented (or not implemented)."¹ According to Thomas Jefferson, the government ought to be judged by how well it meets its legitimate objectives.² For the American people these objectives are enumerated in the Preamble of the U.S. Constitution: "We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."³ This essay presents the unique contribution of the American political tradition to the discourse on good government as established in the U.S. Constitution and explained in the *Federalist Papers*. It will first look at what is meant by the American political tradition, then it will set forth the arguably main contributions of that tradition to the question of good government, and it will conclude with current trends in the U.S. regarding the interpretation and application of these eternal and universal principles.

What is the American Political Tradition?

This is a very complex and disputed question. However, most scholars agree that the "American Founding Period" (1760-1791),

during which there was a coming together of great individuals and great ideas, viz., Alexander Hamilton, James Madison, Thomas Jefferson, John Adams, Benjamin Franklin, George Washington, et al., is at the "core" of American political theory.⁴ This period gave rise to various schools of thought each of which tried to explain the theories, values, and intellectual "forces" that motivated the founding generation in the creation of the first modern republic.⁵ There are numerous documents of this period relating to core concerns of good governance that reveal a good deal about American political thought on the subject. Among these documents must be included the United States' Declaration of Independence (1776), the Articles of Confederation (1777), the states constitutions, and most importantly, the U.S. Constitution (1788).⁶ Without a doubt, after the ratification of the Constitution, American political thought tends to concentrate on issues arising from it. The records of the deliberations of the Constitutional Convention in Philadelphia (May 14 to September 17, 1787), the ensuing debates in the different ratification conventions and the published essays on both sides of the ratification debate are found in *The Federalist Papers* –a series of 85 articles or essays published in various New York City papers advocating for the endorsement of the United States Constitution written by Alexander Hamilton, John Jay, and James Madison (1787-1788).⁷ These essays are generally considered by most scholars to provide the best insight into the theories

underlying the constitutional forms and processes of the American republic.⁸

The Contribution of American Political Theory to the Discourse on Good Government

There is a uniqueness to the American political tradition on the subject of good government. According to Prof. George W. Carey, Professor of Government at Georgetown University, the basis for this distinctiveness derives from the question put forth by Alexander Hamilton in the first paper in *The Federalist*, "whether societies of men are really capable or not, of establishing good government from reflection and choice, or whether they are forever destined to depend, for their political constitutions, on accident or force."⁹ Hamilton believed this was the main issue confronting not only the American people but all of humanity. The affirmative answer given to this question with the ratification of the Constitution on June 21, 1788, has served to provide a unique and important contribution to the discourse on good government for all ages and peoples. As Carey explains, *It is quite understandable why the Constitution should serve this function. It was not ordained or sanctioned by the gods, nor was it "given" to the people by a mythical lawgiver. Rather, it is a written document, the result of a deliberative process, that can be looked upon as embodying the "constitutive will" of a people; that is, it spells out in some detail the processes and institutions by which the people, acting in the constituent capacity, have consented to be governed. It established the government with the understanding that it is "fundamental law," unalterable by the government it created.*¹⁰

America is truly unique because, unlike other nations founded on ethnicity, a common religion or shared history, the American republic is founded on the universal ideas of liberty and equality: "America is the only nation in the world founded on a creed that is applicable to all men and to all times."¹¹ This is

what makes the contribution of the American political tradition to the question of good government an exceptional one. Based on these two ideas of liberty and equality the American political tradition contributed, arguably, five major principles to the reflection of good government: Republicanism, Rule of Law, Federalism, Separation of Powers, Bill of Rights, and Separation of Church and State.

Republicanism

When Americans pledge allegiance to the "flag of the United States of America," they uphold "the republic for which it stands."¹² A republic, as James Madison explains in *Federalist* no. 10, is a "government in which the scheme of representation takes place." Unlike direct democracy in which people vote on laws directly, in a republic such as the United States, the people vote for representatives who in turn vote on the laws proposed. The Founding Fathers chose the republican model because they sought to protect the individual from the will of the majority. Representation, Madison explains in *Federalist* no. 63, is "sometimes necessary as a defense to the people against their own temporary errors and delusions." Representatives, moreover, continue to remain accountable to the people who elect them. Though the American people and government commend democracy as the most just form of government what they truly mean by "democracy" is "a regime in which free elections regularly take place and a government that protects the rights of all."¹³ Thus, one may conclude that America is a "democratic republic." Throughout its history, America has fought to include into this process of political participation all those who have been excluded for different reasons, hence, for example, the struggle for women's suffrage and the African American struggle for civil rights constitute the continual effort of "We the people" to actualize this principle.¹⁴

Rule of Law

The rule of law is the idea, as John Adams wrote, that the United States is constituted by a "government of laws, not of men."¹⁵ This is implicitly expressed in the Constitution's supremacy clause: "The Constitution, and the Laws of the United States... shall be the supreme Law of the Land" (Article VI). This general principle is the foundation of the American legal and political system. The rule of law is composed of four key components:

First, the laws equally bind those who govern –including legislators, judges, and executive authorities– and those who are governed. No person can ignore the law, and no person is unprotected by the law. Second, when laws are violated, the rule of law requires a formal, unbiased, and routine process of law enforcement and adjudication. Third, the principle requires certain standards to which lawmaking must conform. For example, no law can declare and act to be a crime after it occurred. Such a law would subject citizens to the whims of government. Lastly, the rule of law is based on, and emphasizes the centrality of, lawmaking.¹⁶ For this reason, although there are in the U.S. three coequal branches of government due to the principle of separation of powers, as we shall see below, the legislative branch should be first among equals.

Federalism

Federalism is a form of government in which its powers are divided between the regional states and federal governments.¹⁷ The Tenth Amendment which declares that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people" affirms that the U.S. Constitution creates a federal form of government. The principle of federalism has three main benefits. First, federalism, following the principle of Subsidiarity, ensures that power is exercised at

the closest and most accountable level possible. Second, federalism provides a "vertical" separation of powers along with the "horizontal" division of powers. Finally, if different regional states have the ability to make diverse laws, and the general public is free to move from one state to another, the regional states have stronger motivations to make better laws.¹⁸ However, two major issues connected with this principle have surfaced in the course of the American experience of good government: "the foundations of union, that is, whether the union is a contract between states or whether it is based on the assent of the people; and the extent of national power vis-à-vis those of the states."¹⁹ These two issues were some of the major questions underlying the American Civil War (1861-1865) and continue to be debated today.

Separation of Powers

The principle of separation of powers dictates that the executive, legislative, and judiciary powers of government should be divided into different branches and not concentrated in one (Article I-III). The Founding Fathers argued that these powers should be separate and distinct because of the corrupting nature of power –power must be checked or it will be abused. James Madison, in his essay in the *Federalist Papers*, states that the combination of legislature, executive, and judicial powers is "the very definition of tyranny" (*Federalist*, no. 47). The Constitution also gives each of these powers of government the ability to keep in check the other branches of government: "The Constitution not only divides power but also sets it against itself, thereby creating a dynamism within the workings of government that uses the interests and incentives of those in government to enforce constitutional limits."²⁰ The separation of the branches of government also intends to improve the efficiency of the State by allowing each branch to fulfill its specialized function: the Legislative Branch makes laws, the Executive Branch enforces and carries out the

laws, and the Judicial Branch interprets the laws.²¹ On the other hand, some argue that the original understanding of the separation of powers has changed over time.²² It seems that the Founding Fathers regarded the Legislative Branch of government as the foundation of the Constitutional system in that they gave it virtually all of the powers delegated to the federal government; it can "discipline" the other branches through impeachment and removal of powers; and it plays a key part in the amendment process (See Article 1). Nevertheless, by the beginning of the twentieth century "the concept of constitutional federalism was abandoned, the president's role as chief legislator was solidified, and the public had come to accept, even demand, an energetic and positive executive branch."²³ Since the early twentieth century many contend that Congress has in fact delegated its legislative powers to the executive power in violation to what John Locke wrote in his *Second Treatise of Civil Government*: "The Legislative cannot transfer the Power of Making Laws to any other hands. For it being but a delegated Power from the People, they, who have it, cannot pass it over to others."²⁴ Even more so, the Supreme Court, particularly since World War II, has taken very controversial decisions that have had a tremendous impact on U.S. politics and society giving it a prominence, some would argue, not envisioned by the original Framers.²⁵ For this reason, the separation of powers, already changed by the creation of a powerful executive at the beginning of the Twentieth century, has been transformed even more since World War II with the development of an overly influential Judiciary, thus weakening, some would argue, the federalist principle as first envisioned by the Framers of the Constitution.

Bill of Rights

The Bill of Rights, ratified on December 15, 1791, comprise the first ten amendments to the Constitution. These amendments curtail the

powers of government so as to protect the four freedoms of religion, speech, free press, assembly, and association. It also established the rights to keep and bear arms and trial by jury. It defends citizens from search without a warrant, self-incrimination and the quartering of soldiers. The Bill of Rights also recognizes that there might be other rights not spelled out in the present Ten Amendments and therefore the federal government or the regional states may establish other rights. Many Framers of the Constitution, however, held that the inclusion of a Bill of Rights in the Constitution was needless. In *Federalist* no. 84, Hamilton argued that a bill of rights is "not only unnecessary in the proposed constitution, but would even be dangerous. They would contain various exceptions to powers which are not granted; and on this very account, would afford a colorable pretext to claim more than were granted." After all, he inquires "why declare that things shall not be done which there is no power to do?" Nevertheless, Anti-Federalist (opponents of the Constitution, viz., most likely George Clinton, Robert Yates, Samuel Bryan, Melancton Smith, Patrick Henry and either Richard Henry Lee or Mercy Otis Warren) insisted on the inclusion of a Bill of Rights.²⁶ These men argued that the Bill of Rights is necessary to guarantee that the federal government does not take away the individual rights of its people. When the government (state or national) does something that violates the rights of citizens it is up to the Supreme Court using its power of *judicial review* to strike down the act citing the Bill of Rights.²⁷

Separation of Church and State

The Constitution states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof" (Amendment I). In other words, the amendment prevents Congress from establishing an official state religion. This was a unique principle unheard of during the time of the ratification of the Constitution.²⁸

Some argue that this principle does not support the modern American (or Continental European view) that religion must therefore be excluded entirely from the public square. That although the First Amendment establishes the separation of Church and State, it does not necessarily create an absolute separation between them: "The Founders were not, however, hostile to religion and did not view references to God in public laws, official speeches and ceremonies, on public property and in public buildings, and even in public schools as an unconstitutional establishment of religion."²⁹ However, on January 1, 1802, Jefferson wrote a letter to the Danbury Baptist Association in the state of Connecticut which was published in a Massachusetts newspaper where he states, "I contemplate with sovereign reverence that act of the whole American people who declared that their legislature should 'make no law respecting an establishment of religion, or prohibiting the free exercise thereof,' thus building a wall of separation between Church & State."³⁰ Jefferson's "wall of separation" metaphor has been evoked frequently by the U.S. Supreme Court either as an absolute principle whereby religion is to be completely excluded from the public square or as a porous wall between Church and State that allows religion to have a suitable role in the public forum. Hence, the proper relationship between religion and State in the U.S. remains an ongoing contest.³¹

Conclusion

In the late nineteenth and early twentieth century reformers arose in the United States who believed that in order to address its modern problems, America had to take a wider understanding of the role of good government and interpretation of the Constitution. Progressives paved the way for contemporary political liberalism.³² Some Progressives were well-known journalists such as Herbert Croly, some were renowned professors such as Woodrow Wilson (president of Princeton before he was President of the United States) and John

Dewey, and many were charismatic political leaders such as Robert LaFollete and Theodore Roosevelt.³³ Some were Democrats, such as President Wilson, while others belonged to the Republican Party like Theodore Roosevelt. Progressives lobbied for an expansive and proactive government, a "living" and evolving Constitution, and the rule of "experts" in nationally centralized administrative agencies.³⁴ Progressives argue that the Framers of the Constitution quickly realized that any document meant to structure a government needed flexibility in order to endure the passing of time. Thus they incorporated into the Constitution two important flexibility features: the "Elastic Clause" (Article 1, Section 8, Clause 18) and the "Amendment Process" (Article 5).³⁵

At the same time, in the early Twentieth century as the Progressive movement began to expand and dominate American politics and academia, well-known political figures and intellectuals, such as President Calvin Coolidge (1921-1923), began to overtly counter Progressivism advocating a return to the literal first principles of the Framers and "small" government.³⁶ The Conservative movement became more visible and more formalized after 1945 with the work of conservative scholars and politicians such as William F. Buckley, Russel Kirk, and Barry Goldwater.³⁷ One of the main points of contention that Conservatives have against Progressives is their understanding of the Constitution as "living law." The American Conservative movement believes that "the original structure of America's carefully written constitution and its enduring framework of limited government is the best mechanism for securing national independence, providing economic opportunity, establishing religious liberty, and maintaining a flourishing society of republican self-government."³⁸ However, Progressives continue to argue, as Thomas Jefferson contended, that "the Constitution is not a fixed, static document that locks future generations of Americans into late 18th century constitutional interpretations."³⁹ The wisdom of

the Constitution, they dispute, is in its capacity to adjust to the changing circumstances and knowledge of new times: "The Founders wanted citizens to draw on the best available evidence and evolving understandings of democracy to keep the spirit of individual liberty and political equality alive."⁴⁰ These two interpretations and applications of the principles of the American political tradition, Progressive and

Conservative, continue to vie for prominence in the "American Experiment" founded on the principles of Republicanism, Rule of Law, Federalism, Separation of Powers, Bill of Rights, and Separation of Church and State to secure "life, liberty, and the pursuit of happiness" for the people of the United States of America and the world.⁴¹

NOTE:

¹ UNESCAP, "What is Good Governance?" (Bangkok, Thailand: UNESCAP, 2012), n.p., url:<http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp> [accessed October 14, 2012].

² To the Republican Citizens of Washington County Maryland, March 31, 1809 in Andrew Adgate Lipscomb and Albert E. Bergh, eds., *The Writings of Thomas Jefferson*, Vol. 16 (Washington: Thomas Jefferson Memorial Association, 1903-4), p. 358.

³ National Archives, U.S. Constitution, n.p., URL: http://www.archives.gov/exhibits/charters/constitution_transcript.html [accessed October 29, 2012].

⁴ The American Founding in Heritage Foundation, *First Principles Series*, n.p., URL: <http://www.heritage.org/initiatives/first-principles/basics> [accessed October 28, 2012]. Also see Joseph J. Ellis, *Founding Brothers: The Revolutionary Generation* (New York, NY: Knopf/Borzoi, 2000); Encyclopedia Britannica, *Founding Fathers: The Essential Guide to the Men Who Made America* (Hoboken, NJ: Wiley, 2007); R.B. Bernstein, *The Founding Fathers Reconsidered* (New York, NY: Oxford University Press, 2011).

⁵ See James McClellan, *Liberty, Order, and Justice: An Introduction to the Constitutional Principles of American Government* (Indianapolis, IN: Liberty Fund, 2000); Donald Lutz, *The Origins of American Constitutionalism* (Baton Rouge, LA: Louisiana State University Press, 1988); Russell Kirk, *Roots of American Order*, 4th ed. (Washington, D.C.: Intercollegiate Studies Institute, 2003); Trevor Colbourn, *The Lamp Experience* (Indianapolis, IN: Liberty Fund Inc., 2012); David H. Fisher, *Albion's Seed: Four British Folkways in America* (America: A Cultural History) (New York, NY: Oxford University Press, 1989).

⁶ The Articles of Confederation (1777-1789), the first form of government adopted by the United States after the Declaration of Independence, was an ineffective form of government that nearly prevented the Americans from winning the Revolutionary War. The "great and radical vice" of the Articles of Confederation, according to the

Federalist Papers, was the inability of the federal government to make laws that applied directly to citizens. Under the Articles of Confederation, America was a loose confederation of independent sovereign states, rather than a true union. This meant that the laws of the national government were mere recommendations that states (and citizens) were free to ignore. Under the Articles of Confederation, Congress was unable to raise revenue or establish an army for defense, each state had its own currency, there was no effective national administration, states erected barriers to commerce, and it was difficult for the nation to conduct a consistent foreign policy. Any kind of government which cannot make binding laws is bound to fail, and the Articles of Confederation was no exception. Thus the Constitution with its new understanding of federalism was needed to create 'a more perfect union. See "American Founding," n.p.

⁷ All citation are from A. Hamilton, J. Madison, and J. Jay, *The Federalist Papers* (Lindenhurst, N.Y.: Tribeca Books, 2012).

⁸ See Anthony A. Peacock, *How to Read the Federalist Papers* (Washington, DC: The Heritage Foundation, 2010) and Charles R. Kesler, *Saving the Revolution: The Federalist Papers and the American Founding* (New York, NY: Free Press, 1987).

⁹ George W. Carey, "America's Founding and Limited Government" in *Intercollegiate Review* 39, no. 1 &2 (Fall 2003/Spring 2004): 13-23.

¹⁰ Idem. James Madison, writing in *Federalist* no. 53, conveys this understanding of the status of the Constitution when he distinguishes "between a constitution established by the people, and unalterable by government" and systems such as the English in which legislatures have "a full power to change the form of government."

¹¹ See Matthew Spalding, "Why is America Exceptional?" in Heritage Foundation, *Understanding America*(October 1, 2010), n.p., url: <http://www.heritage.org/research/reports/2010/09/why-is-america-exceptional> [Accessed October 17, 2012].

¹² I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.

¹³ Julia Shaw, "Is America a Republic or a Democracy?" in Heritage, *First Principles* (November 1, 2011), n.p., URL: <http://blog.heritage.org/2011/11/01/is-america-a-democracy-or-a-republic> [Accessed October 28, 2012].

¹⁴ See Tracy Justis, "Political Participation Trends of Yesterday and Today" (Ph.D. diss. The University of North Carolina at Chapel Hill, 2012) and Bruce Ackerman, *We the People*, 2 vols. (Cambridge, MA: Harvard University Press, 1991).

¹⁵ John Adams, *Novanglus Papers*, no. 7 in Samuel Eliot Morison, ed., *Sources and Documents Illustrating the American Revolution, 1764-1788: and the Formation of the Federal Constitution 2nd*. Ed. (New York, NY: Oxford University Press, 1965), p. 130.

¹⁶ The American Founding, n.p.

¹⁷ See Larry N. Gerston, *American Federalism: A Concise Introduction* (Armonk, N.Y.: M.E. Sharp, 2007).

¹⁸ Charles Cooper, "The Constitution in One Sentence: Understanding the Tenth Amendment" in The Heritage Foundation, *Political Report. First Principles Series Report #3* (January 10, 2011), n.p., url: <http://www.heritage.org/research/reports/2011/01/the-constitution-in-one-sentence-understanding-the-tenth-amendment> [Accessed October 17, 2012].

¹⁹ Carey, "America's Founding," p. 23. See also Raoul Berger, *Federalism: The Founders' Design* (Norman, OK: University of Oklahoma Press, 1987); Felix Morley, *Freedom and Federalism* (Indianapolis, IN: Liberty Fund Inc., 1981); Samuel Beer, *To Make a Nation: The Rediscovery of American Federalism* (Cambridge, MA: Belknap Press of Harvard University Press, 1993); and C.H. Hoebeker, *The Road To Mass Democracy: Original Intent and the Seventeenth Amendment* (New Brunswick, NJ: Transaction Publishers, 1995).

²⁰ The American Founding, n.p. For instance, the veto power gives the President a check on Congress. Congress approves presidential nominations and controls the budget. It can pass laws over the president's veto and can impeach the president and remove him or her from office (Art. 1, Sec. 7). The Supreme Court can declare presidential acts unconstitutional as well as laws passed by Congress. The president nominates the judges of the judicial branch and the Senate confirms the president's nominations. Congress can also impeach judges and remove them from office.

²¹ See Charles R. Kesler, "What Separation of Powers Means for Constitutional Government" in Heritage Foundation, *Political Report. First Principles Series Report #17* (December 17, 2007), n.p., url: <http://www.heritage.org/research/reports/2007/12/what-separation-of-powers-means-for-constitutional-government> [Accessed October 17, 2012].

²² See for example Theodore Lowi, *The End of the Republican Era* (Norman, OK: University of Oklahoma, 1995); Peter Zavodnyk, *The Rise of the Federal*

Colossus: The Growth of Federal Power from Lincoln to F.D.R. (Santa Barbara, CA: ABC-CLIO, 2011).

²³ George W. Carey, "Common Ground: The Founding Era" in *First Principles* (January 5, 2012), p. 29. See also M.J.C. Vile, *Constitutionalism and the Separation of Powers* (rev.ed., Indianapolis, IN: Liberty Fund, 1998); Keith E. Whittington, *Constitutional Construction: Divided Powers and Constitutional Meaning* (Cambridge, MA: Harvard University Press, 2001); Brion T. McClanahan, *The Founding Fathers Guide to the Constitution* (Washington, DC: Regnery History, 2012).

²⁴ John Locke, *Second Treatise of Civil Government*, Ch. 11.

²⁵ Zavodnyk, *The Rise of the Federal Colossus*, p. 189. Also see *Separation of Powers Does It Still Work?*, eds. Robert A. Goldwin and Art Kaufman (Washington, DC: AEI Press, 1986).

How To Read the Constitution: Originalism, Constitutional Interpretation, and Judicial Power (Lanham, MD: Rowman & Littlefield Publishers, 1996); Charles S. Hyneman, *The Supreme Court on Trial* (New York, N.Y.: CQ Press, 2009); Gary McDowell, *Equity and the Constitution: The Supreme Court, Equitable Relief, and Public Policy* (Chicago, ILL: University of Chicago Press, 1982); Raoul Berger, *Government by Judiciary* (rev. ed., Indianapolis, IN: Liberty Fund, 1997).

²⁶ These major Anti-Federalist authors wrote the Anti-Federalist Papers, a collection of articles written in opposition to the ratification of the 1787 U.S. Constitution. Unlike the *Federalist Papers* written in support of the Constitution, mostly operating under pen names, were not engaged in a strictly organized project. One of the major points of the articles was the danger the new Constitution would bring without a statement of individual rights. Some of the Anti-Federalist concerns were addressed in the Bills of Rights, which was ratified in 1791.

²⁷ See Christopher Wolfe, *The Rise of Modern Judicial Review* (New York, N.Y.: Rowman & Littlefield Publishers 1986); John Hart Ely, *Democracy and Distrust: A Theory of Judicial Review* (Cambridge, MA: Harvard University Press, 1980); William Marbury v. James Madison, Secretary of State of the United States, 5 U.S. 137, 1 Cranch 137; 2 L. Ed. 60; 1803 U.S. LEXIS 352; Larry D. Kramer, *The People Themselves: Popular Constitutionalism and Judicial Review* (New York, NY: Oxford University Press, 2005).

²⁸ Jeffries Jr., John C. and Ryan, James E., "A Political History of the Establishment Clause" in *Michigan Law Review*, Vol. 100 (November 2001), n.p., URL: <http://ssrn.com/abstract=267786> or <http://dx.doi.org/10.2139/ssrn.267786> [accessed November 7, 2012]. Also see Philip Hamburger, *Separation of Church and State* (Cambridge, MA: Harvard University Press, 2002); Daniel L. Dreisbach and Mark David Hall, *The Sacred Rights of Conscience:*

Selected Readings on Religious Liberty and Church-State Relations in the American Founding (Indianapolis, IN: Liberty Fund Press, 2009).

²⁹ Daniel L. Dreisbach, "The Mythical 'Wall of Separation': How a Misused Metaphor Changed Church-State Law, Policy, and Discourse" in The Heritage Foundation, *Political Thought. First Principles Series Report #6* (June 23, 2006), n.p., url: <http://www.heritage.org/research/reports/2006/06/the-mythical-wall-of-separation-how-a-misused-metaphor-changed-church-state-law-policy-and-discourse>

[Accessed October 17, 2012]. Also see Marci A. Hamilton, *God vs. the Gavel: Religion and the Rule of Law* (Cambridge, U.K.: Cambridge University Press, 2005); Isaac Kramnick and R. Laurence Moore, *The Godless Constitution: The Case Against Religious Correctness* (New York, NY: Norton, 1996); David L. Holmes, *The Faiths of the Founding Fathers* (New York, NY: Oxford University Press, 2006). For a more nuanced view see Steven Waldman, *Founding Faith: How Our Founding Fathers Forged a Radical New Approach to Religious Liberty* (New York, NY: Random House Trade Paperbacks, 2009).

³⁰ "Jefferson's Letter to the Danbury Baptists" in Library of Congress, *Information Bulletin* 56:6 (June 1998), n.p., URL: <http://www.loc.gov/loc/lcib/9806/danpre.html> [Accessed October 28, 2012]. Also see Daniel L. Dreisbach, *Thomas Jefferson and the Wall of Separation Between Church and State* (New York, NY: New York University Press, 2003); Daniel L. Dreisbach, "The Mythical 'Wall of Separation': How a Misused Metaphor Changed Church-State Law, Policy, and Discourse" in The Heritage Foundation, *Political Thought. First Principles Series Report #6* (June 23, 2006), n.p., url: <http://www.heritage.org/research/reports/2006/06/the-mythical-wall-of-separation-how-a-misused-metaphor-changed-church-state-law-policy-and-discourse> [Accessed October 17, 2012].

³¹ "Jefferson's Danbury letter has been cited favorably by the Supreme Court several times, notwithstanding that the Court has also criticized it. In its 1879 *Reynolds v. United States* decision the high court said Jefferson's observations 'may be accepted almost as an authoritative declaration of the scope and effect of the [First] Amendment.' In the court's 1947 *Everson v. Board of Education* decision, Justice Hugo Black wrote, 'In the words of Thomas Jefferson, the clause against establishment of religion by law was intended to erect a wall of separation between church and state.' It is only in recent times that separation has come under attack by judges in the federal court system who oppose separation of church and state," see Robert Boston, *Why The Religious Right is Wrong About Separation of Church & State* (Buffalo, NY: Prometheus, 1993), p. 221.

³² See Buenker, John D., John C. Burnham, and Robert M. Crunden, *Progressivism* (New Brunswick, NJ: Transaction Publishers, 1986); Maureen Flanagan, *America Reformed: Progressives and Progressivisms, 1890s–1920s* (New York, NY: Oxford University Press, 2007); Perry, Elisabeth Israels and Karen Manners Smith, eds., *The Gilded Age & Progressive Era: A Student Companion* (New York, NY: Oxford University Press, 2006).

³³ See Glenda Elizabeth Gilmore, *Who Were the Progressives?* (Boston, MA: Bedford/St. Martin's, 2002); Steven J. Diner, *A Very Different Age: Americans of the Progressive Era* (New York, NY: Hill and Wang, 1998); Steven Piott, *American Reformers 1870–1920* (Lanham, MD: Rowman & Littlefield Publishers, 2006).

³⁴ Robert D. Johnston, "Re-Democratizing the Progressive Era: The Politics of Progressive Era Political Historiography," in the *Journal of the Gilded Age and Progressive Era* 1:1 (2002), pp. 68-92; Robert M. Crunden, *Ministers of Reform: The Progressives' Achievement in American Civilization, 1889–1920* (Chicago, ILL: University of Illinois Press, 1982); Lewis L. Gould, *America in the Progressive Era, 1890–1914* (Harlow, UK: Longman, 2000); David M. Kennedy, ed., *Progressivism: The Critical Issues* (Boston, MA: Little Brown & Company, 1971).

³⁵ The Congress shall have Power : "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof;" "The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate."

³⁶ Richard Jensen, "Democracy, Republicanism and Efficiency: The Values of American Politics, 1885–1930," in Byron Shafer and Anthony Badger, eds., *Contesting Democracy: Substance and Structure in American Political History, 1775–2000* (Kansas, MO: University of Kansas Press, 2001), pp 149–180; John Whiteclay Chambers II, *The Tyranny of Change: America in the Progressive Era, 1890–1920* (Piscataway, NJ:

Rutgers University Press, 2000); Christopher Lasch, *The True and Only Heaven: Progress and its Critics* (New York, NY: Norton, 1991); Michael McGerr, *A Fierce Discontent: The Rise and Fall of the Progressive Movement in America, 1870–1920* (New York, NY: Oxford University Press, 2003); Aaron Schutz, *Social Class, Social Action, and Education: The Failure of Progressive Democracy* (Basingstock, UK: Palgrave Macmillan, 2010).

³⁷ Phillips-Fein, Kim, "Conservatism: A State of the Field," in *Journal of American History* 98:3(December 2011), pp 723-743; Patrick Allitt, *The Conservatives: Ideas and Personalities Throughout American History* (New Haven, CT: Yale University Press, 2010); George Nash, *The Conservative Intellectual Movement in America Since 1945* (Wilmington, DE: Intercollegiate Studies Institute, 2006); Gregory Schneider, *The Conservative Century: From Reaction to Revolution* (Lanham, MD: Rowman & Littlefield Publishers, 2009).

³⁸ American Founding, n.p.

³⁹ William P. Connors and John Halpin, "The Progressivism of America's Founding" in Center for American Progress, *Progressive Tradition Series* (October 2010), p. 2.

⁴⁰ Idem.

⁴¹ National Archives, *Declaration of Independence*, Sec. 2, url: http://www.archives.gov/exhibits/charters/declaration_transcript.html. See George Lakoff, *Moral Politics : How Liberals and Conservatives Think* (Chicago, ILL: University of Chicago Press, 2002); Kenneth M Dolbeare and Michael S Cummings, *American Political Thought* (Washington, DC: CQ Press, 2009); Marjorie R. Hershey, *Party Politics in America* (Upper Saddle River, NJ: Pearson Press, 2012). See however Morris P. Fiorina, Samuel J. Abrams, Jeremy C. Pope, *Culture War? The Myth of a Polarized America* (Upper Saddle River, NJ: Pearson, 2010).