

Foundered Fathers

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I have long been fascinated by tales of the Founding Fathers. Reared by parents whose educations were cut short by the depression, World War II, and the need to provide for a young family, my childhood was nevertheless steeped in veneration for the men and women who had, with the wisdom of Solomon and the fortitude of Horatio at the bridge, created the best, most powerful, and richest nation in the history of the world. And since many of these protean figures had come from ostensibly ordinary backgrounds, they personified ideals to revere and strive to live up to. The citizens of those decadent European nations had long lists of royalty and nobility to honor and emulate; we had the citizen-statesmen collectively known as the Founding Fathers.

Where we come from has important implications for who we are. In a room full of scholars, most of whose work involves a careful reading of the past, this claim hardly needs to be justified. This claim in the political arena, however, is fraught with debatable motives and one of the handiest tools of the spinmeisters and propagandists who labor for one side or the other in the ongoing battle over which parts of our past should be used to determine who we think we are and therefore which tools are permissible to us and our elected servants in the struggle to preserve and protect our experiment in representative democracy.

This discussion of whence we come and who we are will depend on my interpretation of history and, to some extent, the law. Since I am neither an historian nor a lawyer, I want to beg the indulgence of those of you who are. My plea is that you will forgive my missteps as the clumsiness of the sincere amateur working through these thickets in order to understand issues that seem worthy of the effort. This is a search for a place to stand. I don't expect to discover a lever big enough to move much of anything. Rather I am trying to resolve in my own way some of the issues that have been thrust upon the American public by the rather mean-spirited echo chamber that has taken over the political discourse of our country.

The claim that prompted these musings is that the original intent of the Framers of the Constitution is the standard that should guide our interpretation of this document. The Framers are, of course, that elite bunch of Founding Fathers who debated and discussed and eventually produced the longest-lived written constitution in history. Their wisdom and experience, along with their predilections and prejudices, can be mined to gather guidance in solving problems that they could never have imagined. When you get to the tricky bits, the originalists would like to reserve the privilege of interpretation

to themselves, as is usually the case where literal readings of anything are said to matter.

My students for over twenty years have come from a religious tradition that worships the inerrancy of the Bible. Most of them, when asked, admit that they seldom read the Bible; their preachers tell them what it says and then they tell them what that means. In this regard they share something with the Constitutional originalists. Indeed those who share this religious belief are much more likely to be originalists.

And much has been written about the religiosity of the Founding Fathers. “We are a Christian nation,” goes the refrain of the originalists; at least that is what they taught Michelle Bachman at Oral Roberts Law School. But I wonder. Do they mean we are a Christian nation because some majority of the Founding Fathers were, or claimed to be, Christian, or do they mean that the values at the heart of what it means to be American, the thing that makes this collection of immigrants a nation, can be understood as residing somewhere in the Christian faith?

When I hear fundamentalists make the Christian-nation claim, what I understand them to be saying is because a majority of the Founding Fathers professed some kind of Christian faith, we are obligated to understand the nation, not as the Founding Fathers understood it, but as the fundamentalists making this claim want it understood. For example, we must abhor homosexuality because the Founding Fathers would have done the same, as if the world were unchanged since 1776. By this logic, Americans should countenance African slavery and the political marginalization of women. And if we want to see if they are sincere in their originalism, we should agree with the 2nd Amendment enthusiasts that they have the right to keep and bear any gun they want as long as it is no more modern than a flintlock.

It is an interesting thing to observe literalists. Whether focused on the inerrancy of the Bible or the original intent of the Framers of the Constitution, whenever you get to the complicated bits, where there is no clear guidance as to how to resolve ambiguity, we are expected to yield our own judgment to the literalists themselves, because, I suppose, they have an inside track to God or the Framers’ intent. I’m not really sure why we should, but yielding judgment to these folks is what the literalists’ claims are usually about.

Here is an example. When Robert Bork got borked by the Dems in the U.S. Senate, one of the reasons was his claim that the Constitution was not in fact a living document. Its meaning, Bork seemed to be asserting, had ceased to evolve as soon as the ink dried on the parchment. I always wondered what he meant to do about judicial review, which you may remember from civics class, is the right of the Supreme Court to pass judgment on the

constitutionality of anything, up to and including acts of Congress. The Founding Fathers apparently held divergent, even conflicting notions about whose job it was. The Constitution is silent on the question. There is some evidence that James Madison (the Framers-in-Chief) wanted the job to be handled by Congress. Thomas Jefferson wrote about the potential tyranny of life-tenured judges. But one enterprising Federalist justice asserted, in his opinion in *Marbury v. Madison*, that it was the prerogative of the Supreme Court to render these kinds of judgments. For John Marshall, the Constitution possessed enough elasticity, enough life, to evolve in directions he felt were for the good of the country. And while Marshall had been alive during the debates on what should and shouldn't be included in our founding document, he wasn't actually one of the framers; he created something out of his own judgment and the political interests of his party, in direct opposition to the intent of those Founding Fathers who debated and signed the Constitution. He felt the need to strengthen the federal judiciary, he asserted this prerogative, he almost never used it, and so he got away with it.

What would the originalists have us do with over two centuries' judicial practice, scrap it and start over? Law firms seeking billable hours might like this proposal. The rest of us probably won't. But I don't think that's what Bork meant to do at all. I believe (as apparently did a majority of senators) he meant to keep the non-originalist parts he liked and use the originalist argument to take a meat axe to the parts he didn't. When he got to the ambiguous stuff, he wanted the freedom to decide, like Marshall, what was best for us all, and to use "original intent" as a cloak to sanctify whatever he decided.

Now permit me to circle back to an earlier question of these ruminations. To be a Christian nation must require some attempt to realize the teachings of Christ in public policy. To claim Christian-nation status without embracing these teachings makes meaningless spin out of the phrase "Christian nation." The Christians who vote for policies that make the poor poorer and the rich richer must be able to imagine miniscule camels and gigantic needles, or they aren't willing to heed the very book they claim is inerrant. I won't go as far as to claim they aren't Christian; I am not willing or able to render that judgment. But I am willing to say that if we are a Christian nation, it's only on some technicality that allows some Christians to claim identification with Jesus and his teachings and to vote for policies that do all they can to exalt the rich and to trouble the poor. If Jesus taught that and you can show me in the Bible where it says so, I will modify my views of the originalist-literalist faction and look with more favor on their claims of moral supremacy. Let me acknowledge that my conflation of the Biblical literalists and the constitutional originalists is a matter of authorial convenience. Any careful examination of the two groups

will yield many shadings of interpretation and motive among these modern Americans. It will also, I believe, show many more similarities than differences.

But I digress from my main theme. My title is derived, perhaps no surprise, from equine terminology. Too much of a good thing is often not a good thing at all. In the horse world too much rich food can cause the hoof to delaminate rendering the animal lame or worse unable to survive. This problem is commonly known as foundering. I wonder whether the near-deification of the Founding Fathers isn't too much of a good thing. As Exhibit A, I give you the story of Barnabas Strong.

Every narrative has to begin someplace, and so ours spreads outward from the 1630s when John Strong settled with his extensive family in the Connecticut valley. Note I said extensive, not extended. John Strong fathered 21 children, most of whom lived to adulthood. Striving puritans all, he and his descendants moved up the valley until, by the end of the French and Indian War, Benajah Strong and his brother and their children, including Barnabas, the central figure in this narrative, founded the town of Hartford, VT, where the White River comes down the mountain from Stowe and Montpelier and joins the Connecticut, where the Connecticut swings to the east and its headwaters embrace what became known as the Northern Kingdom, the watershed territory between New England and Quebec.

This much we know from Strong family lore and property records. The rest we supply from historical inference. Picture the narrow track hugging the dry ground on the west bank of the river, the train of pack animals the Strong brothers employed to move from Northampton to the White River junction, the back-breaking labor required to build a home, and then a town, in the wilderness, the small triumphs and defeats of day-to-day survival, the reassurance of a bounteous harvest, the anxiety of famine years, the continuing of the generations, new Strongs to carry the family name to new adventures.

We arrive now at the first we know about our hero, Barnabas Strong, besides his birth in 1758. From military records we learn that at 17 he enlisted with Timothy Bedel's regiment of New Hampshire militia in May of 1775. Originally intended as a small ranger company, the unit was expanded to regiment strength and detailed to support Benedict Arnold's expedition against Canada. Not for Bedel's rangers was the torturous slog up the Kennebec, over the Great Carrying Place and down the Chaudiere to Quebec. Rather they traveled north and west to Ticonderoga and then to the northern end of Lake Champlain where they besieged and took the British forts on the River Richelieu in September and October of 1775. From there they were sent on to Montreal, where in the spring of '76, they were involved in the Battle of the

Cedars. It was here that Barnabas, along with most of his fellows, was captured.

Several of the captives were given to the Indians for torture and death, but Barnabas was given to an Iroquois squaw as a son to replace one who had been killed fighting the Americans. There he stayed until he was swapped with the rest of Bedel's regiment for captured Brits, and weak and sick, rejoined his unit for the retreat from Canada. Along the way he was mustered out of the militia, given a glass of cordial by Horatio Gates, in Barnabas' words, "...by his own hand," and wished well for his service and suffering, and sent home to recover.

Here, but for the recuperative powers of the young and a desire to further serve the cause of American independence, our knowledge of Barnabas Strong, child of puritans, son of the frontier, and stubborn American, might have faded save for a few lines in the militia rosters of those early days of the Revolution. But in January of 1777 he joined again, for a period of three years, this time with the Connecticut Line, First Battalion, under Brigadier General Jedidiah Huntington, which later became the 17th Regiment of the Continental Line under Col. Josiah Storer.

Early in this enlistment he saw action in and around Connecticut at the battles of Green Farms and Ridgefield and then moved to Fishkill, New York, until September of that year. When the reorganization of the Continental Army was complete, Barnabas' unit was ordered to join Washington's command after Germantown. They were in time for the battle of Whitemarsh, Pennsylvania, and then sent to winter quarters at Valley Forge.

I have no first-hand information of Barnabas' time during that bitter winter encampment. What I have related thus far comes from general histories of the Revolutionary War, from copies of his pay records obtained from the National Archives, and depositions he gave to Daniel Gano, Hamilton County Clerk of Courts, in 1818 and 1821. The necessity of these depositions was related to his application for the Revolutionary Veterans' pension, which had been denied because he was listed in the war office records as a deserter. It was this denial of pension that generated the paperwork that provides much of the primary documentation of Barnabas' service.

Before I turn to this matter, let me complete the tale of that service. As a soldier in the Connecticut Line he served from 1777 until 1780, first in Benjamin Throop's Company and later under Ebenezer Perkins' Light Infantry Company, all in the 1st Connecticut Battalion. He was on hand for the battles of Monmouth, New Jersey, and White Plains, New York and, as I have said, spent the winters of '78-79 at Redding, Connecticut, and '79-'80 at Morristown, New Jersey, which, with his time at Valley Forge, means he endured three of

the worst winter postings that the Continental Army required of any soldiers. Poor housing, scant supplies, bitter cold, and low morale don't begin to describe the severity of the challenges to survival which fell heaviest on the enlisted men. On mustering out he returned to his home in Vermont and enlisted once again, this time in the Vermont militia under Ebenezer Allen, and later joined the Independent Company of Rangers under Beriah Green. He rose through the ranks and ended the war as an officer in his local militia. Once again, this rather dry listing of the times and events of his Revolutionary service are culled from pay records and muster rolls, supported by his subsequent depositions.

About his life between the end of the war and his appearance before the Hamilton County Clerk of Courts, we have little documentation. We know he married and moved westward by stages. The census of 1800 lists a Barnabas Strong residing in Albany, New York, with his wife – this close to Vermont it strikes me as unlikely that this was any other than the hero of our story. Eventually he arrived in the western part of Hamilton County where he took up land in what is now Colerain Twp between Cleves and the Ohio River. While there he pursued his trade as a linen weaver, farmed, served as a justice of the peace, oversaw property for William Henry Harrison, grew old and infirm, and applied for his veteran's pension.

His application was returned denied. The records of the War Dept. included notice of his desertion but not, apparently, the record of his reinstatement. This may be because of the fires that destroyed large quantities of War Dept. records in 1800 and 1808, or perhaps reflects the action of a bureaucrat who read as far as the desertion and read no further. Desertion was and is a serious blot on anyone's war record, and the faceless bureaucrat reviewing Barnabas' application may simply have allowed his distaste for the act to render judgment. We hold special contempt for those who abandon their duties in times of need, whether friends who fail to stand by us or those who shirk their duties in times of war. Whether there is any mitigation of Barnabas' act, I will leave to you. Here, in his own words, is the tale of this episode in his Revolutionary War service. In places I have had to insert what I infer would/could/should be reflected in the illegible bits.

Cincinnati, 12th January, 1819

Sir, I take the liberty to address you on the subject of a pension I made application on May last to the War Office (which) was rejected. My affidavit with the secretary's answer I enclose. The papers of that day will certainly show the answer (to his objections?). I will state facts and (refer you?) to documents in the

war office. In March, 1777, enlisted for 3 years and joined the regiment soon after and continued there to do duty about two year(s) till in the winter of 1779 the Connecticut Line encamped at Redding in the western part of the state. I was ordered in detachment of perhaps 100 men under command of Major Grey to a place on Long Island Sound 15 or 20 miles from the main body. The sufferings of the troops through privations of various (kinds due to the severity of?) the winter brought on sedition(?) that soon broke out into open insurrection. Bayonets were drawn and (here as in previous places the affidavit is illegible – we can infer from what is readable that confrontations led to general) insubordination. The sedition ran from rank to rank through the whole line. Many of the officers was absent on furlough (they mostly having families.) It required all the skill and ingenuity of General Putnam to get it quieted in any degree. At length by pleading and entreating he allayed the storm in some measure. The cartridges was taken away and by degrees the mutiny ended, new rules and regulations adopted. The men in one hut was not allowed (to go?) into another. Two men were not allowed to go out of camp (and?) sentries placed all along the Parade. No one was ever punished for the mutiny. One man of our Regiment was shot dead by the sentinel for going out ... without leave. Although mutiny did not reach the different detachments (officers?) by such severe discipline (here unreadable, but the sense is by severe discipline combined with unfulfilled promises) order was restored. Many still thought the business not at an end. Several away on duty deserted, many I really believe, with an intention to return.

I then cleared out with another and made for Long Island as I durst not go among my friends on account of their Patriotism. It was on the 11th day of Feb'y, 1779, I deserted after I had served two year nearly. Soon after General Washington issued a proclamation offering free and unconditional pardon to all that had deserted and would return to their duty. I returned as soon as I found one of them (proclamations, probably) and joined my Regiment at the opening of the campaign, the time I cannot ascertain. It was a custom in that war to muster the troops 2 or 3 times each year. I was mustered by the inspector every time the whole three year and (here Barnabas somewhat illegibly describes receiving moneys from Connecticut) payable at some future given period for my entire

three years' service to make up for the depreciation of Continental (money)." With some remarks about not troubling you (the war office) further, the deposition closes.

So there it is, the Connecticut Line in mutiny over lack of supplies and harsh discipline. It may be that the reorganization of the Continental Army into a more regular force than the patchwork of militia and short-term volunteers led the officers to emulate their British counterparts with regard to discipline of the private soldiers. British discipline was nothing if not brutal, and this change in the manner of treating the soldiers may have played a role in their discontent. Also at Redding there was a problem with food.

One pronouncement read,

"The General of the brigade informs the officers and soldiers that he has used every possible method to supply flour or bread to the brigade. Although a sufficiency of every article necessary is at Danbury, the weather had been so extreme that it is impossible for teams to pass to that place. Every measure is taken to supply flour, rum, salt and every necessary to morrow, at which time, if a quantity sufficient comes in, all past allowances shall be made up. The General, therefore, desires for the honor of this corps and their own personal reputation, the soldiery, under the special circumstances caused by the severity of the season, will make themselves contented to that time."

So much for the officers take on circumstances that winter. The enlisted men's perspective with regard to making themselves contented is revealed in the journals of Joseph Plum Martin.

"We arrived at Redding about Christmas or a little before, and prepared to build our huts for our winter quarters. And now came on the time again between grass and hay, that is, the winter campaign of starving.

... I assisted in the building our winter huts. We got them in such a state of readiness that we moved into them about New Year's Day. The reader may take my word, if he pleases, when I tell him we had nothing extraordinary, either of eatables or drinkables, to keep a new year or housewarming.

We settled in our winter quarters at the commencement of the new year and went on in our old Continental Line of starving and freezing. We now and then got a little bad bread and salt beef (I

believe chiefly horse-beef for it was generally thought to be such at the time). The month of January was very stormy, a good deal of snow fell, and in such weather it was mere chance if we got anything at all to eat.”

There is no reason to suppose that Barnabas’ experience of winter camp differed materially from the above. Imagine yourself, after a winter at Valley Forge, enduring these same privations among your underfed, under clothed, underpaid fellows, and then facing the same again in Redding. Add to this the new and severe discipline meted out by under-experienced officers to troops who believed they were fighting for their own independence and freedom from the British class system, and it isn’t difficult to imagine why Barnabas and many of his fellow soldiers took unannounced leave. It is likewise not too difficult to understand why Washington, who knew from first-hand observation if not from personal experience, just how harsh conditions were, issued the free and unconditional pardon as a way to maintain depleted regiments and signal to the rest of the army his concern for the conditions endured by the enlisted men.

And so we find Barnabas in court in Cincinnati that January day in 1819 making his case to the war office that he deserved a veteran’s pension. He apparently succeeded in moving the bureaucratic hearts there, because he was given his pension later in January, 1819. But we find him back in court two years later making another deposition defending his need. It would seem that Congress, during the so-called Era of Good Feelings, modified the pension law with one entitled “An act to provide for certain persons engaged in the land and naval service of the United States in the Revolutionary War,” and Barnabas had to prove to the satisfaction of the war office that he was fairly poor and had not given away anything so as to seem poorer than he was. His list of possessions, in his 61st year, amounted to a net of \$65.035, and his debts were \$67.00. All he could show for a lifetime’s adventures, toil, and struggle was a net deficit of \$1.97. (When the current Congress gets around to enacting a modification of the Social Security Act that limits benefits to those who satisfy some definition of the truly needy, they will be able to claim with some accuracy that the founding fathers embraced such means testing and that therefore we should too.)

Barnabas collected his pension for a little over two years and succumbed to his infirmities (another practice the budget hawks in Washington might like to see employed more often,) and was buried near his home on the banks of Riedesell Creek on high ground overlooking the Great Miami River. The meandering Miami long ago washed the cemetery away and Barnabas’ memory

would likely have gone with it except for some old family stories and one amateur genealogist's tenacious efforts at uncovering the documentation I have shared with you this evening. That tireless researcher is my mother, Elinor Faucett Edmundson, and Barnabas Strong my many-greats grandfather.

Does he qualify as a founding father? Except for his service and sacrifice during the entirety of the Revolutionary War, it is difficult to identify anything he contributed to the organizing and shaping of this country. But imagine for a moment what his service entailed. From 1775 until 1783, he served in one unit of his country's military or another, faced death in battle, and endured hunger and privation at the limits of his strength and commitment to the cause. He survived and persisted. If it hadn't been for him and thousands more like him, there would have been no Constitutional Convention, and the names of Washington, Madison, and Hamilton merely footnotes in British colonial history. Frontier bred and based on the language in his depositions (if it isn't Daniel Gano's poor grammar) Barnabas lacked the education and the skill with words that were brought to the fore by those protean men we have learned to call founding fathers. But without doubt, he is my founding father, warts and all.

So if I am to honor the spirit and intent of the founding fathers, as it seems reasonable and proper for a patriotic citizen to do, which shall I choose? If I embrace the philosophies of Madison and Jefferson, I must discard much of what Washington and Hamilton believed in, and vice versa. All of the men we call founding fathers labored and sacrificed in semi-harmony to establish this country, and then, when that was well begun, reverted to their old habits of dividing along class, sectional, and philosophical lines. Generalizing about them quickly leads to meaningless clichés or a confusing recitation of exceptions to whatever rule is put forward.

And yet I do desire to honor them. I am proud of my connection to Barnabas Strong, if not of the desertion then for his return to duty and especially for his eight years of service to the cause, for his endurance of what to 21st century sensibilities was unendurable. I am also glad to be among the inheritors of Washington, Madison, Jefferson, Hamilton, and all the others who there and then debated and squabbled until they came up with a foundation on which we and all those between us and them could build a nation that a free man or woman might be proud of and willing to struggle and sacrifice for, each in our own way. With all due respect to the originalists, their interpretations of the intentions of our founding fathers can only be one possibility among many, and their insistence on having the prerogative to determine which part of that legacy to honor flies in the face of what those

worthies of old struggled to create. When it comes to matters of belief, I need not yield to anyone's judgment but my own.

So how should we embrace this legacy, when to do so is fraught with conflict and contradiction? My way out of this thicket is to heed the spirit of the times and the words of Jefferson. In our post-modern, or post-post-modern era, or whatever fundamental understandings describe the spirit of our own moment in time, it might be useful to remember that the founding fathers, Jefferson especially, were products of the enlightenment, the dominant spirit of which was skepticism toward all received truths and of untrammelled free inquiry in the pursuit of knowledge. The last century has produced such seismic changes in so many fields that it was only natural and predictable that someone would step forward to say, "Wait a minute; give us time to make sense of all this." And so they did and cloaked their understandable and instinctive reaction in the language of the originalists. Here is the rub. How can an originalist honor the spirit of the founding fathers by denying the spirit of the enlightenment? Someone working for the Heritage Foundation may come up with something, but I don't see how it can be done.

The founding fathers were mortals. To make them objects of worship degrades their accomplishments. Gods can do what they like, men do the best they can and then shuffle off the stage to make room for the next bunch to do the best they can in their turn. We must then allow for the great variety of strengths, experiences, struggles, and, yes, original intents personified by those men. To single out one group and elevate them to superior status is, to put it plainly, a leap of faith bordering on religious conversion. But then, given the nature of history and the needs of modern politics, maybe any claim about the founding intent of that various group amounts to what we need to be true rather than what we can support with the facts, that is, more religion than science. In a letter to the rabbi of a Savannah synagogue in 1821, Jefferson wrote in praise of religious pluralism with all its dissension and conflict. He believed, as a son of the enlightenment, that the clash of ideas kept us from falling into grievous error. The same principle might serve us well in our faith-based wrangles over the meaning of the founding fathers. Let us each pay our devotions to whichever version of history will strengthen our resolve to preserve this wonderful country and remember tolerance of one another, for in this matter, as in all matters of belief, we need vigorous debate lest we fall into grievous error. Reversing the usual formulation, in the words of Jefferson, "Divided we stand, united we fall."