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"Causing the Blood to Flow Where I Touched Him" - Liberalism, Constitutionalism, Christianity, and the "War" at Covey Farm

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"causing the blood to flow where I touched him" 
Liberalism, Constitutionalism, Christianity, and the "War" at Covey Farm

ANTHONY V. BAKER*

"[b]ut we have this treasure . . . in earthen vessels"
St. Paul²

1. INTRODUCTION: “A CITY THAT IS SET ON A HILL”³

It is the late spring/early fall, 1786, in Annapolis, Maryland and a group of men have gathered together in a hall on a singular mandate from their esteemed national Congress: to develop a plan to save their nation. From the high flush of unexpected victory over the King George III’s mighty British navy and infantry sealed with the signing of the ‘Second’ Treaty of Paris in 1783, the fledgling United States of America had by then settled to a low unimaginable in those happy days just three years past. So unified in purpose and sacrifice as colonies during the Revolutionary War, the thirteen succeeding States had in that short space of time devolved effectively into petty, mean-spirited Germanic fiefdoms,¹ squabbling at military gunpoint over borders⁵ and charging

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². 2 Corinthians 4:7 (King James).
³. Matthew 5:14 (King James).

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exorbitant tariffs for goods traveling into their respective states from others. Without a national currency to regularize the economy, the nation was awash in a mongrel mix of European exchange fare—moirdores and pistoles and French francs and Spanish pieces-of-eight, and gold doubloons and British pounds-sterling and the like—each valued wildly differently with each border it crossed, with economic chaos following. Post-war tax increases combined with a lack of a ready currency in Massachusetts had turned the whole state into something of a 'debtor's prison', causing Revolutionary War hero Daniel Shays and a band of 1500 “Regulators” to close courts and rampage the countryside.6 So difficult were the times then upon the young nation, that then

Madison would be even more descriptive about the matter, noting, candidly “New Jersey, placed between Phila. & N. York, was likened to a cask tapped at both ends; and N. Carolina, between Virga. & S. Carolina to a patient bleeding at both arms.” James Madison, A Sketch Never Finished nor Applied, in WRITINGS 831 (The Library of America 1999). Madison’s observations were but examples of the endemic problems rife between various of the states and, in his view, “The Articles of Confederation provided no remedy for [such] . . . complaint[s].” Id.

5. At the time of Constitutional ratification, around 1790, with the exception of the Pennsylvania/Maryland border, predominately settled at the close of the surveying work of astronomers Charles Mason and Jeremiah Dixon between 1763 and 1767 (and that with its own pre-history of border violence including the Cresaps War of 1730), virtually every border among the thirteen states was in some level of dispute. Ohio and Michigan would settle their dispute of over fifty years in the “Toledo War” closing in 1836. Michigan’s “Upper Peninsula,” connected as it was geographically to the Wisconsin territories though claimed by the former beginning in 1836, remains colloquially in dispute to this day. South Carolina had a history of acrimonious border disputes with both its northern namesake and its southern neighbor, Georgia. Florida’s ongoing border dispute with Georgia was finally settled by the United States Supreme Court in 1854, in the landmark Florida v. Georgia, 58 U.S. 478 (1854), that same body finally settling the border dispute between New Hampshire and Maine almost 240 years after initial commencement, in 1977. New Hampshire v. Maine, 426 U.S. 363 (1977). Speaking of Maine, it achieved statehood by act of Congress in 1820, of course, by virtual secession from Massachusetts, which had claimed the territory by ancient prescriptions from the colonial beginnings, and whose right over the territory had been reaffirmed closing the War of 1812. Thus, regarding state borders and boundaries, the rule was disputed—often accompanied by violence—rather than the exception. For a general related overview of the above, see MARK STEIN, HOW THE STATES GOT THEIR SHAPES (HarperCollins Publishers 2008).

6. This was getting good and started at the very convening of the Annapolis group. See generally SAUL CORNELL, A WELL-REGULATED MILITIA: THE FOUNDING FATHER’S AND THE ORIGINS OF GUN CONTROL IN AMERICA (Oxford Univ. Press 2006), in which attention is paid to Shays’ Rebellion in Chapter 1, and more specifically, DAVID P. SZATMARY, SHAYS’ REBELLION: THE MAKING OF AN AGRARIAN INSURRECTION (Amherst: Univ. of Mass. Press 1980).
Secretary of Foreign Affairs\textsuperscript{7} John Jay confided candidly to George Washington that “I am uneasy and apprehensive; more so than during the [Revolutionary] war\textsuperscript{8} and the great General himself was ‘mortified beyond expression when I view the clouds that have spread over the brightest morn that ever dawned upon any Country.’\textsuperscript{9}

While the delegates gathering in the picturesque Chesapeake Bay city were officially commissioned by Congress benignly to “take into consideration the Trade and Commerce of the United States”\textsuperscript{10} everyone knew of the more critical work laying in their hands, work re-imagining the nation itself, along better lines. Too critical, in fact, for the few who actually gathered there and then, but five states of the thirteen by number\textsuperscript{11} and but a handful of delegates altogether.\textsuperscript{12} And so the most important of the work accomplished by those intrepid few for their nation then was their adjourning on September 14, 1786, just four days after convening, with an auspicious recommendation. “Deeply impressed with the magnitude . . . of the object confided in them” Alexander Hamilton wrote in a \textit{Report for the Annapolis Convention to Congress}, and “dictated by an anxiety for the welfare, of the United States” the Commissioners begged “leave to suggest their unanimous conviction, that it may . . . advance the interests of the union, if the States . . . [would] meet at Philadelphia on the second Monday in May next”\textsuperscript{13} to more broadly and collectively consider the re-imagining of the

\begin{itemize}
  \item \textsuperscript{7} Revolutionary patriot and statesman John Jay held the office, precursor to the more familiar Secretary of State succeeding it, from May 1784 to March 1790.
  \item \textsuperscript{8} Letter from John Jay to George Washington (June 27, 1786), \textit{in 4 THE PAPERS OF GEORGE WASHINGTON: CONFEDERATION SERIES 130} (W.W. Abbot ed., 1995).
  \item \textsuperscript{9} \textit{Id.} at 33.
  \item \textsuperscript{10} This in New York’s Appointment as Commissioner to the Annapolis Convention (May 5, 1786), \textit{in III THE PAPERS OF ALEXANDER HAMILTON, 1782–1786 665–66} (Harold C Syrett & Jacob E. Cooke eds., 1962).
  \item \textsuperscript{11} Particularly, New York (Egbert Benson; Alexander Hamilton), New Jersey (Abraham Clark; William Houston; James Schureman), Pennsylvania (Tench Coxe), Delaware (George Read; John Dickinson; Richard Bassett), and Virginia (Edmund Randolph; James Madison).
  \item \textsuperscript{12} Writing for the Convention, Hamilton put the matter simply, noting, “Your Commissioners did not conceive it advisable to proceed on the business of their mission, under the Circumstances of so partial and defective a representation.” \textit{Id.} at 687. Minutes recorder Egbert Benson noted that it was “inexpedient for this Convention, in which so few States are represented, to proceed in the business committed to them.” \textit{Id.} at 686. See generally, in this regard, \textit{THOMAS A. EMMET, ANNAPOLIS CONVENTION HELD IN 1786 WITH THE REPORT OF THE PROCEEDINGS REPRESENTED TO THE STATES BY PRESIDENT JOHN DICKINSON 1891}, referenced in \textit{THE PAPERS OF ALEXANDER HAMILTON, 1782–1786, supra note 10}, at 686 n. 1.
  \item \textsuperscript{13} For the full text of the Annapolis Convention report, see \textit{id.} at 686–89.
\end{itemize}
nation. And, of course, that recommendation was fully heeded: a delegation convened in the place and on the date recommended—Philadelphia, beginning in May, 1787—whose work would accomplish nothing less than fashioning a classical liberal haven, a nation “conceived in Liberty, and dedicated to the proposition that all men are created equal,” a nation at which the world would wonder ever thereafter.

Let us move scenes slightly, but a few years ahead—we cannot be precise about how many, as the young man telling this story was the member of a group “know[ing] as little of their age as horses know of theirs”—and no more than 15 miles downbay from the place of that miraculous beginning in Annapolis those years before. The young man knew the name of his mother—Harriet Bailey—though, having met her but “four or five times in my life; and each of these times . . . [of] very short . . . duration, and at night” and not learning of her death until “[s]he was gone long” he would receive that news “with much the same emotions I should have probably felt at the death of a stranger.” The strong rumor ran that the young man’s father was the self-same individual who legally occupied the construction of ‘master’ to him though, of course, “of the correctness of this opinion” our story teller in fact knew “nothing; the means of knowing was withheld from me.” He was a young man who by the time we meet him had seen horror, for example, witnessing a women “tie[d] up to a joist” by a “master” “and whip[ped] upon her naked back till she was literally covered with blood . . . [t]he louder she screamed, the harder he whipped; and where the blood ran fastest, there he whipped longest.” He was, “quite a child” when he witnessed this, though he noted, years later, “I well remember it . . . I never shall forget it whilst I remember anything . . . the first of a long series of such outrages . . . a most terrible spectacle.”

The young man in question is named Frederick’, and he is at the moment we meet him in a pitched battle for his life. The details of the battle—the “how” and “why”—are significant, and will be given more attention hereafter. What is important to note at this time is the person with whom he is battling, not so much his name, though it is in fact a “Mr. Covey,” but rather his status to Frederick, that of erstwhile master

15. DOUGLASS, supra note 1, at 39.
16. Id. at 40.
17. Id.
18. Id. at 42.
to legally constituted slave, and the reason for the set-to: perceived disobedience on the part of Mr. Covey to a communicated direction Frederick could not keep. Further, it is important to note again, that this status between the two, one effectively “owning” the other, one directing every detail of the life of the other, and reserving the right to effect that control even to blood or death, is happening in the land of the “founder's” dreams, that greatest place of liberal individualism, that place which would on their foundation one day unashamedly seek the world's "tired . . . poor . . . huddled masses yearning to breathe free." And in consequence it is important to ask “Why?”.

Let me say here what a delight it is to join you again in Raleigh, on the occasion of this, your annual Campbell Law Review Spring Symposium, and I want to thank the organizing committee and your academic advisor (and my good friend), Professor Kevin Lee, for the opportunity.  I commend you for the hard work to which you have committed yourselves, as others before you, in the ambitious task of planning and hosting an event such as this, and I especially commend you on your choice of topics, a deliberate move into “law as theory” augmenting your more traditional “law as practice” efforts in the past. This underscores the continuing maturity of the institution, recognizing in the practical workings of the law its ineffable nature if not its very origin in the ethos of ideas, and the importance of “touchstoning” those ideas in adding heft and dimension to the full-bodied practice of the profession. But, as with all exercises essentially intellectual in nature – as with all “theory” meant to have its way ultimately in a real world of lives and people and politics and action and place – it proves its worth by the tracks it makes “down here” as it were. Simply put, while theory gains its shape and form “in the air,” in the realm of “thought” and “ideas,” it gets its weight and its catalytic power to change things – to make things better – down here.

This, then, is my role in this body, this group of well-accomplished scholars with whom I am honored to be associated, even for just one day: I am the “down here” guy, the “so what?” guy, the “run-that-by-me-again?” guy.  I will begin my critique by going directly to the source here, the famous Philadelphia Constitutional Convention of 1787, and ask us to look somewhat carefully at the work of the “founders” there, in considering the ultimate integrity of the product they fashioned and the world they “created.” That they gave us a classical liberal wonder, with tenets of that philosophy writ large in government for the very first time,

is undeniable, though it will be submitted that they gave us “something else” as well. It is right for us then to explore that “something else,” not abstractly, through ideas, but concretely – starkly and bloodily so – through the world captured so powerfully by self-educated, self-actualized and self-emancipated Frederick in his 1845 published memoirs, recalling experiences of his youth in that rights-reifying land remembered a decade or more thereafter. In this we will focus on one incident where two worlds collided violently on a non-descript Maryland farm – those of legally generated and maintained “master” and “slave” – and we will seek to test the weight of our conference’s thesis in the struggle of these two men and these two worlds. We will be free to make appropriate following comments in conclusion.

II. CONSTITUTIONAL MAGIC: “WHAT THINGS GOD HAD WROUGHT”

When the fifty-five from all around the United States\textsuperscript{21} gathered in the no-doubt dusty and hot Philadelphia hall in mid-Spring of 1787, the immensity of the task in front of them was at least matched by resources fashioned in advance of their work and fully available for them then and there. Particularly, they had with them in that room Thomas Jefferson's immense Declaration of Independence of ten-plus years earlier, and most would argue that, the daunting size of their task notwithstanding, nothing more was needed. In the soaring rhetoric of its aspirational opening alone – “[w]e hold these truths to be self-evident; that all men are created equal”\textsuperscript{22} – they had all that the human spirit could give them to guide their way, pure classical liberalism in its most compact and potent form. “We” – essence; community; vivacity – “hold” – conviction; commitment; grip – “these” – thought; intellect; selection; critical choice – “truths” – immutables; essentials; dependable; sublime – “self-evident” – complete; obvious; impressive; irrefutable and undeniable – “all men” – whole; entire; complete; universal – “created” – how many volumes have been written in human history to attempt to unpack this one powerful word, in all its implications – “equal” – eye to eye; upright and unashamed, one with another. Here, then, was both foundation and pole-star of unparalleled clarity: could they but keep its guiding light in their

\textsuperscript{20} Acts 21:19 (King James).
\textsuperscript{21} In fact, there were representatives of all of the States then forming the confederation of the United States with one exception: Rhode Island, the reasons underlying that absence of which are well and popularly known historically.
\textsuperscript{22} 5 JOURNALS OF THE CONTINENTAL CONGRESS 1774–1789 510 (Worthington Chauncey Ford et al. eds., 1906).
eye and lay their work on its capacity, the result would be wondrous indeed.

And of a truth, Jefferson before them had relied on the intellectually immense work of John Locke and his *Two Treatises of Government* — the classical liberal manifesto as potent in fact as the one of communist variety formally bearing that name a-century-and-a-half beyond — in meeting his own capacious responsibilities for his stellar committee and the Congress and nation awaiting in 1776. The very act contemplated by the nation at the moment of Jefferson's writing was Locke's Chapter XIX writ large — *Of the Dissolution of Government* — where that author radically posited "a Right [of a people] to resume their original Liberty ... absolved from any farther Obedience" to a Legislature "endeavour[ing]... to take away, and destroy the Property of the People, or to reduce them to Slavery under Arbitrary Power." As the fifty-five gathered in Philadelphia those few years later with


25. In taking up the imposing task of drafting articles of separation from their large, petulant and vindictive parent nation in the early summer of 1776, the Continental Congress wisely did not take on the task as a whole, with the internecine and petty squabbles over words that would have hindered the process and diluted the final product, but instead tasked a "committee, to prepare the declaration, [to] consist of five members: the members chosen, Mr. [Thomas] Jefferson, Mr. [John] Adams, Mr. [Benjamin] Franklin, Mr. [Roger] Sherman, and Mr. [Robert] R. Livingston." *JOURNALS OF THE CONTINENTAL CONGRESS 1774-1789* 431 (Worthington Chauncey Ford et al. eds., 1906). Two future Presidents, two seasoned patriots and political veterans, and the inimitable "Dr. Franklin" (!). Auspiciousness of the Committee as a whole notwithstanding, the four in their very first meeting stepped back, turning the responsibility of draft writing over to the brilliant young Virginian alone.

26. In a letter dated August 30, 1823 to James Madison, the then octogenarian Thomas Jefferson found himself in the uncomfortable position of defending the quality of his *Declaration of Independence* against late critiques of its true originality. There he noted, with some pique, "Richard Henry Lee charged it as copied from Locke's treatise on government... [W]hether I had gathered my ideas from reading or reflection I do not know. I know only that I turned to neither book nor pamphlet while writing it." Letter from Thomas Jefferson to James Madison (August 30, 1823), in 25 *THE WRITINGS OF THOMAS JEFFERSON* 462 (Andrew A. Lipscomb & Albert Ellery Bergh eds., 1904). These facts notwithstanding, it is worth remembering here the towering place the great Locke occupied in the writer's admiration and respect, being, in Jefferson's mind, one of "the three greatest men that have ever lived, without any exception." Letter from Thomas Jefferson to John Trumbull (February 15, 1788), in 14 *THE PAPERS OF THOMAS JEFFERSON* 561 (Julian P. Boyd ed., 1958). Francis Bacon and Sir Isaac Newton completed his auspicious trio.

27. *LOCKE, supra* note 23, at 412 (original emphasis omitted).
Jefferson's "American Scripture" underarm, they were embarking on Locke's high-water point for any classically liberal endeavor, a people voluntarily leaving "the State of Nature" and exchanging its "perfect Freedom," resigning it up into the hands of the Community ... umpiring ... by settled standing Rules, indifferent, and the same to all Parties. This was John Locke's "Political, or Civil Society" in theory, but it was theirs for the making in fact, a task of present urgency for them, but potential wonder for the future, theirs and the world's following. The very fact of this symposium on this topic, in this place of ease, comfort and prosperity, where we can discuss and critique their work in safety and in freedom - of body, and thought, and assembly, and expression - almost two-and-one-half centuries thereafter, is ample testament to its success: its ambition, its endurance and, essentially, its goodness.

Good, yes, but was their work sincere? Latin in its original form, possibly derived from the combination of two Latin roots - sine, or "without," and cera, or "wax," or, literally "without wax," it is imagined as a term of law and commerce in the Roman world, employed in rudimentary "products liability" context, related to the highly prized Empire art form of marble sculpture. Beautiful in its perfect finality, so delicate was the sculpture production process that the mere slip of the artist's tool could chip the surface, dramatically depreciating the commercial value of the finished work; hundreds of hours of expensive effort would be effectively compromised by one wrong stroke. Under these exigencies it would not have been unusual for the offending sculptor to patch up such mistakes with a special wax, cosmetically hiding the blemish from all but the most discerning eyes, thus achieving "top dollar" for a less-than-perfect commodity. All would be well until the prize was delivered to the purchaser and placed in an outdoor garden, where the gentle but unrelenting Mediterranean sun would do its work, the melting wax plainly revealing the whole truth. Thus, in the face of the plain disabilities of caveat emptor, wary purchasers in such circumstances would soon have learned to include a sine cera warranty protection in their commissioning contracts, assuring that the delivered

29. Locke, supra note 23, at 272.
30. Id. at 269 (original emphasis omitted).
31. Id. at 324.
32. Id. at 325 (original emphasis omitted).
product was "without wax," with clear legal recourse available if the opposite proved true.\textsuperscript{33}

In their self-appointed task of creating a classically liberal haven, a place of individual worth and dignity, personal liberty and personal rights, natural, fundamental and inalienable, bestowed not as a grant of government but rather as a gift, "of Nature and of Nature's God," was the final product of the work of the "Founding Fathers" sincere... without wax? They certainly got off on an interesting foot in that direction, on the issue of centrality of prayer – of "humbly applying to the Father of lights to illuminate our understandings"\textsuperscript{34} – in the work they then had before them. In their Thursday, June 28, 1787 session, noting particularly the "small progress we have made after 4 or 5 weeks close attendance & continual reasonings with each other,"\textsuperscript{35} and contrasting "the beginning of the Contest with G. Britain, when we were sensible of danger... [having] daily prayer in this room for the divine protection,"\textsuperscript{36} Benjamin Franklin urged the Convention not to have "forgotten that powerful friend,"\textsuperscript{37} reminding them eloquently that "if a sparrow cannot fall to the ground without his notice, is it probable that

\textsuperscript{33} In service of full disclosure, it should be noted that this story is more or less attributed to a folk etymology which consigns the very origins relayed here as more likely apocryphal than real. Etymologist Walter William Skeat notes candidly of the reference preferred here, "[s]ome connect it with cera, wax; putting sincerus = sine cera, which is unlikely." \textit{An Etymological Dictionary of the English Language} 555 (1888), available at http://www.archive.org/stream/etymologicaldict00skeauoft#page/554/mode/2up. Even if that author would later ameliorate his original observation, somewhat cryptically – "If, as some have thought, sincerus means sine cera, "without wax," it was orig. applied to honey (Bréal). \textit{Walter William Skeat, An Etymological Dictionary of the English Language} 563 (Oxford Univ. Press 1963) (1879–1882). A second highly authoritative source puts the matter even more directly: "there is no probability in the old explanation from sine cera 'without wax.'" \textit{The Oxford English Dictionary} 508 (2d ed. 1989). Indeed, in the interest of full transparency, I myself learned of the story in a setting highly given to apocrypha if not outright fiction, in service of potent illustration: a conservative Christian sermon/Bible study." Well and good. However, accepting the above acknowledgement of the possible anti-intellectual roots of the story herein, as a referential metaphor, I suggest that it retains its potency apart from the reasonable disputes as to its pure etymological history, and I am thus comfortable offering it for the limited and narrow acknowledged purpose.

\textsuperscript{34} The words of no less a preeminence than "Doctor Franklin" as he was referred to throughout the 1787 Convention. \textit{The Debates in the Federal Convention of 1787 Which Framed the Constitution of the United States of America, Reported by James Madison, A Delegate from the State of Virginia} 181 (Gaillard Hunt & James Brown Scott eds., Prometheus Books 1987) (1920).

\textsuperscript{35} \textit{id}.

\textsuperscript{36} \textit{id}.

\textsuperscript{37} \textit{id}.
an empire can rise without his aid?" He put his plea in the form of a motion before the Assembly, "that henceforth prayers imploring the assistance of Heaven, and its blessings on our deliberations, beheld in this Assembly every morning before we proceed to business," which was immediately seconded by Connecticut conventioneer Roger Sherman. After a brief discussion, by the likes of North Carolina's Hugh Williamson, Edmund Randolph of Virginia and Alexander Hamilton himself, an "adjournment [of the session] was at length carried, without any vote on the motion."

From the perspective of classical liberalism, the truest and most substantive test of the ultimate sincerity of the Founders' work in Philadelphia was a matter of no mystery to anyone at that time. Citizen Thomas Paine alluded to that test implicitly when he wrote hopefully in 1775, "may our first gratitude [for God's predicted help in colonial separation from England] be shown by an act of continental legislation, which shall put a stop to the importation of Negroes for sale." Patriot nonpareil Patrick Henry anticipated that test in his personal remonstrance five years before Paine, marveling at the dichotomy between his classical liberal "liberty or death" fame and his personal connection to the audacity of human bondage: "Would any one believe I am the master of slaves of my own purchase! I am drawn along by the general inconvenience of living here without them. I will not, I cannot justify it." Revolutionary War hero Dr. Benjamin Rush imagined the full scope of that test imbedded in his own colorful reference, "[t]he plant of liberty is of so tender a nature, that it cannot thrive long in the neighborhood of slavery." Simply put (though complex in its depth and meaning), that test encompassed that nation's response to the issue of human slavery in a free, democratic republic.

38. Id.
39. Id. at 182.
40. Id.
42. These remarks were included in a letter by Mr. Henry written January 18, 1773. See William Wirt Henry, Patrick Henry: Life, Correspondence and Speeches 152 (1891). In that remarkable document the intentional and deliberate slave-owner spoke of abolition of "this lamentable evil" and of transmitting "an abhorrence of slavery," while personally maintaining his commitment to it in practice. Id. at 153.
Neither was the "right" response to that question a matter of equivocation or intellectual obscurity to classical liberal political theory so attractive and easily available for the Founders to discover and channel, for the good of the nation they were charged to serve. Dutch philosopher and erstwhile "father of international law" Hugo de Groot – Grotius – found the narrowest of isthmuses for some notion of human slavery in his "prize of war" theory, but no place else.44 For French philosopher Jean-Jacques Rousseau, "however we look at the question, the 'right' of slavery is seen to be void; void, not only because it cannot be justified, but also because it is nonsensical, because it has no meaning" in a free republic, disavowing even Grotius' narrow exception.45 Contemporary philosopher Baron de Montesquieu was even more straightforward on the important question: "Slavery... the establishment of a right which makes one man so much the owner of another man that he is the absolute master of his life and his goods... is not good by nature..." Montesquieu went on to note thereafter, "In democracy, where everyone is equal, there must be no slaves... slaves are contrary to the spirit of the constitution..."46

For John Locke the matter was simple, straightforward and unequivocal. “[H]e who attempts to get another Man into his Absolute Power, does thereby put himself into a State of War with him... to compel me by force to that, which is against the Right of my Freedom,

44. For a full treatment of Grotius' "prize of war" theory regarding "legally justified" human slavery, see Hugo Grotius, Of the Right over Prisoners, in III THE RIGHTS OF WAR AND PEACE 1360–1373 (Richard Tuck ed., 2005).
45. JEAN-JACQUES ROUSSEAU, THE SOCIAL CONTRACT 58 (Maurice Cranston trans., Penguin Books 1969) (1762). In his Chapter 4, entitled Slavery, Rousseau takes on Grotius and his like directly:

Grotius and the rest claim to find in war another justification for the so-called right of slavery. They argue that the victor's having the right to kill the vanquished implies that the vanquished has the right to purchase his life at the expense of his liberty – a bargain thought to be the more legitimate because it is advantageous to both parties. But it is clear that this so-called right to kill the vanquished cannot be derived from the state of war.... The right of conquest has no other foundation than the law of the strongest. And if war gives the conqueror no right to massacre a conquered people, no such right can be invoked to justify their enslavement.... It would... be an iniquitous barter to make the vanquished purchase with their liberty the lives over which the victor has no legitimate claim.

Id. at 55, 57.
i.e. make me a Slave." 7 "This is the perfect condition of Slavery, which is nothing else, but the State of War continued," 8 a violation of the "Freedom of Nature... under no other restraint but the Law of Nature." 9 "For I have reason to conclude, that he who would get me into his Power without my consent, would use me as he pleased, when he got me there, and destroy me too when he had a fancy to it... ." 10 "And therefore it is Lawful for me to treat him, as one who has put himself into a State of War with me, i.e. kill him if I can; for to that hazard does he justly expose himself, whoever introduces a State of War, and is aggressor in it." 11

It is of no particular value here to delve into the details of the final work of the "founders" in this critical area of their received task: the famous "3/5ths Compromise," 12 the 1808 African slave trade ban accommodation, 13 and the baffling "fugitive slave" diabolism. 14 What is important to note, and what appears obvious from the herein and the two-hundred-plus years of received Constitutional history in our experience is this: if the "founders" were mandated with calling forth a classical liberal haven and refuge on this continent on behalf of themselves, their constituents and generations following, in this they failed, by their own self defined and self-accepted foundational standard. Indeed, given the pristinity of the charge they had given themselves that portentous late-18th century summer, to be successful in most was to fail in all, especially where the weak piece, however small, related to fundamental human value and human rights. It is important as well to own what they were successful in creating: a sort of mawkish, dual world, where singular human value and classical liberal self-actualization was in play, but in forced, weird proximity with a nether region, in phases, where individual worth and liberty and value could come under dissipation and deadly assault at any time. It is into this world that we must now go to see the problem clearly, the world of human bondage and degradation within the world of self-worth, the world of our Frederick and his intractable opponent on Covey Farm.

47. MARX & ENGELS, supra note 24, at 279 (original emphasis omitted).
48. Id. at 284 (original emphasis omitted).
49. Id. (original emphasis omitted).
50. Id. at 279.
51. Id. at 280 (original emphasis omitted).
52. U.S. CONST. art. I, § 2, cl. 3.
54. U.S. CONST. art. IV, § 2, cl. 3.
III. SLAVERY IN THE REPUBLIC: "THE LIFE . . . IS IN THE BLOOD"55

At the time we meet our combatants, Frederick is "a boy about sixteen years old"56 by his own crude reckoning, and "now, for the first time in my life, a field hand,"57 contracted out to Mr. Covey's farm. The controlling contract is between Frederick's legally reified "master" – "Master Thomas"58 – and the formally hiring Mr. Covey,59 the length of the contract is one year, commencing "on the 1st of January, 1833"60 and its ultimate purpose is clear and chilling: to take advantage of Covey's "very high reputation of breaking young slaves . . . as a 'nigger-breaker.'"61 "My master and myself had quite a number of differences . . . ."62 Frederick owned simply in his memoirs following, prompting the need for the change of circumstances meeting him that year. "He resolved to put me out, as he said, to be broken"63 and, if in reputation at least, he found the right man for the job in Mr. Covey. "Added to the natural good qualities of Mr. Covey, he was a professor of religion – a pious soul,"64 admixing divine gift and calling to his facility in the cruel arts, augmenting his reputation and perceived usefulness to his neighbors in his special calling.

Mr. Covey proved nothing if not quick and committed in the prosecution of his pristine duties in service of Master Thomas' desires for the young Frederick. "I had been at my new home but one week before Mr. Covey gave me a very severe whipping, cutting my back causing the blood to run, and raising ridges on my flesh as large as my little finger."65 "This whipping was the first of a number just like it . . .

55. Leviticus 17:11 (King James).
56. DOUGLASS, supra note 1, at 80.
57. Id. at 71.
58. Id. at 70.
59. In the "practical" world of "slavery," it was by no means unusual for "owners" to hire out "slaves" to neighboring farms for any number of reasons: oversupply on the part of the "owner," special need of neighbors, income generation, etc. In this case, "Master Thomas" could hire Frederick out to Mr. Covey and achieve a two-fold benefit from the arrangement: 1) a "breaking" of the young Frederick by the experienced Mr. Covey, and 2) residual income for Thomas from the arrangement, even if only minimal. This describes the relationship between the three – Thomas, Covey and Frederick – at this time.
60. DOUGLASS, supra note 1, at 71.
61. Id.
62. Id. at 70.
63. Id.
64. Id. at 71.
65. Id.
scarce a week passed without his whipping me," 66 Frederick would note matter-of-factly in his later published memoirs. Through such corporeality and other methods, including impossible rigor in work - "[w]e were worked fully up to the point of endurance" 67 - austere sustenance - “enough to eat, but scarce time to eat it... often less than five minutes taking our meals" 68 - and the like, Mr. Covey proved for young Frederick adept indeed at his particular calling. Of that experience the grown Frederick would conclude, “Mr. Covey succeeded in breaking me... broken in body, soul, and spirit... natural elasticity... crushed... intellect languished... the dark night of slavery closed in upon me; and behold a man transformed into a brute!” 69

While it feels almost trite to interrupt the narrative flow here, it is nevertheless important to emphasize the obvious: all of this is occurring well within the parameters of the God-animated natural law miracle of the constitutional republic, replicated literally thousands of times across the land. All of those delicate, tough rights and privileges - freedom of conscience and movement, individual liberty, freedom of contract and assembly, freedom of speech and rights of self-actualization and realization, even freedom of worship and religion 70 - so prevalent across the land, dissipate in the contracted space of the “plantation” as fully and quickly as morning dew before a hot dawn. Even the common law of battery, serving as it is specifically designed to do the natural right of bodily integrity and autonomy from personal invasion, turns its otherwise all-seeing eye away in the face of corporal discipline serving purloined labor. However, even if the classically liberal-based, Christian-tinged constitutional rights regime that was America could afford to take no notice of the plight of young Frederick and his millions of comrades-in-sorrow across that land, God himself would prove less disinterested, less distracted. “You have seen how a man was made a slave,” Frederick would write in the famous Chapter X of his Narrative, adding, provocatively, “you shall see how a slave was made a man.” 71

66. Id. at 72.
67. Id.
68. Id.
69. Id. at 74.
70. These “human rights” born individually and entrenched by direct reference of amendment in the body of the Constitution, reflect the individualism at the heart to the American Experience, and, arguably, are America itself. But not Frederick’s “America.”
71. DOUGLASS, supra note 1, at 75.
The incident began nondescriptly on a hot summer day on Covey's St. Michael's, Maryland farm – the township being named after God's "fighting angel," ironically enough – where Frederick and others were engaged in the brute work of "fanning" wheat: "simple, requiring strength rather than intellect."\textsuperscript{72} However, on this day, strength was the one thing Frederick had in no great measure: "my strength failed me," and being "seized with a violent aching of the head, attended with extreme dizziness,"\textsuperscript{73} he trembled into total collapse. Alerted by the silence where sounds of work ought to have been, Mr. Covey investigated and sought to persuade Frederick beyond his physical disability, first with a "savage kick in the side"\textsuperscript{74} followed quickly by another, with instructions to rise. When neither produced the desired result he reinforced his direction by employment of a "hickory slat . . . [giving] me a heavy blow upon the head, making a large wound . . . [where] the blood ran freely; and with this again told me to get up."\textsuperscript{75} Interestingly enough, while in the face of Frederick's immediate lack of response Covey turned his attention to other parts of the interrupted labor, "after receiving this blow, my head grew better," and Frederick was suddenly seized with a plan: "to go to my master, enter a complaint, and ask his protection . . . "\textsuperscript{76}

Under the circumstances, we ought not to miss the intellectual and spiritual significance of Frederick's planned appeal. Simply put, the hardest person to satisfy of the non-personhood of an individual is the individual "non-person" herself, forced to grapple with and come to appreciate and understand and eventually accept and embrace their non-personhood by employment of their personal brain and personal logic and personal human spirit. In determining to walk the seven miles and some five hours "through bogs and briers, barefooted and bareheaded, tearing my feet sometimes at nearly every step"\textsuperscript{77} and presenting himself to his master, he was appealing to John Locke's "civil authority," testing his place in that civil order, even if unwittingly so, and measuring its commitment to him and his value. This was a \textit{human appeal}, an appeal to \textit{human right} and \textit{natural order}, classical liberalism writ large in his life, a naive attempt at finally locating himself as a human being in the

\textsuperscript{72} Id.
\textsuperscript{73} Id.
\textsuperscript{74} Id. at 76.
\textsuperscript{75} Id.
\textsuperscript{76} Id.
\textsuperscript{77} Id. A grown Frederick would later describe those very feet as so damaged from this and other misuse "that the pen with which I am writing might be laid in the gashes." Id. at 54.
confused melo-drama that was his “America.” The results of this remarkable jurisprudential experiment were abrupt for Frederick, and unequivocal.

Finally arriving late at night at his “master’s” stead, Frederick presented undeniable proof of the essence of his humanness in the very picture he carried into that home that night. “From the crown of my head to my feet, I was covered with blood . . . hair . . . all clotted with dust and blood . . . shirt . . . stiff with blood . . . legs and feet . . . torn . . . with briers and thorns . . . covered with blood.” 78 Asked by his plainly flummoxed “master” what he wanted, and responding by “humbly entreating him to interpose his authority for my protection” 79 his “master” paced the floor, seeking “to justify Covey by saying he expected I deserved it,” reminding “that he [Covey] was a good man,” and muttering that “he would lose the whole year’s wages” by intervening, before arriving at a settled conclusion. “I belonged to Mr. Covey for one year . . . that I must go back to him come what might; and that I must not trouble him with any more stories, or that he would himself get hold of me . . . which meant that he would whip me.” 80 Contract and wage bargains in the place of natural law and right in the “constitutional republic”; having “got no supper that night, or breakfast that morning” 81 – effective coda to his “non-humanness” – Frederick was on his way back to Covey farm.

Immediately on arrival at the yard gate of the farm, Frederick ran into the man himself, who “spoke to me very kindly” a fact that might have caused him wonder “had it been any other day than Sunday” when Covey was “on his way to meeting.” 82 Come the following day, bright and early, the real Covey was up and ready for action. Using stealth to his advantage, Covey succeeded in surprising Frederick with a tackle, attempting to tie his legs and bringing him fully under Covey’s ill-intentioned control, though in the face of Frederick’s sudden, unexpected and successful resistance, Covey “trembled like a leaf.” “This gave me assurance, and I held him uneasy, causing the blood to run where I touched him with the ends of my fingers” 84 by his throat;

78. Id. at 77.
79. Id.
80. Id.
81. Id.
82. Id. at 78.
83. Frederick had noted earlier of Mr. Covey, “[His] forte consisted in his power to deceive. His life was devoted to planning and perpetrating the grossest deceptions,” elaborating on that theme in almost amusing detail thereafter. Id.
84. Douglas, supra note 1, at 78.
Covey’s physical attempts at release along with his unsuccessful pleas for the intervention of other “slaves” over the length of the extended battle – “We were at it for nearly two hours . . .”85 Frederick later memorialized – earned him no advantage in the battle; Frederick should be given an extended “last word” on the effects of all of this on his own mind and spirit:

Covey at length let me go, puffing and blowing at a great rate, saying that if I had not resisted, he would not have whipped me half so much. The truth was, that he had not whipped me at all. . . he had drawn no blood from me, but I had from him. The whole six months afterwards. . . he never laid the weight of a finger upon me in anger. He would occasionally say, he didn’t want to get hold of me again. “No,” thought I, “you need not; for you will come off worse than you did before.”

This battle with Mr. Covey was the turning-point in my career as a slave. It rekindled the few expiring embers of freedom, and revived within me a sense of my own manhood. It recalled the departed self-confidence, and inspired me again with a determination to be free. The gratification afforded by the triumph was a full compensation for whatever else might follow, even death itself. He only can understand the deep satisfaction which I experienced, who has himself repelled by force the bloody arm of slavery. I felt as I never felt before. It was a glorious resurrection, from the tomb of slavery, to the heaven of freedom. My long-crushed spirit rose, cowardice departed, bold defiance took its place; and I now resolved that, however long I might remain a slave in form, the day had passed forever when I could be a slave in fact. I did not hesitate to let it be known of me, that the white man who expected to succeed in whipping, must also succeed in killing me. 86

Even if natural law writ large failed Frederick, even if the classical liberalism of faith-tinged constitutionalism-American-style could not see this “invisible man”87 and his countless confrères across the nation, do not make the mistake of thinking the final outcome on Covey’s farm was not Lockean . . . not natural. For in the walk back from his “master” to the confrontation awaiting him at Covey farm, Frederick came

85. Id. at 79.
86. Id.
87. I am referencing here Ralph Ellison’s prize-winning and still remarkable Invisible Man, and his cogent theme, simply put here: African-Americans embracing ‘stereotype’ are given the benefit of ‘identity’ in the broader majority-culture dominated world, albeit of the cartoonish trope form demanded by the stereotype (think ‘Amos and Andy’ here); African Americans who refused to adopt the stereotype form laid out for them by the majority culture, are invisible to that culture, utterly and completely. RALPH ELLISON, INVISIBLE MAN (1952).
inexorably to understand a single critical, grounded and important fact: “If I am indeed ‘not in’ – not in the protections of your rights reifying constitutional order, or even in its contemplation – then I am ‘out,’ though you are out too . . . out here with me.” “If I am not in your civil order, than you are in God’s state-of-nature, with me, where the rules are very different.” “We are equals here,” Frederick understood beyond understanding, and he used ‘blood’ as the symbol of that equality, all throughout his narrative, though it was in fact no metaphor at all. For who could miss the connection between Frederick Douglass’ “war” at Covey Farm, Covey’s own blood effectively shed in purchase of Frederick’s “freedom,” and the war which lay just a handful of years ahead for Frederick and Covey both – and millions of others – and the endless, purging blood that war would both exact and require?

IV. Conclusion: “Him that knoweth to do good, and doeth it not”

When he rose to address the first Conservative Political Action Conference on January 25, 1974 in Washington DC, keynote speaker and then California Governor (and Presidential aspirant) Ronald Reagan for the first time employed what would come to be identified as his signature simile to his thrilled listeners. Referencing the words of the great Massachusetts giant John Winthrop of three-plus centuries earlier, who had himself borrowed the phrase from the singular words of Jesus Christ a-millennium-and-a-half before that, Reagan’s poetical vision for America was unmistakable: “[w]e will be as a city upon a hill . . . [t]he eyes of all the world . . . upon us . . .” He spoke that night of his belief in “some divine plan that placed this great continent between two oceans to be sought out by those who were possessed of an abiding love of freedom and a special kind of courage.” “Never in any society has the preeminence of the individual been so firmly established and given such a priority” he reminded his no doubt rapt and adoring audience. He

88. James 4:17 (King James).
90. Id.
91. Id.
92. At the time of the speech, the Republican Party and American conservatism with it were undoubtedly at a low ebb. Particularly, the Party was in the throes of the Watergate fallout; Spiro Agnew was but three months into his political exile and forced resignation from the vice-presidency; President Nixon would face impeachment hearings
neatly laid this unadorned miracle where it unquestionably belonged, with “that remarkable band we call our Founding Fathers” and their equally miraculous product, “probably the most unique document ever drawn in the long history of man’s relation to man,” the “culmination of men’s dreams for 6,000 years.”

Beyond the historically confirmed political brilliance of these carefully chosen words for the post-Nixonian “silent majority” audience beholding the rise of their next hero, their power and resonance still echo, even in the mouth of one far less trained in the special art of stentorian delivery then was our twice-famous “cowboy President.” These words remain “truthful” at their core even if they are not “true” in a mature meaning of that word in the American character, isolating challenging aspiration for us nationally, rather than providing pretext for mawkish self-congratulations favored by Mr. Reagan those years ago, and his kind today. To conflate wishing with believing is the worst kind of self-delusion in one’s personal life; it is down-right dangerous when multiplied across a people and when inculcated into a national ethos. But don’t take my word for it . . . ask post WW II Germany, for example. If Christ/Winthrop/Reagan’s “city on a hill” exists for this nation at all, it exists in our future – most definitely not in our past and our imagining it as having been attained already is the surest means of guaranteeing that it remains just out of our aspirational future reach.

Of all of the lessons to be derived from this rich story, the late 19th century observations of a precocious Harvard Ph.D. recipient come to mind as particularly cogent to our topic, time and place. Regarding the unvarnished pusillanimity of the choices made by the “Founding Fathers” to the dilemmas before them regarding human life, rights and liberty, that researcher/writer was inclined to mince no words:

[T]here began, with 1787, that system of bargaining, truckling, and compromising with a moral, political, and economic monstrosity, which makes the history of our dealing with slavery . . . so discreditable to a great people. Each generation sought to shift its load upon the next, and

but three-plus months in the future, with his resignation coming three months thereafter. Into that morass the trained actor stepped before his audience, delivering the first of act of what would become the role of his life.

93. Regan, supra note 89. I am thankful for Mr. Reagan’s preference for the word “probably” in offering his judgment here; I am free thereby to continue to prefer such documents as Magna Charta or Luther’s 95 Theses or the Mayflower Compact or, indeed the Gospel of John as worthy claimants to the honor he offered there. But I am quibbling.

94. There are any number of people-groups reified as “other” in American history that will attest to the truth of this contention, most notably Indians, pre-suffragette women, and immigrants of all kinds.
the burden rolled on, until a generation came which was both too weak and to strong to bear it longer.\textsuperscript{95}

And as for the matter of timing – the proper when of addressing such matters as those facing the “Founders” in this regard, the writer/observer was equally uncompromising:

How far in a State can a recognized moral wrong safely be compromised? And although this chapter of [American] history can give us no definite answer suited to the ever-varying aspects of political life, yet it would seem to warn any nation from allowing, through carelessness and moral cowardice, any social evil to grow. No persons would have seen the Civil War with more surprise and horror than the Revolutionists of 1776; yet from the small and apparently dying institution of their day arose the walled and Castled Slave-Power. From this we may conclude that it behooves nations as well as men to do things at the very moment when they ought to be done.\textsuperscript{96}

That brilliant young Harvard Ph.D. recipient – William Edward Burghardt Du Bois – said something else as well in his landmark monograph, something that bears particular focus for us more than one century after his words were written:

No American can study the connection of slavery with United States history, and not devoutly pray that his country may never have a similar social problem to solve, until it shows more capacity for such work than it has shown in the past.\textsuperscript{97}

Simple in their message and honest in their presentation, these words are nevertheless chilling indeed for all of us who bear more than casual interest in the details of the “American Experiment.”

James the Epistlor put the matter this way in seeking to make the concept of moral duty real for his ancient audience: “whoever knows what is right to do and fails to do it, for him it is sin . . . ”\textsuperscript{98} I like this; in my experience it is the only really interesting and creative thing at all the Bible has to say about the archetypal concept of human sin, the only thing that makes the concept real and tangible for me. You see, for those of us who are not terribly moved by long lists of action-based directives – do's and don't's – for those of us far more interested in what lies behind the curtains of life, where the why's of such prescriptives lie, Jame's definition hits us where we live. It is grand in its simplicity, pointing in

\textsuperscript{95.} W.E. BURGHARDT DU BOIS, THE SUPPRESSION OF THE AFRICAN SLAVE-TRADE TO THE UNITED STATES OF AMERICA, 1638–1870 198 (1896).
\textsuperscript{96.} Id. at 199.
\textsuperscript{97.} Id. at 197.
\textsuperscript{98.} James 4:17 (King James).
the direction of a Grand Being who, if existing at all and caring about human endeavor as a consequence of that existence, views individual choice against a better measure of propriety than a static, external list of sanctioned actions. The exercise measures “who we are” against “who we could be” and therefore “who we ought to be” —our capacity, in consequence of who we know in our hearts we should be — and by that measure we are rightly judged by a fit and fair tool.

For if we are no longer facing a dilemma of the character and scope of the one presented to late 18th century America and — in consequence of their choices — about which 19th century America would debate, argue, fight and die, no one would deny their like if not their equivalent among us today in the contested area of human rights: illegal immigration, terrorism and the “problem” of Islam, and “war” in different parts of the globe, to mention a few. How ought we to measure ourselves, against these great challenges and great opportunities? What ought we to do? Who ought we to be? How ought we to act?

In closing, when poet laureate and American “renaissance man” James Russell Lowell stood before his rapt, august Manhattan audience, delivering the keynote to the Reform Club of New York in the spring of 1888, he lyrically lauded the American Constitution as, “a machine that would go of itself”99 though history exposes the evocative reference as more poetically imaginative than substantively real.

With regard to the pristine and highly tendentious area of extensive human rights across the full breadth of the American idea, for Indians,\(^{100}\) for women, both in access to professional actualization\(^{101}\) and political voice,\(^{102}\) and for African-origin Americans generally,\(^{103}\) it has too often proven itself, on first take at least, to be a machine that would not go at all.\(^{104}\) And, in the face of recent responses to similar rights-based questions, including military tribunal process for Guantanamo Bay detainees, or, indeed, even Guantanamo Bay itself,\(^{105}\) one would be hard pressed to declare the problem referenced in these pages, set in antiquity, to be presently solved; here, again, Lowell's "perpetual motion machine" has simply shown no motion at all. If this nation is indeed the "last best hope of man on earth," as Governor Reagan oh-so-confidently closed his famous speech on that remarkable night in 1974,\(^{106}\) that hope remains a "work in progress" for both the nation and the world, beyond any reasonable claims otherwise, though that is the "good news." The words of one last great American original come to mind here, words of which our famous Frederick would approve—and the "founders," likely, as well, under the circumstances of the history following their singular work—both defining the vital, compelling cause still before this nation.

\(^{100}\) Here, in this regard, we have only to consider the remarkable work of America's "third branch," its "Court of last Constitutional resort," the U.S. Supreme Court, in such cases as Johnson v. M'Intosh, 21 U.S. (8 Wheat.) 543 (1823), Cherokee Nation v. Georgia, 30 U.S. 1 (1831), and the memorable Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832).

\(^{101}\) In this regard, see Bradwell v. Illinois, 83 U.S. 130 (1873), and In re Lockwood, 154 U.S. 116 (1894).

\(^{102}\) Here we reference Minor v. Happersett, 88 U.S. 162 (1875), and the well-famous United States v. Anthony, 24 F. Cas. 829 (C.C.N.D.N.Y. 1873) (No. 14,459).

\(^{103}\) Any number of case can serve as good reference here, including the work of the U.S. Supreme Court in United States v. Libellants & Claimants of the Schooner Amistad, 40 U.S. (15 Pet.) 518 (1841), Prigg v. Pennsylvania, 41 U.S. 539 (1842), and the famous Dred Scott v. Sandford, 60 U.S. 393 (1857), and, in other venues, for example, Roberts v. City of Boston, 59 Mass. (5 Cush.) 198 (1850) and Bryan v. Walton, 14 Ga. 185 (1853).

\(^{104}\) It is no coincidence that these final words in the American process usher from its judicial courts, more than anything. If indeed Thomas Paine is correct in noting "that so far as we approve of monarchy, that in America the law is king." THOMAS Paine, THE SELECTED WORKS OF TOM Paine & CITIZEN TOM Paine 30 (Howard Fast ed., Duell, Sloan & Pierce 1945) (1943). Its authoritative voice in this regard comes from its Courts, without question.

\(^{105}\) Opened by one Presidential regime to avoid issues of "natural rights" in relation to individuals suspected of terrorism, and continued by a second for what appears to be political purposes in contravention of express campaign pledges, Guantanamo Bay seems to reflect on the nation as "still at sea" in the face of the difficult application opportunities regarding fundamental human rights.

\(^{106}\) Regan, supra note 90.
and setting it properly in the work remaining before us, for our benefit and that of the watching, waiting world:

The woods are lovely, dark, and deep,
But I have promises to keep,
And miles to go before I sleep,
And miles to go before I sleep. 107

107. Robert Frost, Stopping by Woods on a Snowy Evening, in New Hampshire (H. Holt 1923) (emphasis added); see also Robert Frost, Collected Poems, Prose, & Plays 207 (Richard Poirier & Mark Richardson eds., Library of America 1995). I cannot leave this without referencing another of Frost’s works that quite likely typified Frederick’s “America,” and undoubtedly typifies my own:

America is hard to see.
Less partial witnesses than he
In book on book have testified
They could not see it from outside –
Or inside either for that matter.
We know the literary chatter . . .

Robert Frost, America Is Hard to See, in In the Clearing 20 (Holt, Rinehart & Winston 1962) (emphasis added). Hard to see, but, fortunately, with no small thanks to the “founders,” not hard to imagine.