

REVIEW ESSAY

LOW TAXATION WITHOUT REPRESENTATION

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*D*avid O. Stewart. *The Summer of 1787: The Men Who Invented the Constitution*. (New York: Simon & Schuster, 2007. Pp. xi, 349, illustrations, appendices, notes, index. Cloth, \$27.00; Paper, \$15.00.)

Woody Holton. *Unruly Americans and the Origins of the Constitution*. (New York: Hill and Wang, 2007. Pp. xi, 370, epilogue, notes, acknowledgements, index. Cloth, \$27.00.)

In an address in Pittsburgh in 2006, eminent historian J. C. D. Clark lodged a protest against the understanding of the American Revolution as a libertarian war for national liberation. Rather than accepting an interpretation of the Revolution as simply a blow for freedom against slavery, perhaps the choice was “between on the one hand independence via world war and social revolution (which is what happened), and on the other hand independence a few decades later via political conflict, negotiation and compromise.” There was no American nation before the Revolution created it; American society is therefore revolutionary

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at its very core. Without the full recognition of this, Clark insisted, the traditional accounts of the American Revolution are one-sided, and therefore defective, no longer able to provide "the USA with a usable analysis of its nature and public purposes."¹

Woody Holton's masterful *Unruly Americans and the Origins of the Constitution* provides such balance to our understanding of the revolutionary framing of the Constitution. The traditional story, as recounted by David O. Stewart in *The Summer of 1787*, was that the delegates to the Constitutional Convention "journeyed to Philadelphia to form a vigorous republican government."² But the republicanism that emerged was a new one, in direct opposition to Montesquieu's maxim that republics could only be viable over a small territory.

That there can be a successful republic or democracy for a large empire is seen as America's great contribution to political science. Though in an extended republic the nature of democracy or republicanism must change fundamentally, it is agreed that, as Holton's critics are quick to point out and Holton himself states forcefully, the Constitution *worked*. After ratification taxes went down, the money supply went up, the bondholders were paid, British creditors found more success collecting their debts, the supply of capital increased, diplomatic success was had with Spain and military success with the Indians. Does this mean, as Peter Onuf puts it, that "Americans recognized that responsiveness had to be calibrated with capacity," that democracy has to be more than responsive to the people's will, but also have the authority and legitimacy to make decisions and the ability to follow through on them and implement an effective public policy?³ Yes; the Constitution passed, delivered the goods, and was accepted by following generations. Yet this does not take anything away from Holton's question of the opportunity cost: while "the Constitution yielded tremendous economic benefits . . . many Americans believed these came at an enormous political cost."⁴

What was this price which some deemed too high? What was lost by the adoption of the Constitution? This is the requisite question for avoiding a mythology of American origins. Holton begins his book with the plea that other interpretations of the Constitution besides the Founding Fathers' be considered; after all, it would be truly remarkable if those responsible for precisely that which waxes so heavily in popular constitutionalism, the Bill of Rights, were completely wrong in their assessments of the proposed Constitution. It is to those professed believers in Montesquieu's maxim, and not just to the Framers, that we must look for a usable analysis of the nature

and public purposes of the Constitution. In providing materials for this task Holton's work excels, while Stewart falls short.

According to Holton, the Framers "made the Constitution considerably less responsive to the popular will than any of the states" by failing to impose term limits and instruction of representatives, creating a powerful and indirectly elected President and Senate (the latter having staggered terms), awarding bonus representation to slave states, imposing property qualifications for voting, eliminating annual elections, and finally by constructing extremely large constituencies for members of the House of Representatives.⁵ Explaining these undemocratic features of the Constitution is at the core of Holton's book, much of which is focused on telling the story of the battle between bondholders and taxpayers which preceded the writing of the Constitution and provided a crucial impetus for it. As illuminating as that analysis is, Holton admits that the story of the Constitution is simply unable to be reduced to disagreements on specific policies, and was about something more: a disagreement about the meaning of self-government.

The Constitution was at bottom a move towards virtual representation, replacing the actual representation extant in the states. A kind of virtual representation took place in the Constitutional Convention itself, since ordinary people were present there as "ghosts . . . influencing it without being there in the flesh."⁶ The delegates knew they could not fashion a government which would seem too aristocratic, since what they produced had to be ratified by the people in the states. Virtual representation under the Constitution works in this way: the "better sort," elites, hold the power to make political decisions, but must consider the popularity of them beforehand. While actual representation maximizes the potential for the lower classes to grab the reins of power themselves, virtual representation works to exclude them as far as possible from participating in government directly. The impact of large election districts is perhaps the best example of this. Representation of the whole country in the first Congress was less than 4% of that of all the state legislatures taken together, the size of the constituency per legislator going up by a factor of thirty. With such greatly enlarged districts, it becomes difficult for anyone who is not exceptional to win a seat. The lack of wealth, reputation, or wealthy connections becomes a serious impediment to getting elected under these circumstances.

The result of this virtual representation is the insulation of the (wealthier and more talented) political class from an outraged populace. In theory, such insulation is supposed to encourage virtue, a public-spirited search

for the good of the whole, as opposed to pandering to special interests. James Madison, drawing on Hume, explains why in *Federalist* #10: in an extended republic bad special interests will have difficulty translating their common feeling into public policy (or indeed even becoming politically self-aware of such feeling), giving men of merit wider leeway for measured action on behalf of the whole.⁷ This neglects, however, the possibility that the interest of the upper class might not form itself just such a biased faction.

Particular interests could not be excluded entirely from the federal government, after all. Hume thought that a successive filtration of opinion would occur through indirect elections, but this was not possible in America, since in order to give the national government the popular legitimacy the nationalists knew it needed, there had to be direct elections of the lower house of Congress; however, this would seem to bring in precisely the “force of popular tides and currents” that Hume aimed to dampen.⁸ After sketching Madison’s solution to allow for wealthy elites to “divide and conquer” the people by making it difficult for them to effectively combine, Holton portrays how Madison himself ended up opposing what this made possible, viz. the victory of the bondholders in the Funding Act of the first Congress. Madison never recorded any confession of error however (unlike Noah Webster, who, as Holton relays at the start of his first chapter, publicly retracted his early opinion of Shays’ Rebellion), leaving historians to grope for explanations of Madison’s shift of positions.⁹

As Holton puts it, “It has never been entirely clear what had made Madison and other Constitutional Convention delegates so confident that extending the sphere of government would stymie irresponsible factions without also neutralizing virtuous ones.”¹⁰ This Achilles heel in Madison’s theory of faction—that strengthening the ability of the upper classes to get their way does nothing to decrease the likelihood that their power will be used for factious purposes—is brought starkly into relief by Holton on the question of taxpayers versus bondholders. When it comes to particular economic policies, like raising taxes in a credit crunch to support speculators in government bonds, there is usually not a clear virtuous path. Those who think that there is—throughout the book Holton uses the example of Abigail Adams, who was an able securities speculator—are often taking the side that happens to correspond with their own interest or the interest of their group.

This is not to say, and Holton does not say, that the Constitution was a cabal by the wealthy to feather their own nests. This cannot be true, since the elites in America do not form a unified class. There is no aristocracy in the US, but rather an open system where the upper class absorbs new talent and

wealth while at the same time losing members.¹¹ One of the nice features of the Stewart volume is its penultimate chapter, which follows up on the careers of the founders, and details how, for a Robert Morris or a James Wilson, decent from the pinnacle haunts even their posthumous reputations.

With an open, rather than static, social hierarchy, the upper stratum economically does not necessarily hold power politically. The evidence is overwhelming that the Constitution was not an economic document like Charles Beard claimed it was, and that the economic interests of the upper classes did not determine its ratification; yet no one disagrees that the Constitution is a political document, nor that its ratification depended crucially upon the advantages its elite supports had: a favorable disparity of talent, information, and organization. As Gordon Wood has shown, the Constitution was on a basic level about giving political power back to the social elite.¹² The Constitution concerned the distribution of political power first, and economics only second, as evidenced by arch-nationalists Morris and Wilson losing everything in land speculations. Of course, with political power comes the ability to protect economic interests, and "The Constitution produced a massive shift in the balance of power between Americans who paid taxes and those who had invested in government bonds."¹³ That does not mean the Constitution was about the economic advancement of the elite; but on the other hand it was not neutral in the political contest between ordinary Americans and elites, a contest which necessarily includes economic policy.

The fascinating outcome is that, by design, the lower classes do not necessarily lose out economically with the Constitution. Holton argues that "an underdogs' Constitution is precisely what the Framers did not intend to write. While there is no reason to question their claim that they hoped to benefit all free Americans, what they meant to give the ordinary citizen was prosperity, not power."¹⁴ In the part of the book dealing with ratification, Holton relates how the Federalists won over skeptics with the possibility that the new federal government could lower taxes and increase the money supply. That it did indeed turn out this way raises a tantalizing question. While *Unruly Americans* makes an effective case that the Federalist interpretation of the 1780s, "that the uneducated farmers who seized the ship of state during the American Revolution had damn near driven it aground," is a one-sided and therefore fatally flawed interpretation of the period, the argument propels one towards a provocative conclusion: the trade-off between the agitated pursuit of affluence on the one hand, and democracy on the other. Montesquieu might be right after all: responsive government might

very well have to be a small government, a weak government, which means government for a people that put other priorities ahead of muscular economic expansion. Opinion in Georgia swung to the nationalist side, as Holton tells us, only due to conflict with the Creek Indians, a conflict fomented by hunger for Indian land. Had Americans been content with their situation, had they not desired continual economic betterment, then the pleas of Patrick Henry to keep political power with the responsive state governments would have carried the day. Democracy as Holton defines it might require an acknowledgement of limits, the moderation that Montesquieu thought essential to commercial republics, and the sacrifice of American restlessness, impatience, and chip on the shoulder attitude.¹⁵ Americans—and perhaps above all the unruly Americans Holton describes—were unwilling to make this sacrifice. Those who favored the Constitution preferred instead low taxation without much popular representation (as was fitting, considering the history of the Revolution).

The political system designed by the Framers went on to prove itself. Yet, in *The Summer of 1787*, David O. Stewart gives convention delegate Elbridge Gerry's entirely accurate prognosis that the Constitution laid the foundation for a civil war, and it forms a poignant contrast with the prediction of James Wilson that Stewart provides: serene peace in a harmonious country.¹⁶ Should the Constitution be celebrated if in fact it didn't work, inasmuch as it did lead to a civil war just like its enemies said it would? Interestingly, throughout his book Stewart, although he adopts completely the Federalist viewpoint, refuses to celebrate the Constitution outright with his own voice. An introduction, preface, conclusion, or anything which would require words of summation, are omitted. The book begins straightaway with the narrative—"Snow was falling outside as George Washington ..."—and ends with a jejune final sentence in which Stewart writes "the Constitution is a story that will continue as long as the nation does."¹⁷ Throughout the text Stewart carefully refrains from drawing any conclusions, leading at times to such cringe-inducing, anodyne prose.

Yet the only hint of anything that should not be celebrated in the Constitution is the slavery compromises. If there is a point to Stewart's book besides updating the genre of textbook convention histories, it is to highlight the role of slavery at the convention.¹⁸ Stewart condemns slavery, just as a number of delegates did during the convention, but his silence over the acclaim due the Constitution resounds all the more loudly here. Though hypocritical, were the slavery compromises necessary in order to fashion a new government? Stewart freely condemns the inhumane and hypocritical

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words of those who favored the continuation of slavery, but refuses to pose the crucial question of whether the political system that was created due to these compromises is praiseworthy or not. The problem here is not that Stewart fails to pass judgment, but that he eschews the perspective from which a judgment could be possible. The Philadelphia Convention produced a political document, and Stewart's refusal to present the views of the other side on the political questions of the day makes *The Summer of 1787* perfectly emblematic of Holton's complaint that "The textbooks and the popular histories give surprisingly short shrift to the Framers' motivations."¹⁹ For Holton, what the Framers were doing is a question able to be answered only by reference to that which they were opposing. We cannot understand the Constitution only from the Federalist perspective as Stewart attempts to do; we have to know what it was rejecting to get a sense of what it meant, and what it means. And this involves giving both sides a fair hearing, the job of the historian. To shirk this task is to fall inevitably into a celebratory and self-congratulatory mode, that is, to become a mythmaker.

NOTES

1. J. D. C. Clark, "The American Revolution: Fulfillment of or Departure from the British Legacy?," address to the Philadelphia Society, October 14, 2006, Pittsburgh, Pennsylvania.
2. Stewart, 263.
3. Peter S. Onuf, "Democratic Detours," *Reviews in American History* 36 (2008) 186–193; quotation on 191.
4. Holton, 270–71.
5. Holton, 9.
6. Holton, 191. Holton is borrowing the turn of phrase from Alfred F. Young.
7. Gary Wills, *Explaining America* (New York: Penguin, 1981), 223–30.
8. The term "successive filtration" is taken from a statement of Madison's at the convention. Cf. James S. Fishkin, *The Voice of the People* (New Haven: Yale University Press, 1995), 57–60; Edmund S. Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America* (New York: W.W. Norton, 1988), 270–71; David Hume, *Essays: Moral, Political, and Literary*, ed. Eugene F. Miller (Indianapolis: Liberty Fund, 1987), 528.
9. Cf. Lance Banning, *The Sacred Fire of Liberty: James Madison and the Founding of the Federal Republic* (Ithaca: Cornell University Press, 1995).
10. Holton, 265.
11. Tocqueville expressed this well: "The poor have few means of leaving their condition and of becoming rich, but the rich constantly become poor or quit trade after they have realized their profits. Thus the elements that form the class of the poor are nearly fixed; but the elements that compose the class of the rich are not. To tell the truth, although there are rich, the class of the rich does not

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- exist; for the rich have neither common spirit nor objects, neither common traditions nor hopes. There are then members, but no corps." Alexis de Tocqueville, *Democracy in America*, trans. Harvey C. Mansfield and Delba Winthrop (Chicago: University of Chicago Press, 2000), 532.
12. Gordon S. Wood, *The Creation of the American Republic, 1776–1787* (Chapel Hill: University of North Carolina Press, 1998), 471–518.
 13. Holton, 267.
 14. Holton, 277.
 15. Baron de Montesquieu, *The Spirit of the Laws*, V, 6. It is American expansionism and ideological imperialism that creates the threats which then require the creation of a powerful, centralized (and unresponsive) government. Cf. Robert Kagan, *Dangerous Nation* (New York: Knopf, 2006), 65–93.
 16. Stewart 222, 250.
 17. Stewart 264.
 18. This class includes a number of different books, from the magisterial volumes of Charles Warren and Clinton Rossiter to an unreliable one by Christopher and James Collier. Cf., Max Farrand, *The Framing of the Constitution* (New Haven: Yale University Press, 1913); Charles Warren, *The Making of the Constitution* (Littleton: Rothman, 1928); Catherine Drinker Bowen, *Miracle at Philadelphia* (Boston: Little, Brown and Co., 1966); Clinton Rossiter, *1787: The Grand Convention* (New York: Macmillan, 1966); Christopher Collier and James Lincoln Collier, *Decision in Philadelphia* (New York: Random House, 1986); Carol Berkin, *A Brilliant Solution* (New York: Harcourt, 2002).
 19. Holton, 4.