

ESSAY REVIEW

The Constitution and the New Historicism

New Order of the Ages: Time, the Constitution, and the Making of Modern American Political Thought. By MICHAEL LIENESCH. (Princeton: Princeton University Press, 1988. x, 235p. Bibliography, index. \$20.00.)

The Last of the Fathers: James Madison and the Republican Legacy. By DREW R. MCCOY. (New York: Cambridge University Press, 1989. xvii, 386p. Illustrations, index. \$29.95.)

An Uncertain Tradition: Constitutionalism and the History of the South. Edited by KERMIT L. HALL and JAMES W. ELY, JR. (Athens and London: University of Georgia Press, 1989. ix, 403p. Select bibliography, index. Cloth, \$40.00; paper, \$17.95.)

The 200th anniversaries of the French Revolution and the implementation of the United States Constitution, in 1989, raise some common historical questions. Are revolutions as events and revolutionary history as ideas points on a single continuum? Did republican ideas and institutions in America or France ever become detached from, and independent of, the revolutionary events which spawned them? Does the ideological experience of republics also flow backward in time, from the present to the past, altering what we perceive about revolutionary history? And, if our knowledge of revolutionary origins changes, does contemporary politics change as well? For the French, the answer to these questions is "yes." Three generations of Marxist historians from the early twentieth century until the 1960s taught authoritatively that the French Revolution began as a bourgeois overthrow of a feudal past and then became a lower-class, albeit still pre-industrial, movement to empower peasants and the urban poor. Then during the last thirty years, the English critic of this Marxist orthodoxy, Albert Cobban, and the French historian, François Furet, have argued that the Revolution was devoid of real class conflict and was, rather, brought on by the uneven pace of modernization which adversely affected certain segments of the

aristocracy, the bourgeoisie, the urban poor, and the peasants.¹ For these new conservative French historians—no less than for their Marxist predecessors—a contemporary vision of political truth has thrust itself back in time to recover hidden truths about events from the Bastille to Napoleon.

As a revolutionary document continuously in use from 1789 until the present, the Federal Constitution likewise links Americans to their republican origins. Efforts by political institutions, especially the Supreme Court, to reconcile the exercise of power with the dictates of the Constitution represent continued efforts by Americans to drink from the water of their own first principles. During much of the twentieth century, the fight between conservatives fearful of change and liberals hankering for it politicized the interpretation of the Constitution. As conservatives in the age of Reagan became more atavistic and liberals lost their confidence in the efficacy of governmental intervention, the historical argument about the meaning of the Constitution has shifted from liberals versus conservatives to republicans versus Lockeans. Lockeans, erstwhile liberals, see the Constitution as a covenant between ruler and ruled, while the republican school of political historians sees the Constitution as an improvised device for the maintenance of virtue and the containment of corruption and private gain.

The framers of the Constitution lived near the end of an age—the early modern period which began in the Renaissance and concluded with the French Revolution. They felt close to, and drew confidently on, the history and ideas of humanism, Protestant political realism, and early modern statecraft. They appreciated afresh the utility of history and political theory in explaining the elusiveness and yet stark reality of power.

Michael Lienesch has written a book about the Founders' sense of newness. He argues that the new nation—being acted upon with unprecedented suddenness by ideological changes which in turn demanded the timely seizing of rare opportunities lest the promise of liberty slip away—discovered that time itself was an asset to be handled with care. History revealed to American leaders in 1783 a narrow opportunity to be seized or lost. To their minds, God obviously had intervened on the American side with what one speaker called "the sword of the Lord, and of Washington." But providential political good fortune would not be available indefinitely. "Perhaps there never was a nation that had the fair opportunity of becoming the happiest people on earth, that we now have," Lienesch quotes the Reverend John Rodgers as saying. Rodgers continued: "But misery, as well

¹ Simon Schama, "The Nightmares of Reason," *New Republic*, July 31, 1989, pp. 26-33. See, especially, Patrice Higonnet, *Sister Republics: The Origins of French and American Republicanism* (Cambridge, 1988), 273-80.

as happiness, lies before us . . . unless our present state of things is wisely improved by us. They are both at our option" (pp. 32, 36).

Lienesch further sees a conception of time taking shape in the mid-1780s in which the "cyclical" life of "both corruption and renewal" suggested the "possibilities for restructuring the republic" (pp. 63, 65). This cycle was a fortuitous opportunity to escape "a form of debasement" arising from "an excess of freedom." Only dire straits could inspire renewal: "From the high ground on which we stood, from the plain path which invited our footsteps," Washington lamented to Jay in 1786, "to be so fallen! so lost! is truly mortifying" (p. 59). The difference between many supporters and opponents of ratification was whether the gap between revolutionary heroism and subsequent politics-as-usual was a cause of pain or a spur to painful exertion. Revolutionary memory, Mercy Otis Warren exclaimed, was "calling" the people "before they are compelled to blush at their own servitude . . . to turn back their languid eyes on their lost liberties." Her husband, James Warren, averred, "I have lately trod the sacred ground of Concord[.] . . . I saw little . . . of that noble spirit and . . . those comprehensive views and sentiments which dignified those times." Joel Barlow, in contrast, perceived in such anguish "the noblest effort of human nature, . . . *the conquest of self*" involved in the envisioning and drafting of new constitutional arrangements (p. 175).

The framing and ratification of the Constitution therefore fed on a powerful sense of immanence and contingency. The framers felt that they could gain short-term advantage from creating a government which would seize the day, and they gambled that the new republic could convert short-term opportunity into longer-term stability and statecraft. "'TIME,' as Hamilton . . . put it with some sense of resignation in the last of the *Federalist Papers*, 'must bring it [the new system] to perfection,'" Lienesch writes, anchoring his interpretation in contemporary evidence. Again, he provides a telling Antifederalist contrast, Thomas Treadwell, a delegate at the New York ratification convention, who believed that the closest Americans had ever come to perfection was "the political faith of '76 when the spirit of liberty ran higher and danger put a curb on ambition." For Hamilton, the perils of an inscrutable future were the strongest of all curbs on ambition (pp. 164-65). In what Lienesch calls "the new psychology" of the Constitution, Americans like John Quincy Adams felt secured from political folly by "the seeds of Liberty, . . . plentifully sown" by the "genius" of the Revolutionary generation. This republican ideology had transformed the selfish ambitions and rivalries of the past into "generous and disinterested energies which you [Americans in 1793] are summoned to display, [and which] are permitted by the bountiful indulgence of Heaven to remain latent in the bosoms of your children" (pp. 181-82).

In all of these ways—in the uniqueness of the moment in the 1780s, in the close proximity of danger and salvation, in the use of their own folly as the material for political reformation, and in the new political culture of republicanism which seemingly altered the whole moral equation of politics—time acted to draw energy and insight from the lessons of the past and infuse it into the present and the immediate future. Drew McCoy's account of Madison, as an old man and an engaged figure in politics from the end of his presidency in 1817 until his death in 1836, reveals how resistant the political culture of the new nation became to the renewing influence of republican principles. In retirement, Madison's circle of friends, protégés, guests, and admirers became a colloquium in the science of moral philosophy and government. The record of their correspondence, conversations, and writing convinces McCoy of the depth and suppleness of Madison's belief in

a permanent public good and immutable standards of justice, both of which were linked to the rules of property that stabilized social relationships and that together defined the proper ends of republican government (p. 41).

Here was the same kind of civic timelessness which John Quincy Adams believed his father's generation had bequeathed to the second generation of American political leaders and citizens. For Madison, even more than for Quincy Adams, timeless verities were crucial to the survival of the republican experiment because "the frailty or perverseness" of human nature and men's appreciation of "peace and order" necessitated a system of discipline and the insulation of government deliberations from popular passions (p. 42). In the 1780s, McCoy makes clear, this conservative whiggery strained Madison's intellectual friendship with Jefferson, and from 1817 until the 1820s he cringed at the willingness of nationalists like Calhoun, jurists like Marshall, and antislavery friends like Edward Coles or Robert Walsh to tamper with a strict and principled interpretation of the Constitution. "Madison's longstanding fear of majority abuse," McCoy concludes,

remained as resonant in 1825, after the problem had surfaced on the national level, as it had been in the 1780s, when the states had been the focus of his concern. In neither period, however, did that fear take precedence over his broader commitment to republicanism as the least imperfect form of government (p. 117).

Few prominent Americans outside of Madison's circle seemed interested during the 1820s and 1830s in preserving a "least imperfect" system. Indeed, the case of Coles and Calhoun, two of Madison's early protégés who broke privately with him over slavery and sectional issues, sharply etched the nature of Madison's isolation from the republic he created and loved. Coles had been Madison's private secretary in the White House and

Calhoun a member of Congress who supported Madison's administration. Antislavery drove Coles to Illinois and a crusade for the colonization of slaves; the abuse of blacks in Illinois, including Coles's own freed and transplanted slaves, filled him with despair. Despair over political centralization and its implicit threat to slavery drove Calhoun to an intransigent defense of states' rights, even to the point of opposing a federal appropriation for the purchase of Madison's Constitutional Convention notes in 1837, shortly after Madison's death. "Mr. C. felt that his position in opposition to this resolution was a painful one," the *Register of Debates* in the Senate recorded; "but the opinions of Mr. Madison, which were the textbook of Mr. C. and of those with whom he acted, demanded that he should not abandon it" (p. 168).

If partisanship and ideology diminished Madison's influence, Senator William Cabell Rives of Virginia remained a steadfast defender of Madisonian republicanism. Rives clashed with Calhoun over the purchase of Madison's notes and again over the Force Bill during Nullification. Citing Madison's 45th *Federalist Paper*, Rives insisted in the Force Bill debate that the framers intended to divide sovereignty into powers that only the national government could properly perform and the remaining ones which reverted to the states. Calhoun was aghast that a Virginian could so glibly concede a superintending national authority to Congress such as the kind needed to enact and enforce the "tariff of abominations."

This episode, which McCoy does not include in his chapter on Rives, revealed something fundamental about the eighteenth-century ideology which informed the Constitution. Madison was willing in 1787 to incorporate both Lockean Calvinism and classical republicanism into the Constitution and its vindication in the *Federalist Papers*. He had learned the merits of such eclecticism from John Witherspoon at Princeton, and he readily used distrust of human nature to analyze human conduct and civic humanism to project the vitality of republican institutions. When Calhoun rose in the Senate to deliver a seven-hour speech against the Force Bill and against Rives's interpretation of states' rights, he recognized for the first time the price American republicans had paid in incorporating both contractual and civic virtue principles into their political creed. Calhoun rehearsed the value of both traditions and then deliberately, firmly, and finally passionately repudiated Locke and embraced Machiavellian despair as the only sane stance a republican could take as traditional constraints on political adventurism disintegrated.² Calhoun's intransigence is a staple of American history;

² Robert M. Calhoun, *Evangelicals and Conservatives in the Early South, 1740-1861* (Columbia, 1988), 83-91, 179-85.

Rives's dedication to an older, Madisonian balance in politics during the antebellum period, delineated here for the first time, makes for a stunning final chapter in McCoy's book. "Rives pleaded . . . for a return to the wholesome spirit of compromise," he explains, and

to that statesmanlike ethos of prudent restraint—to the submergence of all fanaticism, North and South—that had allowed Madison's generation to launch the great experiment: . . . elevate reason over passion, transcend the insistent pressures of party spirit, and sensibly grasp the essential benefits of remaining one people (p. 342).

That delicate web of constraints on political passion—itsself a passionate moral stance tempered with skepticism and realism—depended on both Lockean and republican values and presuppositions. Calhoun was one of those rare inheritors of eighteenth-century ideology to question the compatibility of these contrasting schools of libertarian thought and to conclude that the Madisonianism which had been his political "textbook" was in fact an impediment to action. By imbibing so deeply Lienesch's concepts of timely action, historical contingency, the seizure of the moment, and the timelessness of resulting discoveries of political truth, Americans may have lost their new-found capacity to live with the ambiguity which McCoy finds at the core of Madison's and Rives's political consciousness.

The ideological origins of the Constitution and the testing of republican values during the early decades of the nineteenth century vex historians because they touch on the current crisis within the historical profession. "Literature has returned to history," David Harlan declares in a major reconsideration of the state of the discipline and reaffirmation of historicism; "the return of literature"—that is, the recognition that the historians' sources are texts which are slippery and elusive to interpret and that their writings attempt to communicate complex truths through language—"has questioned our belief in a fixed and determinable past, compromised the possibility of historical representation, and undermined our ability to locate ourselves in time." The heart of the problem for Harlan is "authorial presence," which literature now teaches that historians cannot take for granted. "The liberation of the text from 'the glare of the father's eye'" means simply that the interpreter and writer, rather than the historic person being quoted, bears the authority and responsibility to define the meaning of the text or source. "To paraphrase Francis Bacon, we must put history to the rack; we must compel it to answer our questions, *our* questions, derived from our needs, couched in our terms."³

³ David Harlan, "Intellectual History and the Return of Literature," *American Historical*

The recent study of the Constitution abounds with evidence that this dilemma over the literary nature of history offers historians an opportunity to find fresh meaning in familiar sources. Analyzing the Lockean statements about constitutional compact and republican ones about the preservation of virtue and the corrosiveness of power in John Taylor and John C. Calhoun, Gillis J. Harp emphasizes the "inter-relatedness of different political languages" in American political discourse and the way astute constitutional interpreters "intermingle" different theoretical conceptions of power and community.⁴ When Madison wrote of the taming and civilizing human ambition by constitutional means, he may well have been admitting that while power is in the end corrupting, the onset of political action is a moment rich with opportunity for insights from the past to ennoble the conduct of government in the present; constitutions therefore exist to expand this interval—this Madisonian moment—of creativity and virtue. Constitutional history also enables us to look unblinkingly at the end of the interval—at the long twilight when historically derived and tested principles fall prey to contingencies of the moment.⁵

Such was the orientation of a symposium on "The South and the American Constitutional Tradition" at the University of Florida in 1987, now published in book form as *An Uncertain Tradition: Constitutionalism and the History of the South*. These essays, the editors explain, "weave together . . . themes of racism, states' rights, and individual liberty in southern constitutional thought and practice" to show how "the federal nature of the republic and the supremacy of the Constitution has refracted the distinctive qualities of southern constitutional experience" (pp. 12-13). Two examples illustrate the way in which constitutional history imbues the sources with meanings which then alter the future and almost indelibly re-interpret the past. Kent Newmyers's essay on John Marshall and William Wiecek's on "the distinctiveness" of southern constitutionalism both emphasize that from the Revolution to the Civil War constitutionalism in America, and especially in the South, provided a way of talking about the brutish, volatile, savage, ungovernable qualities of human life which lay just beneath the surface of society and defied control or mastery by the law. None of Marshall's great nationalist opinions before 1819 really alarmed the South,

Review 94 (1989), 581, 602-3, and 608 (for Bacon quotation). This entire issue—including articles by Harlan, David A. Hollinger, Allan Megill, and a symposium on "The Old History and the New"—make it a historiographical landmark.

⁴ Gillis J. Harp, "Calhoun, Taylor, and the Decline of a Theory of Political Disharmony," *Journal of the History of Ideas* 46 (1985), 107, 114, 120.

⁵ Calhoun, *Evangelicals and Conservatives*, 88.

but his ruling in *McCulloch v. Maryland* did shift the very foundations of legitimacy:

The case was legally unprecedented because the question of implied powers was before the Court for the first time. . . . Hamilton had theorized about implied powers, but his theory was not law; Congress had enacted the law but had not provided a constitutional justification for its action. Marshall's opinion did both at once. . . . When push came to shove, the Supreme Court . . . was an arm of national authority. The hope that the Court might be a means of limiting the federal government was now dead and buried (pp. 110-11).

As a literary artist, more than as a judicial philosopher or nationalist, Marshall had woven in his earlier opinions a veil through which to view the power gaining new shape and potency in American politics and society; now the *McCulloch* case had prompted him to open the veil in ways that agitated the whole course of constitutional discourse in the South. Wiecek also argues that constitutionalism was not just a way of speaking about the unspeakable in the South, it was an intellectual gamble for the highest of stakes: "The South's constitutionalism was discriminating and opportunistic" (p. 169). As long as the consolidation of national authority offered a way of protecting slavery and staple-crop agriculture, it remained an option to hold in reserve. Once southern politicians and jurists became convinced that consolidation and antislavery were running in the same direction, states' rights became the only option left to them because "southern constitutionalism was a theory neither of rights nor of sovereignty but of power."⁶ The Civil War destroyed the veil of constitutional language which partially concealed the reality of power, and the instrumental language of the Fourteenth Amendment transformed federalism from an imaginative hypothesis into a straightforward rule of law.

These three books and several other bicentennial studies of the Constitution⁷ remind Americans that the political values of their nation

⁶ Wiecek applies this insight to Calhoun in 1837, calling into question the difference between Calhoun and Rives on national consolidation suggested above. If so, Wiecek's view is consistent with McCoy's contention that Calhoun and Rives represented two competing kinds of proslavery republicanism. On this point, see Kenneth S. Greenberg, *Masters and Statesmen: The Political Culture of Slavery* (Baltimore, 1985), 146: "The central problem of political life for antebellum Southerners was how to avoid becoming an enslaver or a slave. It was an insoluble problem for men who sought both republicanism and honor. Whereas republicanism demanded the renunciation of all forms of unrestrained power, honor demanded its accumulation."

⁷ William E. Nelson, "Reason and Compromise in the Establishment of the Federal Constitution, 1787-1801," *William and Mary Quarterly* 44 (1987), 458-84; and Isaac Kramnick, "The 'Great National Discussion': The Discourse of Politics in 1787," *ibid.*, 45 (1988), 3-32.

come at a high price—a price paid by eighteenth-century revolutionaries and constitutionalists when they drew on the rich legacy of ideas and history at their disposal to tame and direct the forces of change swirling around them. As each political generation renegotiates trade-offs between energy and liberty, enterprise and virtue, honor and republicanism, rights and cohesion, or compact and fraternity, they pay a price again in the protracted and unsettling business of discourse in a democracy.

University of North Carolina at Greensboro ROBERT M. CALHOON

