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Forum

Reflections on the Founding: Constitutional Historiography in Bicentennial Perspective

Peter S. Onuf

THE general verdict is that the bicentennial has been an “intellectual bust.”¹ The most highly regarded scholarly contributions, including works by Richard Morris, Forrest McDonald, Edmund S. Morgan, and Richard Bernstein and Kym Rice, succeeded in reaching a general audience without sacrificing rigorous professional standards, but do not advance bold new interpretations.² Meanwhile, the criticism

Mr. Onuf is a member of the Department of History, Southern Methodist University. He wishes to acknowledge the helpful criticism of Lance Banning, George A. Billias, Paul Finkelman, Ralph Lerner, Michael Lienesch, Cathy D. Matson, Jack N. Rakove, Herbert Sloan, Michael Vinson, David Weber, Gordon S. Wood, and Neil L. York. He also wishes to thank the many editors and authors who allowed him to read and comment on their forthcoming works.

¹ “‘Cerebral’ celebration of the Constitution’s bicentennial is derided as an ‘intellectual bust,’” *Chronicle of Higher Education*, XXXIII (Mar. 4, 1987), 6-8; Paul L. Murphy, “The Bicentennial’s Scholarly Impact,” *OAH Newsletter*, XVI (August 1988), 10-11. Murphy applauded contributions by Michael Kammen (cited in n. 3, below), Jack P. Greene (in n. 49), Richard B. Morris, Forrest McDonald, and Edmund S. Morgan (all in n. 2), but concluded that “full-scale revisionism was not a scholarly result of the Bicentennial.” A similarly dim view was expressed by editor David Thelen in explaining why a special issue of the *Journal of American History* on “The Constitution and American Life” included nothing on the founding. “As we were deciding how to focus this issue,” Thelen writes, “experts on the drafting and ratification of the Constitution suggested that there was little fresh thinking in their field and that specialists in it had not been much concerned with the long-range significance of constitutionalism” (*JAH* LXXIV [1987], 661). Much of the bicentennial scholarship justifies these negative assessments; it is also true that resources that could have supported serious work have been shamelessly squandered. For a scathing indictment of the U.S. Bicentennial Commission see Jamie Kitman and Ruth Yodaiken, “Bicentennial Bust: Celebrating (Yawn) the Constitution,” *Nation*, CCXLVII (July 2/9, 1988), 1, 14-21.

² Richard B. Morris, *The Forging of the Union, 1781-1789* (New York, 1987), and *Witnesses at the Creation: Hamilton, Madison, Jay, and the Constitution* (New

continues, the plethora of fellowships and grants, conferences and publication opportunities has done little to rouse constitutional scholarship from its recent lethargy. In this essay I challenge these prematurely pessimistic assessments. Critics discount or overlook important new work because they do not see how the field itself is being redefined.

The bicentennial's alleged failure to stimulate good scholarship is usually attributed to the disparity between scholarly interests and the political and polemical distortions endemic to patriotic celebrations. As an episode in American cultural history, the recent celebration undoubtedly will be remembered as yet another display of vulgar commercialism and mindless patriotism. But readers of Michael Kammen's comprehensive cultural history of the Constitution, *A Machine That Would Go of Itself*, will recognize that such excesses are hardly unprecedented.³ Certainly, the proceedings were not as objectionable as those marking the Revolutionary bicentennial in 1976. Historians then were not deterred from producing a remarkable body of work. They are doing so now, notwithstanding early reports to the contrary.

Historians have been slow to recognize the emergent scholarship for various reasons. In 1976 historians set the agenda for the scholarly bicentennial: new work on the Revolution developed and extended familiar themes in contemporary historiography. In 1987, however, historians found that they had to share a stage crowded with law professors and political scientists. As a result, many historians experienced the

York, 1985); Forrest McDonald, *Novus Ordo Seclorum: The Intellectual Origins of the Constitution* (Lawrence, Kan., 1985); Edmund S. Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America* (New York, 1988); Richard B. Bernstein with Kym S. Rice, *Are We to Be a Nation? The Making of the Constitution* (Cambridge, Mass., 1987). Other contributions of general interest by professional historians include Elizabeth P. McCaughey, *Government by Choice: Inventing the United States Constitution* (New York, 1987), and Christopher Collier and James Lincoln Collier, *Decision in Philadelphia: The Constitutional Convention of 1787* (New York, 1986). For a judicious assessment of these and other works see Richard B. Bernstein, "Charting the Bicentennial," *Columbia Law Review*, LXXXVII (1987), 1565-1624, esp. 1578-1597. Project '87's *This Constitution* deserves special praise: since it began publication in Sept. 1983, the magazine has succeeded admirably in presenting scholarship on the founding and American constitutionalism to a general audience. For good introductions to the historiography of the founding period see Jack P. Greene, ed., *The Reinterpretation of the American Revolution, 1763-1789* (New York, 1968), introduction; James H. Hutson, "Country, Court, and Constitution: Antifederalists and the Historians," *William and Mary Quarterly*, 3d Ser., XXXVIII (1981), 337-368, and "The Creation of the Constitution: Scholarship at a Standstill," *Reviews in American History*, XII (1984), 463-477; and Greene, *A Bicentennial Bookshelf: Historians Analyze the Constitutional Era* (Philadelphia, 1986).

³ Michael Kammen, *A Machine That Would Go of Itself: The Constitution in American Culture* (New York, 1986).

bicentennial—at least I did—as a sustained exercise in defending “history” against alien disciplines.⁴

The most conspicuous assault came from proponents of “original intent” jurisprudence. As custodians of the documentary record, historians found themselves compelled to demonstrate that the founders’ original intentions rarely could be definitively established, and certainly not on questions the founders did not even consider.⁵ Political scientists presented a still more serious challenge. Encounters with political theorists influenced by the late Leo Strauss have been particularly bewildering: the Straussians condemn “historicism” and dismiss historians’ efforts to contextualize key terms—like “equality”—in the political discourse of the founding era. Because these theorists so often invoke their own interpretations of fundamental “regime principles” to advance a conservative policy agenda, historians find them ideologically repellent and methodologically incomprehensible.⁶

Of course, good old-fashioned narrative history is a powerful antidote to antihistorical excesses in cognate disciplines. It is crucially important to get the record as straight as possible and, thanks to the great letterpress editions of the founding fathers (most of which are complete through the 1780s) and particularly to the estimable *Documentary History of the Ratification of the Constitution*, the primary source materials for a new history of the founding are now easily accessible.⁷ It would be a mistake, however, to conclude that the publication of primary sources constitutes the historical community’s only important contribution to the bicentennial or its most effective response to challenges from other disciplines.⁸

Emphasis on the incompatibility of history with original intent jurisprudence or Straussian political theory, although understandable in the contemporary political climate, is misleading. In fact, legal scholars and political scientists range across the ideological spectrum; even the so-

⁴ Peter S. Onuf, “Historians and the Bicentennial,” *OAH Newsletter*, XVI (May 1988), 4, 20.

⁵ James H. Hutson, “The Creation of the Constitution: The Integrity of the Documentary Record,” *Texas Law Review*, LXV (1986), 1-39; Jack N. Rakove, “Mr. Meese, Meet Mr. Madison,” *Atlantic*, CCLVIII (Dec. 1986), 77-86.

⁶ For a thoughtful discussion of the Straussians see Gordon S. Wood, “The Fundamentalists and the Constitution,” *New York Review of Books*, XXXV (Feb. 18, 1988), 33-40.

⁷ Merrill Jensen *et al.*, eds., *The Documentary History of the Ratification of the Constitution*, 16 vols. to date (Madison, Wis., 1976-). For a good survey of recent documentary editions see Bernstein, “Charting the Bicentennial,” *Columbia Law Rev.*, LXXXVII (1987), 1569-1577.

⁸ In any case, historians deserve little credit for these projects. The prevailing sentiment, a function of waning interest in political and constitutional history, is that the money could be better spent. Politicians invest taxpayers’ money in these projects in order to erect suitable monuments to prominent national leaders (with a few important exceptions), not to support historical research. As a result, historians tend to be as ambivalent about the papers projects as they are about bicentennial celebrations.

called Straussians resist and resent easy categorization. Many lawyers and theorists are intelligent consumers—and in some cases, producers—of historical scholarship. Their forays into the founding period have helped push historical inquiry in interesting new directions. These advances will remain obscure, however, until historians recognize that they are taking part in a broad interdisciplinary “conversation.”

In the following pages I will identify some of the interesting and important themes that have emerged in recent constitutional scholarship. Scholars from other disciplines have played a particularly conspicuous role in the ongoing debate over the relative importance of different intellectual traditions in the founding period. Although many questions remain controversial, these exchanges have led to greater awareness of the theoretical and rhetorical ambiguities and complexities of American republican thought. The reassessment of republicanism has in turn focused renewed attention on the specific contexts in which republican ideas were deployed. An important consequence has been a revival of interest in the “crisis of the union” and in the efforts of constitutional reformers to construct—and conceptualize—a workable federal system. Of course, as the ratification debates demonstrated, there was considerable confusion about what kind of regime the framers meant to establish—and not only among critics of the proposed plan. Neither ratification nor the adoption of the Bill of Rights put an end to this controversy. Instead, as many scholars now recognize, the ratification debates represented only the first episode in a continuing history of conflict over constitutional interpretation.

I: IDEOLOGY AND EVENTS

The brilliant and influential analyses of republican ideology in the works of Bernard Bailyn, J.G.A. Pocock, and, particularly, Gordon S. Wood constitute the point of departure for important new work on the founding period. Controversy over the assumptions and methods that should govern the history of political thought has spurred scholars to reconsider the meanings and uses of republican ideas in historical context. Yet, until recently, the ideological interpretation has impeded scholarship. To many readers, Wood’s *Creation of the American Republic* seemed to offer the last word on the transformation of political discourse in the Revolutionary era.⁹ Consensus on the importance of ideological change discouraged scholars from pursuing more traditional, less analytical approaches to the political and constitutional history of the period. As a result, historians lost interest in the specific course of events that climaxed in the drafting and ratification of the Constitution. But the bicentennial has helped renew interest in the founding narrative and scholars are now beginning to construct a new “story line” that connects ideology to events.

⁹ Wood, *The Creation of the American Republic, 1776-1787* (Chapel Hill, N.C., 1969); “*The Creation of the American Republic, 1776-1787: A Symposium of Views and Reviews*,” *WMQ*, 3d Ser., XLIV (1987), 549-640.

There is no logical reason why the study of political language should *not* be yoked to historical narrative. Indeed, it is precisely the efforts of students of ideology to contextualize ideas that distinguish them from traditional intellectual historians or from political theorists who focus on transcendent, immutable principles.¹⁰ Difficulties arise instead from the kinds of stories ideological historians have chosen to tell, and the lessons they draw from the stories. Because they survey vast bodies of writing at extended “moments” of conceptual change, contingent outcomes and ambiguous intentions must be given short shrift. But problems of scope and scale do not adequately explain the shortcomings of constitutional scholarship. In this case the choice of story has been critical: too often, students of the founding have linked ideological changes to the broader and deeper transformation of American society and culture, *not* to the founding of the federal republic.

Efforts to uncover deeper structures of social life and underlying patterns of culture have enormously enriched our understanding as they have substantively redefined our discipline, with particularly striking results in colonial American history.¹¹ But the “new” history has not done some things very well—or at all—and this is particularly apparent in the case of the American founding. The question is whether the study of deep structures can be reconciled with the historians’ commitment to historical narrative. In theory, a “deeper” study of eighteenth-century American society and culture should help explain how and why men thought and acted as they did at crucial moments. Until recently, however, the founders *as political actors* have been lost to view. From a structuralist perspective, the story of how and why constitutional reformers created a “more perfect union” simply does not seem very important.

Attacks on the “republican synthesis” from both within and without the historical discipline point toward a convergence of ideological and political history.¹² This does not mean that protagonists in the great debates over which ideological tradition was dominant at what point are about to lay down their cudgels—too much is at stake. But, at least to disinterested observers, these controversies underscore the importance of narrative.

¹⁰ See J.G.A. Pocock, “Introduction: The State of the Art,” in his *Virtue, Commerce, and History: Essays on Political Thought and History, Chiefly in the Eighteenth Century* (Cambridge, 1985), 1-34.

¹¹ Jack P. Greene and J. R. Pole, eds., *Colonial British America: Essays in the New History of the Early Modern Era* (Baltimore, 1984), esp. the editors’ introduction, 1-17.

¹² On republican historiography see Robert E. Shalhope, “Toward a Republican Synthesis: The Emergence of an Understanding of Republicanism in American Historiography,” *WMQ*, 3d Ser., XXIX (1972), 49-80, and “Republicanism and Early American Historiography,” *ibid.*, XXXIX (1982), 334-356; Herbert Sloan and Peter Onuf, “Politics, Culture, and the Revolution in Virginia: A Review of Recent Work,” *Virginia Magazine of History and Biography*, XCI (1983), 259-284, esp. 262-264; and Linda K. Kerber, “The Republican Ideology of the Revolutionary Generation,” *American Quarterly*, XXXVII (1985), 474-495.

How can we determine the impact of “republicanism” or “liberalism”—or evangelical Protestantism or popular “moral economy”—without knowing what happened? And clearly we need to know what historical actors were talking about—how they defined their situation and what they hoped to accomplish—as well as what they “mean” as speakers of particular political languages. Recent work on the 1780s shows ideological historians to be increasingly responsive to these demands. They are beginning to work within a more modest but ultimately more illuminating narrative framework.

Of course, the revival of interest in “events” and in historical narrative is not confined to the study of the Constitution.¹³ In fact, because of the peculiar circumstances of the bicentennial, this broader historiographical development has been welcomed more eagerly in other fields. The problem for constitutional specialists is that the story of the founding is so difficult to disentangle from patriotic mythology. One major advantage of an analytical, non-narrative approach has been that it has enabled historians to view the founding with a certain skeptical detachment and so avoid the more egregious distortions of the heroic story line that dominates popular history and is so often apparent in the work of political theorists and legal scholars. But the “return to narrative” does not require us to eschew the analytical approach or to forget that the founders were mere mortals acting within the political and rhetorical limitations of another time and place. Nor is a tedious recapitulation of the traditional founding narrative the desideratum. Instead, historians must recognize that the old story line is itself problematic and needs to be recast. No narrative is more important for the subsequent course of American history than the drafting and ratification of the federal Constitution and the successful inauguration of the new national government.

II: REPUBLICANS AND LIBERALS

The great achievement of republican historiography has been to redefine the American Revolution as an ideological transformation.¹⁴ Bailyn and his students rejected the premises of consensus historians who emphasized the continuity of American social and political experience. By reconstructing the distinctive and radically changing political language of the Revolutionaries, the ideological historians made the Revolution seem

¹³ On the return to narrative see esp. James A. Henretta, “Social History as Lived and Written,” *American Historical Review*, LXXXIV (1979), 1293-1322. For suggestions that politics and public life should be central to the new narrative see William E. Leuchtenburg, “The Pertinence of Political History: Reflections on the Significance of the State in America,” *JAH*, LXXIII (1986), 585-600; Thomas Bender, “Making History Whole Again,” *New York Times Book Review*, Oct. 6, 1985, 1, 42-43; and Bender, “Wholes and Parts: The Need for Synthesis in American History,” *JAH*, LXXIII (1986), 120-136.

¹⁴ Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, Mass., 1967).

revolutionary again. The “otherness” of the Revolutionary generation suddenly became apparent as its leading ideas—which, as heirs of the Revolution, we mistakenly think we know so well—were relocated in their original discursive contexts. Furthermore, these writers showed that ideas were not simply instrumental—enabling “aristocrats” to oppress the people—or merely representational of broadly shared assumptions and practices. Instead, these historians insisted that ideas were to some significant extent autonomous: the intentions of historical actors were shaped by what their language enabled them to conceive.

Critical commentators generally have acknowledged the ideological historians’ great contributions to scholarship. But these critics also have identified—and, in their polemical heat, undoubtedly exaggerated—tendencies in “republican revisionism” that have deflected attention away from particular events and thus deemphasized and obscured the significance of the founding. First, the critics charged, the ideological historians have been so absorbed with reconstructing patterns of thought that they underestimated the agency and originality of individual thinkers. The republican revisionists portrayed the founders as “enmeshed in a net of meanings, intentions, and significations largely not of [their] making and largely beyond [their] control.”¹⁵ The revisionists’ implicit assumption, Ralph Lerner writes, is that the founders could never *use* language to pronounce and enact principled commitments. The ideological approach minimized the importance of “individual thought and individual actors” and encouraged scholars to explicate the shared assumptions of speakers and their audiences in broadly inclusive “discursive communities.”¹⁶

Other critics were less concerned with the revisionists’ displacement of individual authorship and agency than with the assumption of an essentially homogeneous, middle-class patriot reading public.¹⁷ The ideological interpretation, they concluded, was really nothing more than warmed-over consensus history. Insisting on a more fractured social landscape, these critics argued that nonelite audiences responded to alternative ideologies or, at least, “*mentalités*.”¹⁸ A more satisfyingly complex view of

¹⁵ Ralph Lerner, “The Constitution of the Thinking Revolutionary,” in Richard Beeman, Stephen Botein, and Edward C. Carter II, eds., *Beyond Confederation: Origins of the Constitution and American National Identity* (Chapel Hill, N.C., 1987), 36-68, quotation on p. 39. This essay has been republished, in slightly revised form, in Lerner, *The Thinking Revolutionary: Principle and Practice in the New Republic* (Ithaca, N.Y., 1987), 1-38.

¹⁶ Lerner, “Thinking Revolutionary,” in Beeman *et al.*, eds., *Beyond Confederation*, 44. Significantly, Bailyn began his *Ideological Origins* by stressing the importance of political pamphlets in creating such a “discursive community” in late provincial America (chap. 1, “The Literature of Revolution,” 1-21).

¹⁷ Joseph Ernst, “‘Ideology’ and an Economic Interpretation of the Revolution,” in Alfred F. Young, ed., *The American Revolution: Explorations in the History of American Radicalism* (Dekalb, Ill., 1976), 159-185.

¹⁸ In addition to the essays collected in Young, ed., *American Revolution*, see James A. Henretta, “Families and Farms: *Mentalité* in Pre-Industrial America,”

the Revolutionary situation emerged as historians began to emphasize the social—and ideological—obstacles to mass mobilization.¹⁹ Paradoxically, however, putative new connections between ideology (or ideologies) and society accelerated the historiographical movement *away* from political history. The study of political language—or of quasi- or prepolitical popular culture—enabled historians to go after bigger fish: by uncovering deeper collective patterns and structures, they could illuminate American society as a whole during a period of radical transformation.

In exploring the dimensions of this “real” American Revolution, republican revisionists and their critics—new left and liberal alike—have a common agenda. Current controversy centers on when and how Revolutionary republican ideology was supplanted or transformed by “liberalism” and modern America thereby came into being. The republican revisionists set the terms of this debate: in one of his more extravagant moments, J.G.A. Pocock proclaimed the Revolution “the last great act of the Renaissance”; with similar boldness, Gordon S. Wood asserted that the ratification of the Constitution marked “the end of classical politics in America.”²⁰ John M. Murrin would push the “Great Transition” forward to accommodate the persistence of republicanism in postconstitutional political culture. By 1830, however, the configuration and therefore the meanings of key republican terms—virtue, corruption, the public good—had been radically altered. Charting these changes is a crucial historiographical challenge, Murrin suggests, for they may reveal when and how “North America experience[d] a transition from a premodern to a modern social order.”²¹ Labor historians, the chief legatees of new left historiography, find this general framework congenial,²² but exponents of the neoliberal interpretation favor an earlier transformation. “Republican” thrusts into the early national period and “liberal” counterthrusts into the

WMQ, 3d Ser., XXXV (1978), 3-32. The “ideological project” proved to be compatible with parallel exercises in the new social history aimed at reconstructing family and community life. Though social historians disdained the elitist orientation of ideological history, they found high-level generalizations about ideology—particularly when “democratized” in the form of *mentalité*—indispensable in attempting to make sense of the structures they had uncovered.

¹⁹ See, particularly, Robert A. Gross, *The Minutemen and Their World* (New York, 1976).

²⁰ Pocock, “Virtue and Commerce in the Eighteenth Century,” *Journal of Interdisciplinary History*, III (1972), 119-134; Wood, *Creation of the American Republic*, 606.

²¹ Murrin, “Self-Interest Conquers Patriotism: Republicans, Liberals, and Indians Reshape the Nation,” in Jack P. Greene, ed., *The American Revolution: Its Character and Limits* (New York, 1987), 224-229, quotation on p. 225, and “Gordon S. Wood and the Search for Liberal America,” WMQ, 3d Ser., XLIV (1987), 597-601.

²² See, for example, Sean Wilentz, *Chants Democratic: New York City and the Rise of the American Working Class, 1788-1850* (New York, 1984), 61-103.

eighteenth century thus characterize a historiographical struggle for the "soul" of the new republic at the time of its founding.

The notion of a "Great Transition" is a beguiling one for students of American political thought; here—wherever and whenever it can be fixed—is an "event" of surpassing significance. But it is the kind of "event" that makes the conventional political narrative seem epiphenomenal and inconsequential. As a result, practitioners of this brand of intellectual history move from discourse—where change is manifest—to the analysis of underlying structures, *not* to the interpretation of political action. The real revolution in America—the transition to a modern social order—is not to be traced through the conventional military, political, and constitutional narratives. By the same logic, the real "founding" of the republic did not take place at Philadelphia but rather in this "modernization" of American life under the exigencies of war and postwar reconstruction.

Historians' lack of interest in the founding over the last generation reflects the ascendancy of the new social history and of a new history of ideas that seeks to give meanings to the structures uncovered by social historians. The assumption that "republicanism" explains everything—or that its supersession by "liberalism" is the decisive event in American political history—has made old-fashioned political narrative seem increasingly unimportant, except perhaps as it provides the occasion for polemical exchanges. As a result, recent historians generally have ignored the story of constitutional reform. Gordon Wood's *Creation of the American Republic*, the apparent exception, reveals the characteristic tendency of ideological history to dismiss the conventional narrative. For Wood, the Constitutional Convention is much less important than the ratification debates in which the Federalists, under intense pressure to justify the new regime, fashioned a "new science of politics." Wood viewed these debates as the crucible of the conceptual change that brought an end to "classical politics" in America. The delegates at Philadelphia, meeting in secret session, were *not* forced to think in new ways, no matter how hard-pressed they were to reconcile their different interests. Only when the Constitution was published did its defenders begin to explore its ideological implications. Their exchanges with Antifederalist critics took them far beyond the immediate political "crisis"—if there was one—to a struggle over the future of the American society. Wood thus posited a direct, if problematic, link between the two "foundings," political and ideological.²³ But his critics have questioned the neatness of the supposed break between "classical" and "modern" *at this time*; by doing so, they have accentuated the ideologists' tendency to extricate discursive "events" from a concrete narrative framework.²⁴ Consequently, challenges to

²³ Wood, *Creation of the American Republic*, esp. pt. 5, "The Federal Constitution."

²⁴ Gary J. Schmitt and Robert K. Webking, "Revolutionaries, Antifederalists, and Federalists: Comments on Gordon Wood's Understanding of the American Founding," *Political Science Reviewer*, IX (1979), 195-229, as well as the essays

Wood's interpretation have *not* rehabilitated the conventional founding narrative.

But Wood really wrote two books: a brilliant and compelling account of conceptual change in the context of state constitutional development is sandwiched between essays on republicanism and its putative demise. This interior narrative demonstrates that the study of political discourse need not strain toward metahistorical generalization but instead can illuminate concrete rhetorical and political situations. Furthermore, Wood shows that problematic ideas—like representation—could take on new meanings over the course of protracted struggles to draft and revise the state constitutions. These new understandings in turn facilitated and rationalized constitutional change. Much more modest in scope than *Creation's* introductory and concluding analyses of *national* ideological development, the book's central sections continue to command respect. Wood here shows how the history of political ideas can help us understand what actually happened and what it means; here the analysis of discourse illuminates the historical narrative.

III: BEYOND REPUBLICANISM

Recognition of the founders' individuality and agency has been made possible by the reconstruction of the diverse matrix of intellectual traditions available to them. Forced to counter criticism of their supposedly reductive and deterministic account of political language, students of republican ideology have increasingly emphasized its ambiguous tendencies and contradictory applications. As a result, the practical differences between the "republicans" and their "liberal" critics seem less consequential. The emerging picture of discursive pluralism, or what Isaac Kramnick calls the "profusion and confusion of political tongues among the founders," promises to reinstate agency and purposeful action in our accounts of the founding.²⁵

Joyce Appleby, the most persistent critic of republican revisionism, suggests that the ideological historians have been misled by their uncritical borrowings from Clifford Geertz's cultural anthropology and Thomas Kuhn's influential conceptualization of the history of science. "Neither seventeenth-century England," where classical republicanism took shape, "nor eighteenth-century America" is comparable to the closed, cohesive communities studied by Geertz or Kuhn. "Both countries were intellec-

collected in the Wood symposium, cited in n. 9, above. For a spirited reply to his critics see Wood's "Ideology and the Origins of Liberal America," *WMQ*, 3d Ser., XLIV (1987), 628-640; for a restatement of his thesis see "The Political Ideology of the Founders," in Neil L. York, ed., *Toward a More Perfect Union: Six Essays on the Constitution* (Provo, Utah, 1988), 7-27.

²⁵ Isaac Kramnick, "The 'Great National Discussion': The Discourse of Politics in 1787," *WMQ*, 3d Ser., XLV (1988), 3-32, quotation on p. 4.

tually as well as culturally pluralistic.”²⁶ Competing discourses permitted original thought and autonomous agency. As John Patrick Diggins succinctly asserts, “Man does not obey ideas; he uses them.”²⁷

Defenders of the republican paradigm resent what they consider a caricature of their work in revisionist attacks: they never meant to deny individual agency. Pocock insists that the “history of discourse . . . is a history of utterance and response by relatively autonomous agents.”²⁸ Republican discourse was not fixed inalterably in neo-Harringtonian civic humanism; indeed, the great virtue of Real Whig thought in America, as Bailyn showed in the *Ideological Origins*, was its capacity for synthesizing diverse discursive traditions. Liberal critics failed to acknowledge the complexity and ambivalence of the republican response to modernity delineated in *The Machiavellian Moment*: Pocock never “alleged that republican virtue was incompatible with trade and industry.”²⁹ If reactionary oppositionists were “nostalgic” for an idealized agrarian order, others were enthusiastic proto-liberals; many displayed both attitudes at different times, or even the same time. After all, writes Lance Banning, “the analytical distinctions we detect” were not always “evident to those we study.”³⁰ Banning concedes that he and his coadjutors may at first have overstated the significance of classical ideas. By now it should be clear, however, that “eighteenth-century opposition thought was always a complex blend of liberal and classical ideas. So was the thought of America’s Revolutionary generation.”³¹

Banning’s reformulation of the republican position would seem compatible with the discursive pluralism described by Kramnick. At least for the founding period, if not for the 1790s, a cessation of hostilities may be in the offing. Liberals will concede that their discursive pluralism was not entirely incoherent and open-ended; republicans will grant that republicanism gave ample scope to contradictory impulses. This historiographical convergence is already apparent in various works that explore the

²⁶ Joyce Appleby, “Republicanism and Ideology,” *Am. Qrtly.*, XXXVII (1985), 461-473, quotation on p. 468. See also Isaac Kramnick, “Republican Revisionism Revisited,” *AHR*, LXXXVII (1982), 629-664. For a fuller statement of Appleby’s views see her *Capitalism and a New Social Order* (New York, 1984).

²⁷ Diggins, *The Lost Soul of American Politics: Virtue, Self-Interest, and the Foundations of Liberalism* (New York, 1984), 357.

²⁸ Pocock, “Introduction: The State of the Art,” in his *Virtue, Commerce, and History*, 1-34, quotation on p. 34.

²⁹ Pocock, “The Varieties of Whiggism from Exclusion to Reform: A History of Ideology and Discourse,” *ibid.*, 215-310, quotation on p. 272, and *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton, N.J., 1975).

³⁰ Lance Banning, “Jeffersonian Ideology Revisited: Liberal and Classical Ideas in the New American Republic,” *WMQ*, 3d Ser., XLIII (1986), 3-19, quotation on p. 12; Wood, “Ideology and the Origins of Liberal America,” *ibid.*, XLIV (1987), 634.

³¹ Banning, “Jeffersonian Ideology Revisited,” *WMQ*, 3d Ser., XLIII (1986), 12.

interpenetration of republican, liberal, and religious traditions in Revolutionary America.

Political theorists influenced by Leo Strauss have played an important role in reestablishing the ideological complexity of the founding era. Because of their hostility to "historicism" and their penchant for timeless truths, these theorists take umbrage at the ideological historians' contextualized, "relativistic" account of political language. Ironically, however, their efforts to rehabilitate the claims of Lockean liberalism or of Protestant Christianity have helped counter reductionist, ahistorical tendencies in republican historiography. Thus the theorists often have been more sensitive than historians to ideological ambiguities. Ralph Lerner, John T. Agresto, and Jean Yarbrough have explored the convergence of classical republican and liberal traditions in what Lerner calls "commercial republicanism." Thomas L. Pangle traces "modern republicanism" to Locke, arguing that classical precepts never figured prominently in the founders' theorizing. Certainly, these critics argue, Revolutionary ideology sanctioned individual enterprise as well as individual sacrifice; many progressive European and American thinkers were convinced that commercial activity was itself a source of general enlightenment and virtue.³²

This ideological compound was highly unstable, as the history of Revolutionary and postwar politics demonstrated. The concept of "virtue," precisely because of its central place in the classical republican account, proved unusually volatile. According to Richard Vetterli and Gary Bryner, who devote an entire book to the concept, the founders "believed that republican virtue and liberal individualism—*self-interest, properly understood*—are compatible and interdependent." They conclude that popular religious beliefs helped mediate these apparently contradictory premises: Christianity was at the core of a "modern," distinctively American "concept of virtue."³³ Yarbrough posits a similar transvaluation:

³² Lerner, "Commerce and Character," in his *Thinking Revolutionary*, 195-221; Agresto, "Liberty, Virtue, and Republicanism: 1776-1787," *Review of Politics*, XXXIX (1977), 473-504, esp. 492-496; Yarbrough, "The Constitution and Character: The Missing Critical Principle?" in Herman Belz, Ronald Hoffman, and Peter J. Albert, eds., *To Form a More Perfect Union: The Critical Ideas of the Constitution* (Charlottesville, Va., forthcoming). Pangle includes a sustained attack on the "republican synthesis" in *The Spirit of Modern Republicanism: The Moral Vision of the American Founders and the Philosophy of Locke* (Chicago, 1988), 28-39. Pangle's rehabilitation of liberal discourse in the Lockean tradition is one of the theorists' most important contributions to constitutional scholarship. On political economic thought generally see Drew R. McCoy, *The Elusive Republic: Political Economy in Jeffersonian America* (Chapel Hill, N.C., 1980), esp. chaps. 1-3; Cathy Matson and Peter Onuf, "Toward a Republican Empire: Interest and Ideology in Revolutionary America," *Am. Q.*, XXXVII (1985), 496-531; and Albert O. Hirschman, *The Passions and the Interests: Political Arguments for Capitalism before Its Triumph* (Princeton, N.J., 1977).

³³ Richard Vetterli and Gary Bryner, *In Search of the Republic: Public Virtue and the Roots of American Government* (Totowa, N.J., 1987), 8, 79, 249. Pangle

during the Revolutionary era the “self-denying virtues” of classical republicanism gave way to “virtues more compatible with a liberal democratic republic.”³⁴

Critics of republican revisionism have performed a valuable service in questioning the dominance of classical republican precepts in the founding era. Recognition of discursive pluralism has forced ideological historians to retreat from some of their bolder and less tenable generalizations about the transformation of American society and culture; they have also become more circumspect in specifying the salience of republican ideas for particular political and rhetorical situations, as well as their distinctive appeal to various social groups. But the debate over which was “the more dominant tradition, republicanism or liberalism,” has not been particularly illuminating. “Not only is the question badly put,” writes Wood, “but it assumes a sharp dichotomy between two clearly identifiable traditions that eighteenth-century reality will not support.”³⁵ Perhaps, as James T. Kloppenberg suggests, we should worry more about how these traditions—or, more accurately, their diverse constituencies—could work together, and less about which one was dominant. “Because of the ambiguities of the traditions from which [the Revolutionaries] drew,” he writes, “and because of the unsteadiness and the inconsistencies of the arguments they advanced, they were able to join together behind a banner of ideas stitched together from three different sources: religious, republican, and liberal.”³⁶ The value of Kloppenberg’s formulation is that it draws attention to the ideological margins, or “ambiguities,” and therefore to the accommodation, under specific historical conditions, of apparently

discounts the importance of religion in the theorizing of the founders in his *Spirit of Modern Republicanism*, 78-85.

³⁴ Yarbrough, “Constitution and Character,” in Belz *et al.*, eds., *To Form a More Perfect Union*. Richard C. Sinopoli develops a similar argument in “Liberalism, Republicanism and the Constitution,” *Polity*, XIX (1987), 331-352. “The modern notion of civic virtue is a necessary concomitant of core liberal premises” (*ibid.*, 347). Lance Banning minimizes the conceptual transformation, suggesting that “virtue” in the 18th-century oppositional tradition always implied “a jealous, vigilant commitment to the public life,” not self-abnegation or “a Spartan uniformity of interests” (“Some Second Thoughts on Virtue and the Course of Revolutionary Thinking,” in Terence Ball and J.G.A. Pocock, eds., *Conceptual Change and the Constitution* (Lawrence, Kan., 1988), 194-212, quotations on pp. 207, 206.

³⁵ Wood, “Ideology and the Origins of Liberal America,” *WMQ*, 3d Ser., XLIV (1987), 634.

³⁶ Kloppenberg, “The Virtues of Liberalism: Christianity, Republicanism, and Ethics in Early American Political Discourse,” *JAH*, LXXIV (1987), 9-33, quotation on p. 20. For a provocative “dualist” reading of the Constitution that stresses the interplay of a civic humanist tradition, “recalling the grandeur of the Greek polis,” and a privatistic “Christian suspicion of the claims of secular community,” see Bruce A. Ackerman, “The Storrs Lectures: Discovering the Constitution,” *Yale Law Journal*, XCIII (1984), 1013-1072, quotation on p. 1043.

contradictory ways of thinking. Such an approach emphasizes the importance of individual thinkers and actors in the processes of Revolutionary mobilization and constitutional politics.

A small group of “conceptual historians,” including non-Straussian political theorists with a greater interest in context and a higher tolerance for “relativism,” has begun to chart the interplay of discursive traditions—or tendencies—in the founding era. Drawing inspiration from Quentin Skinner’s and Pocock’s work on the history of political languages, these writers focus specifically on the conditions that facilitate “conceptual change.”³⁷ Their premise, as set forth by political theorist Terence Ball and historian Pocock in their introduction to a new collection of conceptual histories, is that “political innovation and conceptual change went hand in hand.” The struggle over the Constitution provides an extraordinary opportunity to explore the transformation of political language in specific contexts. “Profound political and conceptual changes can occur with almost unheard-of rapidity” when the outcome of a series of contests for such “obviously high stakes” so clearly depends on the “persuasive power” of the protagonists. “The upshot of this debate,” Ball and Pocock conclude, “was that citizens of the fledgling republic ceased to speak a provincial variation of political English and began to speak in the terms of a political idiom that was distinctively and recognizably American.”³⁸

The notion of “idiom” is considerably more supple than “ideology.” Republicanism, defined as a political idiom, becomes essentially problematic, not prescriptive. Ball suggests that “the search for ‘the true nature of early American republican thought’ is misguided . . . , because the true nature of republicanism was itself very much in dispute during the founding.”³⁹ Ball thus shows “Publius” (Madison) locking horns with “Brutus” in a debate over basic definitions. Attempting to defend “the new Constitution’s republican *bona fides*” against relentless Antifederalist attacks—and driven by a “growing sense of desperation”—Madison questioned the very premises of language itself in his remarkable *Federalist* No. 37.⁴⁰ This “linguistic turn” sanctioned the redefinition of familiar concepts in a way that facilitated—indeed, “constituted”—radical political changes.

³⁷ Skinner, *The Foundations of Modern Political Thought*, 2 vols. (Cambridge, 1978); J.G.A. Pocock, *Politics, Language, and Time: Essays on Political Thought and History* (New York, 1971), *Machiavellian Moment*, and *Virtue, Commerce, and History*.

³⁸ Ball and Pocock, eds., *Conceptual Change and the Constitution*, 1, 3, 4. For an elaboration of the premises and methodology of “conceptual change” see James Farr, “Conceptual Change and Constitutional Innovation,” *ibid.*, 13–34, and the introduction to Terence Ball, *Transforming Political Discourse: Political Theory and Critical Conceptual History* (Oxford, 1988).

³⁹ Ball, “‘A Republic—If You Can Keep It,’” in Ball and Pocock, eds., *Conceptual Change and the Constitution*, 137–164, quotation on p. 137.

⁴⁰ *Ibid.*, 155, 157.

"In revising the meaning of 'republic,' Publius had not merely changed the meaning of a word. He has constituted a world."⁴¹

Aside from Russell Hanson's analysis of the tension between American republicanism as it suddenly emerged in 1776 and the "democratic" tendencies unleashed by the Revolution, few other contributions in the Ball-Pocock volume fit the conceptual history mode.⁴² In any case, political theorists usually do not know the history of the period well enough to contextualize political rhetoric convincingly. Perhaps it is fairer to say that historians have failed to provide a sufficiently detailed account of the period's political history to support sophisticated analyses of conceptual development. In the event, Gordon Wood's brilliant "conceptual histories" remain unsurpassed, and his *Creation of the American Republic* still provides the most comprehensive and compelling explanation for the emergence of a distinctively American "political idiom."

The elaboration of the conceptual history approach is nonetheless a welcome development. In effect, political theorists are asking historians to build on the pioneering efforts of the ideological school. For the conceptual history project to make significant progress, historians will have to show how political ideas were deployed and developed in specific rhetorical situations. The rewards such efforts may yield can be glimpsed in theorist Michael Lienesch's recently published *New Order of the Ages*. The debate over republicanism is Lienesch's point of departure: "American political thought was in transition, moving from classical republicanism to modern liberalism." The "hybrid mixture" of "republican and liberal themes" proved to be inherently unstable, writes Lienesch, particularly when Americans were divided over fundamental political and constitutional issues.⁴³ Drawing inspiration from Pocock's magisterial *Machiavelian Moment*, Lienesch explores a series of deeply problematic concepts—history, change, reform, development—in the political discourse of the founding era. The American "moment," he concludes, was marked by "a transformation in temporal thinking, in the way Americans thought about time."⁴⁴

The debate over the Constitution, Lienesch argues, revolved around Federalist claims "that they had created a politics that would transcend time."⁴⁵ The new system, proponents of the new "political science" promised, would preserve republican government from the traditional pattern of corruption and decay. Not surprisingly, skeptical Antifederal-

⁴¹ *Ibid.*, 160.

⁴² Russell L. Hanson, "'Commons' and 'Commonwealth' at the American Founding: Democratic Republicanism as the New American Hybrid," in Ball and Pocock, eds., *Conceptual Change and the Constitution*, 165-193. See also Hanson, *The Democratic Imagination in America: Conversations with Our Past* (Princeton, N.J., 1985), chap. 2.

⁴³ Lienesch, *New Order of the Ages: Time, the Constitution, and the Making of Modern American Political Thought* (Princeton, N.J., 1988), 7.

⁴⁴ *Ibid.*, 8.

⁴⁵ *Ibid.*, 136.

ists who tended "to think of politics in terms borrowed from classical political theory" had little faith in future "progress."⁴⁶ The resulting debates thus exposed a basic division among American republicans, with Federalists promoting a "liberal," progressive view of historical development and Antifederalists resisting dangerous innovations that jeopardized liberty.

Lienesch's contribution is to illuminate fundamental but generally neglected themes in constitutional discourse. He is less successful in relating his history of political thought to "contending ideological camps" as they formed and reformed from the early 1780s through the 1790s. The voices of the founders remain disembodied, just as the "persuasions"—ideologically identifiable clusters of thinkers—remain ephemeral and elusive.⁴⁷ Precisely because Lienesch is so conscious of history—as concept *and* process—his failure to delineate specific contexts is much more conspicuous than it would be in a typical study of political thought.

IV: TOWARD FEDERALISM

Ideological or "conceptual" history in Lienesch's mode represents a significant move in the direction of narrative. But there are problems with the study of discourse, even when due attention is accorded to its actual historical context. These problems are particularly acute in the case of the American founding. First, and obviously, an ideological interpretation cannot proceed without "texts" that can be subjected to close reading. But what if historical actors had to deal with a set of "problems" that were not fully articulated and that continue to resist conceptualization?

Students of republicanism naturally emphasize issues—such as representation, or the dangers of corruption—that occupy a central place in the conventional, "classical" discourse. Wood thus focuses on the "crisis" of republican government in the states, as it was defined by Madison and other nationalist reformers. As a result, he tends to ignore the problems of interstate organization and international diplomacy that constituted the crisis of the *union*. Such a bias is understandable. As Jack N. Rakove shows, there was remarkably little discussion about the premises of the American union during the Confederation period.⁴⁸

Recently, however, historians have begun to recognize the problematic character of the union—and the very real possibility of disunion—in the "critical period" before the convention met. The delicate and protracted negotiations at Philadelphia secured the union and determined the distinctive character of American federalism. From this perspective, an exclusive focus on the issues and ideas that marked the course of *state* constitutional development is fundamentally misleading. The founders

⁴⁶ *Ibid.*, 131.

⁴⁷ *Ibid.*, 12.

⁴⁸ Jack N. Rakove, *The Beginnings of National Politics: An Interpretive History of the Continental Congress* (New York, 1979), 183-191.

knew that they would have to overcome unprecedented practical and theoretical obstacles in order to construct a durable union. Jack P. Greene asserts that the enduring constitutional dilemma for American statesmen was to reconcile the claims of “center” and “periphery” in an extended imperial and then independent American polity.⁴⁹ The founders’ great achievement was to create—if not fully to conceptualize—a workable federal regime.

The challenge for historians is to explain the relation between federalism and republicanism: when and why was the crisis of the union “republicanized”? It was Madison’s genius, argues Rakove, to persuade his colleagues that the problems of the Confederation were rooted in the defects of republican government in the states. By reconceptualizing federalism in republican language, defenders of the new Constitution enjoyed the rhetorical advantage in the ratification fight. Focusing on the new regime’s republican character, the Federalists diverted potentially dangerous discussion from the fragile intersectional accords and complicated federal machinery on which their hopes for the union were premised.⁵⁰

Could it be that the proper “deconstruction” of the ratification debates leads back to federalism—and the problems of the union—and *not* into the deeper structure of American society? The founders “invented” federalism, John M. Murrin suggests, despite the *absence* of appropriate language and ideas in the political science of the day: the disjunction between this conventional wisdom and the exigencies of the union forced them to strike out in new directions.⁵¹ As they designed a constitution for the extended republic, the founders could draw on a rich legacy of political argumentation in the states.⁵² But there was no equivalent discourse on federalism. How then could the founders conceive solutions to the problems of the union? Perhaps, as I argued in *The Origins of the Federal Republic*, their thinking about the union was shaped by the experience of interstate

⁴⁹ Jack P. Greene, *Peripheries and Center: Constitutional Development in the Extended Politics of the British Empire and the United States, 1607-1788* (Athens, Ga., 1986). Greene acknowledges indebtedness to Andrew C. McLaughlin, *The Foundation of American Constitutionalism* (New York, 1932), and *A Constitutional History of the United States* (New York, 1935), and to Charles Howard McIlwain, *The American Revolution: A Constitutional Interpretation* (New York, 1923).

⁵⁰ Jack N. Rakove, “From One Agenda to Another: The Condition of American Federalism, 1783-1787,” in Greene, ed., *American Revolution*, 80-103, esp. p. 98. See also Rakove, “The Road to Philadelphia, 1781-1787,” in Leonard W. Levy and Dennis J. Mahoney, eds., *The Framing and Ratification of the Constitution* (New York, 1987), 98-111; and “Articles of Confederation,” in Jack P. Greene, ed., *Encyclopedia of American Political History*, 3 vols. (New York, 1984), I, 83-91.

⁵¹ Murrin, “1787: The Invention of American Federalism,” in David E. Narrett and Joyce S. Goldberg, eds., *Essays on Liberty and Federalism: The Shaping of the U.S. Constitution* (College Station, Tex., 1988), 20-47.

⁵² Wood, *Creation of the American Republic*; Willi Paul Adams, *The First American Constitutions: Republican Ideology and the Making of the State Constitutions in the Revolutionary Era*, trans. Rita and Robert Kimber (Chapel Hill, N.C., 1980).

conflict and the difficulties of defining congressional authority and promoting national interests under the Confederation. The dilemma of reconciling central authority and local autonomy may not have been a new one for Americans, but some sort of resolution was now seen as necessary to guarantee the new nation's political and constitutional stability and, therefore, its future prosperity and power. In the months before the Philadelphia Convention escalating intersectional tensions led many commentators to fear for the survival of the union, as did the new nation's rapidly deteriorating diplomatic situation.⁵³

Why have historians typically neglected these problems and concerns? Frederick W. Marks III, author of *Independence on Trial* (1973), knows "of no other period in American history when foreign affairs has been so crucial for the future of the Republic yet so neglected by American historians."⁵⁴ The tendency to distinguish political from diplomatic history may be one explanation; this distinction has been reinforced by the assumption that the impulse for *national* constitutional reform came out of the *states*. From this perspective, the alleged problems of the union simply serve as a pretext for constitutional change: the real issue is how a stronger central government would affect relations among various classes and interest groups. Once headed in this direction, it is not surprising that historians have gone on to explore "underlying" conflicts in society and culture. But it may be more useful to move in the opposite direction: after all, with the union itself in jeopardy, no neat distinction between domestic and foreign politics could then or should now be drawn. Shays's Rebellion and other challenges to state authority, problems arising from the states' failure to comply with the Treaty of Paris, as well as efforts to create new states or establish separate sectional unions all threatened to Europeanize American politics, to make Americans foreigners to each other and leave them vulnerable to the interference of imperial powers. Concern over the future of the union may have been just that, and not merely a smokescreen for a "deeper" conflict over more fundamental issues.⁵⁵

The founders were well aware of the range of possible outcomes. They did not take for granted the survival of the union or of the American nation—whatever that was. Perhaps there had been a continental patriotism in the early years of the war, but disillusionment and skepticism set

⁵³ Frederick W. Marks III, *Independence on Trial: Foreign Affairs and the Making of the Constitution* (Baton Rouge, La., 1973); Rakove, *Beginnings of National Politics*, 360-399; James H. Hutson, *John Adams and the Diplomacy of the American Revolution* (Lexington, Ky., 1980); Morris, *Forging of the Union*, 194-244; Peter S. Onuf, *The Origins of the Federal Republic: Jurisdictional Controversies in the United States, 1775-1787* (Philadelphia, 1983).

⁵⁴ Marks, "Power, Pride, and Purse: Diplomatic Origins of the Constitution," *Diplomatic History*, XI (1987), 303-319, quotation on p. 316.

⁵⁵ Onuf, *Origins of the Federal Republic*, 173-185; "State Sovereignty and the Making of the Constitution," in Ball and Pocock, eds., *Conceptual Change and the Constitution*, 79-98, and "Anarchy and the Crisis of the Union," in Belz et al., eds., *To Form a More Perfect Union*.

in soon.⁵⁶ Congress's "imbecility" was symptomatic of centrifugal tendencies that threatened to balkanize American politics. Drew R. McCoy suggests that "the political history of the post-Revolutionary era is less a story of ideological controversy . . . than it is a reflection of the daunting challenge of fashioning political coherence from the recalcitrant materials of a regionally differentiated colonial past."⁵⁷ Strains between the regions were further complicated by conflicts over access to the undeveloped West and by rising political demands from the new frontier settlements.⁵⁸ The uproar over John Jay's proposal to barter away American navigation rights on the Mississippi showed that the bonds of union—between North and South, East and West—were indeed tenuous. Disagreements over foreign policy, coupled with a growing awareness of distinct sectional interests and of the practical impossibility of amending the Articles, led anxious republicans to consider radical alternatives: some broached the idea of an American monarchy; others looked toward the creation of new regional confederations.⁵⁹ These were the desperate circumstances in which a small band of constitutional reformers led by the studious young Madison took the first tentative steps toward creating an "extended," continental republic.

The preconstitutional period seems more authentically "critical" in recent writing, and with their greater sensitivity to the contingencies historians are now better prepared to appreciate the contributions of key actors to the founding story. An extraordinary outburst of interest in Madison's career as constitutional theorist and reformer attests to the growing recognition of individual agency and narrative complexity.⁶⁰ Recent studies of other founders—notably James Wilson—have also emphasized the wide range of intellectual traditions at work in the Constitutional Convention.⁶¹

⁵⁶ Charles Royster, *A Revolutionary People at War: The Continental Army and American Character, 1775-1783* (Chapel Hill, N.C., 1979).

⁵⁷ McCoy, "James Madison and Visions of American Nationality in the Confederation Period: A Regional Perspective," in Beeman *et al.*, eds., *Beyond Confederation*, 226-258, quotation on p. 229.

⁵⁸ Onuf, *Origins of the Federal Republic*, 149-172; Thomas P. Slaughter, *The Whiskey Rebellion: Frontier Epilogue to the American Revolution* (New York, 1986), 28-60; Onuf, *Statehood and Union: A History of the Northwest Ordinance* (Bloomington, Ind., 1987), 1-66.

⁵⁹ Onuf, "Constitutional Politics: States, Sections, and the National Interest," in York, ed., *Toward a More Perfect Union*. See the informative discussions in Jensen *et al.*, eds., *Documentary History of Ratification*, XIII, 54-57 (disunion proposals), and 168-172 (monarchical revival).

⁶⁰ The literature on Madison is voluminous: works centering on his "federalism" are cited below. For a balanced account of his political theory and further citations see Joseph F. Kobyłka and Bradley Kent Carter, "Madison, *The Federalist*, and the Constitutional Order: Human Nature and Institutional Structure," *Polity*, XX (1987), 190-208.

⁶¹ Stephen A. Conrad, "Polite Foundation: Citizenship and Common Sense in James Wilson's Republican Theory," in Philip Kurland *et al.*, eds., *The Supreme*

The point of departure for most recent histories of the convention is the classic question of the relative importance of interest and principle for the delegates. The interpretative spectrum runs from James H. Hutson's contention that the convention was "devoted principally to harmonizing concrete interests" to "originalist" accounts that stress the founders' principled intentions.⁶² Several recent writers seek to strike a balance by identifying the different kinds of issues that precipitated conflicts of interest or debates over principles. William E. Nelson argues that the delegates resolved conflicts of interest—over representation, slavery, and commerce—in a spirit of compromise, while reserving their most "lengthy and fiery debates" for "instrumental-reasoning disputes." Disagreement over the constitution of the executive, for example, did not revolve around "what each delegate desired for his own group in the present but what the delegates expected or feared for the nation as a whole in the future."⁶³ Although political scientist Calvin Jillson is less impressed than Nelson with the distinctive character of constitutional politics, he draws a similar distinction between "higher" level questions of constitutional design and "lower" level "distributive questions . . . directly affecting the political and economic interests of states and regions." But Jillson concludes that "distributive questions" generated the most controversy. "It was only at this 'lower' level of constitutional construction, where interests clashed so loudly and winners and losers were starkly clear, that the Convention was threatened with dissolution."⁶⁴

Court Review—1984 (Chicago, 1985) 359-388, and "Federalism, Figuratively Speaking: Metaphor and Imagination in James Wilson's Theory of Federal Union," *Law and Social Inquiry*, XIII (1988), 3-70; Garry Wills, "James Wilson's New Meaning of Sovereignty," in Ball and Pocock, eds., *Conceptual Change and the Constitution*, 99-106. Forrest McDonald attempts to connect the various traditions with the deliberations of the convention in *Novus Ordo Seclorum*.

⁶² Hutson, "Riddles of the Federal Constitutional Convention," *WMQ*, 3d Ser., XLIV (1987), 411-423, quotation on p. 423. Paul Finkelman argues for the primacy of slavery interests in his "Slavery and the Constitutional Convention: Making a Covenant with Death," in Beeman *et al.*, eds., *Beyond Confederation*, 188-225. "Originalist" scholarship is discussed below.

⁶³ Nelson, "Reason and Compromise in the Establishment of the Federal Constitution, 1787-1801," *WMQ*, 3d Ser., XLIV (1987), 458-484, quotations on pp. 466, 470. See also Ackerman, "Storrs Lectures," *Yale Law Jour.*, XCIII (1984), 1013-1072, and the discussion in Bernstein, "Charting the Bicentennial," *Columbia Law Rev.*, LXXXVII (1987), 1600-1602.

⁶⁴ Calvin C. Jillson, "Ideas in Conflict: Political Strategy and Intellectual Advantage in the Federal Convention," in Belz *et al.*, eds., *To Form a More Perfect Union*. For earlier accounts that focus on "coalition alignments" see Jillson, "Constitution-Making: Alignment and Realignment in the Federal Convention of 1787," *American Political Science Review*, LXXV (1981), 598-612, and Jillson and Cecil L. Eubanks, "The Political Structure of Constitution Making: The Federal Convention of 1787," *American Journal of Political Science*, XXVIII (1984), 435-458. For excellent discussions of specific problems in constitution making see

But if the founders sought the high ground, what specific “principles” inspired them? In this respect, the debate over Madison’s conception of the extended republic and his role in the convention is illuminating. Rakove argues that Madison saw proportional representation as an essential republican principle. He and like-minded supporters of the Virginia Plan therefore sought to persuade small-state delegates, “who were merely defending the status quo,” to give up the pernicious principle of equal state representation. But considerations of power and interest prevailed, particularly “once the specter of sectional conflict legitimated the small states’ appeal to security.” The so-called Great Compromise on representation was, in fact, a capitulation to small-state interest. “With it,” Rakove concludes, “went not [Madison’s] hopes for a better government but his confidence” that his original republican design “would provide the foundation upon which the entire system would rest.”⁶⁵

Banning views these same transactions in a much different light: *his* Madison is not the nationalist who appears in Rakove’s account but is instead committed to a broadly federal division of powers. Even during the early weeks of the convention “Madison can be legitimately described as a determined ‘nationalist’ only in his quest for a structure and mode of operation that would make the general government effective and supreme *within its proper sphere*, which he consistently conceived as relatively small.” Banning claims that setbacks on various representation questions and on his proposed veto on state laws represented a “learning experience” for Madison. If allowance for state agency compromised Madison’s original conception of the new national government, he came to realize that the states also required security against possible encroachments. Throughout his career as constitutional reformer “Madison had been seeking ‘the practicable sphere of a republic,’ the ‘middle ground’ between excessive localism (and the tyranny of unrestrained majorities) and undue concentration of authority in distant, unresponsive rulers.”⁶⁶ As he

Jack N. Rakove, “Solving a Constitutional Puzzle: The Treatymaking Clause as a Case Study,” *Perspectives in American History*, N.S., I (1984), 233-281, and Shlomo Slonim, “The Electoral College at Philadelphia: The Evolution of an Ad Hoc Congress for the Selection of a President,” *JAH*, LXXIII (1986), 35-58.

⁶⁵ Jack N. Rakove, “The Great Compromise: Ideas, Interests, and the Politics of Constitution Making,” *WMQ*, 3d Ser., XLIV (1987), 424-457, quotations on pp. 427, 456. For a fuller statement of Rakove’s views on Madison’s political thought see his “The Madisonian Moment,” *University of Chicago Law Review*, LV (1988), 473-505. George W. Carey agrees with Rakove that “from the early 1780’s until shortly after the commencement of the system he helped to fashion, Madison was an energetic proponent of a strong national government,” and that his “‘federalism’ . . . can appropriately be characterized as ‘pragmatic’ ” (“James Madison on Federalism: The Search for Abiding Principles,” *Benchmark*, III [1987], 27-57, quotation on p. 33).

⁶⁶ Lance Banning, “The Practicable Sphere of a Republic: James Madison, the Constitutional Convention, and the Emergence of Revolutionary Federalism,” in Beeman *et al.*, eds, *Beyond Confederation*, 162-187, quotations on pp. 169, 185. For

developed a keener appreciation of the requirements of American federalism, Madison withdrew from the nationalist positions he had assumed at the outset of the convention.

Was Madison a frustrated nationalist who, advocating the Constitution in the *Federalist* and at the Virginia Convention put the best face on a system he considered fundamentally flawed? Or was the strong national government he proposed in 1787 intended to redress a dangerous drift toward state sovereignty and thereby secure a durable federal balance? To a large extent, the answer to these questions hinges on how we think about federalism. From the nationalist perspective ably elaborated by Rakove, the irresistible conclusion is that federalism was the inadvertent product of political compromises and accommodations. Just as proponents of the New Jersey plan failed to make a reasoned case for equal state representation, Federalists could not offer any coherent theoretical rationale for the new system's federal features.

But why should the large-state position be privileged, simply because Madison theorized about it so brilliantly and has proven to be such a seminal thinker for succeeding generations of political scientists and historians? After all, Madison and his allies were not immune to political considerations as they sought to maximize the power of the large states in a reconstituted union. And even if the small states' defense of their corporate integrity was politically expedient, it still involved fundamental principles.⁶⁷ Ultimately, of course, it is probably impossible—and pointless—to distinguish motives so neatly: in practice, interest and principle cannot be disentangled at any level of argumentation. The question in this case is whether any of the delegates could have *intended* to construct a federal regime, thus seeking to develop the “middle ground” later staked out by Madison in *Federalist* No. 51.

According to Nelson, “issues of federalism could not be debated . . . as interest-group conflicts” because it could not be known “which groups

Banning's interpretation of Madison's earlier career and of his subsequent role in the Virginia convention see his “James Madison and the Nationalists, 1780-1783,” *WMQ*, 3d Ser., XL (1983), 227-255; “Virginia: Nation, State, and Section,” in Michael Gillespie and Michael Lienesch, eds., *Ratifying the Constitution* (Lawrence, Kan., forthcoming); and “1787 and 1776: Patrick Henry, James Madison, the Constitution, and the Revolution,” in York, ed., *Toward a More Perfect Union*, 59-89. For compatible accounts of the convention see Banning, “The Constitutional Convention,” in Levy and Mahoney, eds., *Framing and Ratification of the Constitution*, 112-131, and Melvin E. Bradford, “Such a Government as the People Will Approve: The Great Convention as Comic Action,” *St. Louis University Public Law Review*, VI (1987), 215-228.

⁶⁷ Rosemarie Zagari, *The Politics of Size: Representation in the United States, 1776-1850* (Ithaca, N.Y., 1987), 61-80. For a discussion of the importance of state size in constitutional politics see also Peter S. Onuf, “Maryland: The Small Republic in the New Nation,” in Gillespie and Lienesch, eds., *Ratifying the Constitution*.

would control the federal and which groups would control the state governments.”⁶⁸ But if future alignments of interest could not be predicted, most delegates agreed that there ought to be a division of authority between the states and the national government. As Greene argues in *Peripheries and Center*, Anglo-American constitutionalism had traditionally been conceptualized in spatial terms, with colonial corporate and individual rights offsetting and limiting the power of the metropolis. The challenge for constitutional reformers was to reconstitute the “center,” “to work out a more precise allocation of authority between the national and state governments.”⁶⁹

Negotiating this “federal boundary” seems like an exercise in interest-group politics only if “nationalism” or “state sovereignty” are viewed as the only principled positions.⁷⁰ But recent work on the origins of American federalism suggests that most Americans rejected both of these extreme positions *on principled grounds*. Political theorist Michael Zuckert thus describes the range of proposals considered at Philadelphia as varieties of federalism, not as progressively diluted versions of Madison’s original nationalist vision. John Dickinson believed that Madisonian federalism was fundamentally flawed: if, as Madison proposed, the states were denied any agency in the new general government, what security would they have against encroachments? A stable federal system depended on balancing national and federal elements *within* the central government as well as in the system as a whole. “From the point of view of Dickinson Federalism,” it therefore follows that “the mode of constructing the Senate, adopted in the Connecticut Compromise, was not a . . . compromise. It was rather a proper and accurate way of expressing the compound they were aiming to create.”⁷¹

Unlike the contemporaneous elaboration of republican ideology, the invention of American federalism proceeded in obscurity and confusion. But these conditions also were propitious for innovative thinking. “Americans needed a conceptual breakthrough,” writes Murrin, if they were ever

⁶⁸ Nelson, “Reason and Compromise,” *WMQ*, 3d Ser., XLIV (1987), 471.

⁶⁹ Greene, *Peripheries and Center*, 192.

⁷⁰ See Martin Diamond, “What the Framers Meant by Federalism,” in Robert A. Goldwin, ed., *A Nation of States* (Chicago, 1963), 24-41, and William Jeffrey, Jr., “The Constitution: A Firm National Government,” in Robert A. Goldwin and William A. Schambra, eds., *How Federal Is the Constitution?* (Washington, D.C., 1987), 16-37. For vigorous statements of the nationalist interpretation by an eminent historian see Richard B. Morris, “The Forging of the Union Reconsidered: A Historical Refutation of State Sovereignty over Seabeds,” *Columbia Law Rev.*, LXXIV (1974), 1056-1093, and *Forging of the Union*, 52-79.

⁷¹ Zuckert, “Federalism and the Founding: Toward a Reinterpretation of the Constitutional Convention,” *Review of Politics*, XLVIII (1986), 166-210, quotation on p. 206. Also see Zuckert, “A System without Precedent: Federalism in the American Constitution,” in Levy and Mahoney, eds., *Framing and Ratification of the Constitution*, 132-150.

to define "an acceptable boundary between central and local power."⁷² The American federal system may not have been "so radical in form," Greene adds, "but it was fundamentally so in principle."⁷³ Both historians see the new conception of "popular sovereignty" that Wood explicated in *Creation of the American Republic* as the keystone of the new federalism: because it was distinguishable from governmental authority, popular sovereignty could justify a radical redistribution of power in the union.⁷⁴ In effect, Greene and Murrin suggest a conceptual reversal. Although federalism is conventionally seen as the means of implementing republicanism over an "extended sphere"—thereby securing the class interests of cosmopolitan elites across the continent—it seems equally plausible to assert the opposite: the designers of the federal union appropriated republican concepts in order to facilitate and rationalize federalism. The quest for an enduring federal system in turn provided the basic impulse toward rethinking republican premises. "The federalism of the Constitution," Murrin argues, "was conceptually impossible before the 1780s." But it may also be true that the redefinition and elaboration of republicanism in the ratification debates was inconceivable before the convention invented federalism, in what Murrin calls "the supreme moment of political invention or innovation" in American history.⁷⁵

V: INTENTIONS AND INTERPRETATIONS

Federalist victories in the state conventions bring the story of the founding to its usual climax, with the adoption of the Bill of Rights serving as coda. But the ratification debates also represented the first great national effort to interpret the Constitution, and *this* story—as the contemporary controversy over "original intent" shows—has not yet been conclusively resolved.

Wary of the ways lawyers abuse history, historians naturally have been

⁷² Murrin, "1787: The Invention of American Federalism," in Narrett and Goldberg, eds., *Essays on Liberty and Federalism*, 20-47, quotations on pp. 36, 21.

⁷³ Greene, *Peripheries and Center*, 205. On the conceptual development of key terms in the new federalism see the brilliant essay by J.G.A. Pocock, "States, Republics, and Empires: The American Founding in Early Modern Perspective," in Ball and Pocock, eds., *Conceptual Change and the Constitution*, 55-77; for the origins and implications of the "federal principle" see Vincent Ostrom, *The Political Theory of a Compound Republic: Designing the American Experiment*, 2d ed. (Lincoln, Neb., 1987), and Daniel J. Elazar, "Our Thoroughly Federal Constitution," Goldwin and Schambra, eds., *How Federal Is the Constitution*, 38-66.

⁷⁴ Wood, *Creation of the American Republic*, esp. 530-536. Edmund S. Morgan reaches similar conclusions, arguing that popular sovereignty was a "fiction" that enabled constitutional reformers to reorganize the union: "Madison was inventing a sovereign American people to overcome the sovereign states" (*Inventing the People*, 267). Morgan's book is most notable for its brilliant analysis of the political culture of representative government, particularly in chaps. 7-9.

⁷⁵ Murrin, "1787: The Invention of American Federalism," in Narrett and Goldberg, eds., *Essays on Liberty and Federalism*, 20-47, quotations on pp. 21, 22.

skeptical about the possibility of knowing the founders' intentions.⁷⁶ At the same time, skepticism about the historical record has not prevented historians from taking great interpretative leaps of their own. The differences separating originalist lawyers and theorists from historians are only incidentally methodological: the primary disagreement is over the proper subjects and objects of interpretation. Historians are drawn to the ratification controversy because the great outburst of polemics enables them to explore the American "mind" during a period of revolutionary transformation. They do not believe the ratification debates can tell us very much about the Constitution itself: at the very least, the text of the document is distorted by the protagonists' rhetorical excesses; more interestingly, this rhetoric is supposed to reveal deeper patterns of thought and motivation that the protagonists themselves did not fully grasp. These historiographical tendencies are reinforced by the fact that modern scholars know much more than did most of the delegates at the state ratifying conventions about the secret proceedings at Philadelphia. The result is that historians do not take the debates entirely seriously as constitutional commentary: they are more inclined to discuss what the delegates disclosed *unintentionally*—about themselves and about American political culture generally—than to consider their openly avowed *intentions*.

If lawyers and political theorists show lamentably little interest in contexts, historians—eager to get on with their story—tend to discount and disregard texts. This is conspicuously the case with the *Federalist*, which, historians are quick to note, did not reach a wide reading public outside of New York and probably had little impact on the ratification vote in that state. The very brilliance of Publius's arguments makes them anomalous, unreliable guides to the currents of contemporary discourse. But political scientists (of all persuasions) are not deterred by historians' caveats, and they have made the debate on the Constitution—this first great systematic effort to define the new constitutional regime—paradigmatic for commentaries up to the present. Thus, while historians emphasize the *Federalist's* serial publication in the context of the New York ratification controversy, political and legal commentators treat the whole series as a single, more or less coherent text.⁷⁷

The historians' approach has many advantages, particularly if the focus is on the ratification vote. If Hamilton's contributions to the *Federalist* or

⁷⁶ See the essays by Hutson and Rakove cited in n. 5, above.

⁷⁷ Notable recent additions to this literature include Garry Wills, *Explaining America: The Federalist* (Garden City, N.Y., 1981); David F. Epstein, *The Political Theory of The Federalist* (Chicago, 1984); Morton White, *Philosophy, The Federalist, and the Constitution* (New York, 1987); the essays collected in Charles R. Kesler, ed., *Saving the Revolution: The Federalist Papers and the American Founding* (New York, 1987); and Pangle, *Spirit of Modern Republicanism*. For an important recent contribution to the intellectual history of *The Federalist* see Daniel W. Howe, "The Political Psychology of *The Federalist*," *WMQ*, 3d Ser., XLIV (1987), 485-509.

his speeches at the state convention had any impact on wavering delegates, the impact was probably negative: in the end, moderate Antifederalists like Melancton Smith balked at the prospect of being excluded from the new union.⁷⁸ But this is only one, and perhaps not the most interesting, story line. The thrust of the ratification debates was not simply to gain votes but to explain and interpret the text and translate it into the language of popular constitutionalism. The history of constitutional interpretation thus begins with the document's first publication, if not with earlier speculation about the convention's proceedings.⁷⁹

The *Federalist* naturally enjoys a privileged position in the history of constitutional commentary. For modern scholars "Publius" speaks with particular authority because Madison had played a leading role in drafting the Constitution. But, as literary historian Albert Furtwangler argues, the contemporaneous impact of the series depended on its persuasive, "candid" voice and its comprehensive rhetorical strategy: the *Federalist* "would embrace all other discussions in favor of the Constitution, and all opposing arguments would be ranged against it."⁸⁰ "Publius" did not tell his readers what the Constitution meant; in fact, he changed his mind, or at least his emphases, as the series progressed. The *Federalist* had to be responsive to the readers it hoped to persuade. According to Furtwangler, "the ratification process was in itself a great appeal to the sovereignty of the people through specially elected representatives. The *Federalist* goes one step further, and appeals for informed assent. . . . It reveals not only the voters but the framers in the act of deliberating. This, I believe, is the most enduring source of its authority. Its pages still hold the tension of arguments that are not conclusive."⁸¹ The *Federalist* constituted an effort to make the Constitution meaningful by imputing plausible intentions to its authors; the framers' ultimate success depended on gaining the people's "informed assent."

Furtwangler's textual analysis of the *Federalist* raises questions about the status of the Constitution itself as the focus of hermeneutical controversy. To think about the Constitution as a "literary text" is to grant it both fixity of form and fluidity of meaning, thus creating a context for interpretation that would shape the subsequent history of American constitutionalism.

⁷⁸ David E. Narrett, "A Zeal for Liberty: The Anti-Federalist Case against the Constitution in New York," in Narrett and Goldberg, eds., *Essays on Liberty and Federalism*, 48-87; John P. Kaminski, "New York: The Reluctant Pillar," in Stephen L. Schechter, ed., *The Reluctant Pillar: New York and the Adoption of the Federal Constitution* (Troy, N.Y., 1985), 48-117, esp. 115-117; Robert H. Webking, "Melancton Smith and the *Letters from the Federal Farmer*," *WMQ*, 3d Ser., XLIV (1987), 510-528.

⁷⁹ The history of constitutional commentary can be most easily traced through the comprehensive, chronologically arranged *Documentary History of Ratification*, ed. Jensen et al.

⁸⁰ Furtwangler, *The Authority of Publius: A Reading of the Federalist Papers* (Ithaca, N.Y., 1984), 53.

⁸¹ *Ibid.*, 87.

Americans were convinced that their rights as individuals would be secure only if they were defined in writing. Their "*liberal idea of a constitution*" emerged, Gerald Stourzh writes, as "the *protection of rights* became a central and not merely incidental part of the concept of constitution." The integrity and authority of the new state constitutions as written texts were clearly established through "the *dissociation* of legislative and sovereign power" and "the institutionalization of the constituent power of the people."⁸²

By the time of the Constitutional Convention, the written constitution was a familiar genre. The genius of the founders, literary scholar Robert A. Ferguson suggests, was to draw on these earlier efforts: "a miracle of concision, . . . the Constitution confirms a familiar past. Every word belongs to the realm of common understanding," including many "taken directly from the constitutions of the states."⁸³ Federalists exploited these textual affinities as they pushed for ratification: the Constitution had the unmistakable form and language of a republican constitution. By these same standards, of course, the Articles of Confederation were radically defective, even un-republican.

The founders' careful craftsmanship was crucial to the document's ultimately favorable reception, but it could not preempt controversy. Because the state constitutions provided conflicting models, the federal Constitution would not seem completely "familiar" anywhere. Furthermore, the state documents continued to spark controversy in many places, as partisans divided over the proper interpretation or implementation of specific constitutional provisions and in some cases pressed for comprehensive revisions. By appropriating state constitutional forms, the founders could make a plausible case for the new regime's essentially republican character. But they also opened the way for the "nationalization" of constitutional controversy, recognizing that their only hope lay in engaging the interest and attention of significant numbers of politically active Americans. The question was whether the new system would establish an adequate framework for national politics. Would the text of the Constitution foster the ongoing process of constitutional interpreta-

⁸² Gerald Stourzh, *Fundamental Laws and Individual Rights in the 18th Century Constitution*, Bicentennial Essay No. 5 (Claremont, Calif., 1984), 17, 18. For the importance of explicit constitutional limitations in the founding era see Leslie Friedman Goldstein, "Popular Sovereignty, the Origins of Judicial Review, and the Revival of Unwritten Law," *Journal of Politics*, XLVIII (1986), 51-71; for a contrasting interpretation, emphasizing the importance of unenumerated fundamental laws, see Thomas C. Grey, "The Original Understanding and the Unwritten Constitution," in York, ed., *Toward a More Perfect Union*, 145-173.

⁸³ Ferguson, " 'We Do Ordain and Establish': The Constitution as Literary Text," *William and Mary Law Review*, XXIX (1987), 3-25, quotation on p. 9, and *Law and Letters in American Culture* (Cambridge, Mass., 1984), 59-84. But note the criticisms of Ferguson's reading by Michael Les Benedict, "Our 'Sacred' Constitution—Another View of the Constitution as Literary Text," *William and Mary Law Rev.*, XXIX (1987), 27-34.

tion that alone could make fundamental law a political reality? Although, of course, Federalists and Antifederalists answered this question differently, their disagreements—particularly when focused on the constitutional status of individual rights—provided the paradigmatic form for a national hermeneutic tradition.

The idea that the founding properly embraces both the drafting of the Constitution and the debates over its adoption suggests that the Antifederalists played a much more positive role than is customarily allowed. "Because they forced this debate and the creative achievements that followed from it," Wood writes, "the Antifederalists deserve to be numbered among the Founders."⁸⁴ The recent publication of Herbert Storing's collection of Antifederalist writings, his own extended essay on their political thought, and a spate of subsequent commentaries all indicate that the opponents of the Constitution are gaining new respect. The Antifederalists are now emerging as ardent defenders of republican liberty who had good reason to fear the dangerous tendencies of several constitutional provisions, not to mention the absence of a bill of rights.⁸⁵

Historians and theorists continue to argue about whether the Antifederalists were really classical republicans or enterprising proto-liberals.⁸⁶ But our appreciation of the Antifederalists should not hinge on whether we find them looking backward or forward as they stand poised on the threshold of modernity. In any case, such simple characterizations cannot be applied to all Antifederalists. Important recent work by Saul Cornell on "Antifederalist populists" in backcountry Pennsylvania emphasizes the social and ideological diversity of the Constitution's opponents. Cornell argues that "we must abandon the idea that the Antifederalists were united

⁸⁴ Wood, "Political Ideology of the Founders," in York, ed., *Toward a More Perfect Union*, 7-27, quotation on p. 17.

⁸⁵ Herbert J. Storing, ed., *The Complete Anti-Federalist*, 7 vols. (Chicago, 1981); Storing's commentary, *What the Anti-Federalists Were For*, is vol. 1 of this set. Other recent commentaries include Michael Lienesch, "In Defence of the Antifederalists," *History of Political Thought*, IV (1983), 65-87; Walter Nicgorski, "The Anti-Federalists: Collected and Interpreted," *Review of Politics*, XLVI (1984), 113-125; Paul Finkelman, "Antifederalists: The Loyal Opposition and the American Constitution," *Cornell Law Review*, LXX (1984), 182-207; Murray Dry, "The Case against Ratification: Anti-Federalist Constitutional Thought," in Levy and Mahoney, eds., *Framing and Ratification of the Constitution*, 271-291; and Gary L. McDowell, "Federalism and Civic Virtue: The Antifederalists and the Constitution," in Goldwin and Schambra, eds., *How Federal Is the Constitution*, 122-144.

⁸⁶ On the Antifederalists' indebtedness to classical theory see Lienesch, *New Order of the Ages*, 131-133; for a quantitative comparison of Federalist and Antifederalist citations see Donald Lutz, "The Relative Influence of European Writers on Late Eighteenth-Century American Political Thought," *Am. Pol. Sci. Rev.*, LXXVII (1984), 189-197. Gordon S. Wood makes the provocative suggestion that "it was not the Federalists but the Antifederalists who were the real pluralists and the real prophets of the future of American politics" ("Interests and Disinterestedness in the Making of the Constitution," in Beeman *et al.*, eds., *Beyond Confederation*, 69-109, quotation on p. 102).

by a single homogenous political creed." Awareness of this diversity should not, however, obscure the homogenizing effects of the national debate over the merits of the Constitution. Some Americans, particularly in the backcountry, remained hostile toward the new regime long after ratification. But, as Cornell shows, the most significant effect of popular disorders like the Carlisle riot was to push "moderate" critics of the Constitution toward accommodation.⁸⁷

Of course, the very existence of Antifederalists as a definable group was a function of the debate over the Constitution, and their arguments against it were primarily those of constitutionalists. They were troubled by the convention's lack of authority in proposing to abolish the Confederation;⁸⁸ they wanted to know whether the Constitution's "elastic" clauses would sanction a broad interpretation of national powers at the expense of the states and of individual citizens; as close readers and future strict constructionists, they wondered why the framers had omitted specific guarantees of individual rights. By raising these questions, the Antifederalists gained important concessions, both in the ultimate addition of a bill of rights and, perhaps equally important, in forcing defenders of the new system to eschew or at least conceal the consolidationist intentions many still privately entertained. Federalists were also constitutionalists, of course, and although they typically favored a somewhat looser construction of constitutional language than did their opponents, they still believed in the power of words. Their *own words* in defense of the proposed system—the texts they generated to explicate and, in a sense, complete the constitutional text—committed them to moderate federalist and libertarian positions.

Federalists had to show that the proposed Constitution was faithful to the standards of American constitutionalism and therefore truly "republican" in character. Thus they emphasized the document's similarity to the state constitutions, promising that traditional canons of construction would be applied to its provisions. These efforts were essential precisely because the new system would transform American politics so radically: the invention of American federalism could take place only within the broad constitutionalist consensus that emerged from the ratification debates. Formal and interpretative continuities helped make the "strange" seem familiar, enabling Americans to think of republican government in continental terms. According to the conventional wisdom, amply confirmed by American experience in the British empire, only a despotic

⁸⁷ Saul Cornell, "Aristocracy Assailed: Back-Country Opposition to the Constitution and the Problem of Antifederalist Ideology," *JAH* (forthcoming). On the persistence of backcountry hostility to national authority see Slaughter, *Whiskey Rebellion*. For a useful analysis of positions on the Constitution in Virginia, emphasizing the nationalizing tendencies of the debate, see Jon Kukla, "A Spectrum of Sentiments: Virginia's Federalists, Antifederalists, and 'Federalists Who Are For Amendments,' 1787-1788," *VMHB*, XCVI (1988), 277-296.

⁸⁸ The issue is considered at length in Richard S. Kay, "The Illegality of the Constitution," *Constitutional Commentary*, IV (1987), 57-80.

authority could govern a large territory. But both parties in the ratification debate assumed that the union *could* be preserved under a *republican* constitution. Controversy centered on how the text should be interpreted or amended in order to realize its ostensible objects: Antifederalists invoked Montesquieu, their authority on the dangers of size, as they pressed for adjustments in the proposed system that would guarantee its republican character. The question was whether the Constitution was sufficiently “constitutional” to counter the dangerous permutations of political authority so familiar to readers of ancient and modern history.

In establishing a “compound,” “partly federal, partly national” regime, the Constitution had to meet three related tests: were its powers distributed and balanced in ways that would sustain limited, constitutional government? would the national government respect the “federal boundary” that defined the legitimate sphere of state authority? would individual rights be secure against federal encroachments? While insisting that these questions were all related, Antifederalists focused most of their attention on the dangerously ambiguous status of states and individual citizens under the proposed system. In response, defenders of the Constitution promised that the states had little to fear from a stronger union: on the contrary, the failure of constitutional reform—and the resulting collapse of the union—would jeopardize republican government in the states. But the issue, Antifederalists recognized as they warned against the horrors of national consolidation, ultimately came down to one of interpretation. Specific guarantees of *individual* rights would provide a corrective to potential abuses of national power within its own sphere, but because American federalism depended on the presence or agency of the national government in the states and of the states in the national government, the “line” between them was necessarily ambiguous and imprecise.

Given the “sweeping language of the Constitution,” legal scholar H. Jefferson Powell writes, Antifederalists feared that the application of conventional techniques of statutory interpretation “would lead inexorably to the effective consolidation of the states into a single body politic with a single, omnipotent government.” Preservation of the federal balance therefore required continuous vigilance and close adherence to the constitutional text. Although Powell suggests that “original intent” jurisprudence emerged only as an alternative to statutory construction in the late 1790s, when Jeffersonians began to argue that the Constitution was a compact among sovereign states whose “intentions” ought to control interpretation, this form of strict construction actually grew out of the Antifederalists’ “anti-hermeneutic” textualism.⁸⁹ Antifederalists insisted that the Constitution *had* to be strictly construed in ways that would

⁸⁹ Powell, “The Original Understanding of Original Intent,” *Harvard Law Review*, XCVIII (1985), 885-948, quotation on p. 905. The literature on “original intent” is enormous. For a good introduction see Bernstein, “Charting the Bicentennial,” *Columbia Law Rev.*, LXXXVIII (1987), 1597-1607, and the citations to recent works at p. 1599n.

guarantee the continuing integrity of the states, whether or not the states were parties to a federal compact. Most opponents of the Constitution accepted ratification gracefully, embracing a mode of constitutional interpretation they hoped would secure states' rights within a more perfect union. Over the course of the debates some skeptics had already been persuaded that the Federalists did not harbor malevolent designs against the states or against individual liberties, and finally voted for the Constitution. The challenge then was to keep the founders true to their words. As Lance Banning concludes, "A leaning toward constitutional literalism, a tendency engendered by some of the strongest currents in Anglo-American thought and powerfully reinforced by Antifederalist prophecies of constitutional decay, prepared the way for constitutional apotheosis. It also does much to explain the appearance of an opposition party which would quickly elevate the Constitution as the palladium of American liberty."⁹⁰ This Constitution was, of course, a *federal* constitution. Whatever Madison and fellow "nationalists" originally intended, the convention had labored hard to fashion a workable federal balance. By promoting strict construction and exposing ambiguities in the text, Antifederalists and their Republican heirs sought to keep the new national government from destroying that balance. As a result, American republicanism was "federalized" and federalism—the great innovation of 1787—was "republicanized."

To a considerable extent, Federalist interpretations of the Constitution were shaped by Antifederalist criticism; the eventual adoption of the first ten amendments represented a still more direct response to their demands. The conventional image of these "men of little faith" thus seems fundamentally mistaken.⁹¹ As they pressed defenders of the document to clarify their commitments to federalism, constitutionalism, and individual liberties, Antifederalists indicated their own willingness to join in the great experiment. By withdrawing demands for prior amendments, a crucial cohort of Antifederalists demonstrated remarkable faith in their opponents' good will and integrity.

When the new government was organized, Madison recognized that the demand for amendments constituted one of its first major tests. During the ratification campaign Federalists had portrayed the Constitution in the most favorable, least threatening light. But the credibility and authority of

⁹⁰ Lance Banning, "Republican Ideology and the Triumph of the Constitution, 1789-1793," *WMQ*, 3d Ser., XXXI (1974), 167-188, quotation on p. 179. Murray Dry writes that "the strict construction of congressional powers, and even more so, the states' rights view of the union, reflect a retention of the Anti-Federalist view of federalism" ("Case against Ratification," in Levy and Mahoney, eds., *Framing and Ratification of the Constitution*, 289). See also Richard E. Ellis, "The Persistence of Antifederalism after 1789," in Beeman *et al.*, eds., *Beyond Confederation*, 295-314.

⁹¹ The characterization is from Cecelia M. Kenyon, "Men of Little Faith: The Anti-Federalists on the Nature of Representative Government," *WMQ*, 3d Ser., XII (1955), 3-43.

their interpretations could not be tested until the new system began to operate: would Federalists in power show the same solicitude for states' and individual rights? Expedient action on the amendments proposed by the state ratifying conventions enabled the new Congress to answer this question in a most conspicuous way.

The adoption of the Bill of Rights was a critical episode in the history of constitutional legitimation. Of course, as many historians have noted, the substantive amendments focused on civil liberties, not on the inevitably more problematic and controversial questions concerning the "federal boundary."⁹² But the distinction should not be overdrawn. For those who feared national consolidation, limits on federal power over states and individuals were inextricably connected: encroachments on individual liberties would mark the eclipse of the states as effective polities. The first ten amendments could not have resolved all interpretative ambiguities—and, at first, they played a minor role in constitutional history—but they did confirm a moderate, federalist consensus on the distribution of authority in the new system.

Charles Hobson suggests that the Tenth Amendment—"the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people"—simply elevated ambiguity to the status of fundamental law. Several state conventions had recommended the more precise wording—"expressly delegated"—that had appeared in Article II of the Confederation. By deleting "expressly," Madison hoped to bar any additional limits on federal power beyond those "he regarded as implied in the original Constitution." But, of course, Madison's understanding of what the Constitution "implied" was shaped by his experience of defending and explaining the document in the ratification controversy. Federalist efforts to parry Antifederalist attacks and to assuage popular anxieties "effectively foreclosed the possibility of a unitary national government for the United States." The Tenth Amendment may have been "superfluous . . . as a declaration of the 'federal' construction of the Constitution," Hobson concludes, "but only because its purpose had been accomplished in the clarification of terms by which the Constitution was presented and justified to the people before its enactment."⁹³

Very little of the extensive historiography on the various amendments situates them in the context of *federal* constitutionalism. Strenuous debate over the interpretation of the establishment clause in the First Amendment is obviously driven by present-day concerns. Thomas J. Curry's

⁹² Narrett, "Zeal for Liberty," in Narrett and Goldberg, eds., *Essays on Liberty and Federalism*, 48-87. But Nelson emphasizes "the Federalists' positive response to Antifederalist demands" and characterizes leaders of both groups as "disinterested statesmen working together in pursuit of the public good" ("Reason and Compromise," *WMQ*, 3d Ser., XLIV [1987], 482).

⁹³ Charles F. Hobson, "The Tenth Amendment and the New Federalism of 1789," in Jon Kukla, ed., *The Bill of Rights: A Lively Heritage* (Richmond, Va., 1987), 153-163, quotations on pp. 161, 162.

excellent book on church-state relations in America before the adoption of the amendment ought to—but probably will not—silence “nonpreferentialists” who advocate federal support of religion. Curry shows that Madison’s language was understood to prevent the national government from recreating any one of the existing state “establishments” at the federal level; at the same time, however, the national government would not interfere with the states.⁹⁴ Stephen Botein wisely emphasizes the federal dimensions of the establishment issue: “the Constitution was a perfectly secular text” but “the constitutions of the separate states were anything but secular.” The founders expected the states to play an important, distinctive role in American federalism, particularly in cultivating virtuous, intelligent, pious, and patriotic citizens. “Compared with the governments of the several states,” Botein explains, the new national government was probably “too distant from the citizenry and too restricted in the scope of its responsibility to require an official religious dimension.”⁹⁵

Historians have also devoted considerable attention to the Second Amendment, guaranteeing “the right of the people to keep and bear arms.” In this case, too, a squabble among historians coincides with contemporary constitutional controversy: were the framers of the amendment proceeding from classical republican premises in providing a “well-regulated militia” for communal defense, or were they libertarian republicans intent on securing individual liberties against the state?⁹⁶ David T. Hardy sensibly concludes that *both* intentions are present in the text: “the dual purpose of the second amendment was recognized by all early constitutional commentators; the assumption that the second amendment had but a single objective is in fact an innovation born of historical ignorance.” Hardy’s reconstruction of the amendment’s textual history suggests how historians should approach the several amendments—also including the first, fourth, fifth, and sixth—which he says “were intended as a composite of constitutional provisions.”⁹⁷ The effort to identify a

⁹⁴ Curry, *The First Freedoms: Church and State in America to the Passage of the First Amendment* (New York, 1986). Also see the sensible account in William Lee Miller, *The First Liberty: Religion and the American Republic* (New York, 1986), and Leonard W. Levy’s broadside against the “nonpreferentialists” in *The Establishment Clause: Religion and the First Amendment* (New York, 1986).

⁹⁵ Stephen Botein, “Religious Dimensions of the Early American State,” in Beeman *et al.*, eds., *Beyond Confederation*, 315-330, quotations on pp. 317-318, 322.

⁹⁶ Robert E. Shalhope, “The Ideological Origins of the Second Amendment,” *JAH*, LXIX (1982), 599-614; Lawrence Delbert Cress, “An Armed Community: The Origins and Meaning of the Right to Bear Arms,” *ibid.*, LXXI (1984), 22-42; Shalhope and Cress, “The Second Amendment and the Right to Bear Arms: An Exchange,” *ibid.*, 587-593; Cress, “A Well-Regulated Militia: The Origins and Meaning of the Second Amendment,” in Kukla, ed., *Bill of Rights*, 55-65.

⁹⁷ Hardy, “The Second Amendment and the Historiography of the Bill of Rights,” *Journal of Law and Politics*, IV (1987), 1-62, quotations on pp. 60, 3.

single, controlling intention may fill a jurisprudential need, but, in these instances at least, it is fundamentally distorting.

Hardy's work on the Second Amendment brings us back to the political context. Congress had to juggle a variety of often contradictory proposals for amending the Constitution, but without jeopardizing the complicated balance of national and state powers worked out in Philadelphia and rationalized in the ratification debates. The adopted amendments would preclude expansive interpretations of federal power, but they would not prevent the new government from acting effectively in its own sphere. In the case of the Second Amendment, this meant that there would be no bar on "standing Armies, in time of Peace," as set forth in the Virginia Declaration of Rights, nor would the amendment interfere with Congress's constitutional authority (in Article I, Section 8) over the state militias. But the states retained considerable control over their own militias, most notably in naming their officers, and individual citizens retained the right to "keep and bear arms." The resulting complex of rights and duties makes sense only in the context of federal constitutionalism. For Madison, as he managed this and the other amendments through Congress, practical political considerations merged with a principled commitment to the new federalism. His overriding "intention" was to preserve that delicate federal balance—even at the risk of exposing the ideological "fault lines" modern commentators find so fascinating.⁹⁸

VI: CONCLUSION

The adoption of the Bill of Rights is an integral part of the American founding. But how does it fit the broad story line suggested in this essay? What are the connections among the familiar episodes in the narrative—constitutional crisis, federal convention, ratification controversy, Bill of Rights? I suggest, first, that constitutional reformers were motivated by genuine anxieties about the survival of the union. The convention therefore plays a crucial role in my account: the framers had to overcome daunting political obstacles and construct a complicated system that would preserve and strengthen the union without destroying the states. As they groped toward federalism, questions of "interest" and of "principle" could not be neatly distinguished. But what did clearly emerge from Philadelphia was a commitment to the union and to the possibility of a continental constitutional republic.

Few Antifederalists were authentic disunionists or believed the Confederation an adequate foundation for enduring union. As a result, they participated in good faith, if with a healthy measure of skepticism, in a sustained discussion about the merits of the proposed system and the proper interpretation of the constitutional text. Defenders and critics of the document argued from shared republican and constitutionalist assumptions; they also proclaimed their fealty to federal principles. For most

⁹⁸ *Ibid.*, 4.

Americans, the range of constitutional and political possibilities had narrowed dramatically from the dark days preceding the convention. Federalists and Antifederalists argued each other into a moderate middle ground: proponents of the new system vehemently denied any intention of establishing a monarchical regime; opponents denied that they wanted to break the union up into separate confederacies.

But if the very fact of the ratification debates set the boundaries for a federal constitutionalist consensus, polemicists also inaugurated broadly divergent approaches to constitutional interpretation that have persisted to the present day. Debate centered on the federal character of the new regime: following Madison's lead, moderate Federalists insisted that the government of the union itself would be republican and therefore would not encroach on the states; Antifederalists demanded explicit constitutional guarantees of individual and state rights. From the perspective of liberal—and literal—constitutionalism, the omission of such guarantees was indeed troubling. The growing importance of the Bill of Rights in American constitutional jurisprudence in turn suggests that the Antifederalists who pressed for amendments were not benighted reactionaries but anticipated some of the constitutional dilemmas that would accompany the rise of the national state.

Notwithstanding pressures toward consensus and toward containing differences within the context of constitutional interpretation, Americans did not therefore speak with the same voice or pursue the same ends. Recognition of the complex federal structure that the founding generation created for itself and subsequent generations should enable us to understand better how Americans so long resisted tendencies toward ideological homogeneity and political centralization. The political culture of federalism remains a largely uncharted terrain, but we do know that Americans expected radically different things from government—and from themselves as citizens—at the local, state, and national levels.⁹⁹ This is the complicated constitutional context within which Americans encountered “modernity,” however we may define that much-mooted term. The first task for historians of the founding, therefore, is not to tell how or why or when Americans became modern, but rather to show them constructing a political world for themselves that would shape their experience of, and responses to, subsequent changes.

⁹⁹ Yarbrough, “Constitution and Character,” in Belz *et al.*, eds., *To Form a More Perfect Union*; Donald S. Lutz, *Popular Consent and Popular Control: Whig Political Theory in the Early State Constitutions* (Baton Rouge, La., 1980). For a good introduction to the historiography of federalism see Harold W. Hyman, “Federalism: Legal Fiction and Historical Artifact?” *Brigham Young University Law Review*, Vol. 1987, 905-925.