



Bookshelf

2006

America and Enlightenment Constitutionalism

Gary L. McDowell

University of Richmond, gmcdowel@richmond.edu

Johnathan O'Neill

Follow this and additional works at: <http://scholarship.richmond.edu/bookshelf>

 Part of the [American Politics Commons](#), [Political Theory Commons](#), and the [Public Affairs Commons](#)

Recommended Citation

McDowell, Gary L., and Johnathan O'Neill. *America and Enlightenment Constitutionalism*. New York: Palgrave Macmillan, 2006.

NOTE: This PDF preview of *America and Enlightenment Constitutionalism* includes only the preface and/or introduction. To purchase the full text, please click [here](#).

This Book is brought to you for free and open access by UR Scholarship Repository. It has been accepted for inclusion in Bookshelf by an authorized administrator of UR Scholarship Repository. For more information, please contact scholarshiprepository@richmond.edu.

America and Enlightenment Constitutionalism

Edited by
Gary L. McDowell
and
Johnathan O'Neill

palgrave
macmillan

Introduction

Gary L. McDowell and Johnathan O'Neill

By some estimates the Enlightenment began in 1687 with the publication of Isaac Newton's *Mathematical Principles of Natural Philosophy*. Others would place the start earlier, perhaps in 1642 with the publication of Thomas Hobbes's *De Cive*, in many ways the precursor of his more famous work, *Leviathan*, which appeared in 1651. Still others would push the origins back to Descartes's publication of the *Discourse on Method* in 1637, or even further to Francis Bacon's *Advancement of Learning* of 1605. All these thinkers and those who followed in their paths undertook to open to the scrutiny of human reason the mysteries of the universe and of man's place in it. Through science, they believed, the gloom of superstition and the dim lights of dogma would be replaced; their goal was, in the strictest sense, enlightenment.¹

Whatever date one might choose to mark the beginning of the Enlightenment, the fact is it stretched far into the future, dominating the intellectual life of the eighteenth century and influencing most of the nineteenth and twentieth centuries. That "remarkable efflorescence" of human thought has never been without its defenders and advocates. To them, the very foundation of Western modernity is the result of all that is good in the thought of those seemingly disparate thinkers who emerged from the medieval shadows and sought to train the light of human reason on the world. Thus it is to that tradition—to the likes of Bacon, Descartes, Hobbes, and Newton along with John Locke and Adam Smith, among many others—that thanks are owed for everything from constitutionalism and the rule of law to advances in the natural sciences to liberal capitalism. Never, say the friends of the Enlightenment, has a body of thought done more to ameliorate the pain, insecurity, inconvenience, and suffering of so many at every level of society over such a long period of time.

Yet neither has the Enlightenment been without its critics. To many, the essence of the Enlightenment project was an effort to

supplant faith with reason; inevitably, these critics insist, mankind was left stranded in an amoral netherworld where all too often the results have been predictably disastrous. From the terror that came in the wake of the French Revolution to the purges in the aftermath of the Russian Revolution to the startling atrocities of Hitler, all were the result of the errors of Enlightenment thought being drawn out to their logical and sad conclusions. As the twentieth century drew to a close, the Enlightenment and its legacy were beset by a host of critics offering alternatives, from postmodernists broadly considered to communitarians who had grown weary of the moral hollowness of individual rights that were bereft of any sense of public responsibility.²

When it comes to thinking about the Enlightenment and its place in human history, there seems to be no middle ground between its friends and its foes.³ A few years ago *The Economist* observed this striking dichotomy once it had again become fashionable to argue that the Enlightenment had been “a catastrophic error.”⁴ The world seems divided between those who “regard western modernity as a marvel (despite its failings)” and others who see the Enlightenment tradition as nothing less than “a disaster (despite its superficial attractions).”⁵ All is black or white with no muted shades of grey to be found. And, given the stark opposition, it is a debate that promises to continue indefinitely.

Whether one loves or hates the Enlightenment and all it has engendered in the past several hundred years, there is one unmistakable fact about it. There is no nation more closely associated with its most basic premises than the United States, both in its very creation and in its role of perpetuating those premises as the essence of the principles of ordered liberty and republican justice. After all, the United States was the first nation that could boast, as Alexander Hamilton would put it, of having been created from “reflection and choice” and was not merely the result of “accident and force” as were all the other nations of the world.⁶ America was not just created, but was created in light of truths deemed to be universal.

In understanding the relationship of the United States to the Enlightenment, it is necessary to look both backward and forward. On the one hand, America was built upon a foundation that was, if not exclusively at least primarily, the result of well-established Enlightenment principles.⁷ On the other hand, the Americans' European inheritance encouraged them to make their own original contributions to the Enlightenment.⁸ Especially when it came to politics, Americans such as Benjamin Franklin, John Adams, James Madison, and Thomas Jefferson were innovators in, and contributors

to, the assimilation of Enlightenment thinking as part of modern Western values. Their great political accomplishment in creating the American republic—from the Declaration of Independence to the U.S. Constitution—was in many ways a monument to that peculiarly modern frame of mind.

Near the end of his life, Thomas Jefferson could look back on the moment of national creation and suggest that it would be remembered as “the signal of arousing men to burst the chains under which monkish ignorance and superstition had persuaded them to bind themselves, and to assume the blessings and security of self-government” in a political order characterized by “the free right to the unbounded exercise of reason and freedom of opinion.” To ages yet unborn, America’s lesson would be unmistakable:

All eyes are opened, or opening, to the rights of man. The general spread of the light of science has already laid open to every view the palpable truth, that the mass of mankind has not been born with saddles on their backs, nor a favored few booted and spurred, ready to ride them legitimately, by the grace of God.⁹

Jefferson’s enthusiasm was that of an unapologetic student of the Enlightenment.

To assess the state of Enlightenment thinking the School of Advanced Study in the University of London hosted a conference on the subject of “America and the Enlightenment: Constitutionalism in the 21st Century.” The conference drew together some of the most distinguished thinkers in a variety of disciplines to consider the topic, and the following collection consists primarily of the papers presented at that conference, plus essays by Gordon S. Wood and C. Bradley Thompson.

The first two chapters in part I, “Enlightenment Philosophy and Constitutionalism,” relate major features of the Enlightenment to pressing contemporary debates in political and legal theory. Steven D. Smith first orients the volume with a survey of the Enlightenment, arguing that the American founding built on it by premising a providential and normative cosmic order in which reason discerned at least some moral and political truth. However, today most liberal political and constitutional theorists who claim to be heirs of the Enlightenment actually invert its basic principles. Above all, they attempt to eviscerate its claim about the truth that reason can find. And, frequently with the aid of the U.S. Supreme Court’s First Amendment jurisprudence, these theorists seek to subject all political

discourse to their own standards, which are secular, perspectival, instrumental, and conventional. The result, writes Smith, is the impoverished legal-political discourse of "public reason." It is increasingly incapable of addressing citizens' deepest concerns with anything more than suspicion, avoidance, manipulation, and sometimes censorship. This situation has upended the Enlightenment and endangered its achievements.

Martin Loughlin advances this general analysis by focusing on the displacement of the Enlightenment understanding of natural rights by the superficially legal but deeply politicized discourse of "human rights." He then considers how this shift has affected the relationship between law and politics. In the post-World War II era this shift proceeded on the American model of judicial review, which was originally intended to protect rights previously announced in a textual fundamental law. Loughlin notes, however, that the new discourse of human rights lacks just what had constrained American courts before the post-World War II "rights revolution"—a theory of human nature and limited government rooted in the Enlightenment. The new notion of human rights has worked a radical alteration in not only the understanding of the character of law itself but also the relationship between law and politics. Now rights rather than rules established by legislation are the architectonic principles of the legal order. Rights often command, direct, and trump legislation. But with the severing of any connection to nature as a limit, any political claim can be and is articulated in the language of rights. This in turn has yielded an ingeniously creative but fundamentally political jurisprudence where courts define the sphere of individual liberty instead of ensuring that it exists in a realm beyond legal regulation. Loughlin urges recognition of the political character of rights discourse so that the political judgments involved in its elaboration or limitation can be more squarely met.

From these examinations of the contemporary transformation or abandonment of Enlightenment philosophy, the next three chapters return to that philosophy as originally presented by some of its most notable advocates. Frederick Rosen argues that the rediscovery of ancient Epicureanism was a major reason that the Enlightenment undermined the corporatist and religious conceptions of nature and morality inherited from medieval scholasticism. Epicurean materialism, sensationalism, atomism, and emphasis on security and comfortable self-preservation influenced thinkers from the early Renaissance through Hobbes, Locke, and John Stuart Mill. Further, in welcoming the aspiration for happiness and security among the many and not just the few, modern Epicureanism helped define the conception of

legitimate political authority underlying modern constitutionalism. No longer would political authority be based on natural or divine higher law, but instead it would be based on the common agreement of individuals as to the best means of preserving the life, liberty, and property indispensable to their security and happiness. Yet, Rosen concludes, inquiry into what kind of government institutions might achieve these goals was not pursued because the Epicurean tradition was disinclined to rationalist systematizing.

The remaining thinkers treated in part I offered more definite prescriptions for government institutions and more systematic arguments for their underlying political authority. Yet, like modern Epicureanism, they measured legitimacy by the standards of individual rights and consent, rather than by custom, virtue, or religion. While Hobbes famously advanced the focus on rights and consent by overtly demoting religion, Robert Faulkner argues that the "political-theological problem" was similarly but more surreptitiously handled in Locke's too often neglected *First Treatise*. Clearing the ground for the regime of equality, rights, and social contract in the *Second Treatise* required that the *First Treatise* refute Robert Filmer's justification of divine right monarchy. In doing so, claims Faulkner, Locke also sought to displace biblical authority in favor of a philosophic and rational individualism reminiscent of Hobbes. Although Locke easily refuted Filmer, Faulkner concludes that in holding the Bible to his own standards rather than grappling with those it announces—by offering an epistemology to explain away the possibility of revelation—Locke's new basis for politics rested more on determined insistence than rational refutation.

Not long after Hobbes and Locke called upon the English experience to lay the philosophical foundations of modern constitutionalism, Montesquieu also looked hopefully to England. Paul A. Rahe shows that after the English victory at Blenheim (1704) ended France's continental ambitions, the French, Montesquieu among them, found England to be a topic worthy of study. Rahe argues that upon considering the political future of Europe, Montesquieu, in the *Persian Letters*, regarded the ancien régime as doomed. Further, in *Considerations and Reflections* Montesquieu held that nothing like a pan-European empire was possible or desirable any longer. This left England, that republic concealed under the form of a monarchy, which *The Spirit of the Laws* praised as the modern government whose direct object was political liberty. In *The Spirit of the Laws*, Rahe holds, Montesquieu showed how passionate vigilance in defense of liberty, or inquietude, set the English polity in motion. Modern republics like England were

activated more by this fear of losing their liberty than by the older conception of republican virtue. As a result, the various components of the polity restlessly guarded one another. This yielded a counterbalancing of forces institutionalized in the separation of powers, which ensured the checking partisanship and moderation necessary for the preservation of liberty.

Americans inherited such fundamental political lessons of the European Enlightenment and founded their own constitutional republic. The first three chapters in part 2, "The Enlightenment and the Constitution in America," consider how the political culture of the American founding regarded itself as Enlightened; how the Enlightenment shaped the Virginia Constitution of 1776; and how the federal Constitution of 1787 helped unite the nation by extending Enlightenment political principles. Gordon S. Wood's chapter argues that the deep desire to be a coherent nation drove Americans' impassioned insistence that they were especially Enlightened. In the founding period it seemed that building a new nation and loyalty to Enlightenment ideas were one and the same, as when the egalitarian tendency of modern republicanism pushed in the same direction as the Lockean argument for the accessibility to all of sense perception and reason. Wood shows that however much we can doubt the Americans' claim to have been the most Enlightened people on earth, the founding period did contain notable increases in several indicia of the Enlightenment: economic prosperity; education, publishing, and reading; humanitarian social reform; and universalist and cosmopolitan sensibilities. Indeed, Wood concludes, it was only the realization of the Enlightenment in America, albeit limited, that provided the incentive and moral capacity for condemnation of the brutal treatment that Africans and Indians received at the hands of whites.

Colin Bonwick uses Virginia as a case study to argue that the Enlightenment remains helpful for understanding the constitution-making of the founding period. While fair-mindedly accounting for the admixture of other influences and for inevitable limitations, Bonwick claims that distinctly Enlightenment concerns with nature, reason, and progress were central factors in Virginia. Moreover, they have for too long been subordinated to the liberalism versus republicanism debate. Virginia shows that the Enlightenment created a spirit of free enquiry and willingness to innovate that was manifested in the concrete political doctrines derived from the philosophers considered in part 1: natural equality and natural rights; popular sovereignty; the separation of powers; and the duty of government to promote public safety and happiness.

J. R. Pole argues that the founding did not complete the task of nation-making. In fact it was a historical process, with interpretation of the Constitution itself being the site for this ongoing development. America was wedded to the Enlightenment proposition that a true political community was a “community of principle,” and constitutional interpretation, especially of the Fourteenth Amendment, gradually helped create a polity where consent was more fully represented and equal rights more fully respected. This process was not uniform, predetermined, or without instances of regression. However, Pole argues that as a result of this process the Supreme Court has assumed a legislative power inconsistent with its role in the original constitutional design, and he concludes with some suggestions about how Congress might reassert its own power in response to the Court’s overstepping.

The next two chapters in part 2 focus on James Madison, especially on his understanding of the relation between constitutionalism and the modern Enlightenment doctrine that public opinion or consent is the basis of legitimate political authority. Jack N. Rakove approaches the issue by first considering the tension between Madison’s confident openness to constitutional innovation as compared to his wary insistence on the need for constitutional stability. The key to understanding this issue, writes Rakove, was Madison’s belief that it was quite rare to have had inevitably untutored public opinion on the side of the enlightened political wisdom and delicate compromise contained in the Constitution. Too frequently involving the public directly in constitutional disputes would be a “ticklish” experiment because, although public opinion was the strongest component of the polity, it was by no means the most reasonable. Madison aimed to prevent the unsteady impulses of public opinion from imperiling the hard-won constitutional arrangements that were so carefully designed to encourage a politics of reason and moderation.

Pursuing a related inquiry, C. Bradley Thompson argues that Madison saw the goal of constitution-making as reconciling the modern Enlightenment doctrine of consent with the ancient idea that political wisdom was the preserve of a few, and perhaps even a single founder. America had achieved such a reconciliation when the Constitution written at Philadelphia won the consent of the people and was ratified. Thompson emphasizes that Madison’s profound understanding of political prudence led him to argue, especially in *The Federalist* no. 37, that a perfect reconciliation, and indeed a perfect constitution, was impossible. The inevitable limitations imposed by circumstance, prejudice, fallible reason—and politics itself—counseled moderation of expectations and prudent acceptance of this Constitution

as the best that could be achieved. Madison, Thompson concludes, realized that preservation of the Constitution's reconciliation between wisdom and consent required that it be treated as fundamental law. This in turn required that the prejudices and even the reverence of the people be on the side of the Constitution, whose wisdom was to garner political stability by moderating and enlightening the passions and interests of the very people who had consented to it.

The unifying theme of these chapters is the importance of various aspects of the Enlightenment not only for understanding America as it was, but as it is, and as it likely will continue to be. Whatever criticism one may level at the ways the American republic has developed, whatever alternatives might be put forward to challenge the most fundamental premises of the constitutional order, the fact is that American greatness—indeed, its exceptionalism—among the nations of the world from the time of the founding to our own day stems from, and is guided by, those principles that shine still from the dawn of modernity. Such is the power of those ideas that we think of simply as “the Enlightenment.”

* * *

Permission to use the following previously published material in this volume is gratefully acknowledged: Steven D. Smith, “Recovering (From) Enlightenment?” *San Diego Law Review* 41 (2004): 1263–1210, copyright 2004 *San Diego Law Review* is reprinted in a slightly shorter version with the permission of the San Diego Law Review; Martin Loughlin's chapter appeared as “Rights,” and is reprinted from *The Idea of Public Law* (2003), 114–130, by permission of Oxford University Press; Robert Faulkner's “Preface to Liberalism: Locke's First Treatise and the Bible” appeared in the *Review of Politics* 67 (2005): 451–472 and is reprinted with permission. Additionally, we thank Rebecca O'Neill for her diligent help in the preparation of the manuscript.

Notes

1. “There . . . was only one Enlightenment,” Peter Gay once noted: “A loose, informal, wholly unorganized coalition of cultural critics, religious skeptics, and political reformers from Edinburgh to Naples, Paris to Berlin, Boston to Philadelphia . . . [which] made up a clamorous chorus . . . The men of the Enlightenment united on a vastly ambitious program, a program of secularism, humanity, cosmopolitanism, and freedom, above all, freedom in its many forms—freedom from arbitrary

power, freedom of speech, freedom of trade, freedom to realize one's talents, freedom of aesthetic response, freedom, in a word, of moral man to make his own way in the world." Peter Gay, *The Rise of Modern Paganism*, vol. 1, *The Enlightenment: An Interpretation* (New York: Alfred A. Knopf, 1967), 3.

2. See, e.g., Karlis Racevskis, *Postmodernism and the Search for Enlightenment* (Charlottesville: University Press of Virginia, 1993); Max Horkheimer and Theodor W. Adorno, *Dialectic of Enlightenment* (New York: Herder and Herder, 1972); and Michael J. Sandel, *Democracy's Discontent: America in Search of a Public Philosophy* (Cambridge, MA: Harvard University Press, 1996).
3. For an effort to assess the Enlightenment, especially the British Enlightenment, in an evenhanded way, see Roy Porter, *The Creation of the Modern World: The Untold Story of the British Enlightenment* (New York: W. W. Norton, 2000).
4. "Crimes of Reason," *The Economist*, March 16, 1996, 113.
5. *Ibid.*, 115.
6. Jacob Cooke, ed., *The Federalist* (Middletown, CT: Wesleyan University Press, 1961), 3.
7. See, e.g., Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, MA: Harvard University Press, 1967); Gordon S. Wood, *The Creation of the American Republic, 1776–1787* (Chapel Hill: University of North Carolina Press, 1969); Michael Zuckert, *Natural Rights and the New Republicanism* (Princeton: Princeton University Press, 1994); and Joyce Appleby, *Liberalism and Republicanism in the Historical Imagination* (Cambridge, MA: Harvard University Press, 1992).
8. See, e.g., Adrienne Koch, ed., *The American Enlightenment: The Shaping of the American Experiment and a Free Society* (New York: George Braziller, 1965); Henry F. May, *The Enlightenment in America* (New York: Oxford University Press, 1976); Morton White, *The Philosophy of the American Revolution* (New York: Oxford University Press, 1978); and Bernard Bailyn, *To Begin the World Anew: The Genius and Ambiguities of the American Founders* (New York: Alfred A. Knopf, 2003).
9. Merrill Peterson, ed., *Jefferson: Writings* (New York: Library of America, 1984), 1517.