


12-10-2010

Judicious Modification

Gary L. McDowell

University of Richmond, gmcdowel@richmond.edu

Follow this and additional works at: <http://scholarship.richmond.edu/jepson-faculty-publications>

 Part of the [Political History Commons](#), and the [United States History Commons](#)

Recommended Citation

McDowell, Gary L. "Judicious Modification." *Times Literary Supplement*(London), December 10, 2010.

This Book Review is brought to you for free and open access by the Jepson School of Leadership Studies at UR Scholarship Repository. It has been accepted for inclusion in Jepson School of Leadership Studies articles, book chapters and other publications by an authorized administrator of UR Scholarship Repository. For more information, please contact scholarshiprepository@richmond.edu.

Judicious modification

As Thomas Jefferson neared the end of his long life ("with one foot in the grave and the other uplifted to follow it", as he put it), he had occasion to reflect on that extraordinary generation of which he so proudly had been a part. He was convinced that the "host of worthies" that comprised his "generation of 1776" had secured to all mankind in all future times the philosophical grounds for "the blessings and security of self-government", and thereby "the rights of man". Yet his pride in the accomplishments of his own generation was tempered by the nagging fear that the "unwise and unworthy passions of their sons" might yet, by their inept handling of the problem of slavery and the potential "scission" of the Union, lose all Jefferson and his fellow founders had achieved.

There was a difference between his generation and others that could not be denied. James Madison, Jefferson's lifelong friend and collaborator, was similarly moved by his own recollections of his fellow constitutional framers. It was his "profound & solemn conviction" that "there never was an assembly of men, charged with a great & arduous trust, who were more pure in their motives", nor more dedicated to securing "the permanent liberty and happiness of their country", than the members of the Constitutional Convention of 1787. Madison, like Jefferson, knew how to count his nation's political blessings.

Even the most cursory listing of the great and the good of their day is enough to make the point. What other nation ever enjoyed at the same moment the collective intellectual and political virtues (whatever their all too human weaknesses) of the likes of John Adams, Alexander Hamilton, Benjamin Franklin, Samuel Adams, George Washington, Gouverneur Morris, Richard Henry Lee, John Jay, James Wilson, George Mason and John Witherspoon, to say nothing of Madison and Jefferson themselves? It is precisely this enduring historical "puzzle" that lies at the heart of Jack Rakove's splendid and original new book, *Revolutionaries: A new history of the invention of America*. In many ways, that generation of what Rakove calls "unlikely provincial revolutionaries" inexplicably discovered the necessary resolve within themselves and rose to the occasion. As he suggests, they "became revolutionaries despite themselves", and as they made their revolution, so their revolution in turn made them. It was an event, Hamilton observed, that brought forth "talents and virtues which might otherwise have languished in obscurity". Yet what emerges from this new telling of an old and familiar tale is something more than a series of brilliant biographical sketches or even a remodelled narrative of the Revolution and the creation of the new republic. These studies come together to form something of a primer on statesmanship – or at least leadership. Rakove shows us how, by combining the grand visions of high-minded political theorists with the often petty and self-interested calculations of street-savvy politicians, the Americans made what would prove to be their principled republican way not simply to independence, but to a new and

GARY L. MCDOWELL

Jack Rakove

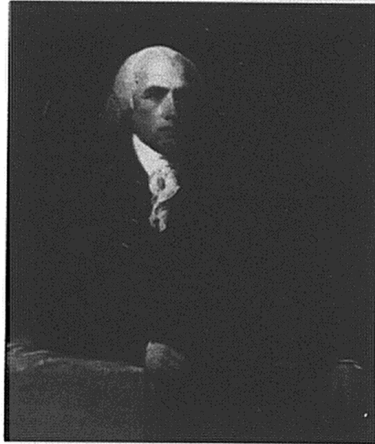
REVOLUTIONARIES

A new history of the invention of America
496pp. Houghton Mifflin Harcourt. \$30.
978 0 618 26746 0

Alison L. LaCroix

THE IDEOLOGICAL ORIGINS OF
AMERICAN FEDERALISM

320pp. Harvard University Press. £25.95 (US \$35).
978 0 674 04886 7



James Madison by Gilbert Stuart, 1805–07

lasting understanding of constitutionalism.

At the heart of that new constitutional order was the successful combination of previously independent states into a federal union, a national government beyond the sum of the parts and one intended to endure for ages to come. As Alison L. LaCroix argues in *The Ideological Origins of American Federalism*, this was not simply the result of ad hoc compromises but, more deeply, the result of a fundamental theory, or what she insists on calling an "ideology" of federalism, the belief that multiple levels of governance could – and should – exist within the same polity.

With a glance back to Madison (whom Rakove calls simply "the greatest lawgiver of modernity"), we see how he, more than anyone, understood the nature and extent of the idea of federalism as a principle of government. He was convinced, as he privately wrote to Washington on the eve of the Constitutional Convention, that a consolidation of the states into one simple and seamless republic was to be deemed not only politically "unattainable" but theoretically "inexpedient". Madison's goal was to find "some middle ground" and thereby transform a dangerously loose confederation of states into a nation through what he would call in *The Federalist* a "judicious modification . . . of the federal principle". What this "judicious modification" meant in practice was to retain the states as states wherever they could be "subordinately useful", yet to make clear that the national authority enjoyed a near unquestioned constitutional supremacy. The virtue of La Croix's account is to show not only that federalism as it developed was more intellec-

tually coherent than a mere bundle of compromises, but also that its theoretical core had begun to emerge decades before the delegates travelled to Philadelphia in May 1787. Yet with such a theoretical or ideological centre, the tensions implicit in Madison's "judicious modification" would still prove to be nearly irreconcilable. Even with the Supremacy Clause of the Constitution suggesting that the federal judiciary would be the "crucial fulcrum on which the federal-state balance pivoted", it would not be possible to remove completely the potentially dangerous structural ambiguity of a regime deemed neither "wholly federal, nor wholly national", but rather a combination of both.

It is perhaps no small irony that it was Jefferson himself (aided and abetted by Madison) who would exploit that ambiguity through the arguments and actions of their Republican party. To their critics, such as Chief Justice John Marshall, the Republican agenda was to smuggle a foreign theory of states-rights confederalism into the new nationalistic constitution through political, if not judicial, interpretation. The Jeffersonians were, said Marshall with more than a little bitterness, engaging in mere "political metaphysics", seeking to transform the essence of the new republic back into what the framers had sought to leave behind. Indeed, such notions as "nullification" and "interposition" uttered by Jefferson and Madison, would do much to roil the political waters surrounding that generation whose "unwise and unworthy passions" worried Jefferson.

Those passions would eventually find their fiercest expression in the secession of the Southern states and their attempt to dissolve Madison's "partly federal" and "partly national" union once and for all. And it would take another kind of statesman to preserve the nation, but one still imbued with an appreciation for the founders' principled invention of America. And in that sense, at least, Jefferson was ultimately correct. The ideas of that "host of worthies" at the beginning, those who had put the republic on the path to securing the fundamental blessings of liberty and self-government, would eventually give rise to what Lincoln at Gettysburg one wintry November day would call simply a commitment to "a new birth of freedom" and the fulfilment of the original pledge of that generation of 1776 to secure a "government of the people, by the people, [and] for the people". And American federalism, one of the old revolutionaries' proudest inventions, would never be the same.