

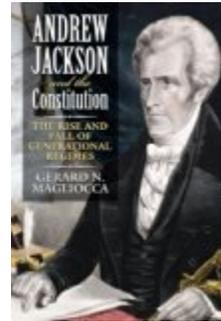
H-Net Reviews

in the Humanities & Social Sciences

Gerard N. Magliocca. *Andrew Jackson and the Constitution: The Rise and Fall of Generational Regimes*. Lawrence: University Press of Kansas, 2007. xi + 186 pp. \$29.99 (cloth), ISBN 978-0-7006-1509-4.

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Published on H-Law (July, 2008)



In *Andrew Jackson and the Constitution*, Gerard N. Magliocca, associate professor of law at Indiana University, has written a little book with a lot of big ideas. In only 129 pages of text, he covers everything from the growth and challenges of Supreme Court- and president-influenced constitutional doctrine, to its relation to race during the Jacksonian period, to the link between the rise of abolitionism and Indian rights, to the meaning of judicial review and the Fourteenth Amendment, and much in between. Without question, Professor Magliocca is a learned and broad thinker. His ideas will cause readers to think, and that is what any good book should do. Yet at the same time, the big ideas are sometimes not as fully engaged as some readers might like. This is most certainly due to the limited size of the book, and I wondered why it was not expanded to provide an even deeper consideration of the many ideas that are presented.

Readers should note that Magliocca's is not the first book titled *Andrew Jackson and the Constitution*. The original was written by Francis Norene Ahl in 1939. The title, however, is the only thing that these books have in common. Whereas Ahl provided a rather cursory overview of Jackson's actions as president and, for the most part, concluded that his dominant personality forced change that reflected "a wholesale contempt for the law,"[1] Magliocca asserts that the seventh president's actions were far more reflective of a generational response to the federal government's growing power. The key catalysts for the Jacksonian generation's actions, or what Magliocca might more properly define as reactions, were chief justice John Marshall's 1819 *McCulloch v. Maryland* decision in which he acknowledged the constitutionality of the Bank of the United States, and

the *Worcester v. Georgia* decision (1832) in which he attempted to provide a safeguard against government action regarding the Cherokees.

Before going further, it is important to understand that Magliocca's work falls within the realm of what one might call "serious" legal scholarship. I do not mean this in a trite way, insinuating that other legal scholarship is not serious. The readers of H-Law will surely grasp the historiographical and analytical significance of what Magliocca is attempting in offering a broad, and at times sweeping, discussion of constitutionalism and the seminal importance of particular cases as they relate to political movements and change. The author even acknowledges in the conclusion that one of his goals is to "offer some fresh ideas about our constitutional past" and to try "to sketch out fruitful lines of research for others to pursue" (p. 129). Thus, in many ways, Magliocca is attempting to spark debate and considered thought, rather than derive "conclusions." One of the rubs in his approach, however, is that those who are interested in constitutional ideas and how they intersect with politics, especially the rise of political parties, may find themselves scratching their heads at some of the broad ideas offered and the how the specificity of Magliocca's legal focus relates to the bigger movements of politics in the Jacksonian period. As one who skirts the boundaries of both constitutional and political history, I believe that this book will spark the interest of those readers who fall more within the constitutional/legal camp of scholars.

That said, Magliocca's broad approach is matched with a broad theory regarding the nature of what he calls "constitutional generations," or "generational cohorts,"

offering that “The cycle in constitutional law is fueled by the fact that each generation goes through a unique set of collective experiences that sets its views apart from its predecessors” (p. 2). He follows by asserting that “This claim finds support in the literature on ‘generational cohorts,’ which explains that people who come of age at the same time tend to view political and social issues in the same way throughout their lives” (p. 3). Magliocca sums up that “The main point that flows from this temporal analysis is that the friction from the regular clashes between ‘constitutional generations’ is the primary force shaping the first principles of the Republic” (p. 3). At its most basic level, Magliocca’s thesis is that one generation’s actions spark the next generation’s reaction, and hence the original generation “carries the seeds of its own destruction, as its very success eventually triggers a backlash” (p. 7).

Whereas Magliocca’s contention, that action sparks reaction, is fundamentally sound, some may take issue with his rather clear-cut generational depictions. How long, for example, does a generation last? When does it start? How do we define a clear end? What happens when those of the same age group, those who essentially “come of age” at the same time, do not “view political and social issues in the same way throughout their lives”? Do they still belong to the same generation? What if one group harkens back to an earlier generation for legitimacy? What if both groups claim a previous generation’s legitimacy? Surely this was the case in the early years of the republic, when Federalists and Republicans divided so steadfastly, and angrily, over the meaning of the Revolution and what it should foster for the future of the young nation.

I do not mean that social and political movements can never be defined by generations. Tom Brokaw properly defined those who lived through World War II as the “greatest generation.” In this instance, one can see that a collective experience shaped the beliefs and intentions of an entire group, a generation. I am not, however, certain that such a clear point of demarcation, such as Pearl Harbor or the Nazi threat, can be determined for those in the Jacksonian period. Magliocca pin points the beginning of the Jacksonian generation in the combination of the Panic of 1819 and John Marshall’s *McCulloch* decision, referring to it as a “lighted match” that provoked a crisis leading to the “the demise of his constitutional generation” (p. 9). “Marshall and his allies were now on the defensive, confronted by a new movement dedicated to a major revision of constitutional principles” (p. 11).

Though there is no question that Jackson and many of his followers were opposed to *McCulloch* (Jackson made that abundantly clear in his Bank Veto message), it does not follow that the beginning of this opposition materialized in the immediate aftermath of the Court’s decision or even with the burgeoning of the Jackson coalition in 1824, or in 1828. In fact, it is hard to say at the outset what the new Jacksonian Democratic Party represented, beyond very general calls for “reform” and a dedicated opposition to John Quincy Adams and Henry Clay. One of Jackson’s greatest difficulties was in satisfying all of the elements of his party. Clay believed that very problem would be the president’s downfall if he vetoed the Bank bill. To be sure, the inconclusive nature of Jackson’s coalition is certainly not lost on Magliocca, who acknowledges that, “In Congress, the situation was muddled at best. People calling themselves Democrats were a majority, but the president could not rely on them because there was no agreement on what being a Democrat meant” (p. 21). I would argue, then, that the logical extension of this is to be very careful in attempting to define such a clear-cut Jacksonian generational regime.

Political historians will also consider additional factors in the rise of the second American party system, other than focusing almost solely on *McCulloch*. Magliocca, for example, makes no mention of the Missouri crisis, which was very much a catalyst for Martin Van Buren, arguably the architect of the new party system. Additionally, in his broad overview of the period and *McCulloch*’s place in it, the author lumps together some rather complex issues, asserting, for example, that the Bank represented a “contest over whether America’s future rested with the commercial world exemplified by the Bank or with the simple agrarian life that evoked the Minutemen of the Revolution” (p. 11). Such a statement is too general. Jackson, and many in his party, were not simple, rustic, yeoman farmers. They were every bit as capitalistic as were the opposing Whigs. The issue was about power and access to wealth.

Finally, the point of generational regimes and Jackson as a leader who forced change intersects a major issue of debate among Jacksonian scholars: to what extent did Jackson set a clearly defined agenda and carry it through as a forceful, modern president who shaped legislation, expanded the veto power, and ushered in a new era of understanding regarding the power of the chief executive? Magliocca’s focus on generational regimes clearly depicts Jackson as a clear-minded agent of change who led his cohorts and shaped the veto into a powerful weapon.

The other major focal point for Magliocca is the *Worcester* decision, the ensuing Jacksonian generation's onslaught against Native Americans, and the corresponding destruction of rights for all nonwhites. Magliocca draws insightful parallels between the treatment of the Cherokee, the *Dred Scott* decision, and the writing of the Fourteenth Amendment. He similarly makes direct connections, as have other scholars, between the abolitionists' concern for the plight of slaves and their outrage over the fate of Native Americans. Magliocca ultimately concludes that through their reaction to the *Worcester* decision, the passage of the Removal Act in 1830, and what followed, "the Jacksonian generation was largely defined by the struggle over Cherokee rights" (p. 103).

Though there is no question about the racial proclivities of Jackson and his followers, political historians will take issue with the argument that the Cherokee issue "defined" the Jacksonian generation. They look more consistently to the Bank War, and some include the Nullification Crisis and Jackson's response to it as a major episode in the perpetuity of the Union and the nature of the Constitution. Interestingly, with Magliocca's narrow focus on Supreme Court decisions and the specifics of legal history, nullification and the serious constitutional issues tied to it barely appear in the book. Historians from a variety of fields will also debate Magliocca's statement that "there was a big difference between the way Tribes were treated before the 1830s and after" (p. 13). His meaning here is, again, in terms of strict legal/governmental policy, but there is no mistaking the fact that Native Americans were robbed of their lands and treated as less than whites long before Andrew Jackson came on the scene.

Though I have certainly taken issue with some of what Magliocca argues, his book has caused me to think and formulate ideas in regard to his points. I have benefited from that. One of the items that was of particular note, and which transcends both legal and political history, is the author's assertion regarding how precedents are created. He describes a sort of haphazard growth of constitutionalism, rather than a legalistic crafting. More often than not, changes were far more reactionary than forward-thinking in constitutional terms: "Many of the

constitutional principles that are now considered fundamental began as nothing more than offshoots of a generational conflict. The great engine of legal creativity is the primal desire to win. As a result, leaders caught up in the emotions unleashed by a fight for power often reached for unorthodox solutions to attract support. Innovations introduced in the heat of battle often became pillars of constitutional order over time" (p. 47). I agree whole-heartedly with this analysis and have documented it rather clearly when discussing the precedent that Jackson created when he declared martial law in New Orleans in 1814-15 and what the Congress did with that action in the 1840s.[2] The Democrats pushed hard to essentially legalize Jackson's use of emergency powers without much consideration of who might utilize those powers in the future or how they might impact the Constitution.

One of the other ideas that I found intriguing was the constitutional importance of William Henry Harrison's premature death. Magliocca argues persuasively that had Harrison lived he would have signed a new Bank bill into law and thus offered the Roger Taney-led, and Jacksonian-generationally influenced, Supreme Court to overrule *McCulloch*. When John Tyler, really a Democrat, vetoed the Whig-sponsored Bank bills, he robbed the Court of such an opportunity. Magliocca concluded that "The replacement of Harrison by Tyler is a prime example of the role chance plays in constitutional politics" (p. 81).

All in all, *Andrew Jackson and the Constitution* is, as I have stated, a small book with a lot of big ideas. Gerard Magliocca is to be commended for offering both constitutional/legal and political historians something to contemplate.

Notes

[1]. Francis Norene Ahl, *Andrew Jackson and the Constitution* (Boston: Christopher Publishing House, 1929), 22.

[2]. Matthew Warshauer, *Andrew Jackson and the Politics of Martial Law: Nationalism, Civil Liberties and Partisanship* (Knoxville: University of Tennessee Press, 2006).

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Citation: Matthew Warshauer. Review of Magliocca, Gerard N., *Andrew Jackson and the Constitution: The Rise and Fall of Generational Regimes*. H-Law, H-Net Reviews. July, 2008.

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