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Elaine K. Swift. *The Making of an American Senate: Reconstitutive Change in Congress, 1787-1841*. Ann Arbor: University of Michigan Press, 1996. x + 185 pp. \$39.50 (cloth), ISBN 978-0-472-10702-5.

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## Partly Democratic, Partly Aristocratic?

Some thirty years ago, Paul Eidelberg wrote a book called *The Philosophy of the American Constitution: A Reinterpretation of the Intentions of the Founding Fathers*.<sup>[1]</sup> The crux of his argument was that the founders created neither a simple democracy nor a federal republic but a “mixed regime,” patterned somewhat after the English form of government, in the sense that the new government would be a mixture of democracy, oligarchy, aristocracy and monarchy. Rather than being one form or another, however, the institutions of the new government would exist in tension with each other and partly with themselves. Despite obvious differences with the English form of government, Eidelberg insisted that the drafting of the United States Constitution was not purely the product of a democratic mind, but partook of various streams of thought regarding governance, including pre-modern political philosophy. The founders used the modern idea of institutions to promote premodern ends, and thereby institutionalized the conflict between modern and premodern thought. Recognizing that enlightened statesmen will not always be at the helm, the founders provided for a less-than-democratic institutional solution to the problems of human nature.

Eidelberg, however, provided for no theory of constitutional change. His argument was grounded in the original meaning of the Constitution as it was framed in 1787. At most, Eidelberg suggests that we are diminished by any alteration from its original form. Yet it is noteworthy that Eidelberg’s dissertation advisor, Herbert J. Storing, wrote a Foreword to Eidelberg’s book disagreeing

with Eidelberg’s “mixed regime” thesis. Storing agreed with his pupil up to a point: he thought it safer to say that the United States was more oligarchic than democratic in 1787, but that fact in no way diminished the democratic structure of the United States. For Storing, the quasi-permanent status of senators in no way added up to a mixed regime. The key question for Storing was whether a democracy remains so when it is institutionalized in different forms. He thought it did. Storing agreed with James Wilson, who characterized the United States as “purely democratical,” but refused to leave it at that. “Democracy is the beginning point,” Storing wrote, “and the problem for the Framers was to find ways to mitigate that democracy to secure its advantages and avoid its excesses” (p. xii). How, then, to classify the new American government, especially its particular parts? Can oligarchic or aristocratic national institutions be superimposed on a democratic people? How separate can the state be from society? Institutionally, the main question, asked by Eidelberg, is this: “What role was the Senate intended to play in shaping the character of American society?” (p. 106).

Elaine Swift, in *The Making of an American Senate: Reconstitutive Change in Congress, 1787-1841*, has entered this debate and enriched us all. Her thoughtful, well-written book on how the Senate changed during the antebellum era provides fresh insight into Eidelberg’s original, more philosophic, thesis. Combing history and political science, and using a mixture of quantitative data, newspaper accounts, and other historical documents,

Swift weaves an argument about the Senate's transformation before the Civil War that has implications for contemporary legislative studies and American political development as well. But before turning to her understanding of reconstitutive change, I want first to describe her thoughts on the Senate's role in American politics.

Through an analysis of the various plans put forth at the Constitutional Convention to establish the Senate, Swift describes the making of the Senate in terms of the social, political, and economic forces that shaped its development. Taking a broad view, her first chapter underscores the "reactionary social, economic, and governmental rationale for why the framers created the kind of upper chamber they did" (p. 13). Rather than a textual analysis of James Madison's words regarding the democratic basis of the Senate, Swift delves deeply into the historical record, and argues that the Senate was patterned after "an idealized conception of the British Constitution" (p. 11). Believing that American society in 1787 was "under siege" (p. 10) by the common people and their representatives intent on redistributing property, the founders, she writes, structured the upper house of the legislature as an independent political power that would "dominate the House and the people whom the House represented" (p. 12). For Swift, the need for the Senate was not simply to serve as a counterweight to the House; rather, the framers approached the creation of the Senate from the standpoint of a "Whiggish ideal of a hierarchical social order... which American conservative elites... held dear" (p. 15). The state of inequality that existed in the economy had to be reproduced institutionally "to stabilize the polity and preserve freedom" (p. 25). The Senate, then, would defuse any radicalism coming from the states and promote a "stable, wise, powerful, and virtuous rule" (p. 20).

Swift takes the structural differences between the two houses seriously, and argues against Madison's admonition in *The Federalist* that the Senate would represent the people, although in a different capacity than in the House. "Almost all the framers eventually would join in the making of an American House of Lords" (p. 31). The new Senate would have the following elements: "a membership with high social and economic status, substantial political autonomy, and sweeping legislative and executive power" (p. 47). The formal division between the Senate and the House facilitated the division of labor between the two houses, and thereby replicated the British parliamentary system, where "power would flow from different sources" (p. 52). Although changes were made after the Connecticut Compromise that democra-

tized the Senate somewhat, Swift argues that the Senate formalized aristocratic ideas in its basic structure. The members of the Senate, then, would be more conservative, more national, and more devoted to property than the members of the House of Representatives. Indeed, because of these structural dynamics, the Senate would maintain some of the English feudal elements in law that would be later be institutionalized by judges before the Civil War.

Elaine Swift's book is more than just a story about congressional transformation. Its force lies in her analyses and explanations of the Senate's changes over and within time. "The significance of the Senate's transformation is not confined to the chamber," she writes in the introduction (p. 3). Rather than relying exclusively on macro-historical forces to explain the Senate's transformation, or focusing on quantitative data to explain variations between Senates, Swift focuses on how the Senate was first created as an elite chamber, and then transformed into a more democratic one by an adaptive institutional vision. Swift places her book firmly within American political development. She periodizes the Senate's development over time, from 1787 to 1841 and beyond, in an effort to deepen our awareness of the processes that are at work in the contemporary Senate that cannot be ignored because they belong to the past. Each chapter of the book analyzes a ten to twenty-year period within which the Senate increasingly moved away from the House of Lords model and toward "An American Senate." In between, she sets up a theoretical and explanatory chapter detailing the bases for the changes in the Senate to come, for example, wars, economic crises, the rise and collapse of political parties and the democratization of the electorate from the War of 1812 to the end of the 1830s. Through periodization, she links the large-scale changes in American political and social life with the institutional changes of the Senate, never forgetting where the Senate came from. She thus joins those, such as Karen Orren, who argue that American political history is more than simply liberal; that feudal elements persist past the signing of the United States Constitution, and that the Senate is one such example. The origins of the Senate, then, for Swift, extend into time, into the "English medieval tradition that predated both republicanism and its seventeenth-century incarnation and liberalism in its eighteenth-century version" (p. 3).

Swift argues that the Senate did not simply change over time; it reconstituted itself through history, becoming the institution that we take for granted some 80 years before the seventeenth amendment formally democra-

tized the relationship between the voters and the Senate. Reconstitution, she writes, is brought about by the confluence of “major changes in national political parties, the national electorate, the national government agenda, institutional vision, and the presence of institutional activists” (pp. 6-7). She devotes several sections of various chapters to a detailed discussion of these factors. Indeed, these explanatory chapters form the strongest part of the book. Unlike other congressional scholars who focus on the Senate’s relationship to the House of Representatives, or with the President or the voters, and who disregard the role of exogenous factors on the development of institutions, Swift focuses on the “rapid, marked, and enduring shift in the fundamental dimensions of the” Senate as an institution (p. 5). In an effort to broaden our understanding of institutional change over time, she emphasizes how changes in the Senate’s structure came about through changes in the parties, the electorate, and the federal government’s agenda. It is important to note that the Senate need not have adapted the way it did. Her third chapter charts the process of democratization begun between 1809 and 1829.

Swift argues that the flexible, institutional vision of the Senate (and among certain elites) allowed it to adapt and change, without undergoing any serious signs of stress. Thus, within the first two decades of its existence, the Senate’s Lords-like understanding of itself weakened and was replaced with a more democratic vision (p. 111). Indeed, these alterations endured. Institutional vision is the “prevailing beliefs about what role an institution should play in national government” (p. 87), and is derived from Senate elites, who create “road maps” for the institution to follow. By the end of Jefferson’s second term as president, the Senate was on its way to becoming an American Senate. How and why did this occur? Primarily, Swift argues, Senate elites built support for reconstitution by becoming activists for the Senate in the face of large-scale changes that could have threatened the strength of the institution. Rather than falling into desuetude, the Senate faced the task of nation building following the War of 1812.

The Senate continued to reconstitute itself throughout the so-called “Era of Good Feelings.” By the 1820s, there arose in the United States, according to one observer Swift quotes, a “basic democratic antipathy toward social class” (p. 113) that forced the Senate to reconstitute. Over time, the Anglo cast to the Senate faded, and was replaced by a “closer relationship [among senators] with the people” (p. 111). The result was a “different kind of bicameralism” that, in turn, fostered a “new vi-

sion” of the Senate (pp. 146, 149). The post-Jacksonian Senate abjured reliance on the framers’ institutional outlook and accepted the idea that the people, not state legislatures, “were the chamber’s primary constituents” (p. 149). The extension of the Jeffersonian notion of agrarian capitalism across the United States had merged successfully with the increase in egalitarian expectations among all classes. Key senators “could not help but be aware” of these changes (p. 160): they thus channeled this new vision into reconstituting the Senate. Overall, a “democratic ethos” had penetrated the insular Lords-like Senate so that, when other changes in the United States occurred that democratized the political order, the Senate quickly adapted. Between the 11th and 20th Congresses, the Senate was openly competing for the public’s attention (p. 122).

A brief review cannot do justice to a book of this scale and importance. But at times it seems that Swift paints her picture with such broad strokes that she misses subtleties that demand her attention. Overall, the book relies too much on structure and not enough on agency. We learn much about the Senate’s changing vision of itself in light of large-scale changes in the economy and in the forms of political activity, but we are not informed (until p. 155) who the Senate activists were; indeed, we barely feel their presence. Moreover, we are told that the political parties, which had previously “subscribed to anglophilic visions” (p. 152) adapted to the Senate’s new vision, without considering that maybe that vision was driven in part by party elites (pp. 152-53). Swift rejects the possibility that the Jeffersonians and the Federalists contributed to senatorial changes made in the 1820s: “the older visions seemed played out” (p. 152). But rather than saying that “Senator X fashioned a new vision,” she writes, “Institutional vision also to a large degree contributed to marked shifts in committees, rules, members, and leaders (p. 153)”, and “Institutional vision shaped a powerful consensus among senators on how they could most effectively and legitimately respond to the pressures and opportunities created by sweeping changes in national parties, the electorate, and the agenda” (pp. 154-55). Was it not the other way around? If so: was there an agenda among certain senators or party leaders to move the Senate away from its Lords-like structure, besides abstract notions of democratization and a greater emphasis on divisions of labor to facilitate the demands of an industrializing economy? Indeed, Swift argues on the penultimate page of the book that the reconstitution of the Senate by 1840 away from its English roots opened the Senate up to slave interests. “Only to the Senate,”

Swift writes, “could southerners therefore look to preserve their rights to enjoy the fruits of slave labor” (p. 184). If this is a crucial subtext to the Senate’s democratization (that is, if actors were in charge of reconstitution), then it is all-too-briefly discussed. If the slave states benefited from the Senate’s reconstitution, then maybe the founders did set up something different in 1787 to stem those interests, and their thoughts have been unjustly ignored. But it was neither a House of Lords nor an institution blurred by an anglophilic bias. It was an American Senate from the start, designed to address real political concerns and to temper political passions arising from the states. The founders, then, looked not to England but to American political practices that, they hoped, would change and adapt when new leaders seized the opportunity presented to them by changed political realities.

Because of this latter concern, I have doubts about Swift’s original claim that the Senate was purposely designed to be like the House of Lords in any fashion. Taken in its most plain form, the true meaning of the Senate is unique. Just as James Madison had to rely on the awkward “partly federal, partly national” description of the federal structure of the United States to explain what would later be called federalism, so too did he find the Senate without historic analogy. The ancients had no conception of representation, he wrote in *Federalist* 63. The Senate’s uniqueness, consequently, according to Madison, lies in its “total exclusion of the people in their collective capacity,” from any share in governance. But this fact did not constitute the beginning

of a mixed regime; it merely altered the democratic cast given Congress by the House of Representatives.

In some sense, whether the Senate was a House of Lords or not is not terribly important. Swift, of course, recognizes the differences between the two institutions, and thus her book charts an important change, irrespective of the characteristic used to describe the Senate’s transformation. To be sure, I found the persistence of the analogy throughout the book troublesome, particularly in light of the fact that she says that the Senate was only a House of Lords “for a brief period” (p. 53). If the early Senate was a feudal element in a liberal regime, it lasted no longer than twenty years, and the metaphor is strained. But it is more important to emphasize that the Senate did reconstitute itself between 1787 and 1841, and Elaine Swift has written a terrific book that charts the Senate’s alteration over time. It is also a necessary book, long overdue in the literature on Congress and political development.

#### Notes

[1]. Paul Eidelberg. *The Philosophy of the American Constitution: A Reinterpretation of the Intentions of the Founding Fathers*. New York: The Free Press, 1968, reprinted Lanham, Md.: University Press of America, 1989.

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