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Jerome Mushkat, Joseph G. Rayback. *Martin Van Buren: Law Politics and the Shaping of Republican Ideology*. DeKalb, IL: Northern Illinois University Press, 1997. x + 272 pp. \$35.00 (cloth), ISBN 978-0-87580-229-9.

Reviewed by William Shade (Lehigh University)  
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## Advocating Republicanism

When this reviewer was a graduate student, a major void in the flourishing scholarship on the Jacksonian era was a modern biography of one of the major figures of the time and one of its most creative political innovators, Martin Van Buren, master of the Albany Regency and the maker of the modern Democratic party. There was some hope that the Red Fox would be given his due. Robert V. Remini had published an excellent brief study of Van Buren's early years, *Martin Van Buren and the Making of the Democratic Party* (1959), and James C. Curtis contributed a good study of his presidency, *The Fox at Bay: Martin Van Buren and the Presidency*. Either might have been expected to provide the hoped-for full-length biography. But none was forthcoming. Both moved on to write biographies of Andrew Jackson. Curtis quickly produced a brief critical study, useful for the classroom, while Remini went on to construct the definitive multi-volume study of the Old Hero's career, which occupied him until the mid-1980s.

While doing research for his 1970 book, *Free Soil: The Election of 1848*, Joseph G. Rayback decided to turn his attention to a biography of Van Buren. He proposed to write two volumes, but at his death in 1983 the project remained incomplete. At just about that time, however, three books appeared in quick succession to more than fill the void that had existed. John Niven's *Martin Van Buren: The Romantic Age of American Politics* (1983) and Donald B. Cole's *Martin Van Buren and the American Political System* (1984) were full scale biographies; Major L. Wilson's *The Presidency of Martin Van Buren* (1984) mod-

ified somewhat the earlier portrait provided by Curtis. These books taken together dispelled the hostile scholarly view of the New Yorker and depicted him as a genial but hard working and intelligent figure a notch above the "first rate second rate man" described by one of his opponents.

In over a decade's work on the subject, Rayback collected voluminous notes and had drafted a large portion of the first volume of his intended biography. His son James M. Rayback spent several years seeking out a scholar who might bring his father's project to fruition. Eventually Jerome Mushkat, the author of two books on the New York Democratic party and a biography of Fernando Wood, accepted the task. As he writes in the Preface:

After assessing the manuscript, I decided that the historical profession could indeed profit from another Van Buren inquiry. Every previous work, starting with William M. Holland's impressionistic hagiography of 1835... had assumed a single truism: Van Buren's profession as a lawyer made him a success in Politics. But no previous investigator had demonstrated the exact nature of this process, nor the precise interplay that existed between Van Buren's republican principles, his legal practice, and his political activities (p. viii).

Consequently Mushkat reorganized Rayback's manuscript and focused upon what he calls Van Buren's "dual career" in the law and politics and the way in which his legal experience before 1828 affected the

development of his political views as “he adapted his classical republican ideas to new conditions by accepting several key components of liberal republicanism (p. vii).”

Mushkat is clearly responsible for the general argument of the book, which is imposed upon the narrative and summarized in the final chapter. He emphasizes that Van Buren’s career as a lawyer and politician enabled the New Yorker to play crucial roles in the development of both American law and democratic politics. Essential was the way in which Van Buren “augmented” his classical republican principles “with an evolving set of liberal republican values (p. 177).” This growth was stimulated by the nature of his legal practice, which involved Van Buren’s defense of early clients who were from “an upwardly striving agrarian class.” Mushkat is at pains to insist that they were neither “longing for an imagined past, nor... subsistence farmers,” but rather men on-the-make who wanted a piece of the economic pie—that is, “businessmen intent on abolishing all remnants of feudal prerogatives (p. 178).” As his practice grew and Van Buren gained wealthier clients, his classical republican principles gave way to liberal republicanism aimed “toward gaining wide distribution and allocation of opportunity (p. 179).”

Mushkat argues that his main contribution is to elucidate the “indispensable way in which Van Buren integrated classical republicanism and liberal republicanism into his career (p. 180).” After acknowledging some of the problems with the concept of republicanism, he distills the essence of his argument:

Van Buren’s commitment to republicanism was neither imprecise nor one-dimensional. On one level, he defined his principles in purely classical republican terms. Under this approach, Van Buren stressed that republicanism meant a government with limited powers, restrained by statutes and constitutional arrangements, and resting on civic-minded virtue, propertied independence, popular sovereignty, personal liberty, freedom, equality, and privatism. Furthermore, classical republicanism employed those values as a bulwark against aristocratic privilege, tyranny, concentrations of wealth, and arbitrary government. But as Van Buren’s dual career evolved, he also selected other ideological ingredients from liberal republicanism: equal opportunity; human improvement through private acquisitiveness, much as he himself had achieved; personal security, upward mobility, competitiveness, and self-reliance in a free market economy; and individual freedom, both material and political. In the process, Van Buren wove this synthesized

republicanism into the law and politics, thus giving his contemporaries a means to reconcile his nation’s basic ideology of republicanism with self-seeking political parties in the quest for a just society (p. 181).

Thus, through his commitments to republicanism (which took the form in his legal thinking of positivism, instrumentalism, and a commitment to distributive justice), Van Buren was able to alter contract law by legitimizing the “will theory” of contracts and tort law by urging on recalcitrant judges “a new method [of assigning damages] based on fault,” while reshaping the nature of negotiable instruments to facilitate the free market economy (p. 181). The New Yorker was truly a legal magician.

In politics, Van Buren’s major accomplishment was the invention of American political parties and the construction of the ultimate justification of their existence as the necessary instrument of democracy. There can be no doubt that Mushkat agrees with Remini that Van Buren, almost single-handedly, saved democracy by creating the Democratic party and giving it to the people. But he goes even further, locating the wellsprings of Jacksonian ideology in Van Buren, who usually has not been acclaimed for his intellectual contributions to the cause:

As a legal and political innovator, Van Buren anticipated the Jacksonian concerns for individualism bounded by the institutional constraints of party, the accountability of judges in carrying out the public will, the expansion and enhancement of property rights to eliminate political deference and entrenched elites, majority rule, the sovereignty of the people, and the legislative supremacy over the judiciary. In the same way, Van Buren’s Dutch-American sense of ethics as manifested in the law prefigured the Jacksonian commitment to civil betterment through the extension of personal liberty (p. 186).

But Mushkat acknowledges that the Sly Fox was a pragmatist who advocated “prudent change” rather than any dogma. “To be fair,” Mushkat writes, “he was a partisan and did not hesitate in bending the law to serve political ends (p. 182). In the constitutional convention of 1821, he upheld the traditional powers of the equity and circuit courts and the political nature of the state Supreme Court in line with his professional and political impulses. His ingrained “agrarian” anti-urbanism caused Van Buren to oppose the election of sheriffs and justices, while his classical republican fear of the dependency of the propertyless led him to oppose universal manhood suffrage. And of course as a slaveholder and a racist, Van Buren (like his fellow Republicans and Jacksonian Democrats) excepted African-Americans from his com-

mitments to human rights.

In general the argument is intriguing. There can be little doubt that Van Buren's experience with the law must have affected his political views and behavior and no doubt Van Buren accepted liberal republicanism by 1828. But Mushkat's arguments abound in both contradictions and special pleading; and there are two larger problems which plague both the final essay and the book generally. On the one hand, the author's usage is imprecise and convoluted. On the other, the relationship between the parts of Van Buren's dual career is repeatedly stated but never clearly drawn.

Too often the writing is opaque and this reviewer, at least, had trouble understanding exactly what some sentences mean. For example, Mushkat writes at one point that Van Buren "incorporated his evolving republicanism into a complex era of economic and political developments (p. 184)?" At another, he concludes that, "Van Buren created the possibilities for a democratic government and an expanding economy no matter their imperfections (p. 186)?" Elsewhere, Mushkat refers to the importance of Van Buren's "Dutch-American heritage," without indicating what might distinguish it from a German-American or an Anglo-American background, unless one wishes to believe that only the Dutch are ambitious, hardworking, and honest—most of the time.

Similar problems with major interpretive concepts abound. There is a "Glossary of Legal Terms," but it is not terribly helpful to define "legal instrumentalism" as a "doctrine that judges the law as an instrument of policy, adjusted to changing conditions, not a set of immutable

principles" (p. 191) and leave it at that. Similarly "legal positivism" and, particularly, "distributive justice" are rendered so abstractly as to be of little real analytic value. Van Buren's opponents at the bar and in the legal textbooks (or in the political trenches) were just as likely to adhere to these general ideas that historians regularly use to describe the "transformation" of American law in the first half of the nineteenth century.

The book is made up of an often tedious discussion of cases, Van Buren's legal practice and a few political activities, embedded in generalizations that are summarized in the final chapter. The problem is that these generalizations and descriptions are linked not by logical argument but rather by mere proximity and innuendo. Much of the latter is derived directly from the traditional Progressive perspectives on the Jeffersonian Republicans, the Jacksonian Democrats, and their various opponents. The political discussion is quite weak. That world of "wheels within wheels" that even the party managers did not understand is not charted here. The Peoples' Party and the Antimasons are never mentioned. Neither the real manipulation of electoral politics that gave Van Buren his reputation for wizardry nor any actual policy matters are discussed in detail. At the same time, Mushkat exaggerates greatly both Van Buren's previously unheralded role in bringing about major changes in the legal profession and the place of the practice of law in explaining Van Buren's well-known political inventiveness.

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