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THE AMERICAN POLITICAL TRADITION REVISITED

Saul Cornell is an assistant professor of history at Ohio State University. *The Other Founders* is his first book. In the book's Epilogue (p. 303), Cornell takes the legendary Richard Hofstadter to task for allegedly failing to appreciate the impact of Anti-Federalism on, in Hofstadter's famous phrase, "the American political tradition."[1] No one can accuse Cornell of lacking moxie.

I became acquainted during the course of my own research with an article Cornell had published in the *William and Mary Quarterly* on postmodernism in the study of early American history.[2] I had found the article to be both informative and well-crafted. Consequently, I jumped at the chance to review his book on Anti-Federalism. To my surprise – but to the delight of traditional historians, I'm sure – I discovered that postmodernism makes only occasional appearances in Cornell's book.

The book – a dramatically reconceptualized version of Cornell's University of Pennsylvania Ph.D. dissertation – is a straightforward exegesis of "the role Anti-Federalism played in the evolution of a dissenting tradition of political and constitutional thought over the first four decades of America's history" (p. viii). However, as Cornell points out in a number of places in his book, Anti-Federalism has played a role in political and constitutional thought during almost every period of America's history. One only need peruse Supreme Court Justice Clarence Thomas's landmark dissenting opinion in *U.S. Term Limits, Inc. v. Thornton* (1995) to appreciate this fact.[3] Indeed, Ronald Reagan's America – of which Justice Thomas is among the most favorite of sons – was, for the most part, Anti-Federalism writ large. Hence, Anti-Federalist ideas have not always been limited to a *dissenting* role in the America mind.

The Other Founders is divided into three parts. Part I examines, not surprisingly, the public debate over the ratification of the Constitution of the United States. Part II explores the role of Anti-Federalist ideas in the rise of Democratic-Republicanism. Part III analyzes the period 1800-1828.

What ties together these seemingly disparate parts of Cornell's account is his demonstration of how Anti-Federalism was able to both change and stay the same during this forty-year time span. Cornell writes: "In contrast to the approach of traditional political or constitutional history, I have concentrated on how this evolving tradition was shaped by a constantly shifting set of texts that defined what Anti-Federalism meant at various moments. Whereas older approaches have tended to homogenize and reify Anti-Federalism, assuming that it was an unchanging construct, I have tried to show the persistence of certain themes while demonstrating how this tradition was evolving and being constantly reshaped" (p. 9).

Cornell's exploration of Anti-Federalism and the Constitution –Part I of his book – comprises four chapters. His principal point in this first part is that Anti-Federalist thought was not monolithic. For example, there often were major differences between the ideas and arguments propounded by so-called "elite" Anti-Federalists and those of the "popular" (in other words, middling and plebeian) classes of Anti-Federalists. With respect to the former, Cornell concludes, "What elite Anti-Federalists feared most was corruption, the potential of any group of men, no matter how virtuous, to exalt

their own interests or those of some faction and ignore the common good. Elite opponents of the Constitution were eager to preserve an aristocracy of virtue or merit – a natural aristocracy" (p. 80). By contrast, middling and plebeian Anti-Federalists "each championed a democratic critique of the Constitution. A principal target of their attack was natural aristocracy" (p. 119). (Cornell is quick to point out that there were differences between middling and plebeian Anti-Federalists as well.)

Part II, wherein Cornell explores how Anti-Federalism was "transformed" after the ratification of the Constitution, is divided into three chapters. Central to this portion of Cornell's analysis are the different texts that commentators invoked to buttress their dissenting arguments. Here, Cornell builds on a point he raised earlier – that, during the debate over the ratification of the Constitution in 1787-1788, a handful of texts defined Anti-Federalist thought. In the 1790s those texts were replaced by the published proceedings of the state ratifying conventions and, later still, by James Madison's 1800 report to the Virginia legislature (among other texts). Cornell devotes the opening chapter of Part II to explaining how the Anti-Federalists – shorn of the pejorative label "Anti-Federalists" (they more or less eventually became known as "Democratic-Republicans") – became a "loyal opposition" under the Constitution they had worked so hard to defeat. The second chapter in this part carries forward this theme, most notably by examining Anti-Federalist efforts to defeat the centralizing tendencies of Hamiltonian Federalism. The final chapter in Part II, "The Limits of Dissenting Constitutionalism," describes how the most radical facet of Anti-Federalist thought –epitomized most dramatically by the famous Whiskey Rebellion of 1794 – almost brought an end to Anti-Federalism itself. However, Cornell insists, Anti-Federalism once again demonstrated its ability to adapt to changing circumstances: it simply dropped the most radical of the plebeian ideas and pressed ahead with the arguments advanced by elite and middling Anti-Federalists.

This more streamlined version of Anti-Federalist thought occupies the three chapters in the third and final part of Cornell's book. He revisits the 1795 debate over the Jay Treaty, the outcry over the Sedition Act of 1798, the crisis involving the Bank of the United States, and the Nullification controversy of 1828 to make his case for the continuing significance of Anti-Federalist ideas during the 1800-1828 period. And in a fit of synchronicity that was obviously too good to resist, Cornell closes his discussion by applauding the underappreciated Martin Van Buren for best capturing the impact that the equally underappreciated Anti-Federalism had on the American regime: "The most important political figure to champion [Anti-Federalist] ideals [in the post-ratification era] was Martin Van Buren, who recognized that it was the Anti-Federalists, not the Federalists, who represented the spirit of American politics and constitutionalism. The 'Anti-Federalist Mind,' Van Buren concluded, was the mind of America" (p. 302).

Although Cornell is plainly taking poetic license with this last statement, it is hard to deny the influence that Anti-Federalism has had, and continues to have, on the American regime. For example, Cornell correctly points out that James Madison himself – the so-called "father of the Constitution" and one of the principal authors of *The Federalist* – came to adopt many, if not most, Anti-Federalist ideas. And, as I mentioned at the outset of this review, contemporary America has been largely shaped by the presidency of Ronald Reagan, and hence by Anti-Federalism itself.

This said, scholars trained in the discipline of history will likely find little new in Cornell's account of Anti-Federalism. However, lawyers and political scientists with a penchant for invoking history probably will – especially those prone to indulging in "law-office history" to discern the "original understanding" of the Constitution.

To be fair, though, it is important to emphasize that, just as lawyers and political scientists can learn from historians such as Cornell, so too can historians learn from their colleagues in law schools and political science departments. For example, the biggest problem I had as a lawyer and political scientist with Cornell's otherwise excellent book was its tendency – shared by many books written by historians – to miss the forest for the trees. To make my point more directly, Cornell fails to appreciate that the most significant text in American history is not *The Federalist* or the myriad of Anti-Federalist texts he discusses in his book – or even the Constitution itself – but rather the Declaration of Independence: *the* founding document of the American regime, and the document that best articulates our origins, purposes, and ideals as a nation. In my judgment, it is only by exploring the political philosophy of the Declaration, and its impact on America's history, that we can truly come to grips with the "American political tradition."[4] Indeed, many of the Anti-Federalists – the very subjects of Cornell's book – emphasized this fact.

Space constraints permit me to mention but one ex-

ample: Mercy Otis Warren in her *Observations on the New Constitution.* She wrote: "All writers on government agree, and the feelings of the human mind witness the truth of these political axioms, that man is born free and possessed of certain unalienable rights – that government is instituted for the protection, safety, and happiness of the people, and not for the profit, honour, or private interest of any man, family, or class of men – That the origin of all power is in the people, and that they have an incontestible right to check the creatures of their own creation, vested with certain powers to guard the life, liberty and property of the community."[5]

Notes

[1]. Richard Hofstadter, *The American Political Tradition and the Men Who Made It* (New York: Knopf, 1948).

[2]. *See* Saul Cornell, "Early American History in a Postmodern Age," *William and Mary Quarterly* 50 (April 1993): 329-41. *See generally* Scott Douglas Gerber, ed., *Seriatim: The Supreme Court Before John Marshall* (New York: New York University Press, 1998).

[3]. *See generally* Scott Douglas Gerber, *First Principles: The Jurisprudence of Clarence Thomas* (New York: New York University Press, 1999). Cornell cites Thomas's concurring opinion in *McIntyre v. Ohio Elections Commission* (1995) as an example of the Justice's Anti-Federalism. *Term Limits* is a far more important case, however, and far more effective an illustration of Cornell's point.

[4]. On this point, *see generally* Scott Douglas Gerber, *To Secure These Rights: The Declaration of Independence and Constitutional Interpretation* (New York: New York University Press, 1995).

[5]. As quoted in ibid., 66 n.*. See generally Herbert J. Storing, *What the Anti-Federalists Were For* (Chicago: University of Chicago Press, 1981) (arguing that the Anti-Federalists were liberals in the "decisive sense" of regarding the end of government as the protection of individual rights, not the cultivation of virtue or the promotion of some organic common good).

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