

VIEWPOINT

PEACE PACT AND NATION: AN INTERNATIONAL INTERPRETATION OF THE CONSTITUTION OF THE UNITED STATES*

The United States was born from a struggle for independence and an act of union, and the nation's identity has always centred on the foundational documents that expressed these acts: the Declaration of Independence and the Constitution. Their importance is daily reflected in American civic religion, political rhetoric and court rulings. And they of course also feature prominently in the labours of the historical profession. Even more than the Declaration, the framing and ratification of the Constitution is a perennial topic of American historiography. But as a rule, professional historians have been quite critical of how politicians and the public celebrate the document and its origins, finding naked self-interest and fierce conflict where laymen see an exemplary story of patriotism and national unity. The best-known of these critical readings remains Charles Beard's 'economic interpretation' of the Constitution, now more than a century old. Although a complex and nuanced work, Beard is best remembered for his attempt to establish the 'property affiliations' of delegates to the Constitutional Convention, with the implication that more than anything else the Constitution was a giant speculative venture to raise the value of near-worthless government bonds.

Beard was a prominent member of the first generation of 'Progressive' American historians, named thus after the period of US history that spans the decades around 1900. Progressive scholars saw material self-interest and above all class conflict as the driving forces of history and their approach had a profound impact on American historical inquiry in general and on the study of the origins of the Constitution in particular. In fact, up until

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around 1960, Beard's *An Economic Interpretation of the Constitution of the United States* completely dominated the field. However, in the decades that followed, most of the profession turned its back on the political history of the Constitution's genesis and those who soldiered on followed their peers in a turn towards a cultural and intellectual history that downplayed political and legal institutions in favour of mapping broad ideological transformations.¹

In the 1960s, Bernard Bailyn and Gordon Wood uncovered a rich and largely unexplored intellectual world, which they presented in books that replaced Beard's to become new intellectual milestones. Less iconoclastic than Beard and the Progressives, the so-called 'Ideological School' nonetheless issued a profound challenge to America's perception of itself. Together with John Pocock and his disciples, Bailyn and Wood questioned the view, long-held among both scholars and laymen, that the American founding was fundamentally a Lockean, or liberal, moment. Their challenge shifted the terrain away from the Progressives, for whom the liberal nature of the founding had never been in doubt — if for the most part lamented. Instead, the ideological interpretation presented the founding as a classical republican rearguard action to contain the inevitable advance of liberalism in the struggle for the soul of America. But with their attention fastened on culture and ideas, historians no longer had time for institutions. The Constitution along with its clauses sanctifying contracts and banning paper money, which Beard and others had once presented as markers of economic liberalism, were deemed irrelevant when scholars concentrated on changes in a collective 'mind' or a nebulous political 'culture'. It is symptomatic that the most intense debates about the exact point in time when liberalism replaced republicanism revolved not around the framing and ratification of the Constitution, but around the formulation of a Jeffersonian ideology in the 1790s.²

¹ James H. Hutson, 'The Creation of the Constitution: Scholarship at a Standstill', *Reviews in American History*, xii (1984).

² The historiography is discussed in Robert E. Shalhope, 'Toward a Republican Synthesis: The Emergence of an Understanding of Republicanism in American Historiography', *William and Mary Quarterly*, 3rd ser., xxix (1972) and Robert E. Shalhope, 'Republicanism and Early American Historiography', *William and Mary Quarterly*, 3rd ser., xxxix (1982).

Historiographical milestones became millstones when the Ideological school failed to demonstrate that the political discourse of the founding was structured by sharply demarcated republican and liberal world views that followed each other in succession. Instead, scholars found a polyglot ‘confusion of idioms’ and ‘clatter’ of tongues. Polyglotism indicates that to the framers of the Constitution, ideas and concepts were means to persuade and to make the world intelligible. But the estrangement of the Ideological historians from agency, institutions and materiality prevented them from making the intellectual leap required to pursue this lead. By 1987, when the United States celebrated the bicentennial of the Constitution, the republican synthesis was dying from consumption.³

Whereas the exploration of republicanism would continue to thrive in European intellectual history, its premature death in the United States appeared to take the steam out of the study of the Constitution altogether. When the *Journal of American History* published its bicentennial special issue on ‘The Constitution and American Life’, David Thelen, the editor at the time, explained that the reason why there was no article on the founding was because ‘experts on the drafting and ratification of the Constitution’ had told him ‘that there was little fresh thinking in their field’. Only a few years earlier, James Hutson had published an exhaustive overview of the historiography of the Constitution’s origins which he chose to subtitle ‘scholarship at a standstill’.⁴

Yet perhaps the intellectual desert of the bicentennial was not quite as barren as Hutson and Thelen believed. A lone dissenting voice argued that ‘prematurely pessimistic assessments’ had failed to notice ‘how the field itself is being redefined’ thanks to yet another historiographical turn, this time toward the study of federalism and international relations. To Peter Onuf, the founding was a period marked neither by class struggle between the people and the elite, as the Progressives said, nor by the transition from republicanism to liberalism, as suggested by the

³ Daniel T. Rodgers, ‘Republicanism: The Career of a Concept’, *Journal of American History*, lxxix (1992); Isaac Kramnick, ‘The “Great National Discussion”: The Discourse of Politics in 1787’, *William and Mary Quarterly*, 3rd ser., xlv (1988), quotations at 4, 12.

⁴ David Thelen, ‘Introduction’, in *The Constitution and American Life*, special issue, *Journal of American History*, lxxiv (1987), 667; Hutson, ‘Creation of the Constitution’.

Ideological interpretation, but by the crisis of the American union in the wake of the War of Independence. More than anything else, the Constitution represented ‘the efforts of constitutional reformers to construct — and conceptualize — a workable federal system’. A decade later, the redefinition of the field had matured into a complex but cohesive explanation of the form and function of the Constitution.⁵

Sometimes called a ‘Unionist’, sometimes an ‘International’, interpretation of the founding, this perspective points to international and intra-union, rather than domestic, relations in the analysis of both the causes and the consequences of the Constitution. And rather than competition between classes, it points to competition between polities as the main driver of political development. The International interpretation therefore calls for a return to, and a reassessment of, the so-called ‘dual revolution’ thesis that has often been used to make sense of the American nation-building process. The term was coined by a Progressive historian contemporary with Beard, Carl Becker, to capture how the American founding was at the same time ‘a struggle for home rule’, or independence, and ‘a struggle over who should rule at home’, or, in Becker’s words, a struggle over ‘the democratization of American politics and society’. Although the Progressive tradition has never denied the significance of independence, it has always emphasized the struggle over democratization as the more important development. The International interpretation reverses this priority by arguing that neither political independence nor the creation of a stable federal union were foregone conclusions of the American Revolution.

The historiographical shift in focus from domestic politics to foreign affairs and federalism represented by the International interpretation of the origins of the Constitution has many sources. One is the trend towards an Atlantic perspective on early American history. As scholars have turned their sights from the nation state and its genesis to the larger multi-ethnic, multilinguistic, multinational, multicentred cluster of entities that constituted the Atlantic world, it has become ever more difficult to ignore the often quite menacing geopolitical context in which the United States was created. Another source is the

⁵ Peter S. Onuf, ‘Reflections on the Founding: Constitutional Historiography in Bicentennial Perspective’, *William and Mary Quarterly*, 3rd ser., xlvii (1989), 342, 344.

revitalized field of British imperial history. Historians have come to see the United States as a successor regime to the British Empire in North America and the federal government as the successor to an imperial government whose concerns were predominantly relations within the empire and with other powers. These historiographical impulses have generated a renewed appreciation for the role and function of the American federal union — that is, the terms by which a collection of former colonies joined together to form a single polity.

The International interpretation has important implications for our understanding of the American founding and early United States history and therefore deserves to be more widely known. Its perspective shift raises the question of whether scholars have mischaracterized both the Constitution and the American union and thereby exaggerated the degree to which the founders sought to radically recast early American social and political life. Consequently, if perhaps counterintuitively, the reinterpretation of the Constitution's origins put forward by the International perspective therefore also allows for a fresh look at the old question at the heart of the Progressive interpretation, about who should rule at home once American independence was secured, and thus for a reinvigoration of the tradition of constitutional analysis initiated by Beard well over a hundred years ago.⁶

I

Historiographical breakthroughs can best be discerned against the backdrop of what went on before. The Progressive approach provides the most pertinent point of comparison for, like the Internationalist perspective, it privileges actions and institutions over ideas. It is both a venerable and diverse

⁶ Other attempts to present this argument in systematic form are David C. Hendrickson, 'The Constitution in History: A Bibliographical Essay', in his *Peace Pact: The Lost World of the American Founding* (Lawrence, Kan., 2003), 281–97; Alan Gibson, *Interpreting the Founding: Guide to the Enduring Debates over the Origins and Foundations of the American Republic*, 2nd edn (Lawrence, Kan., 2010), ch. 8; Robbie J. Totten, 'Security, Two Diplomacies, and the Formation of the US Constitution: Review, Interpretation, and New Directions for the Study of the Early American Period', *Diplomatic History*, xxxvi (2012); Tom Cutterham, 'The International Dimension of the Federal Constitution', *Journal of American Studies*, xlviii (2014).

tradition. In the ascendancy before the Second World War, it fell into disrepute when the United States mobilized against communism at the outbreak of the Cold War, only to stage a comeback in a different guise in the altered social climate of the 1960s. Lumping together the methodologically more advanced and politically more radical analyses of neo-Progressive and New Left historians with the relatively more coarse handiwork of Progressive progenitors is of course intellectually questionable. What follows is a limited survey of four historians, whose books span a century of scholarship. In the study of the Constitution's origins, Charles Beard is the founding father of the Progressive interpretation. Merrill Jensen was a second-generation Progressive whose most important works appeared in the middle decades of the previous century. Terry Bouton and Woody Holton are the most sophisticated present-day exponents of an updated Beardian approach. The aim is not an exhaustive account of the Progressive perspective — for that the reader will have to look elsewhere — but the construction of a reference point that will make the central elements of the Internationalist edifice appear in sharper relief.⁷

Progressives do not deny the inherent duality of the American Revolution, but they emphasize the importance of internal transformations over national independence. Conflict between distinctive social groups *within* America is the core of the Progressive interpretation. Progressives apply general assumptions

⁷ Charles A. Beard, *An Economic Interpretation of the Constitution of the United States*, new edn (New York, 1935); Merrill Jensen, *The New Nation: A History of the United States during the Confederation, 1781–1789* (New York, 1950); Terry Bouton, *Taming Democracy: “The People,” the Founders, and the Troubled Ending of the American Revolution* (Oxford and New York, 2007); Woody Holton, *Unruly Americans and the Origins of the Constitution* (New York, 2007). In addition to Beard, leading Progressive historians in the early twentieth century included Carl L. Becker, J. Franklin Jameson, Vernon Louis Parrington, Arthur M. Schlesinger, Sr. and Jackson Turner. In the neo-Progressive generation, the leading scholar is Merrill Jensen, who trained around fifty graduate students at the University of Wisconsin, many of whom would become influential historians in their own right. The first generation of Progressive historians is discussed in Richard Hofstadter, *The Progressive Historians: Turner, Beard, Parrington* (New York, 1968). The subsequent development of their perspective is traced in Alfred F. Young, ‘American Historians Confront “The Transforming Hand of Revolution”’, in Alfred F. Young and Gregory H. Nobles, *Whose American Revolution Was It? Historians Interpret the Founding* (New York, 2011). A recent example of the staying power of the Progressive interpretation is Michael J. Klarman, *The Framers’ Coup: The Making of the United States Constitution* (New York, 2016), which, however, adds little that is new to the Progressive analysis.

about the nature of social and political relations to the specific social and political dynamic set in motion by the American Revolution. Their social theory understands society to be divided into discrete and relatively stable classes, whose identity is determined by the unequal distribution of property. In principle, the existence of class does not necessarily lead to class conflict. Historians studying the struggle for home rule, or the nation's pristine identity, habitually homogenize America and stress consensus between social groups. But Progressives see class interests as not only different but inherently antagonistic.⁸

The dynamic set in motion by the American Revolution had both an economic and a political dimension. The War of Independence and its outcome resulted in economic challenges and opportunities. Attempts to pay interest on the large public debt by means of increased taxation created widespread hardship, but freedom from British restraints created opportunities to trade in new international markets and to expand European American settlement into the continental interior. The political consequences of the Revolution, meanwhile, were threefold. First, the supervisory role of the British government was removed, leaving the new American states free to determine their own political course. Second, the constitutional reforms that took place during the Revolution made the state assemblies the principal locus of power in the state governments, at the expense of the executive and judicial branches. Third, lower property restrictions for voting broadened the franchise and brought new classes of men into the state assemblies. To the Progressives, these three changes amount to a democratization of American politics.⁹

Economic opportunities and difficulties, combined with the democratization of politics, produced a new political agenda in

⁸ Beard, *Economic Interpretation of the Constitution of the United States*, 19. In an ironic twist of fate, Beard's opposition to US interventionism and entry into the Second World War made him devote the final period of his life to international relations. As much as the perceived Marxism of his economic interpretation, it was Beard's opposition to an interventionist United States that discredited him in the eyes of a post-war history profession that had turned intensely patriotic.

⁹ J. Franklin Jameson, *The American Revolution Considered as a Social Movement*, new edn (Boston, 1956), 18–19; Jensen, *New Nation*, 259–60, 424–7; Jackson Turner Main, 'Government by the People: The American Revolution and the Democratization of the Legislatures', *William and Mary Quarterly*, 3rd ser., xxiii (1966); Holton, *Unruly Americans and the Origins of the Constitution*, 4–5.

the independent American states. For the first time, a majority of the people was now represented in all-powerful state assemblies. They used their power to enact legislation that protected their property interests, such as paper money emissions, tax reductions and stay laws to suspend the collection of private debts. While protecting the people, this legislation had a negative impact on the social and economic elite by diminishing the value of their public securities and salaries. Once independence was secured, the elite mobilized in defence of their property interests, and by extension their social standing, in an attempt to rein in the people. The outcome was the adoption of the Constitution, which reintroduced an unrepresentative central government with the power to overrule legislation enacted by popular majorities in state assemblies. In the Progressive reading, the framing and ratification of the Constitution represents ‘the culmination of an anti-democratic crusade’.¹⁰

Newer Progressive interpretations have lost some of the analytical nuances of the pathbreakers. Historians have turned away from social science methodology and ‘class’ is now approached as a subjective identity rather than an objective reality. Thus, while class remains central to Holton and Bouton their terminology is vague and shifting and their socio-economic groups undefined. Bouton finds ‘ordinary’ or ‘common folk’, sometimes ‘ordinary white men’, opposing the Constitution and ‘the elite’, ‘the gentry’ or ‘gentlemen’ supporting it. As with Holton, it is nevertheless clear that the core opposition was made up of self-owning farmers — ‘small farmers’, ‘smallholders’ and the ‘agrarian majority’ — a group that Allan Kulikoff and others have called the ‘yeoman class’. Among the Constitution’s supporters, the creditor interest, primarily public creditors, was an important group.¹¹

Beard’s and Jensen’s social taxonomy is more specific. To Beard, the Constitution received support from owners of four kinds of personal property: ‘money, public securities,

¹⁰ Beard, *Economic Interpretation of the Constitution of the United States*, 19–51; Merrill Jensen, *The Articles of Confederation: An Interpretation of the Social-Constitutional History of the American Revolution, 1774–1781*, new edn (Madison, Wis., 1970), quotation at xv; Jensen, *New Nation*, 234–57, 302–26, 375–98, 424–7.

¹¹ ‘Yeoman is a class term relating to farmers who owned the means of production and participated in commodity markets in order to sustain familial autonomy’, Allan Kulikoff, ‘The Rise and Demise of the American Yeoman Class’, in his *The Agrarian Origins of American Capitalism* (Charlottesville, Va., 1992), 34.

manufactures, and trade and shipping'. Its opponents were 'the small farming and debtor interests'. He postulated a long-running conflict between capitalists and agrarians, in which slaveholding planters joined the ranks of the small farmers.¹² In a similar vein, Jensen sees merchants, ship owners, capitalists, professionals and public creditors facing farmers, including some rich planters in the South, artisans, manufacturers and debtors.¹³ But regardless of the level of specificity, Progressives tend to work with a binary division of society according to property interests, which is reproduced in most states, north and south, east and west. Progressives are of course aware of sectional differences such as slavery, but in their analysis this binary class division overrides them and largely clears the political playing field from state and sectional interests.

In the 1960s, the New Left historians extended historical inquiry beyond white propertied males to incorporate the experiences, including political ideas and actions, of so-called marginal groups. That such groups are absent from the works of Beard and Jensen is hardly surprising. That they play such a limited role in the interpretations of Bouton and Holton is more so, for theirs are intended as radical interventions. Elsewhere, Holton has convincingly argued that *indirectly* American Indians, African-American slaves, and propertyless whites were instrumental in pushing the Virginia gentry into opposition against Britain in the 1770s. But writing on the Constitution, Holton, like Bouton, merely says that to secure social peace, the elite delegates of the Constitutional convention had to take into account the needs and concerns of the nation's small farmers.¹⁴

¹² Beard, *Economic Interpretation of the Constitution of the United States*, 324–5.

¹³ Jensen, *Articles of Confederation*, xiii–xiv, 7–15, 109–10, 239–45; Jensen, *New Nation*, 3–5, 21–3, 42–53, 125–8, 399–400, 422–8.

¹⁴ Woody Holton, *Forced Founders: Indians, Debtors, Slaves, and the Making of the American Revolution in Virginia* (Chapel Hill, NC, 1999); Holton, *Unruly Americans and the Origins of the Constitution*, 157–8. The idea that the non-elite had an impact on the Constitution by being on the minds of the framers was presented by Alfred F. Young in 'The Framers of the Constitution and the "Genius of the People"', *Radical History Review*, xlii (1988). Staughton Lynd made this point about slaves already in the 1960s in *Class Conflict, Slavery, and the United States Constitution* (Indianapolis, 1967), 18: 'The slave, though he spoke few words, should be moved front and center. If, as Beard said, there was a "large propertyless mass" which the Constitution "excluded at the outset", the one-fifth of the population in hereditary bondage better deserves that description than any group of whites; for few whites who began life without property failed to acquire it'. Lynd then went on to argue that the compromise over slavery was the crucial event of the Constitutional convention necessary to bring together

(cont. on p. 276)

Two things probably operate to constrict the analysis, demonstrating the difficulty of breaking free from Beard's powerful analysis of the origins of the Constitution. One is the focus on the founders' motives that can be traced back to Beard's wish to unmask the framers to show how sordid self-interest hid beneath lofty ideals of liberty and equality for all.¹⁵ But this focus on the motives of the founders, and of their vocal critics, risks underestimating the role played by the silenced majority of women, propertyless males and slaves in bringing about and in indirectly shaping the Constitution, not as direct agents but by being prominently on the framers' minds. A similar argument can be made about European powers and their citizens, and about American Indian nations, who were not part of the American polity but very much part of American politics. For regardless of who wrote, supported, and opposed the Constitution, it was intended to touch the lives of people far beyond the social groups that had taken active part in the Constitutional convention and in the struggle for ratification.¹⁶

The second influence from Beard is the notion that politics can be reduced to the protection of property interests, where property is defined rather narrowly as real estate and money. With such an understanding of politics, the searchlight of the historian will inevitably be trained on the social groups that owned property, or stood a chance of acquiring it. As a result, the actions and beliefs of white propertied males become central, to the exclusion of everyone else. This narrow conception of property of course blunts the radicalism of the Progressive interpretation in an age concerned with equal rights and identity politics. Be that as it may, property in real estate — land and slaves — and 'personalty' — money and public securities — defines the classes that are the principal agents in the mainstream Progressive history of the Constitution. Beard is famous for suggesting that 'above all' the Constitution appealed 'to the owners of personalty anxious to

(n. 14 cont.)

northern and southern elites in the reform of the Union. See further below, n. 39. Beard dismissed the impact of the non-voting working class in *Economic Interpretation of the Constitution of the United States*, 25.

¹⁵ Beard, *Economic Interpretation of the Constitution of the United States*, 73–151; Holton, *Unruly Americans and the Origins of the Constitution*, 3–16.

¹⁶ A cultural history of the white male founding generation's concern with ethnic and gendered 'others' is Carroll Smith-Rosenberg, *This Violent Empire: The Birth of an American National Identity* (Chapel Hill, NC, 2010).

find a foil against the attacks of levelling democracy'. To Bouton the Constitution was quite simply the elite's attempt 'to redirect wealth and power to moneyed men'. True to character, Jensen presents a longer and more diverse agenda. Merchants demanded navigation acts, artisans and manufacturers protective tariffs, farmers tax relief, creditors tax hikes, frontiersmen protection from Native American attacks, and so on. But more than anything else, Progressives hold that the interlinked issues of paper money and impairments of contracts, which followed from the pressure to deal with the wartime debt, divided the American political nation. Public creditors demanded heavy taxation in gold and silver to make possible interest payments in specie. The taxpaying majority favoured lower taxation and interest payments in paper.¹⁷

Economic policy was forged in the state assemblies. Jensen points out that demands for government support for the pursuit of private material interest was nothing new in America. 'Ever since the founding of the colonies, Americans had been accustomed to government intervention in economic matters' in the form of land grants, tax exemptions, monopolies and bounties. Faced with both economic opportunities and economic difficulties after independence, 'it was natural for Americans to demand government aid'. But the political changes brought about by the Revolution meant that the balance of power between social classes had shifted dramatically. After independence, 'the states alone had the power to legislate on economic matters' and the state assemblies had come under the control of new men.¹⁸

As 'state after state in 1785 and 1786 adopted some form of paper money that could be loaned on farm mortgages and used to pay taxes, and in some cases private debts as well', the elite 'became desperate'. Their response was a plan to restrain the power of the state assemblies over economic policy by transferring political authority from the states to a new national government deliberately insulated from popular influence. In Holton's words, the elite wanted a political order that, whenever necessary, allowed them to appeal 'an unfavorable

¹⁷ Beard, *Economic Interpretation of the Constitution of the United States*, 154; Bouton, *Taming Democracy*; Jensen, *New Nation*, 245, 259–60.

¹⁸ Jensen, *New Nation*, 245 ('states alone'), 248, 283 ('ever since'; 'natural'), 285–7.

jury verdict to a higher court'. In the Constitution, states were proscribed from certain actions deemed threatening to the elite, such as issuing paper money or impairing the obligations of contracts. The national government was shielded from popular influence by the extension of electoral districts that 'would enhance the likelihood that representatives would be wealthy men' removed 'from grassroots pressure'. The enlarged electoral district, says Bouton, was 'the most powerful barrier' against popular politics, which 'placed a tremendous organizing burden on anyone pushing reforms opposed to the ruling elite'.¹⁹

The ultimate aim of the elite was the creation of 'a central government with power to coerce the state governments and their citizens' in order to protect their own property interests. The historians discussed here have been reluctant to systematically investigate the degree to which the elite was successful. Bouton is alone in devoting a substantial part of his book to the decade after ratification. He concludes that adoption of the Constitution was 'an enduring victory for the elite' that permanently 'constricted the meaning and practice of democracy', on the one hand, and replaced ideals of economic equality with acceptance of an 'uninhibited wealth accumulation' that made possible 'a largely unimpeded concentration of wealth across the nineteenth and early twentieth centuries', on the other. In his survey of US history, Beard argued that the social classes who had clashed over the Constitution continued their struggle as Federalists and Jeffersonians, thereby allowing for another round of fighting between capitalists and agrarians over the control of the national government. Jensen and Holton leave the question suspended.²⁰

Although this brief survey hardly does justice to the rich Progressive tradition, it serves to highlight how the International interpretation offers a different reading of events. Where the Progressives believe the principal political agents to be classes, the Internationalists concentrate on polities: European monarchies, American states, the federal union, and American Indian nations. Where the Progressives see the principal historical dynamic springing from class struggle, the Internationalists find it in

¹⁹ Jensen, *New Nation*, 426 ('state after state'); Holton, *Unruly Americans and the Origins of the Constitution*, 9–10; Bouton, *Taming Democracy*, 260–1.

²⁰ Jensen, *New Nation*, 4 ('central government'); Bouton, *Taming Democracy*, 260, 261, 263; Charles A. Beard and Mary R. Beard, *The Rise of American Civilization*, i, *The Agricultural Era* (London, 1927), 350–8.

geopolitical competition and sectional tension. Where the Progressives find the principal political agenda of the constitutional reform movement to be the redistribution of property and status from 'ordinary people' to the elite, the Internationalists describe it as an attempt to defend US territorial integrity and the national interest from competitors in the western borderlands and on the Atlantic Ocean. Where the Progressives identify the principal outcome of the founding to be the creation of a bourgeois state that faced inwards to make North America safe for capitalism, the Internationalists identify it as the creation of a stronger federal union that faced outwards to stand up to European powers and to conquer the North American continent.

II

Onuf's prescience at the bicentennial of the founding came from his own role in forcing historiographical change. His scholarly trajectory began in 1983 with a study of how 'jurisdictional controversies' over state land claims and secessionist movements in the trans-Appalachian west during the American Revolution fed into the creation of the Constitution. It was soon followed by a book on the Northwest Ordinance. At the time, the West was a highly unusual vantage point from which to write the history of the founding, but it meant that Onuf's analysis came to foreground inter-state conflict and federalism and to identify the creation of a viable union as the single most important political problem of the founding era. He next brought this outlook to bear on the making of the Constitution in a series of essays written for publications marking the bicentennial, which were then reworked into a book co-authored with Cathy Matson, *A Union of Interests: Political and Economic Thought in Revolutionary America*, that appeared in 1990. It added to the analysis of western expansion and state conflict an account of how the immersion of the American states in the Atlantic marketplace also gave rise to intra-union tensions. It was the first fully-fledged International interpretation of the origins of the Constitution.²¹

²¹ Peter S. Onuf, *The Origins of the Federal Republic: Jurisdictional Controversies in the United States, 1775–1787* (Philadelphia, 1983); Peter S. Onuf, *Statehood and Union: A History of the Northwest Ordinance* (Bloomington and Indianapolis, 1987); Cathy D. Matson and Peter S. Onuf, *A Union of Interests: Political and Economic Thought in Revolutionary America* (Lawrence, Kan., 1990).

Onuf owed an intellectual debt to his advisor Jack P. Greene, who in 1986 published *Peripheries and Center: Constitutional Development in the Extended Politics of the British Empire and the United States, 1607–1788*, a book based on decades of research into the British Empire and colonial America, which drew extensively on Onuf's work for the post-independence period. In *Peripheries and Center*, Greene acknowledged his own debt to Andrew McLaughlin and Charles McIlwain, constitutional scholars of the British Empire and the United States active in the 1920s, and thus sank historiographical roots for an International interpretation. Greene made the case for the persistence of a fundamental political problem in the English and British imperial project: how to govern a geographically 'extended polity'. From the establishment of the first colonies in North America to the outbreak of the American Revolution, Britons on both sides of the Atlantic struggled to maintain a central power strong enough to keep the far-flung Empire together without endangering the liberty and safety of its constituent parts. The American Revolution removed Britain from the equation but otherwise left organizational issues unaddressed when the problem of empire turned into the problem of union. Attempts to resolve the tension between the whole and the constituent parts 'provide the underlying unity to early American constitutional history from colonial through the early national periods', Greene says. To Onuf, 'the definition of the federal union' remained 'the central problem in American political discourse' to the Civil War.²²

²² Jack P. Greene, *Peripheries and Center: Constitutional Development in the Extended Politics of the British Empire and the United States, 1607–1788* (Athens, Ga., 1986), 3, abridged and updated as Jack P. Greene, *The Constitutional Origins of the American Revolution* (Cambridge and New York, 2011); Peter S. Onuf, 'A Declaration of Independence for Diplomatic Historians', *Diplomatic History*, xxii (1998), 79; Jack N. Rakove, *The Beginnings of National Politics: An Interpretive History of the Continental Congress* (New York, 1979). The Antebellum period is explored in Peter Onuf and Nicholas Onuf, *Federal Union, Modern World: The Law of Nations in an Age of Revolutions, 1776–1814* (Madison, Wis., 1993) and Nicholas Onuf and Peter Onuf, *Nations, Markets, and War: Modern History and the American Civil War* (Charlottesville, Va., 2006). Unrelated to Greene's work was the simultaneous publication of the first volume of Donald Meinig's masterful *The Shaping of America*, the final chapters of which treat the disintegration of empires and the problems of federations. Neither volumes I nor II, which cover the period to the aftermath of the Civil War, cite Greene or Onuf, apart from Onuf's book on the Northwest Ordinance. D. W. Meinig, *The Shaping of America: A Geographical Perspective on 500 Years of History*, i, *Atlantic America, 1492–1800* (New Haven, 1986).

Economic and administrative limits meant that the English Crown colonized North America by proxy using charter companies and proprietary lords. Two important consequences followed from this mode of colonization. First, there was not one but many colonization ventures, which resulted in a number of distinctive colonies largely autonomous from the imperial centre. Second, because the sponsors, too, had limited economic and administrative resources at their command they could only attract settlers by extending the rights and privileges of native-born Englishmen to the American colonies. Chief among these was the right to extensive self-rule in legislative assemblies representing local landowners. These ‘contracts’ between sponsors and settlers formed the basis for every colony’s ‘particular constitution’. In the century and a half that followed the establishment of Jamestown and Plymouth Plantation, the understanding that the colonies had a separate corporate identity and distinctive corporate privileges became entrenched in North America. ‘Consisting of a well-defined body of territory, each of the colonies had its own particular constitution, institutions, laws, history, and identity, to which its inhabitants were, for the most part, both well socialized and strongly attached’.²³

The colonists’ belief in the corporate identity of their satellite states raises the question why the struggle against England produced not thirteen independent nations but one. This mystery dissolves when the act of declaring independence is scrutinized more closely. In an insightful essay, John Pocock asked what it meant that the rebelling colonies chose to call themselves ‘united states’. ‘State’ was not the default term for a political organization at the time, at least not in the Anglophone world, but was derived from the law of nations to signal that the colonies assumed for themselves the status of sovereign polities vis-à-vis other sovereign polities. Their declaration announced that they were ‘Free and Independent States’ possessing ‘full Power to levy War, conclude Peace, contract Alliances,

²³ Greene, *Peripheries and Center*, 2–12, quotation at 164. A similar account is Christopher Tomlins, ‘The Legal Cartography of Colonization, the Legal Polyphony of Settlement: English Intrusions on the American Mainland in the Seventeenth Century’, *Law and Social Inquiry*, xxvi (2001), reworked into chs. 3–4 of Christopher Tomlins, *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580–1865* (Cambridge and New York, 2010).

establish Commerce’, and the right ‘to do all other Acts and Things which Independent States may of right do’. As Pocock points out, this presents us with ‘the problem of what happens when thirteen “states” are made to claim that they are “free and independent” and that they are “united”’.²⁴

The answer is that the colonies used the federative powers they had assumed as independent states to enter into union. In *Spirit of the Laws*, Montesquieu had explained how federations were the fruit of ‘an agreement by which several small states agree to become members of a larger one . . . It is a kind of society of societies’. These societies were formed, Pocock writes, when states exercised their ‘power to conclude peace and war by means of treaties or *foedera*’. The American union, announced to the world in the Declaration of Independence, should therefore be seen as a treaty organization. In July 1776, the American *foedus* was implied rather than explicit, the result of a decade of consultation between, and concerted action by, the colonies, but it would soon be spelled out in the Articles of Confederation. The ‘firm league of friendship’ established by the ratification of the Articles constituted the United States not as ‘a body politic but an association of bodies politic’. The *Novus Ordo Seclorum* motto notwithstanding, such a political organization was nothing new but was well established in the law of nations and ‘readily recognizable’ to European ‘eighteenth-century taxonomists of political forms as a “league of firm friendship,” a “*république federative*,” or a “system of states”’. That a treaty could create a union making it possible for several states to act as one nation explains why a portfolio of American organic laws, aimed at impressing European courts, described the Articles of Confederation as a ‘Treaty’, that formed a ‘Constitution, or mode of Government, for the collective North-American Commonwealth’.²⁵

²⁴ J. G. A. Pocock, ‘States, Republics, and Empires: The American Founding in Early Modern Perspective’, in Terence Ball and J. G. A. Pocock (eds.), *Conceptual Change and the Constitution* (Lawrence, Kan., 1988). Pocock is not correct to say that the term ‘commonwealth’ rather than ‘state’ was used to designate a political association formed in a state of nature. ‘State’ was used in the latter sense in both British and American political and legal discourse: see Quentin Skinner, ‘A Genealogy of the Modern State’, *2008 Lectures* (Proceedings of the British Academy, clxii, Oxford, 2009).

²⁵ Montesquieu, *Spirit of the Laws*, ed. Anne M. Cohler, Basia Miller and Harold Stone (Cambridge, 1989), part II, book 9, ch. 1, 131–2; Pocock, ‘States, Republics,

(cont. on p. 283)

The goal of the American union created by the Declaration and formalized by the Articles was, in Onuf's analysis, twofold: to 'constitute a more perfect world order for the colony-states', on the one hand, and to serve as 'a legitimate (recognizable) government' of the union 'in the larger world', on the other.²⁶ But the first union failed miserably on both counts. After independence, critical issues confronted the United States in the western marchlands of the continental interior as well as in the Atlantic marketplace. In the West, the Continental Congress had only nominal control over the American Indians and European American settler colonists who resided there. Britain violated the new nation's territorial integrity by maintaining military posts on American soil and diplomatic relations with Indian nations living within the borders of the United States. On the Atlantic Ocean and beyond, the expulsion of the American colonies from the common market of the British Empire had led to a sharp downturn in exports and shipping, which in turn had caused an economic depression. A third challenge lay in the cracks that had begun to appear in the federal union, where conflicts of interest between the member states over the Revolutionary debt, commercial regulations and territorial claims were producing tension. Times were bad, and the future of the Union in doubt. In this climate the Constitutional convention met in May 1787 to 'render the federal constitution adequate to the exigencies of government and the preservation of the Union'.²⁷

(n. 25 cont.)

and Empires', quotation at 60, and see 67–73; David C. Hendrickson, *Peace Pact: The Lost World of the American Founding* (Lawrence, Kan., 2003), ix ('body politic'; 'readily recognizable'); Onuf, 'Declaration of Independence', 78, quoting *The Constitutions of the Several Independent States of America; The Declaration of Independence; The Articles of Confederation* (London, 1782).

²⁶ Onuf, 'Declaration of Independence', 73. See also Pocock, 'States, Republics, and Empires', 57–61; David Armitage, 'The Declaration of Independence and International Law', *William and Mary Quarterly*, 3rd ser., lix (2002).

²⁷ 'Confederation Congress Calls the Constitutional Convention, 21 February 1787', in *The Documentary History of the Ratification of the Constitution*, i, *Constitutional Documents and Records, 1776–1787*, ed. Merrill Jensen (Madison, Wis., 1976), 187. On the post-war period, see Matson and Onuf, *Union of Interests*, 50–100; John J. McCusker, 'Estimating Early American Gross Domestic Product', *Historical Methods*, xxxiii (2000); Peter H. Lindert and Jeffery G. Williamson, 'American Incomes Before and After the Revolution', *The Journal of Economic History*, lxxiii (2013); Allan Kulikoff, '"Such Things Ought Not to Be": The American Revolution and the First National Great Depression', in Andrew
(cont. on p. 284)

The principal purpose of the Constitutional convention was therefore not to restrict democracy, promote property interests or turn America into a liberal society — although such outcomes may well have been unintended, if not necessarily unwelcome, consequences — but to repair the Union. In the words of the political scientist Michael Zuckert, the leading reformers were critical of the Confederation for ‘its failures to achieve the ends for which it was instituted, not its failure to reach ends beyond these’. Looking back at the Convention from a distance of five decades, James Madison, the putative ‘father of the Constitution’, presented the Constitution as a plan of union between sovereign republics. Throughout ancient and modern history, he wrote, echoing Montesquieu, ‘feeble communities, independent of each other, have resorted to Union . . . for the common safety ag[ain]st powerful neighbors, and for the preservation of peace and justice among themselves’. The American Constitution was but another addition ‘to those examples’.²⁸

The idea that a union could preserve peace and justice among member-states harked back to a long tradition of peace plans. When the Americans formed their union, ‘Montesquieu, Vattel, and before them, a whole series of early world federalists had imagined a world of confederated states, freed from war’, Onuf points out.²⁹ Although Onuf was the first to analyse this aspect of the Union, the most elaborate discussion is found in the works of two political scientists: David Hendrickson’s *Peace Pact: The Lost World of the American Founding* from 2003, preceded by an influential article on the ‘Philadelphia System’ by Daniel Deudney. Union as a means of nation-building, another central part of Onuf’s analysis, has recently been the subject of detailed inquiries by Eliga Gould and Daniel Hulsebosch focusing on the

(n. 27 cont.)

Shankman (ed.), *The World of the Revolutionary American Republic: Land, Labor, and the Conflict for a Continent* (New York, 2014); George William Van Cleve, *We Have Not a Government: The Articles of Confederation and the Road to the Constitution* (Chicago, 2017).

²⁸ Michael P. Zuckert, ‘Federalism and the Founding: Toward a Reinterpretation of the Constitutional Convention’, *Review of Politics*, xlviii (1986), 174; ‘Preface to the Debates in the Convention’, in James Madison, *Notes on Debates in the Federal Convention of 1787 Reported by James Madison* (Athens, Ohio, 1966), 3.

²⁹ Onuf, *Origins of the Federal Republic*, 205; Onuf and Onuf, *Federal Union, Modern World*, 141.

problem of international recognition, and by Leonard Sadosky and others focusing on the organization of the national domain in the trans-Appalachian West. The following two sections will look more closely at the Constitution as a peace pact and as an instrument of nation-building.³⁰

III

Today the word ‘constitution’ typically signifies a state’s basic legal order, with a special authority and superiority over lesser law. But its historical meaning has varied. Now largely lost is the notion of a constitution as a federal treaty, the means by which ‘several states join into a lasting political entity without giving up their own political independence in the process’.³¹ A federal treaty creates supra-state institutions of authority and transfers powers from the states to these institutions, but its ultimate aim is the preservation and protection of the corporate identity and corporate interests of the treaty parties.³² A central way to do this is by offering states entering into union a means to escape war, the default means of conflict resolution in the anarchic international state system and a principal existential threat to states. By replacing anarchy with union, Hendrickson argues that the Constitution of 1787 fulfilled a role comparable to

³⁰ Daniel H. Deudney, ‘The Philadelphian System: Sovereignty, Arms Control, and Balance of Power in the American States-Union, circa 1787–1861’, *International Organization*, xlix (1995); David M. Golove and Daniel J. Hulsebosch, ‘A Civilized Nation: The Early American Constitution, the Law of Nations, and the Pursuit of International Recognition’, *New York University Law Review*, lxxxv (2010); Eliga H. Gould, *Among the Powers of the Earth: The American Revolution and the Making of a New World Empire* (Cambridge, Mass., 2012); Leonard J. Sadosky, *Revolutionary Negotiations: Indians, Empires, and Diplomats in the Founding of America* (Charlottesville, Va., 2009).

³¹ Ernst-Wolfgang Böckenförde, ‘The Historical Evolution and Changes in the Meaning of the Constitution’, in his *Constitutional and Political Theory: Selected Writings*, ed. Mirjam Künkler and Tine Stein, 2 vols. (Oxford, 2017), i, 159. On the variable meaning of the term ‘constitution’, see also Gerald Stourzh, ‘Constitution: Changing Meaning of the Term from the Early Seventeenth to the Late Eighteenth Century’, in Ball and Pocock (eds.), *Conceptual Change and the Constitution*.

³² Michael P. Zuckert, ‘A System Without Precedent: Federalism in the American Constitution’, in Leonard W. Levy and Dennis J. Mahoney, eds., *The Framing and Ratification of the Constitution* (New York, 1987), 141; Zuckert, ‘Federalism and the Founding’.

the great peace settlements of early modern European history: Westphalia in 1648, Utrecht in 1713 and Vienna in 1815.³³

This understanding of the founding implies that the bonds of affection that held the American states together after independence were not strong enough to prevent them from acting out their self-interest to the detriment of other member states. Absent union, anarchy and inter-state competition would characterize their relationship and thereby extend to North America the European balance-of-power system with its arms races, bloated governments and frequent wars.³⁴ This prospect posed an existential threat to the newly independent American republics in two ways. Most obviously, a single state or group of states, with or without a European ally, could achieve hegemony and subject the other states to its will. Less obviously, the republican system of government could be expected to corrode if external pressure became too pronounced. War always centralizes power and if wars were frequent, or the danger of war constant, there was a significant danger that centralized power would develop into despotic rule and the circumscription of civic rights. ‘America was without kings or military establishments; it would acquire both in circumstances of disunion’, Hendrickson remarks. ‘It had no class of white men who, profiting from the “military system” so deeply entrenched in Europe, made the European laborer “go supperless to bed, and to moisten his bed with the sweat of his brows.” Disunion would bring that as well’. Because the ‘internal character of states’ was perceived to be ‘a function of powerful systemic pressures generated by the structure of the “international system”’, the preservation of republican rule in the American states depended on the creation and maintenance of a benevolent international environment in North America.³⁵ Union was the means to do so. By defusing the danger of inter-state war, the

³³ Onuf, *Origins of the Federal Republic*, 173–85; Pocock, ‘States, Republics, and Empires’, 66–70; Hendrickson, *Peace Pact*, x–xi; David C. Hendrickson, ‘Bringing the State System Back In: The Significance of the Union in Early American History, 1763–1865’, in Peter Thompson and Peter S. Onuf (eds.), *State and Citizen: British America and the Early United States* (Charlottesville, Va., 2013), 114.

³⁴ Deudney, ‘Philadelphian System’, 193, 195; Hendrickson, ‘Bringing the State System Back In’, 114.

³⁵ Hendrickson, *Peace Pact*, 10; Max M. Edling, *A Hercules in the Cradle: War, Money, and the American State, 1783–1867* (Chicago, 2014), 224–7.

federal treaty protected both the independence of the American states and their republican system of government.

To maintain union the centripetal force of state interests had to be somehow neutralized without watering down state self-determination too much. A federal treaty entailed a voluntary circumscription of the treaty parties' sovereignty. In Vattel's words, the states 'put some restraint on the exercise of [their sovereignty], in virtue of voluntary agreements'.³⁶ But in the American case this did not mean that the thirteen states were consolidated into one nation state. The framers of the Constitution steered a careful course between the twin dangers of national consolidation and civil war. They wrote into the Constitution protection both for the states' corporate identity and for their essential interests, while at the same time they attempted to remove sources of inter-state conflict and the power of the states to make war.

The Constitution protected the corporate identity, or sovereignty, of the states by guaranteeing their territorial integrity and self-determination. Large states could not be subdivided and small states could not be merged with other states without their consent (art. IV, § 3). States were protected from invasion and rebellion and guaranteed a 'Republican Form of Government' (art. IV, § 4). The states were made essential elements of the federal government structure by the provision for equal state representation in the Senate (art. I, § 3 and further protected by art. V), but also by creating a House of Representatives elected by 'the People of the several States' (art. I, § 2) and an executive chosen by state electors appointed 'in such Manner as the Legislature [of each state] may direct' (art. II, § 1). But the most important protection of state corporate identity was the framers' design of a national government of limited and enumerated powers, which was geared toward the management of diplomacy, international trade and war, but left domestic matters mostly alone.³⁷ Federal government powers

³⁶ Emer de Vattel, *The Law of Nations*, ed. Béla Kapossy and Richard Whatmore (Indianapolis, Ind., 2008), 84.

³⁷ Onuf, *Origins of the Federal Republic*, 186–209; Zuckert, 'System Without Precedent', 132–50; Hendrickson, *Peace Pact*; Max M. Edling, 'A More Perfect Union: The Framing and Ratification of the Constitution', in Edward G. Gray and Jane Kamensky (eds.), *The Oxford Handbook of the American Revolution* (New York, 2013).

were explicitly listed in art. I, § 8. Powers that were not enumerated there belonged to the states, a principle that was most clearly expressed in the constitutional postscript of the tenth amendment, which stated that '[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people'.

All American states were concerned with their territorial integrity and self-determination. Onuf and others have stressed that they were also keen to protect their particular economic interests. Social and economic diversity meant that states had potentially antagonistic material interests. Preserving the peace pact therefore required that the treaty parties accepted both that other states had legitimate interests and that such interested states could nevertheless co-exist in a 'union of interests'. Matson and Onuf argue that this understanding of the American union was absent when the Constitutional convention assembled in Philadelphia and was worked out only in the course of its proceedings.³⁸

The two interests most clearly articulated in the convention were the slave interest of the southern states and the shipping interest of the northern and middle states. An inter-sectional agricultural interest was also voiced, with demands for action by a stronger national government to open foreign markets for American exports and western lands for European American settlers, and to keep open sea lanes and transportation routes and to maintain peace in the trans-Appalachian West. These demands worked at cross purposes. If settlements were stepped up, a backlash from the American Indian nations controlling the region, and from Britain and Spain, that still had ambitions there, could be expected.

The Constitution provided both explicit and implicit protection for state economic interests. The slave states were strikingly successful in getting explicit protections written into the document, guaranteeing numerical advantage in the House of Representatives (art. I, § 2) and presidential elections (art. II, § 1) as a result of the 'three-fifths clause', which counted 60 per cent of the slave population for purposes of representation; return of escapee slaves in the fugitive clause (art. IV, § 2); and a

³⁸ Matson and Onuf, *Union of Interests*, 101–23.

continuation of the slave trade to at least 1808 (art. I, § 9; art V). The Constitution also banned export duties (art. I, § 9), which would have affected southern staples such as rice and tobacco, and introduced a comity clause (art. IV, § 1) that forced non-slave states to recognize the legality of slavery. So pronounced was the southern victory that recent works by George Van Cleve and David Waldstreicher have placed protection of slavery at the centre of the American federal treaty, vindicating an understanding once embraced by radical abolitionists and slave owners alike that the Constitution was a pro-slavery document.³⁹

The gains of the shipping interest were much more limited. Northern delegates defeated the slave states' insistence on a qualified majority for Congress to pass navigation acts, but a two-thirds majority in the Senate was required to ratify commercial treaties (art. II, § 2). The Northwest Ordinance was adopted by Congress in July 1787 thanks to delegates from the Constitutional convention, who were also members of Congress, taking time out of the convention to attend Congress. It was very likely part of the sectional bargain over slavery. The Ordinance held out the promise to the northern agricultural interest that the West would be opened up for white settlement and that in time the region north of the Ohio River would be turned into three to five self-governing republics. The exclusion of slavery ensured the future of the Northwest Territory as a free-soil region, but also implied slavery's legality in future territories to be created south of the Ohio River.⁴⁰ North and South, the argument was also made that economic interests would be promoted by the creation of a stronger national government with the power to conclude beneficial trade

³⁹ David Waldstreicher, *Slavery's Constitution: From Revolution to Ratification* (New York, 2009), 57–105; George William Van Cleve, *A Slaveholders' Union: Slavery, Politics, and the Constitution in the Early American Republic* (Chicago, 2011), 103–83. Among legal historians Paul Finkelman has consistently argued for the importance of slavery in the Constitution, for example in 'Slavery and the Constitutional Convention: Making a Covenant with Death', in Richard Beeman, Stephen Botein and Edward C. Carter, II (eds.), *Beyond Confederation: Origins of the Constitution and American National Identity* (Chapel Hill, NC, 1987). In the Progressive tradition, Staughton Lynd was unusual in stressing the role of slavery in the making of the Constitution. His essays on the topic are collected in *Class Conflict, Slavery, and the United States Constitution*, 135–213.

⁴⁰ Lynd, 'The Compromise of 1787', in *Class Conflict, Slavery, and the United States Constitution*; Matson and Onuf, *Union of Interests*, 113–19; Waldstreicher, *Slavery's Constitution*, 87–8; Van Cleve, *Slaveholders' Union*, 153–67.

agreements in the Atlantic marketplace and to pacify American Indian nations in the western borderlands.⁴¹

Explicit guarantees for state economic interests were of course important. But just as important was the development in the convention of a general understanding of how to balance state interests with the need to preserve the union. This involved accepting that the interests of other states were real and that the pursuit of self-interest was legitimate. Up to a point, the framers argued that claims about sectional antagonism — based on slave, shipping and agricultural interests centered in the South, North, and West — were exaggerated and that the sections could co-exist in a harmonious ‘union of interests’. But whenever state interests clashed, compromise alone, achieved by bargaining, could prevent disunion. ‘Union’ and ‘independence’ became inseparable concepts in American political culture, the ‘*Staatsräson*’ of the American union in Hendrickson’s words, due to the conviction that only the peace pact could guarantee a republican system of government in the states and protection of vital state interests. This acceptance laid the foundation for a distinctive American style of politics, as the statesmen of the Antebellum era became adept at developing the art of the sectional compromise.⁴²

If constitutional guarantees for the corporate identity and interests of the treaty parties were one way of maintaining the peace pact, another was the removal of sources of inter-state conflict. There were limits to such endeavours. Southern planters would not abolish slavery, northern merchants would not abandon the shipping industry. But beyond these confines, something could still be achieved. The landed states ceded their western territory to the nation in the mid and late 1780s. The right of Congress to make ‘Rules and Regulations’ to govern this common national domain was established by the Constitution (art IV, § 3) and the rules themselves were spelled out in the Northwest Ordinance. As Onuf’s analysis of the Ordinance shows, in a single stroke, the discontent of the landless states for not having a stake in western expansion, and the repeated conflicts between states with overlapping western land claims, disappeared.⁴³

⁴¹ Max M. Edling, *A Revolution in Favor of Government: Origins of the U.S. Constitution and the Making of the American State* (New York, 2003).

⁴² Hendrickson, *Peace Pact*, quotation at xii; Matson and Onuf, *Union of Interests*; Onuf, *Origins of the Federal Republic*.

⁴³ Onuf, *Statehood and Union*.

Other sources of conflict were removed by the monopolization of commercial policy by the federal government, which prevented the enactment of competing tariffs by the states and competition in the Indian trade. The Constitution also prohibited the states from issuing paper money and interfering with contracts. In the post-war period such policies had defrauded out-of-state creditors and caused inter-state friction. After the adoption of the Constitution, the fiscal resources of the new federal government made possible both payments on the national debt and the nationalization of large parts of the state debts, another source of conflict between the states.⁴⁴ Should inter-state conflict still arise, the Constitution reduced the chance of escalation by depriving the states of the right to enter into alliances, to maintain troops or to wage war without the consent of Congress (art. I, § 8 and 10).⁴⁵ Conflict resolution instead took the form of adjudication by the Supreme Court, which had judicial power over ‘controversies between two or more States’ (art. III, § 2). Boundary disputes had dominated inter-state conflicts before the adoption of the Constitution but rarely came before the federal court in the decades that followed. Rather than the Supreme Court, Congress provided a forum for inter-state conflict resolution through bargaining and compromise.

IV

If the peace pact was one purpose of the federal treaty, the other was to allow thirteen sovereign republics to act in unison as one nation against external powers. In the words of a contemporary jurist, the federal government became ‘the organ through which the states communicate with foreign nations’. The law of nations established that all nations were equal. ‘A dwarf is as much a man as a giant’, Emer de Vattel wrote; ‘a small republic is no less a sovereign state than the most powerful kingdom’. But the equality of states extended beyond their size to apply also to their form. Whether they were democratic or monarchical, unitary states or federal republics, they were all *nations* in relation to each other.⁴⁶

⁴⁴ Edling, *Hercules in the Cradle*, 50–107.

⁴⁵ Golove and Hulsebosch, ‘Civilized Nation’, 993–4.

⁴⁶ St. George Tucker, ‘View of the Constitution of the United States’, in his *View of the Constitution of the United States With Selected Writings*, ed. Clyde N. Wilson (Indianapolis, Ind., 1999), 248; Vattel, *Law of Nations*, quotation at 75, and see 81–4.

The ability to act as one nation provided protection against foreign aggression, which, just like the peace pact, guaranteed the continued independence of the American republics. Typically militarily weaker than monarchies, the federal treaty was a conventional solution to the security concerns of republics. Although the principal security threat to the American states was civil war, a limited threat also existed in the western borderlands from American Indian nations and their European allies, and from naval attacks and amphibious assaults on Atlantic port cities by European naval powers, as evidenced in the War of Independence and the War of 1812 alike. But as long as the United States was at peace with European North American powers, a borderlands war would be most likely to be instigated by Americans, either through brash government action or freelance aggression by European American settlers.⁴⁷

Concerted international action also promised to protect and promote material interests by expanding white settlements in the western borderlands and by promoting Atlantic and global trade. The cost of war and the relative weakness of the United States meant that negotiation rather than armed aggression was the most realistic means to reach such goals. To make that possible, however, the power over foreign affairs and Indian diplomacy had to be transferred from the states to the national government by the process of voluntary circumscription of state sovereignty Vattel had identified as an intrinsic part of the federal treaty. In 1787, the Atlantic marketplace was structured by trading nations' attempts to exclude or restrict political and economic competitors from access to their home markets and colonial dependencies. These restrictions could be circumvented by trading illicitly, but commercial agreements were a more effective means to promote economic interests.⁴⁸

⁴⁷ Totten, 'Security, Two Diplomacies, and the Formation of the US Constitution', 101–9; Max M. Edling, '“A Vigorous National Government”: Hamilton on Security, War, and Revenue', in Jack N. Rakove and Colleen Sheehan (eds.), *The Cambridge Companion to The Federalist* (New York, forthcoming).

⁴⁸ John E. Crowley, *The Privileges of Independence: Neomercantilism and the American Revolution* (Baltimore, Md., 1993) argues that American statesmen failed to appreciate that Britain maintained a difference between the exchange of goods, where British post-independence policy was liberal, and shipping, where it was mercantilist. After independence, American political leaders wished for a return to the colonial order that allowed American ships to carry goods within the British

(cont. on p. 293)

To conclude a commercial agreement a nation had to be seen as ‘treaty-worthy’, in Eliga Gould’s phrase, and under the Articles of Confederation, the United States was not. In their extended essay ‘A Civilized Nation: The Early American Constitution, the Law of Nations, and the Pursuit of International Recognition’, David Golove and Daniel Hulsebosch argue that the Constitution of 1787 was both caused and profoundly shaped by the need for the United States to pass muster as a member of the European ‘civilized family of nations’. ‘The fundamental purpose of the Federal Constitution’, they write, ‘was to create a nation-state that the European powers would recognize, in the practical and legal sense, as a “civilized state” worthy of equal respect in the international community’. Gould, too, has shown that independence raised the problem of exactly how the United States would take its place among the ‘Powers of the Earth’.⁴⁹

The ‘family of civilized nations’ consisted of countries that demonstrated their readiness to abide by the law of nations, a system of norms established by European diplomats and promulgated by European jurists to govern interactions between European nations and nationals. The decision by American political leaders and their constituents that the United States, too, would live by the law of nations, signifies that American independence was less the start of American exceptionalism than ‘an attempt to remake the former colonies in Europe’s image’.⁵⁰ That decision was first pronounced with the Declaration of Independence and was followed by the state constitutions and the Articles of Confederation. It took the form of written constitutional documents in part because of the need for Americans to convey it to, and display it in, European courts and courts of opinion. Printed and bound in a ‘revolutionary portfolio’, the documents were carried abroad by

(*n.* 48 *cont.*)

Empire with few restrictions. On the Atlantic commercial regime, see also Matson and Onuf, *Union and Interest*, 67–81; Onuf and Onuf, *Federal Union, Modern World*; Van Cleve, *We Have Not a Government*.

⁴⁹ Golove and Hulsebosch, ‘Civilized Nation’, 935; Gould, *Among the Powers of the Earth*, 130.

⁵⁰ Gould, *Among the Powers of the Earth*, 3. On the law of nations and American political development, see also Onuf and Onuf, *Federal Union, Modern World*; Onuf and Onuf, *Nations, Markets, and War*.

American envoys to demonstrate to the world that the law of nations spanned the Atlantic.⁵¹

The Constitution continued the attempt to make the United States pass as ‘treaty-worthy’ by rectifying the failures of the Articles of Confederation. Historians agree that the violations of the peace treaty of 1783 by several of the American states were ‘the most dramatic manifestation’ of the Union’s inability to conduct foreign affairs in accordance with European norms. Such diplomatic incompetence repeatedly torpedoed post-war attempts to realize American international aspirations, ‘as painfully witnessed by the repeated failures and humiliations experienced by American diplomats’. In particular, it proved impossible to make Britain agree to a treaty that would extricate the United States from its neo-colonial dependence on the former mother country to place American commerce and international status on a par with that of European nations.⁵²

The management of foreign affairs had been the duty of Congress already under the Articles and the issue facing the Constitutional convention was not so much to increase as to make the powers of the national government effective. Doing so involved preventing ‘illegal acts of hostility on the part of Americans themselves’, most importantly acts perpetuated by the state governments against foreign nationals.⁵³ Accordingly, the Constitution gave the new federal government a monopoly on foreign affairs and restricted the powers of the states. Congress was granted war-making powers and the right to regulate commerce (art. I, § 8), the latter of which was a new authority. A federal judiciary was created and given sole jurisdiction over disputes in maritime and admiralty law, where the vast majority of cases arising under the law of nations would originate, as well as all cases involving foreign nationals (art. III). By establishing a single executive who was both commander-in-chief and empowered to make treaties (art. II, § 2), the convention

⁵¹ Daniel J. Hulsebosch, ‘The Revolutionary Portfolio: Constitution-Making and the Wider World in the American Revolution’, *Suffolk University Law Review*, xlvii (2014). The geographic expansion and limits to the law of nations is a major theme of Gould’s *Among the Powers of the Earth*.

⁵² Golove and Hulsebosch, ‘Civilized Nation’, quotation at 945–6; Gould, *Among the Powers of the Earth*, 119, 127.

⁵³ Gould, *Among the Powers of the Earth*, 132; Golove and Hulsebosch, ‘Civilized Nation’, 989–90.

equipped the United States with a president that carried some resemblance to the British monarch.

Progressive historians are correct to argue that the framers intended to shield the national government from state and popular influence over foreign affairs. Under the Constitution, treaties take effect on ratification by the Senate, the less popular of the legislative branches, and when ratified automatically become the supreme law of the land ‘any Thing in the Constitution or Laws of any State to the Contrary notwithstanding’ (art. VI), thereby overriding state sovereignty in foreign affairs. By granting the federal courts jurisdiction over all cases arising under international treaties the framers ensured ‘that the federal judiciary would be available to uphold federal authority against recalcitrant states’. In a parallel move (art I, § 10), the states were stripped of their power over foreign affairs by explicit proscriptions against entering into any ‘Treaty, Alliance, or Confederation’ or making any ‘Agreement or Compact’ with another state or foreign nation without congressional consent. The states were also prohibited from regulating commerce by imposing import and tonnage duties and they had neither the right to make war nor the right to maintain troops or warships in peacetime. The restrictions on the states from issuing paper money or impairing the obligation of contracts reassured foreign nations that the rights of their subjects under international treaties and the law of nations would henceforth be honoured.⁵⁴

The Constitution and the rulings of the federal courts went a long way to convince British merchants and diplomats that the United States would in future act in accordance with the law of nations and the law merchant. Although it would take several years before that conviction bore fruit, the United States signed commercial treaties with Britain in 1794 and with Spain in 1795. At long last, the new nation was seen as ‘treaty-worthy’.⁵⁵

⁵⁴ Golove and Hulsebosch, ‘Civilized Nation’, 993–4; Daniel J. Hulsebosch, ‘Being Seen Like a State: How Americans (and Britons) Built the Constitutional Infrastructure of a Developing Nation’, *William and Mary Law Review*, lix (2018).

⁵⁵ On the actions of the federal courts and the reception of the Constitution in Britain see Daniel J. Hulsebosch, ‘Magna Carta for the World? The Merchants’ Chapter and Foreign Capital in the Early American Republic’, *North Carolina Law Review*, xciv (2016) and Hulsebosch, ‘Being Seen Like a State’. Trade and diplomacy in the period 1789–95 are expertly treated in Stanley Elkins and Eric McKittrick, *The Age of Federalism: The Early American Republic, 1788–1800* (New York, 1993), 375–449.

In the Age of Revolutions, the law of nations governed the western borderlands only imperfectly. Consequently, Golove and Hulsebosch limit their analysis of ‘the international Constitution’ to relations between the federal union and the powers of Europe. In contrast, scholars such as Gould and Leonard Sadosky have employed a broader concept of international history that incorporates borderlands relations and treats them as deeply intertwined with Atlantic diplomacy. The borderlands diplomatic regime recognized American Indian nations as sovereign actors with legitimate interests and territorial rights, on the one hand, but denied them the status of ‘civilized nations’ on a par with European powers, on the other. At the same time American Indian strength and European American weakness meant that a precarious peace could only be maintained by continuous negotiation influenced as much by indigenous beliefs and practices as by the law of the imperial powers. When the military and administrative capacity of the national government grew after the adoption of the Constitution, the United States gradually re-shaped the legal geography by extending the law of nations into the borderlands. Because the European diplomatic regime recognized only ‘civilized nations’, the sovereign status of American Indian polities was thereby undermined. To Native American peoples, the success of the United States in becoming the only recognized sovereign nation in the trans-Appalachian West ‘proved to be a profoundly disruptive event, as the intrusion and growing authority of European notions of peace and treaty-worthiness created new hierarchies of value, new forms of dependency, and, often, new languages of exclusion’. The end point of that development was the Supreme Court’s definition of American Indian tribes as ‘domestic dependent nations’ in its 1831 *Cherokee Nation v. Georgia* ruling, which effectively ended the tradition of recognizing Native American nations as independent and accelerated the process of Indian removal.⁵⁶

⁵⁶ Gould, *Among the Powers of the Earth*, quotation at 11; Sadosky, *Revolutionary Negotiations*, 1–9 and *passim*. Lisa Ford, *Settler Sovereignty: Jurisdiction and Indigenous People in America and Australia, 1788–1836* (Cambridge, Mass., 2010) analyses the transition from legal pluralism in the Georgia borderlands to ‘perfect settler sovereignty’. See also Richard White, *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650–1815* (Cambridge and New York, 1991); Eric Hinderaker, *Elusive Empires: Constructing Colonialism in the Ohio Valley, 1673–1800* (New York, 1997); and Stuart Banner, *How the Indians Lost Their Land: Law and*

(cont. on p. 297)

Like Gould and Sadosky, Gregory Ablavsky insists in his analysis of the ‘Savage Constitution’ that American Indian relations were central to the framers. Along with Atlantic trade, American economic success depended on the successful development of the West. As Ablavsky points out, the Indians ‘possessed the most valuable commodity in early America’: land. Rebellious against Britain, the American people and their leaders had banked on their ability to lay their hands on that commodity after independence. Visions of the future wealth of the region were legion long before the fertile lands of the Ohio and Mississippi River valleys became home to a large population of European American settler-migrants. But unlocking the economic potential of the West required not only the transfer of western territory from the states to Congress, a process well under way by 1787, but also the creation of a legal framework for federal rule of the national domain.⁵⁷

That legal framework had to provide both for the management of a vast geographic space predestined for fundamental transformation, and for the management of two distinctive population groups: the indigenous inhabitants that controlled the land and the white settlers that the government hoped would replace them. The Constitution gave Congress the ‘Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States’ (art. IV, § 3), but these rules and regulations were only fleshed out in the Northwest Ordinance, which to that extent forms an inseparable part of the Constitution in the American founding. The Constitution also extended Congress’s right to regulate commerce to include ‘the Indian Tribes’ (art. I, § 8) and the same principle that made

(n. 56 cont.)

Power on the Frontier (Cambridge, Mass., 2005), 112–227. The consequences of ratification are also treated in Sadosky, *Revolutionary Negotiations*, 176–215; Gould, *Among the Powers of the Earth*, 178–218; and Alan Taylor, ‘The War of 1812 and the Struggle for a Continent’, in Shankman (ed.), *World of the Revolutionary American Republic*.

⁵⁷ Peter S. Onuf, ‘Liberty, Development, and Union: Visions of the West in the 1780s’, *William and Mary Quarterly*, 3rd ser., xliii (1986); Gregory Ablavsky, ‘The Savage Constitution’, *Duke Law Journal*, lxiii (2014), quotation at 1011; Bethel Saler, *The Settlers’ Empire: Colonialism and State Formation in America’s Old Northwest* (Philadelphia, 2014), 16–17.

treaties with 'civilized nations' the supreme law of the land applied also to Indian treaties (art. VI).⁵⁸

The Northwest Ordinance made possible the transformation of the territory north of the Ohio River from what contemporaries were apt to call a 'wilderness' into a space governed by the common law, republican principles of government, Christian morals and patriarchal authority. It was a space reserved for white immigrant settlers and the Ordinance had little to say about American Indians other than that they should be treated with 'good faith' and that 'their lands and property' would never be 'taken from them without their consent'. The government's intention was to people the Northwest Territory with family groups managing freehold farms under the watchful eye of a male head of the household. Production would be partly for the market and settlement would be relatively dense, allowing for both local self-government and market integration. Educated and kept in line by missionaries and government agents, the people of the Northwest Territory would be prevented from backsliding into barbarity. The ultimate aim was for white migrants to the West to reproduce their republican homelands in the East.

This transposition of Atlantic republics into the continental interior required intervention by the national government in several steps: first to transfer land titles from American Indian nations to the United States through a process of negotiation and purchase ratified by treaty; second to remove the American Indian inhabitants beyond a treaty line defining the land cleared for European American settlement; third to survey and sell this land to white settlers in farm-sized parcels; and fourth to create a colonial government to oversee the process of immigration and the gradual development of settler sovereignty that would eventually turn the Northwest Territory into sovereign republics that would join the American union as equal treaty parties.⁵⁹

Bethel Saler has shown how in contrast to the detailed form of government guiding the federal government's rule over white

⁵⁸ Sadosky, *Revolutionary Negotiations*, 127–40; Ablavsky, 'Savage Constitution', 1042–3; Saler, *Settlers' Empire*, 29–32.

⁵⁹ Ordinance for the Government of the Territory of the United States Northwest of the River Ohio, 13 July 1787, in *Documentary History of the Ratification of the Constitution*, i, 168–74; Onuf, *Statehood and Union*; Saler, *Settlers' Empire*, 17–26.

settler colonies, it ruled Indian nations by creating a much less formalized ‘treaty polity’, which regulated Indian territorial possession and rights. As the term suggests, the principal governing instrument in this polity was the Indian treaty. These documents ratified Indian land transfers to the United States and established a borderline separating American Indians from European American settlers. Treaties also attempted to sever commercial and political links with Britain and Spain and replace them with ties to the United States. Treaties, finally, formulated the route by which the Indians would be ‘civilized’ and made to conform to European–American norms of socio-economic organization.⁶⁰ The long-term goal of US policy was not physical but cultural annihilation of Indian society, to ‘civilize’ the indigenous population by imposing on them ideals of sedentary farming, private property rights and patriarchy. Meanwhile, in a transitional period, the Indian nations were treated as ‘quasi-foreign political bodies’ over which the federal government ‘claimed a paternalistic colonial rule’ or ‘a guardianship until they metamorphosed from perceived culturally alien and backward peoples into “civilized” Americans ready for membership in the republic’.⁶¹

V

The International interpretation puts the spotlight on international and intra-union affairs where the Progressives have focused on domestic matters. But rather than making the Progressive perspective redundant, the International interpretation makes it possible to approach the old question of who should rule at home with fresh eyes. By presenting the Constitution as a federal treaty that left the internal

⁶⁰ Saler, *Settlers’ Empire*, 3–5, 26–9, 83–120. Kathleen DuVal, *Independence Lost: Lives on the Edge of the American Revolution* (New York, 2015), 219–351, describes this process from the American Indian side in the Old Southwest; William H. Bergmann, *The American National State and the Early West* (New York, 2012) treats the Northwest Territory.

⁶¹ Bernard W. Sheehan, *Seeds of Extinction: Jeffersonian Philanthropy and the American Indian* (New York, 1974); Bernard W. Sheehan, ‘The Indian Problem in the Northwest: From Conquest to Philanthropy’, in Ronald Hoffman and Peter J. Albert (eds.), *Launching the “Extended Republic”: The Federalist Era* (Charlottesville, Va., 1996); Peter S. Onuf, *Jefferson’s Empire: The Language of American Nationhood* (Charlottesville, Va., 2000), 18–52; Saler, *Settlers’ Empire*, quotation at 27.

arrangement of the states largely alone, the unionist perspective forces us to recognize that the ground rules determining who should rule at home were created through a much more complex process, taking place at different levels of government and involving multiple sources of law, than the Progressive account allows. And by highlighting the role of the federal government in commercial and territorial expansion it opens new areas that can be fruitfully analysed as sites of struggle between social groups over material resources. A proper understanding of the constitutional settlement of 1787 requires us to recognize the impact of the Constitution and the Northwest Ordinance on the organization of the western borderlands and the impact of the Constitution on international relations in the Atlantic marketplace. But it also means going beyond the Constitution and national politics to account for change and stasis at state and local level.

In 1787, the trans-Appalachian West made up roughly half the national domain of the United States. To exclude this enormous region and its population from the analysis of who came to rule at home is surely impossible after decades of American Indian and borderlands historians have emphasized their importance to the course of American history. In fact, their work asks historians to recognize that what is at stake in the struggle over who should rule at home is not only the distribution of political authority but also the geographic boundaries of what the United States claimed was its 'home'. The fiscal, military and administrative resources that the Constitution invested in the new federal government made possible the gradual transformation of the West into American republics. In the train of federal soldiers came surveyors and land agents followed by settler colonists. Between 1791 and 1810, Indian treaties transferred some 170,000 square miles of land — an area about three and a half times the size of England — to the United States, the bulk of which was passed on to white settlers. They filled up the land quickly. In 1790, there were 110,000 settler colonists living in what became the states of Kentucky and Tennessee. By the turn of the eighteenth century, that figure had almost tripled. An additional fifty thousand settlers resided in territories that would become Ohio and Indiana. Of the Kentucky residents in 1800, forty thousand were slaves forcefully removed from the Chesapeake, thus highlighting that western expansion was also slavery's

expansion. This peopling of the West was made possible only by the removal of the American Indian proprietors of the land and the disciplining of the ethnically and culturally mixed borderlands population that chose to remain.⁶²

In the short term the Constitution's effect on Atlantic trade was overshadowed by the impact of the long European and global war triggered by the French Revolution. But throughout the 1790s and the early nineteenth century, American trade expanded dramatically and brought riches to Atlantic port cities at least in part thanks to the now internationally recognized 'treaty worthiness' of the United States. This successful and prolonged immersion in the Atlantic marketplace ensured that the southern states would continue to be major exporters of agricultural staple products such as tobacco, rice, indigo, sugar and, above all, cotton. Due to their mode of production, the expansion of these staples also caused the expansion of slavery. In 1790, close to 700,000 persons, almost one in five inhabitants, were enslaved in the United States. In 1861, they were four million. They too have to be part of our account of who came to rule at home.⁶³

Indian removal and decimation, and the demographic and geographic expansion of slavery, point to the need to look beyond the overt political struggles of white males when analysing the distribution of power and social resources that resulted from the constitutional settlement of 1787. The 'social death' of the slave represents an extreme case of total negation of rights to property and person.⁶⁴ But others, too, had their rights

⁶² Charles J. Kappler (ed.), *Indian Affairs: Laws and Treaties*, ii, *Treaties* (Washington, D.C., 1904); *Eighteenth Annual Report of the Bureau of American Ethnology to the Secretary of the Smithsonian Institution 1896–97*, pt 2: *Indian Land Cessions in the United States 1784–1894*, 56th Cong., 1st Sess., H.R. Doc. No. 736/3, 56th Cong., 1st Sess. (1899), US Serial Set Number 4015; *Indians Removed to West Mississippi from 1789*, H.R. Doc. 147, 25th Cong., 3rd Sess. (1838), Statement B, 9; US Bureau of the Census, *Historical Statistics of the United States, Colonial Times to 1970*, bicentennial edn, 2 vols. (Washington, DC, 1975), i, 24–37. Onuf interprets this process in *Jefferson's Empire* 18–52, 147–88, and in 'The Empire of Liberty: Land of the Free and Home of the Slave', in Shankman (ed.), *World of the Revolutionary American Republic*. See also the references cited in n. 56 above.

⁶³ Elkins and McKittrick, *Age of Federalism*, 375–449; John Craig Hammond, 'The "High-Road to a Slave Empire": Conflict and the Growth and Expansion of Slavery on the North American Continent', in Shankman (ed.), *World of the Revolutionary American Republic*. Among the Progressives, Lynd saw this clearly in *Class Conflict, Slavery, and the United States Constitution*, 135–213.

⁶⁴ Tomlins, *Freedom Bound*, 16–17, 401–508.

and liberty circumscribed. In fact, the vast majority of early American inhabitants lived under the authority of a master who possessed far-reaching rights to their bodies, labour and property. So-called household government formed the bedrock of the American republics. Social and legal historians have shown how, under its laws, wives were subject to their husbands, children to their father, and servants to their master. Household government cannot be dismissed as a marginal phenomenon because for most people it was the only government they knew. As Carole Shammas has pointed out, '[m]ost inhabitants of early America had no direct access to the state; the household head mediated between his dependents, whether children, wife, servants, slaves, or wards, and formal government bodies'. The question of who, in the most literal sense, was to rule at home is central to any story of the American founding that aims at inclusiveness.⁶⁵

The Constitution is silent on the law of the household for the simple reason that, having been a matter of state regulation before 1787, it remained so afterwards. Rather than radical reform, the citizens of the newly independent American states and their elected leaders chose to perpetuate and accentuate a socio-legal order put in place during colonial times.⁶⁶ Continuity rather than change characterized household government in the Age of Revolutions. Quoting Shammas again, 'considering the amount of constituting writing that went on, what is most remarkable is the reluctance to rein in the powers of the household head'.⁶⁷ This was due to neither oversight nor lethargy. On the contrary, a core element of republican citizenship was the power of the citizen over his dependents. Household government was complemented by local government institutions — town meetings, county courts, slave patrols — which stepped in when masters failed to maintain

⁶⁵ Stephanie McCurry, *Masters of Small Worlds: Yeoman Households, Gender Relations, and the Political Culture of the Antebellum South Carolina Low Country* (New York, 1995); Carole Shammas, *A History of Household Government in America* (Charlottesville, Va., 2002), quotation at xiii; Laura F. Edwards, *The People and Their Peace: Legal Culture and Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill, NC, 2009); Smith-Rosenberg, *This Violent Empire*.

⁶⁶ Jack P. Greene forcefully argues for the persistence of the states as the principal polity also after the adoption of the Constitution in 'Colonial History and National History: Reflections on a Continuing Problem', *William and Mary Quarterly*, 3rd ser., lxiv (2007).

⁶⁷ Shammas, *History of Household Government in America*, 65.

or control their household dependents and which co-ordinated and administered tasks that individual households could not undertake on their own — such as poor relief, road construction and adjudication. Like the rights and duties of citizens and their dependents, these institutions were created and regulated by state rather than federal law. William Novak has shown that far from a laissez-faire society where government intervention in social and economic affairs was shunned, a ‘distinctive and powerful governmental tradition devoted in theory and practice to the vision of a well-regulated society dominated United States social and economic policy-making’ in the nineteenth century.⁶⁸ Whereas Novak tends to embrace this tradition of ‘police regulation’ as the expression of local self-determination, Gary Gerstle and others have highlighted how the citizenry’s command over local governmental institutions was used for the surveillance, punishment and reform of those who fell outside the control of the patriarchal household — single women, the destitute, non-‘whites’, vagrants and aliens.⁶⁹

If the Constitution was a federal treaty, investigations of the struggle over who should rule at home, in all its complexity, need to pay attention to the federal government but also to look carefully at what was happening in state assemblies and town meetings. But such investigations cannot stop there. They have to go beyond even the politics of the street to investigate power structures and power struggles in the allegedly apolitical spaces of the court room and the workplace, the congregation, the orphanage, the asylum, and the household and the family.

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⁶⁸ William J. Novak, *The People’s Welfare: Law and Regulation in Nineteenth-Century America* (Chapel Hill, NC, 1996), quotation at 1.

⁶⁹ Gary Gerstle, ‘The Resilient Power of the States across the Long Nineteenth Century: An Inquiry into a Pattern of American Governance’, in Lawrence Jacobs and Desmond King (eds.), *The Unsustainable American State* (New York, 2009); Gary Gerstle, *Liberty and Coercion: The Paradox of American Government from the Founding to the Present* (Princeton, 2015), 59–86.