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Political Thought, Political Development, and America's Two Foundings

ELVIN LIM

ABSTRACT

The relationship between American political thought (APT) and American political development (APD) as phenomena as well as subfields in American Politics has not been sufficiently theorized. This essay takes up what I call the Second Founding of 1787–89 as the critical case for examining the close relationship between APT and APD. The statesmen of that era were thinkers and developmentalists of the first order; they understood the inseparable link between political justification and political change. This dynamic relationship between American political thought and development practiced in 1787–89 can be used as a blueprint for understanding the entwined cycles of political justification and change in American politics.

The most significant developmental episode of American politics, what I call the Second Founding of 1787–89, which culminated in the abolition of the Articles of Confederation and Perpetual Union and the ratification of a new Constitution, was also the most productive moment for American political thought (APT). The Second Founding generated a substantial body of literature that would later enter into the canon of APT, chief among these were the *Federalist Papers*, as well as Anti-Federalist writings such as the *Letters from the Federal Farmer*. The ideas articulated in this literature would, after much negotiation, turn into tangible institutions. The Federalists were therefore not only our first political thinkers under the present Constitution; they were also the first developmentalists. The framers, mostly Federalists, defended a set of principles to bring about the biggest “durable shift in governing authority” in American politics—a new constitution (Orren and

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Skowronek 2004, 103). From the beginning, APT and APD (American political development) were integrally linked.

THE TWO FOUNDINGS AND AMERICAN POLITICAL THOUGHT

APT has its foundations in two indigenous strands of political thought that come from what I call the Two Foundings (Lim 2014). For the United States has had Two Foundings, not one, and the Anti-Federalists pushed back so indignantly against the Federalists' proposal in 1787–88 only because of their fidelity to the First Founding. The First Founding started in 1776, when the 13 colonies declared themselves “Free and Independent States” and came together, with their sovereignties fully intact, to adopt and ratify the Articles of Confederation in 1777 and 1781. In 1787–89, the Anti-Federalists, defenders of the principles of the First Founding, were particularly partial to this older view of union and the political thought associated with it. They combined a radical Whig, classical republican, “Country” philosophy to defend their idea of the small republic and added to that an adapted Lockean liberalism that undergirded their opposition to the proposed federal government. The Second Founding transpired in 1787–89, after the failed experiment of the Articles, when each of the 13 states yielded a portion of its individual sovereignty to create a new compound republic, still partly federal but now also national, with a federal government sanctioned by “We the People” aggregated across state lines. The Federalists—our Second Founders—promulgated this new version of federalism and union and the new republicanism associated with it. The Second Founding radically reconfigured the older conception of union as merely a compact between 13 sovereign states, creating “a more perfect Union” by way of a nationalized “We the People.” Critically, alongside these new ideas was also a paradigmatically APD we will explore further below: the Second Founding created a nation out of what was once merely a league of states.

The Anti-Federalists and Federalists differed sharply and confidently from one another also because each could point to a sacred text of the First and Second Foundings, in the Declaration of Independence (once the Articles of Confederation had fallen into relative disrepute) and the Constitution, respectively, to ground its claims about the meaning of the American experiment. These texts represent not only the old and new federalisms, respectively; they also instantiate antithetical orientations toward power. Whereas the Declaration (and the Bill of Rights, which is in important ways the Declaration reincarnated) articulates our *rights* against government, the Constitution enumerates the *powers* of government. Consistent with this distinction is a

conspicuous insistence in Anti-Federalist political thought that the American political tradition began not in 1789—the year a more consolidated government than ever envisioned by the revolutionaries was created—but in 1776, the year when the original central government, monarchy itself, was overthrown. The Anti-Federalists believed themselves to be the true inheritors of the Spirit of '76, a spirit committed to breaking bonds, not building new ones; disestablishment, not consolidation. The Anti-Federalists believed that America's Revolutionary ideals stand in chronological and moral priority to the Second Founding's (Federalist) principles.

The Preamble of the Constitution, by sharp contrast to the principles of the First Founding, is a strident statement of optimism about the value of government, as well as the collective goals that government can accomplish for us that we cannot do for ourselves, which is to “establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity.” The Anti-Federalists rejected these collective aspirations of We the People, recalling the Articles of Confederation's reference to “United States in Congress assembled” and arguing that there are only the peoples of each state. Whereas the Anti-Federalists, “men of little faith,” had only known consolidated government, namely, monarchy, as a thing to be feared, the Federalists put their faith in institutions and in the possibility that the people could rule and yet be ruled (Kenyon 1955).

The Anti-Federalists defended the First Founding because they thought that republicanism and in particular self-government could flourish only in small republics. They believed, on the one hand, that pure or direct democracy—to which they were more partial than were the Federalists—was more likely to flourish in a small republic and that representation would be more accurate if there was a low ratio of the number of representatives to the number of citizens represented. On the other hand, they believed that a large republic would not only render pure democracy impracticable; it would further require a convoluted and ultimately ineffectual scheme of representation. This, in turn, stemmed from the Anti-Federalist theory of representation, which posited that effective and accountable representation could only occur when there is a close or a mirror resemblance between the representative and the represented (De Maio and Muzzio 1991). As Melancton Smith had argued, representatives ought to be “a true picture of the people, possess a knowledge of their circumstances and their wants, sympathize in all their distresses, and be disposed to seek their true interests.”¹ This was only possible in the context of small, relatively homogenous republics.

1. Speech of Melancton Smith, New York Ratification Convention, June 21, 1788 (Storing 1981, 6:157).

If the Anti-Federalists were not confident that effective representation could operate in a large republic, the Federalists were not convinced that small republics encouraged virtuous representation, because of the potential, ostensibly, for small spaces to breed faction. Instead, the Federalists placed their faith in institutions that privileged a trusteeship, rather than a mirroring model of representation, whereby the will of the people could be distilled from the defects of democracy. As Gordon Wood observed, the Second Founders were pragmatists who adopted “a more modern and more realistic sense of political behavior” (Wood 1969, 606). They did not think that men in small republics would always treat one another like friends and neighbors. One may even say that the Anti-Federalists, like George Mason, were principled, even utopian, philosophers; while the Federalists, like John Adams, were pragmatic political scientists. The former envisioned many small and virtuous republics, while the latter wanted a stronger union and were willing to revise classical republicanism to that end.

THE TWO FOUNDINGS AND AMERICAN POLITICAL DEVELOPMENT

The developmental outcome of the Second Founding, the Constitution, bears the imprint of the two indigenous strands of APT defended, respectively, by the Federalists and the Anti-Federalists. The Second Founding institutionally layered one conception of democratic sovereignty onto another that had been codified 7 years before, leaving the United States with two legitimate but antithetical conceptions of union and federalism.

To understand how the Constitution came to possess its bifurcated nature, we must appreciate the contrasting interpretations of America’s initial experience with self-government in the 1780s. Scholars who have studied the “founding”—almost all monolithically—have reached back to before 1776 (Bailyn 1992; Rahe 1992), placed the late 1780s in the same celebrated era as 1776 (Jensen 1940; Schmitt and Webking 1979), or characterized the 1780s as the disaster, most graphically represented by Shays’s Rebellion, from which we were permanently rescued in 1787 (Farrand 1908; Thach 1922). None explored the implications of two distinct foundings, and only the second group took the important first step of chronicling the successes of 1781–89, where democracy and self-government breathed its first breath here under the Articles of Confederation, arguably the first democratically debated and enacted constitution in the world. This period must be taken seriously, for it is because the Articles of Confederation had enjoyed enough successes that Anti-Federalist attachment to it proved so resilient. Between 1776 and 1789 were the critical years 1781–89, when public enemy number 1, the British, was gone, and Americans got used to one conception of federalism that they had

democratically enacted—unanimously—and one that promised “Perpetual Union,” no less.

Rightly or wrongly, those who refused to sign on to the Second Founding saw this period as the age of original American innocence, when a constellation of 13 sovereign and virtuous republics enjoyed and jealously guarded their hard-won liberties formalized under the Articles of Confederation. On the eve of the American Revolution, well ahead of the ratification of the second Constitution, state sovereignty was born when provincial congresses from 10 of the original 13 colonies drew up and democratically ratified their state constitutions.² Ten states drew up new constitutions within a year of declaring independence. Massachusetts waited until 1780 because the first version of its constitution, promulgated by the General Court, was rejected by the citizens, who objected that they had not been consulted on its contents. By 1777, only Rhode Island and Connecticut were still operating under royal charters (with references to the monarchy struck out) and not by a state constitution ratified by the people of the state (Adams 2001, 3).³ “The unanimous Declaration of the thirteen united States of America” was the first collective expression of fellow feeling among the colonists, although it was one united mostly by commitments to negative liberty and state sovereignty, as registered by the capitalization of “States” but not the “united.” The memory of the First Founding would bear heavily on Anti-Federalist minds in 1787–89. Indeed, their successful insistence on a Bill of Rights as a condition for ratification meant that the Second Founding never fully displaced the First.

2. This was, to be sure, an outgrowth of the tradition of constitutionalism that the colonists inherited from Britain. Since the Glorious Revolution of 1688, British subjects in the United States had developed a distinct sense of their rights as Englishmen, who had overthrown the already limited British monarchy and replaced it with a constitutional monarchy, unlike the French who had yet to overthrow absolutism (Arendt 1963, 154).

3. These exceptions actually prove the rule. Connecticut’s and Rhode Island’s charters may be construed as their first state constitutions because they were secured by local leaders and represented the most liberal charters secured from the Crown among the colonies, guaranteeing fundamental freedoms and self-government. Both colonies, for example, were the only ones that did not have royal governors and judges installed. Connecticut’s Fundamental Orders of 1638–39 was the first document written by a representative body in North America setting up a framework for government—it was the first American constitution. Rhode Island, similarly, likely enjoyed the greatest degree of independence from the Crown. Its Charter of 1663 was the first among the colonies to be guaranteed that “all and every person and persons may, from time to time, and at all times hereafter, freely and fully have and enjoy his and their own judgments and consciences, in matters of religious concerns” (see http://avalon.law.yale.edu/17th_century/ri04.asp). As Rhode Island was the first to declare independence (on May 4, 1776) from the British Crown, jealous as it was of its liberties, so it was the last to ratify the Constitution (on May 29, 1790) among the 13 colonies.

The First Founding's conception of democratic sovereignty and collective identity was embodied in the Articles of Confederation, which was styled a "league of friendship" (in Art. 3) between the states. Crucially, this constitution codified not only a much looser relationship between the states than the second Constitution, but it also boasted a democratic pedigree to rival the one that replaced it. The Second Founders, therefore, were not operating on a clean slate. This, then, is about as close as one can come to staking an empirically verifiable claim about American exceptionalism: the United States is the only federal country in the world to have democratically enacted two and only two constitutions. This fundamental fact defines the "A" in APD and APT. Americans began their world again twice. Separatist movements in other federal republics tend to be piecemeal conflicts that call only for secession of particular territories, not alternative conceptions of union applicable to all territories. Elsewhere, language or culture is a basis of local identity while national identity is democratically constructed. In the United States, state and national identities are a matter of democratic construction, entwined in two distinct conceptions of union articulated at Two Foundings.

To be sure, Publius, in *Federalist* 15–22, would come to attack the first Constitution's "insufficiency." The choice of words is telling in that no one ever dared to challenge its legitimacy, but many did challenge the democratic legitimacy of the Philadelphia convention and its product. Insufficient or not, the Articles and the Confederated Congress that formally operated from 1781 to 1789 were democratically ordained. It was also under the auspices of the Confederation Congress that the American Revolution was conducted and concluded with the Treaty of Paris. Indeed, one could plausibly argue that the Articles was a more contemporaneous expression and institutionalization of the Revolution's ideals. The Articles was drafted by a committee of the Second Continental Congress in June 1776 and debated for over a year, more than the 4 months delegates spent at the Philadelphia convention. It was then sent off to the state legislatures for ratification and became official in 1781 with the unanimity required for ratifying it. Compare the painstaking 4 years it took to ratify the first constitution and the blitzkrieg strategy occurring over 9 months to ratify the second. Before the ratification of the Bill of Rights in 1791, there had already been 17 state constitutional conventions in 11 states.⁴ We the People of the States had spoken many times before We the People of the United

4. Three states held multiple conventions before the ratification of the Bill of Rights: Georgia (1776–77, 1788, 1789×2), New Hampshire (1776, 1778–79, 1781–83), and Pennsylvania (1776, 1789–90). And three states held their first state constitutional conventions after: Connecticut (1818), New Jersey (1844), and South Carolina (1790; see Dinan 2006, 8–9).

States did. This was the crux of the legitimating puzzle that Publius faced. It is because the Anti-Federalists' conception of confederal or peripheralized federalism had enjoyed over a decade of practice and reinscription in the minds of Americans that Madison understood that he had to justify (and possibly to disguise) his new, centralized federalism to the Anti-Federalists in the form of a "compound" republic.

The Anti-Federalists were up in arms not because they were against the federal idea but because they believed that Americans had already spoken loudly in favor of one conception of it. It was thus with incredulity that Cincinnatus posed the question, "will any one believe, that it is because we are become wiser, that in twelve years we are to overthrow every system which reason and experience taught us was right?"⁵ The Articles of Confederation had codified a completely different orientation toward power and (states') rights than the Constitution. Whereas most (80%) of the words in the Constitution were dedicated to describing the powers of government in its first three articles (as opposed to the rights of the governed, which do not enjoy the advantage of chronological placement), the Articles of Confederation was much more circumspect about power, spending only about half of that proportion describing the powers of Congress and only late in the text, in Article 9. The government created under the Articles had no executive, no judiciary, and no taxing power. Indeed, the united States (*sic*) in 1787 were arguably not a nation with a coherent identity but entered into existence only as the delegates of the states were "in Congress assembled."⁶ Some Anti-Federalists, such as William Symmes, were so committed to state sovereignty that they even rejected the "republican guarantee clause" (Art. 4, Sec. IV) of the Constitution. This is just about the purest affirmation of the First Founding's old federalism as there could have been.

For a new Constitution to replace a preexisting one, the Federalists knew that they had to launch a ratification campaign that could conjure as much democratic sanction for their Constitution as the old one possessed. It would be "the first national campaign in a popularly based, territorially extended, representative government" (Riker 1996, 24). This was a campaign that both sanctioned *and* attenuated the legitimacy of the states in its ratification rule specified in Article 7. And here, the tangible and dynamic link between institutions and ideas, APD and APT, is manifest. On the one hand, Article 7 simply assumed that the states, created at the First Founding, were legitimate

5. Cincinnatus IV, 11/22/1787 (Storing 1981, 6:20).

6. As Article 2 of the Articles of Confederation stated, "Each state retains its sovereignty, freedom, and independence, and every Power, Jurisdiction, and right, which is not by this confederation expressly delegated to the United States, in Congress assembled."

units of the union, of which the concurrence of nine was necessary for ratifying the Constitution. On the other hand, Article 7 explicitly forbade the state legislatures, where state sovereignties were formally vested, from having a voice in the ratification process. Instead, it was determined that “Conventions of nine states” would be sufficient for ratification. Thus, in Article 7 alone we may observe how the democratic legitimacy of the Second Founding’s new federalism was strategically constructed or creatively synthesized with the old federalism. In it, the Federalists reconfigured the body politic, creating an aggregated We the People when no such entity existed before, while legitimating (and simultaneously disguising) the creation by partially affirming the prior legitimacy of the states. And thus even before ratification was secured, the very rule specified for ratification had already secured “a more perfect Union”—in effect, a different kind of union. The Federalists also secured the legitimacy of the new federalism by stipulating in Article 4, Section III, the authority of the federal government to admit new states and to “make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.”⁷ This meant that whereas the territorial boundaries of the 13 original colonies were created by royal decree or charter, the territorial boundary of the United States was not. The Federalists had laid the groundwork for a “more perfect Union.”

If that had been that, perhaps the Federalists would have had the final word, and the United States would not have had to endure a recurring lovers’ quarrel about the meaning of the union. But the Articles’ conception of peripheralized federalism would make a comeback in the Bill of Rights, layered on the centralized federalism envisaged by the Federalists. It is very significant that Publius in *Federalist* 84 had argued eloquently against a Bill, suggesting (among other reasons) that a government truly constituted by the people would not need enumerated restraints. But the Anti-Federalists would not back down precisely because they differed on the method of constructing “the People”—they saw only the People of the States. All told, We the People spoke twice—in 1776–81 and 1787–89—not once. The Second Founding did not settle the debate of American identity; it opened it. This is why APD can only be “durable” but never permanent, because we have never conclusively settled the question of just who we are. Madison acknowledged as much in *Federal-*

7. This was an affirmation of the principles of the Northwest Ordinance of July 1787, which stripped all existing states’ claims to the territory; provided government under the jurisdiction of Congress for the area north of the Great Lakes, west of the Ohio River, and east of the Mississippi River; secured a guarantee of the rights of the inhabitants; and paved the way for the westward expansion of the United States by the inclusion of new states rather than the expansion of the existing states (Onuf 1987).

ist 46, when he said that the “federal and State governments are in fact but different agents and trustees of the people.” Similarly, he tried to smooth over divisions between the Federalists and the Anti-Federalists by observing in *Federalist* 39 that the Constitution is “partly federal and partly national.” This was what developmentalists would term “intercurrence” of the first order, the layering of the artifacts of one era over another that laid the groundwork for future quarrel (Orren and Skowronek 2004, 113).

The intercurrence of two conceptions of federalism and union, present in the provision for ratification, is even more evident in the provision for amendment, the place in the Constitution that both constrains and permits change. Bruce Ackerman was right that Article 5 is where the heart of the Constitution lies, but contrary to him, its heart is not dualism but rather the new federalism (Ackerman 1991). Because Article 5 is where the polity’s developmental potential is laid out, it is also the place where the polity’s most fundamental understanding of its identity is articulated. Article 5 stipulates that any amendment to the Constitution must first be proposed by two-thirds of Congress or two-thirds of the state legislatures to call a national convention and then ratified by three-quarters of the state legislatures or state ratifying conventions, with the method of ratification to be decided by Congress. Two features of the higher-lawmaking method are worthy of note. First, the ratification is always left to the states. In this, the preexisting legitimacy and sovereignty of the states is recognized, an acknowledgment of the order of things codified in 1781. Second and conversely, while the ratification is always left to the states, it is the federal Congress that always plays an agenda-setting part in deciding whether the ratifying units would be state legislatures or conventions. Further, once a supermajority is reached, the new amendment is binding even on those states that did not consent to the amendment. To accept that a majority can speak for the whole is to accept the linked fate that makes a nation. This is a sharp departure from the unanimity required in the Articles. As such, the new ratification rule represented a critical movement toward centralized federalism, and the result was the layering of a new conception of federalism on the old. Article 5 ordained that in order for there to be APD, the proponents of the First and Second Foundings must wage a lovers’ quarrel about the foundational cleavage of APT and, in so doing, reach a consensus about the nature and the institutional configuration of the union for each political generation.

CONCLUSION

Even though the Federalists won the day, scholars have estimated that the balance of public opinion for and against ratification was probably roughly

equal.⁸ Of the 55 men who came to Philadelphia in 1787, 16 did not sign off on the proposed Constitution that was sent for ratification in the states. That is to say, even after the agenda-setting of the Virginians, the intense lobbying of Publius, and the procedural tricks of the Federalists such as the insistence on the ratification rule of all or nothing, a sizable number of “framers” remained adamantly Anti-Federalist. For all of Publius’s considerable persuasive skills, America’s first understanding of democratic sovereignty took considerable hold. And that is why even though the Articles came to be seriously discredited, there were fundamental aspects of it that were transferred to the Constitution, especially in Articles 5 and 7, and why 2 centuries after the fact, there are still nationally prominent figures chanting its leitmotif.

APT, in its focus on ideas, and APD, with its focus on institutions, examine American politics from either end of the dynamic interaction between ideas and how they become institutions. Both share the “A” not simply because they occupy the same geographical site but because they operate under the lengthened shadow of America’s unique lovers’ quarrel. At the birth of our present Constitution, the statesmen who gathered at Philadelphia were thinkers and developmentalists both, interrogating and negotiating thought and development in high gear. They produced a set of governing institutions that synthesized the principles of our Two Foundings. They constitutionalized the inseparable relationship between APT and APD.

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8. Jackson Turner Main estimated the balance to be 48% for the Constitution and 52% against; Riker and Fink estimated it at around 50% to 46% (Main 1976, 269; Riker and Fink 1988).

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