Constitutional Values and the Literature of the Early Republic

Maxwell Bloomfield

The Catholic University of America, Columbus School of Law

Recommended Citation
In recent years a "Law and Literature" movement has emerged to take its place beside the established interdisciplinary field of "Law and Economics." Scholars, such as Richard Weisberg, James Boyd White, and Robert Ferguson, have published seminal studies that greatly enrich our understanding of the complex interplay between literary values and legal norms. These writers have tended, however, to concentrate upon the works of major artists, and to build upon a substantial body of prior literary criticism. From a historical perspective this elitist orientation threatens to ignore a mass of valuable, and largely unexplored, secondary literature that deals with significant issues of public policy. Minor authors often serve as conduits to transmit proposals for constitutional or legal change to a general audience; and this function assumes special importance in conflict-ridden eras, such as the late eighteenth century. The decades that witnessed the birth of the American republic provide a useful testing ground for theories of cultural diffusion.

How, then, did constitutional idealism, or what we might term today a "legal mindset," help to shape the literary products of the early republic? And how was creative literature related to political policy-making?

Historians have long recognized that a rising class of colonial lawyers created the ideological framework of the American Revolution. Through courtroom arguments, legislative speeches, and newspaper essays, they accustomed the public to think of its growing differences with the mother country in legalistic terms. During the decade of constitutional controversy that preceded the outbreak of actual fighting, insurgent lawyers charged again and again that the taxes and commercial restrictions lately imposed by the British government violated the rights of colonial Americans, which were guaranteed to them by the common law and by their royal or corporate charters. In response to this constitutional challenge, the loyalist bar developed counterarguments justifying Parliamentary supremacy in equally legalistic terms. Since the colonial position depended so strongly upon constitutional grounds for its legitimacy, it is scarcely surprising that the wartime governments took immediate action to regularize their new status as independent republics. A flurry of constitution-making on the state level succeeded the announcement of the Declaration of Independence, while the Continental Congress on June 7, 1776 set up a committee to draft a written instrument of government for the new nation.

There was yet a more fundamental reason for this widespread resort to formal constitutions by the revolutionary generation. Independence meant not only the absence of royal governors and Parliamentary decrees, but also the loss of unifying cultural symbols and traditions. Living in a pluralistic society that lacked ancient and authoritative folkways, Americans turned to the law to define themselves as a modern republican nation. Thomas Paine captured the ideal well in his rabble-rousing pamphlet, Common Sense (1776), when he observed that the rebellious colonists had no need of kings or other Old World icons of order, because "in America the law is king." Through wise and humane laws, and especially through the fundamental principles established by their new constitutions, Americans hoped to create a model society based upon reason and the consent of the governed.

But responsible republican government proved difficult to achieve in practice. The first state constitutions adhered to a rigorous theory of separation of powers, and conferred dominant authority upon the most popular branch of government, the legislature, at the expense of the executive and the judiciary. Within a few years this system of legislative supremacy came under sharp attack from creditor and propertied interests in almost every state. Populistic laws, these critics charged, were encouraging inflation and creating a dangerous climate of political unrest and instability. The outbreak of the abortive Shays'
Rebellion in the fall of 1786 intensified conservative fears, as essayists and poets filled New England newspapers with denunciations of insurgent Daniel Shays and his rag-tag army of impoverished Massachusetts farmers.

"In a free government, the reality of grievances is no kind of justification of rebellion," commented Fisher Ames, writing for Boston's Independent Chronicle. "Besides," he added, "our constitution is the free act of the people; they stand solemnly pledged for its defence, and treason against such a constitution implies a high degree of moral depravity." Poets likewise condemned Shays and his followers for resorting to the violent tactics of the prerevolutionary years, and for attempting to replace a government of popularly enacted laws with mob rule. One anonymous versifier adopted the persona of a backwoods Shaysite to emphasize the anarchic individualism encouraged by the rebellion:

"Constitutions and oaths, sir, we mind not a rush,  
Such trifles must yield to us lads of the bush."  

The interstate press coverage of Shays' Rebellion stressed the general weakness of the new nation, and helped to focus public attention on the need for sweeping constitutional changes in the national government. That government, formally established in 1781 under the Articles of Confederation, had institutionalized the revolutionary model of constitutionalism that prevailed in the states. A one-house Congress, to which each state elected delegates annually and in which each state had an equal vote, formulated all national policies. There were no countervailing executive or judicial branches, and democratic power-sharing was assured through a rotation requirement that prevented a delegate from serving more than three years in any six-year period. Fearful of creating a potentially oppressive American Parliament, the framers of the Articles left the most important legislative powers in the hands of the states. Congress could not tax, or regulate commerce, or guarantee that individual states would obey the treaties it negotiated with foreign powers. Under these conditions Congressional prestige soon declined, and the genuine accomplishments of the central government in such areas as federal land policy were overshadowed by its mounting debts and ineffectual efforts at substantive reform.

Jeremy Belknap, in his popular satire The Foresters (1792), traced the defects of the Confederation to a utopian ideology that grew out of the struggle for independence. Intoxicated by their newly won freedom, the American "families" (i.e., states) in Belknap's tale resolve to create a partnership of complete equality like that of the industrious beavers, who "carry on their operations with peace and unanimity, without even the appearance of a master." Unfortunately, humans prove to be less cooperative than beavers, and the "perfect republic" soon collapses for want of effective governmental sanctions. To illustrate the harmful effects of uncontrolled state power on national policy-making, Belknap employed an apt mechanical metaphor:

In the club room, among a number of ingenious devices, there was a clock, of a most curious and intricate construction, by which all the common concerns of the partnership were to be regulated. It had one bell, on which thirteen distinct hammers struck the hours. Each hammer was moved by independent wheels and weights, each set of wheels and weights was enclosed in a separate case, the key of which was kept, not as it ought to have been, by the person who represented the family at club, but in each mansion house; and every family claimed a right either to keep the key at home or send it to club, when and by whom they pleased.

Such institutional arrangements led in time to a complete breakdown in the club's operations, as members "knew neither the hour of the day, nor the day of the month; they could not date their letters nor adjust their books, nor do business with any regularity." Belknap's humorous attack upon the weakness of the Confederation government formed a late addition to a body of more sober constitutional criticism that appeared in newspapers and magazines in the 1780s. From the beginning of the Confederation, prominent businessmen, land owners, and professionals had urged the expansion of federal power as a means of strengthening public credit and preventing radical economic experimentation by the states. Through interstate commercial conferences, such as the Annapolis Convention of 1786, these nationalists publicized their views and finally proposed that the states send commissioners to a general meeting at Philadelphia, to revise the Articles. A dispirited Congress eventually approved this extra-constitutional gathering, which was scheduled to begin its deliberations in May 1787.

The advocates of a strong central government employed a variety of popular literary forms to mobilize public support for the impending Philadelphia Convention. Royall Tyler linked constitutional reform to the survival of republican government in his play, The Contrast. First performed in New York City on April 16, 1787, this comedy of manners—the earliest commercially
Constitutional Values and the Literature of the Early Republic

successful play by an American author—deftly contrasted the artificialities of the English caste system with the democratic mores of postrevolutionary America. Behind the witty dialogue and comic stereotypes, however, lay a serious political message. Tyler’s hero, the incredibly virtuous Henry Manly, is a revolutionary patriot whose experience in helping to suppress Shays’ Rebellion leads him to reflect at length on the future of the Confederation. Using historical analogy, a favorite device of eighteenth-century moralists, Manly draws an ominous parallel between the American Union and the Amphictyonic League of ancient Greece:

The various [Greek] states engendered jealousies of each other; and, more unfortunately, growing jealous of their great federal council, the Amphictyons, they forgot that their common safety had existed, and would exist, in giving them an honourable extensive prerogative. The common good was lost in the pursuit of private interest; and that people who, by uniting, might have stood against the world in arms, by dividing, crumbled into ruin…. Oh: that America: Oh: that my country, would, in this her day, learn the things which belong to her peace:11

The implied endorsement of the approaching Philadelphia Convention could scarcely have escaped Tyler’s audience.

Even more pointed were the recommendations for constitutional change made by Lemuel Hopkins and his fellow “Connecticut Wits” in The Anarchiad. Published in fourteen installments in the New Haven Gazette during 1786 and 1787, this mock heroic poem celebrates an epic struggle between two primordial forces for the control of the New World. On one side stands the Anarch, the spirit of misrule and destruction; opposing him is Hesper, the godlike defender of order and rationality. As lawless mobs arise within the states, Hesper convenes his “principal counselors and sages” at Philadelphia to plan a constitutional counterattack. Invoking the spirits of the Revolutionary dead, whose vision of a republican nation has been betrayed, Hesper calls for a new constitutional order that will be strong enough to check the “giddy rage of democratic States.” His nationalistic prescriptions are quite explicit:

But know, ye favor’d race, one potent head
Must rule your States, and strike your foes with dread,
The finance regulate, the trade control,
Live through the empire, and accord the whole.12

The delegates who attended the actual Philadelphia Convention more than fulfilled the expectations of their literary well-wishers. Meeting in closed sessions, they early agree to ignore their instructions and to frame a completely new constitutional system. In place of the rudimentary national Congress provided by the Articles, they constructed a powerful central government composed of three separate, but interlocking, branches. Congress now had the power to tax individuals, to regulate interstate commerce, and to maintain its own military and naval forces. Although the states retained control over their internal affairs, they could no longer impair contractual obligations or engage in other specified inflationary practices. The framers provided that the new federal system should take effect when approved by nine states, acting through specially convened ratifying conventions.13

After some debate Congress transmitted the proposed constitution to the states without comment, and for ten months (September 1787-July 1788) publicists argued the pros and cons of the document to a nationwide audience through the newspapers, the most popular medium of literary communication in the late eighteenth century. One series of essays—The Federalist Papers—became a classic of constitutional commentary. Written by Alexander Hamilton, James Madison, and John Jay under the collective pseudonym of “PUBLIUS,” The Federalist defended the new constitution on logical and philosophical grounds that appealed to the rationalistic temper of the time.

The Philadelphia Convention had successfully reconciled power with liberty, Madison urged, by creating a self-regulating system of structural checks and balances.14 Within the national government, each house of a bicameral legislature checked the other; the President checked Congress through his veto over legislation; and an independent judiciary checked both President and Congress through its interpretation of constitutional norms. Since the national government could exercise only those powers enumerated in the Constitution, the states provided a further external check against any federal encroachments upon their sphere of sovereignty. Hamilton compared the overall arrangement to the Newtonian solar system, in which the states, like planets, revolved in their separate orbits around the central government as their sun.15 The image, with its mechanistic overtones, aptly described for eighteenth-century readers a government of laws. For, just as natural law—the law of gravitation—controlled the movement of celestial bodies, so did the Constitution—an equally transcendent law—define and limit the power of both nation and states.

Opponents of the new system, forced to adopt the label of “Antifederalists,” were at an obvious disadvantage, since they had to defend an existing constitutional order that most of them agreed was
defective. Lacking an alternative plan of their own, they sought to discredit the centralizing provisions of the proposed constitution by arguing that they would reestablish tyrannical government on the English model. As a South Carolinian critic put it:

“In five short years of Freedom weary grown
We quit our plain republics for a throne;
Congress and President full proof shall bring.
A mere disguise for Parliament and King.”

In a related vein, other Antifederalists noted that the constitution contained no Bill of Rights, and thus left the federal government free to invade the most cherished liberties of the individual. They particularly deplored the absence of any federal guarantees of free speech and press or of jury trial in civil cases, and worried about the vaguely defined (and therefore menacing) power of the federal judiciary. Publicists not wedded to conspiracy theories feared that a powerful national government might destroy the pluralism of American society and encourage the development of an irresponsible federal bureaucracy, thanks to those intricate checks and balances so prized by the Federalists.17

While it is impossible to determine how many people read these newspaper polemics, they clearly did help to shape the thinking of those who attended the state ratifying conventions. The same issues tended to appear in debate after debate, and most of them had received prior consideration in the press. The ratifying vote was close in such key states as Massachusetts, Virginia, and New York, where Antifederalists forced their adversaries to approve proposed amendments that would establish a federal Bill of Rights. As the ratification movement gained momentum, however, political rancor and paranoia tended to wane.18

By the end of July 1788, when the eleventh state had endorsed the new Constitution, it had already begun to assume the status of a sacred text, comparable in importance to the Declaration of Independence as a symbol of national unity. Parades and other civic rituals celebrated the accession of each new state to the union, and the word “federal” suddenly entered the popular vocabulary, appearing on the mastheads of newspapers and in the titles of songs. One such “Federal Song” clearly reflected the millennial expectations that would gradually transform the Constitution into an object of public worship:

“Proud Europe hence may learn and see,
A Constitution self-controlling;
By wisdom balance’d, firm and free,
Constitutional Values and the Literature of the Early Republic

Creative writers participated actively in the constitutional warfare of the 1790s, as they had done in the previous decade. Their role, as defined by republican ideology, required such participation. Since popular government depended for its survival upon an enlightened citizenry, republican theorists assigned to literature an overriding didactic purpose. Authors were not merely to entertain their audiences, but to instruct them in virtue and moderation. Like political statesmen, they performed a valuable public service by helping to create a national culture worthy of self-governing individuals. Such a vocational mandate goes far to explain the continued popularity of neoclassical literary models in America at a time when English writers were turning to the more spontaneous and personal modes of expression associated with romanticism. A neoclassical style emphasized adherence to formal rules of composition; it was measured, balanced, rationalistic—an apt medium for disseminating Enlightenment ideas. American writers of the late eighteenth century, assigned to the duties of republican schoolmasters, found neoclassical literary forms admirably suited to political commentary and indoctrination. The patriotic ode, the hortatory essay, the political satire, and the epic poem thus continued to dominate the literature of the young Republic.

Like the partisan politics of the time, the literary works of the 1790s often carried paranoid fantasies to extreme lengths. Charles Brockden Brown's Gothic tales, although not overtly political, capture brilliantly the dark visions of constitutional subversion that obsessed the American public. Brown's villains tend to be intellectually superior types who acknowledge no legal restraints and who conspire to create a new social order in their own image. Like Carwin, the plausible charlatan of Wieland (1798) and Memoirs of Carwin (1803-04), they may be well intentioned; but the realization of their utopian programs would require the replacement of representative government with a benevolent despotism. In a free society that recognizes no hereditary ruling class, Brown implied, voters might easily be duped by aspiring supermen or other demagogic extremists.

While other writers, such as Hugh Henry Brackenridge, sought to enlighten the electorate in more direct ways, they invariably counseled moderation and obedience to constitutional norms. At the height of the Sedition Act prosecutions, for example, Philip Freneau published a series of newspaper essays castigating the Federalists for their violations of First Amendment freedoms. Yet he concluded with a characteristic appeal to the ballot box rather than the barricade, urging his readers to vote against politicians who advocated "alien and sedition bills, stamp act, standing army, &c." The electorate followed such advice in the critical campaign of 1800, and Thomas Jefferson became the third president of the United States.

Jefferson's election ended a constitutional crisis through the peaceful transfer of power from one ruling group to another. Both parties and their literary spokesmen had sought legitimacy through the Constitution, not outside it. A few years later historian Mercy Otis Warren—a Jefferson supporter and a former Antifederalist—was ready to eulogize the Constitution almost as fulsomely as her Federalist contemporaries. "Perhaps genius has never devised a system more congenial to their wishes, or better adapted to the condition of man, than the American constitution," Warren wrote, in belatedly joining the consensus school of American historians. "Many corrections and amendments have already taken place," she noted, "and it is at the present period as wise, as efficient, as respectable, as free, and we hope as permanent, as any constitution existing on earth."

Notes


5Gordon S. Wood's The Creation of the American Republic, 1776-1787 (Chapel Hill, 1969) provides a comprehensive overview of the constitutional arguments within the states.


4^The earliest of these plays was John Daly Burk's Bunker-Hill; or, The Death of General Warren (1797), reprinted in Moody, Dramas from the American Theatre, 70-86. For a good general discussion of nationalism in early American plays, see Walter J. Meserve, An Emerging Entertainment: The Drama of the American People to 1828 (Bloomington, 1977), 126-220.


6^Ferguson, Law and Letters, 59-84; Emory Elliott, Revolutionary Writers: Literature and Authority in the New Republic, 1725-1810 (New York, 1982).


8^Brackenridge's interminable satire, Modern Chivalry (1792-1815), chronicles the Pennsylvania travels of Captain John Farrago, an idealistic country gentleman, and his Irish servant, Teague O'Regan. Everywhere they go, O'Regan, an ingratiating rogue, manages to get himself elected to some public office, despite his manifest incompetence. In each instance the Captain tries to reason with the voters, urging them to select an educated middle-class candidate to represent their interests. See Claude M. Newlin, ed., Hugh Henry Brackenridge, Modern Chivalry (reprint ed., New York, 1937).


Maxwell Bloomfield is a Professor of History and Law at The Catholic University of America, Washington, D.C.