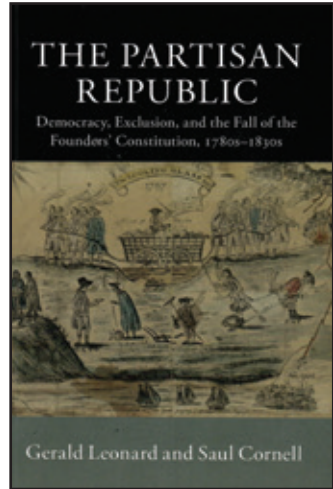


Roundtable

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Gerald Leonard and Saul Cornell, *The Partisan Republic: Democracy, Exclusion, and the Fall of the Founders' Constitution, 1780s–1830s* (Cambridge University Press, 2019). ISBN 978-1-107-02416-8 (Hardcover \$38)



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Introduction by Matthew Crow, Hobart and William Smith Colleges

If all goes according to plan, this forum on Gerald Leonard and Saul Cornell's 2019 *Partisan Republic: Democracy, Exclusion, and the Fall of the Founders' Constitution, 1780s–1830s*, will appear in spring 2024, or a shortly after the trial of Donald Trump for subverting an election begins. Between the writing of this introduction in fall 2023 and whatever events follow, there will be a lot of digital ink spilled about the relationship between law and politics, populist backlash, white supremacy, and the stability, legitimacy, and authority of the United States Constitution. The authors of *The Partisan Republic* and each of the reviewers here raise and wrestle with fundamental questions about the evolving interactions between democracy and institutions, slavery, empire, freedom, and law and politics. One thing, at least, is clear: we must keep raising those questions and struggling to find answers that help us understand the changing dynamics of American democracy.

Leonard and Cornell have produced a remarkably concise and wide-ranging book that offers a synthesis of the constitutional history of the early American republic from the founding to the Jacksonian era. The literal weight of the scholarship produced on this topic is daunting, making the book a gift to scholars and students of early American history alike. In clear, impressively collaborative, and coherent prose, Leonard and Cornell walk their readers through the constitutional history of the period. They make two central arguments that deserve extensive attention here and beyond. First, they argue that while the Founders envisioned a republic of ordered liberty governed by a propertied elite, the forces unleashed by independence and the rise of national politics outstripped that vision, leading to the “fall” of the Founders’ Constitution and the rise of a white man’s democracy that became more, and not less, dedicated to policing lines of racial and gender differences as it expanded. This argument is the subject of the bulk of the reviewers’ attention here. Another argument receives less attention, but seems to be the more original of the two, and it is at least as, if not more, illuminative of the major constitutional questions of the present. This second, more subtle argument is that because of the ways in which the Constitution was envisioned, debated, ratified, and contested, “virtually every contentious issue in American politics would become constitutionalized at some moment” in its early years. Because of the distribution of power between the states and the new federal government, they argue, “defining and policing the boundaries of federalism” was at stake in nearly every conceivable issue, from slavery and expansion policy to currency, federal banking, and tariffs, and so it became the central feature of American law and constitutionalism in the early republic. The implications of this argument extend beyond the first decade or even half-century of the new nation’s history.

As the reviewers and the authors acknowledge (originalist pieties notwithstanding), the intense partisanship of the period shaped constitutionalism and jurisprudence at the highest levels of national governance. *The Partisan Republic* illuminates a more contested and fractious political history than we might have understood. The reviewers each rightly acknowledge that fact here. Conflict rather than consensus was the predominant feature of early national constitutionalism. But in apparent contrast to the reviewers and maybe even the authors, I read the full implication of their arguments to hold that it probably could not have been otherwise. Following the second major argument of the book, the many general political and constitutional uncertainties of our current moment were present at the creation, too. Forces of nationalism, political economy, slavery, and continental expansion made American constitutionalism political to its core, and so politics has always been constitutional to its core. The structural fabric of the national

union is subject to debate in every major issue that is politically contested. Such a framing can make politics a highly fraught, anxious, personal, and frequently violent affair. From this perspective, even scholarly narratives that challenge the vaunted continuity of the American constitutional tradition often paper over just how fragile and open to political divisiveness the text, its meaning, and the order created out of it have been.

To adopt such a perspective has the potential to resituate and expand the study of United States constitutionalism beyond the disciplinary confines of American legal history and constitutional law to embrace the history and historiography of political, philosophical, and historical thought once again, and more specifically, to engage a history of theorizing the inherent, anxious historicity of the tensions between empire, liberalism and commercial society, civic identity, the fiscal military state, and republican political life. This was the late early modern and transoceanic world in which the founding of the United States occurred, and in some ways, it is the world we are still living in today. A broader recovery of ideology, historiography, and intellectual history might do American constitutional history, and maybe even American constitutionalism, some good.

The participants in the forum each grapple with the arguments and implications of *The Partisan Republic*, and each of the reviewers engage a distinctive aspect of the book. Katlyn Marie Carter discusses how the tension between a top-down or judicial approach to constitutional interpretation, and one more aligned with democracy and popular sovereignty, shapes the narrative arc of the book. Carter summarizes these different methods as judicial and political, and while one might wonder, given the book's integration of constitutional and political history, whether such a distinction holds, Carter provides a critical insight: the story is that both win out. At the end of the John Marshall Court in 1835 and after its tangling with the Jackson administration over the legality of expansion policy in *Worcester v. Georgia*, we see an emergent populist and exclusionary democratic political culture anchored to the presumption of the power of higher constitutional interpretation located in the Supreme Court. Another way of putting it might be that populism wins, eventually, by having to abandon an earlier and potentially more substantively popular constitutionalism. Jessica Lowe rightly points out that narratives of American legal history that see either Marshall's federalism or Jackson's populism as innovations or "sinister" developments of later years are missing the presence of both ideologies of hierarchical and lawfully ordered polity and of popular political culture in the colonial and revolutionary world that predated the Founders' Constitution. One need only remember, Lowe suggests,

that George Wythe trained both Jefferson and Marshall as lawyers to know that such pluralism was characteristic of American law and politics well before the 19th century. Lowe also helpfully raises the question of whether democracy is really the word we want to use to describe white populism of the kind that fired the ascendancy of Jacksonian politics. The authors respond with perhaps a necessary, if sobering, thought that at some point we need to use the word democracy to describe its actual, imperfect existence, raising in turn the hopeful if difficult idea that achieving actual democracy remains a project for American politics today. Graham Dodds makes special note of the methodological and contextual specificity that the authors practice in the book. Dodds rightly points out that we get a rich and nuanced perspective, one that both neo-progressive and neo-Whig or consensus narratives of American political history inform, and in turn, from which historians of either or any school of thought might learn. Stephen Rockwell offers the most critical review, describing the book as excellent and insightful, but also as a “traditional tale, smoothly told.” The primary point of critique, for Rockwell, is the presumption of a gradual displacement of policy pragmatism by partisan ideology over the course of the Antebellum period. Greater engagement with the scholarly literature, Rockwell contends, might have enabled the authors to offer a more realistic and pragmatic portrait wherein theoretical and ideological debates on the one hand and policy and practical governance on the other were happening on two different planes, and both in the earlier and later periods. This would negate the idea that the two planes become separate over time as the Founders’ Constitution faded, and would suggest instead that perhaps it never faded or fell at all. From this perspective the real story is one of policy, pragmatism, and political praxis all the way back to the founding.

In his appreciative response, Gerald Leonard suggests that Rockwell’s apparent dismissal of ideas and ideology as historically or politically significant does not allow us to appreciate just how much seemingly high-minded debates about philosophies of constitutional interpretation infuse political life and partisan identification. Saul Cornell, in his response, suggests that the writing of American constitutional history is emerging from a “long slumber” to a new excitement and dynamism, one attuned to a closer relationship between law, politics, and social change in the past and present. If that is the case, it seems fair to suggest in closing the introduction to this excellent forum that the field must seize the moment, strengthening and recalibrating the mutual interdependence of constitutional history and constitutional interpretation. On this, all the reviewers agree: *The Partisan Republic* is a significant step in the right direction.

Review by Katlyn Marie Carter, University of Notre Dame

The Partisan Republic seeks to explain the transition from the republic created by the Constitution of 1787 to “a democracy of a sort” by the 1830s (3). At the heart of Gerald Leonard and Saul Cornell’s argument is the contention that this democracy “explicitly excluded all but white men from civic participation” (3). They chart this transformation of the early American polity through a focus on competing methods of constitutional interpretation, identifying an ongoing tension between a top-down (or judicial) claim on determining constitutional meaning and a bottom-up (or political) one. Through that perspective, they expand and deepen our understanding of democracy in early America.

The book’s core claim is that the American republic became a democracy through exclusion. The authors complicate the narrative of the “rise of American democracy,” in Sean Wilentz’s terms, by highlighting the tensions within the founding principles of the new Democratic Party of Andrew Jackson and Martin Van Buren, between being at once an anti-hierarchical movement yet rigidly committed to an all-white, all-male definition of citizenship. This book thus contributes to a vein of scholarship that aims to modulate our understanding of emerging democracy in America by pointing out its internal contradictions. In some ways, the United States did become more democratic in the early 19th century: the franchise was extended, the press grew, and political participation and party organizing flourished. Yet, in other ways, democratic growth was not only accompanied by, but premised on, the constriction of rights and marginalization of Black people, women, and Native Americans.

While the authors are not the first to make this point, they cast this contradiction in a new framework through a focus on battles over constitutional interpretation. In this way, the book is in conversation with Jonathan Gienapp’s recent work on the processes through which Americans re-thought the Constitution in the first decade of the republic and that of Aaron Hall on the evolution of constitutional originalism alongside slavery.¹ Leonard and Cornell show that activism for a Constitution grounded in popular understandings and priorities, rather than one interpreted by the Supreme Court, were bound up from the start, with racist and

¹ Jonathan Gienapp, *The Second Creation: Fixing the American Constitution in the Founding Era* (Harvard University Press, 2018). Aaron Hall, “Plant Yourselves on its Primal Granite’: Slavery, Public History and the Antebellum Roots of Originalism,” *Law and History Review* 37, no. 3 (July 2019), 743–61.

sexist conceptions of who counted within the consenting part of the American people with the power to make that interpretative claim.

The book attempts to unravel two myths about the Constitution: that the Supreme Court has the final say on interpreting the document and that the Constitution created a democracy. The authors argue that the framers wrote a founding charter that “diminished the roles of the people and the states” and sought to “control the tendencies toward democracy and faction in the states” (9). Covering the familiar reasons behind the framers’ thinking and the compromises of the Constitutional Convention that led to structural limitations on popular sovereignty, they tie the framers’ concerns about democracy to fear of “a growing threat to the rule of law” (23) and point out the roots of judicial review in the federal framework—a structure extended with the Judiciary Act of 1789. Leonard and Cornell acknowledge that despite this antidemocratic structure, the framers still had to make concessions (like protecting slaveholders’ interests, which they believe the Constitution did) to ensure the document’s adoption. Ratification may have resulted in a triumph for the republican system, yet, the authors note that in holding these debates, the framers immediately invited a wider cross-section of the public into constitutional interpretation and thereby opened the opportunity for an enduring popular influence on constitutional politics.

The second chapter follows constitutional politics through the 1790s, examining how Antifederalist resistance to adoption of the Constitution turned into Democratic-Republican opposition to the Federalist implementation of the charter. Alexander Hamilton’s vision of an antidemocratic, centralized, and judicial mode of constitutional interpretation was met with “stirrings of democracy,” but ones that were “intended to reach *only* white men” (43). The authors probe the nature of the opposition and identify nascent tensions between Jefferson and Madison, who only gradually came “to accept a greater role for popular institutions outside the government” (57), on one side, and more “radical localists” at the other extreme who engaged at times in violence, as in the Whiskey Rebellion. (58) The chapter also makes the point that republican principles were at times deployed to call for the abolition of slavery, introduce gradual emancipation laws, and make the case for the extension of civil rights to women. While slavery persisted and spread, they argue that “the Federalist 1790s would remain the high water mark of feminist possibility for decades to come” (70).

The book then explores the tensions within the Republican movement as Thomas Jefferson assumed the presidency in “the almost revolution of 1800” (78). President

Jefferson faced a judiciary stacked with Federalist appointees who “took up the fight for a Constitution of centralized, national power and, further, what might be called a legalist Constitution” (85). The third chapter notes the near-universal acceptance of the notion of judicial review, but draws a distinction between that and judicial supremacy, which the authors identify as a Federalist “fetish” (95). Republicans, meanwhile, “continued to favor a populist, antilegalist ideology” (84). Using major Supreme Court rulings of the early 1800s, most notably on the Yazoo land grant controversy in Georgia, Leonard and Cornell trace the deepening division between moderate Republicans (like Jefferson and Madison) who sought to find compromise and uphold the courts as adjudicators and radical Republicans who made the case that constitutional questions belonged with the people, specifically in state legislatures. For its part, the Marshall Court “pragmatically accommodated itself to the dominant politics of the moment,” in claiming authority over Constitutional interpretation but being careful to work within the political environment (92).

In the fourth chapter, the book follows the deepening divide within the Republican movement as Jefferson, and Madison after him, navigated issues raised by westward expansion and a growing federal government, leading them to abandon more radical state and popular conceptions of constitutional interpretation. The authors assert that the Louisiana Purchase and the Embargo Act of 1807 reveal “the plasticity of Jefferson’s constitutional theory” (123). The chapter also discusses how Federalists turned to a states’ rights theory of constitutional interpretation through the political controversies of the early 1800s, such as the Embargo Act, and especially with the War of 1812. This development raises a question the authors might have usefully addressed more directly: were commitments to judicial versus popular constitutional interpretation merely instrumental or opportunistic? Regardless, Leonard and Cornell illustrate how this new dynamic of Jeffersonian expansion of federal power and Federalist reliance on states’ rights drove a deeper wedge between moderate Republicans like Jefferson and Madison who turned somewhat more toward a top-down, centralized constitutionalism and radicals who remained opposed. After discussing the War of 1812, Leonard and Cornell identify James Monroe’s attempts to bring together these two wings of the Republican movement by being “a president above party,” but note his failure and the ultimate rise of the radical wing of the Republican movement (140).

Through the fifth chapter, the authors trace this radical wing of the Republican movement as it grew into the Democratic Party. Democrats asserted the authority of the people over the judicial claim on constitutional interpretation to shape the country’s path. They advanced the primacy of states’ rights and the power of the

citizenry, now explicitly white and male, over that of the elite. As the authors state, “these democrats thought that the unprecedented American experiment in large-scale democracy could not sustain the burden of giving full civic rights to anyone but white men” (147). The conception of state authority over constitutional matters was deeply linked to “the ideology and movement of white democracy, particularly the crystallization of its commitment to stark racial exclusion” (147). The chapter surveys tensions over slavery through the Antebellum period to illustrate this point, and shows that constitutional reform within the states included restricting the franchise to white men only. With the elimination of land or tax qualifications to vote, states justified exclusion along racial lines; “democrats rejected property as a marker of civic responsibility but substituted race and gender” (168).

The book culminates in the sixth chapter with the Marshall Court’s aggressive assertion of a federal, and judicial claim on constitutional interpretation and the resulting resistance from the Democratic Party, which Leonard and Cornell argue “was built substantially in response to the overreaching of the Court and the resurgent consolidationism of National Republicans” (179). Focusing on rulings issued on American Indian policy, the authors make clear who the real losers were in this struggle: “These legally anomalous peoples would be moved out of the way of white settlement, and the only question for the law was the allocation of power among whites—between the state governments and the federal—not between white and Indian communities” (206). In the end, it was the Democratic vision of the Constitution that prevailed. With Andrew Jackson’s ascendancy to the presidency in 1829, the authors conclude that “the Constitution became what they insisted it was, a charter of power for the majority of white men in each state” (208). Yet, the authors point out the failures of party politics to secure this vision over time and the ultimate turn to the Supreme Court to uphold a vision of white democracy, which it did in the *Dred Scott* ruling of 1857, excluding Black Americans from citizenship and asserting the federal government’s authority to define membership in the polity. Thus, in the end, white democracy won out, but so did judicial supremacy over constitutional interpretation.

By tracing the turn toward democracy over time, but asserting that voting rights were exclusive, Leonard and Cornell bring to the fore some of the deeper paradoxes of democracy in early America. The authors challenge the facile interpretation that the framers were antidemocratic and the Constitution was essentially undemocratic. They demonstrate that emerging democracy actually foreclosed more openings for minority and female participation in the polity than the republican vision of the Federalists. This is not to say that the Federalist vision

for the republic embraced women or people of color, only that it left open more potential than later iterations. The democratic interpretation of the Constitution that emerged by the 1830s was certainly anti-hierarchical, but it was linked to a method of interpretation grounded in the assertion of states' rights and popular sovereignty that was explicitly limited to white men and largely aimed at the maintenance of slavery and Native American land dispossession.

Review by Graham G. Dodds, Concordia University, Montreal, Canada

Debates about whether contemporary political realities in the United States align with the intentions of the American founders are as old as the country itself. In *The Partisan Republic*, Gerald Leonard and Saul Cornell examine how such questions developed in the nation's first half-century by tracing constitutional politics from the creation of the U.S. Constitution to the creation of the first mass political party, the Democratic Party. Although their recounting differs somewhat from the standard schoolbook version of early American history, the work will be familiar to readers influenced by Charles Beard's account of the founders as being elite and unrepresentative and the account of Gordon Wood and others of how the founders favored republicanism over democracy.

After reviewing the problems of America's first constitution, the Articles of Confederation, the authors explain that the framers of what would become the new Constitution purposely sought to establish greater federal authority but also balance it with popular sovereignty. They claim that that at the 1787 Constitutional Convention, "nearly all the delegates shared a suspicion of democracy" (18). As a result, the Constitution "created a series of structural mechanisms designed to restrain the popular will," as well as provisions "to reinforce traditional legal concepts and procedures and insulate them from the democracy's untutored notions of 'justice'" (23). In short, the new polity was to be a republic, not a true democracy. But the details of that arrangement would prove to be tricky, and after the Constitution was ratified, "the next four decades would witness an almost ceaseless struggle over how to interpret and implement the Constitution" (10).

Anti-Federalist concerns about the Constitution did not disappear with its ratification or with the adoption of the Bill of Rights but instead soon came to focus on "the Federalist implementation of the Constitution," especially Alexander Hamilton's "program of centralized state building" (43). In addition to voicing their opposition to Federalist policies, critics of the Washington administration

began to voice opposition to its exclusivity. According to Leonard and Cornell, in the 1790s “assertive democracy began to bubble up from below” (82), as those who had been excluded from the allegedly virtuous governing elite increasingly pushed to be included.

When Thomas Jefferson and the Anti-Federalists (referred to now as the Democratic-Republicans) triumphed in the 1800 elections, Chief Justice John Marshall and the Federalist-dominated judiciary resisted calls for greater democracy and states’ rights, as well as constitutional input from the executive and legislative branches. Marshall sought to entrench the notion that the Constitution “embraced the core principles of common law, especially contract and property rights,” and that the federal judiciary alone had the authority to determine constitutional meanings. Of course, “Republicans resisted both elements” (85). The authors quote Jefferson’s 1801 lament that the Federalists “had retired into the Judiciary as a strong hold . . . and from that battery all the works of Republicanism are to be beaten down” (91).

Yet according to Leonard and Cornell, Jefferson and his two like-minded presidential successors ended up embracing elements of the Federalist vision they had once spurned. They contend that once in office, the Democratic-Republicans realized that the practicalities of effective governance required more centralized authority than orthodox republicanism could countenance, and they came to accept greater executive power. The authors argue that “the Louisiana Purchase exposed the plasticity of Jefferson’s constitutional theory” (123) and that in some respects the third president started to appear almost Hamiltonian. Yet they appear to settle on the characterization that his revised republicanism merely “compromised with Federalism” (146). Regardless of the precise nature of executive republicanism in the early 19th century, some more traditional states’ rights advocates opposed the contemporary Republicans’ new pragmatic nationalism. Those Republican critics would “provide the core for a new partisan formation in the 1820s, the Democratic Party of Andrew Jackson and Martin Van Buren, which adopted formal structures of party organization and an ideology that for the first time justified party as a permanent and positive feature of the American constitutional order” (144–45).

While the nascent Democrats wanted a smaller federal government and more say for states and individuals, Leonard and Cornell assert that a crucial element of their ideology held that the expansion of democracy should be strictly limited to white men. They explain that “as white men in the United States ventured out on a democratic limb, nervously defying the inherited dogma that the people could not

govern themselves, they assumed the branch would fall if weighted with allegedly feckless black men as well” (171). This attitude became widespread, as “every state admitted after 1819 confined the suffrage to white men” (175). The authors note that when New York decided to revise its state constitution in 1821, “delegates often hesitated to abandon the inherited idea that the suffrage was a privilege, deserved only by those who could use it responsibly and independently. On this basis, these democrats rejected property as a marker of civic responsibility but substituted race and gender, denying the suffrage to women, Indians, and nearly all black New Yorkers” (168).

An expanded yet still-limited electorate might have been at odds with the desires of some of the founders, but it was good politics: “This almost complete whitening of the electorate fit seamlessly with Van Buren’s larger strategy for securing the hegemony of the democracy nationally” (175). Indeed, “when Jackson and the white democracy swept into power in 1829, the Constitution became what they insisted it was, a charter of power for the majority of white men in each state” (208). By 1838, the Democratic regime was well established, as Van Buren successfully reinvented the Constitution “as a charter of radical democracy, white supremacy, and states’ rights,” and then sought to “marginalize the Supreme Court and other sources of centralization” (178).

The book’s final chapter details how Marshall sought to push back against the Democrats’ new constitutional regime and to assert the prerogatives of the central government in a series of cases, especially regarding American Indians. The authors write that Marshall’s arguments in these cases “constituted a judicial effort to defend the Union, judicial supremacy, and common law principles against states’ rights and raw democratic will” (207). However, “The Court’s efforts . . . met with little success” (208). Indeed, this part of the book ends with Marshall’s 1832 decision in *Worcester v. Georgia* in favor of the Cherokee Nation, an opinion that the state of Georgia effectively defied and Jackson essentially ignored. “When the Cherokees were . . . removed from Georgia in 1838, it helped to signal the ascendancy of the white democracy’s remade Constitution, as well as the marginalization of the Supreme Court” (209). As the authors note, this “would have been anathema to the framers” and ratifiers (6), but it demonstrated how much the country had changed since its inception.

Several thematic points stand out. First, the authors credit numerous and diverse drivers of the development of America’s early constitutional politics that included individuals, events, and ideas. The developments were marked by electoral victories

and landmark court decisions that not only reflected societal and political changes but then exerted their own developmental force. Thus, instead of clean causality, this is a complex story, with various forces interacting and decisively altering the political and constitutional landscape.

Second, the set of specific contributors to the developments discussed in *The Partisan Republic* is more extensive and varied than one might expect. Because the book purports to combine traditional “top down” historical explanations with a sensitivity to “bottom up” dynamics, the authors discuss some lesser-known factors that arguably contributed to and reflected the broader societal changes. As a result, in terms of the events that contributed to the developments, beyond major episodes like the state ratification debates of 1787–1788 and the crucial election of 1800, the authors also ascribe causal significance to the 1787 Northwest Ordinance, the French Revolution, the War of 1812, and the 1814 Hartford Convention. In terms of individuals, the authors also move beyond the well-known adversarial actions of John Adams and Thomas Jefferson, and introduce such actors as the populist William Manning, the “proto-feminist” Judith Sargent Murray, the slave Gabriel Prosser, and the African American activist James Forten, among others. And in terms of ideational struggle, the authors are careful to demonstrate that the broad camps of federalists and republicans were subject to a variety of internal differences that themselves evolved over time, such that one must always be aware of the different voices within each group. Altogether, this results in an analysis that is rich and nuanced.

Third, the authors contend that questions about America’s core constitutional arrangements were fundamentally unsettled and were driven more by politics than by law: “the operative meaning of the Constitution depended on political and cultural development much more than on constitutional text, established doctrine, and judicial pronouncements” (208). Put differently, Leonard and Cornell claim, “Whatever the Framers and the ratifiers might have imagined, history demonstrated that the development of the Constitution would never belong wholly to the judiciary nor wholly to ‘the people.’ Rather, it would evolve, settle, lurch, and evolve again according to the twists of politics and the skills of those in the courts, in Congress, in the executive, in political parties and social movements” (211). They also contend that “no dogma of constitutional authority would ever grasp final victory” (114). Extrapolating from those historically fixed claims, one might then use the book to argue that just as two centuries ago there was no set or durable consensus on major constitutional issues, many of these questions are still unsettled today and are thus open to a wide variety of reasonable interpretations, with supremacy in matters of federalism to be determined by political contestation.

One could well draw other lessons from *The Partisan Republic*, as it is remarkably rich for a text that is relatively concise. According to its authors, “This book is . . . aimed at multiple audiences, from lay readers and undergraduates to law students and serious scholars” (225). It is indeed very accessible, free of academic jargon, and interdisciplinary in its approach. It should appeal to academic historians, historically minded political scientists, and legal scholars, as well as some armchair historians and political junkies.

Review by Jessica K. Lowe, University of Virginia School of Law

In *The Partisan Republic*—an insightful, at times even magisterial, survey of early U.S. constitutional history to the 1830s—Gerald Leonard and Saul Cornell argue that the American founders intended to create “a republic, not a democracy” (2). Over time, the nation became more democratic, even as the movement that brought about this transformation saw the Constitution as a “charter of freedom for the white man alone” (3). The book has much to recommend it, particularly its helpful integration of the political and constitutional history of the period. This review focuses on *The Partisan Republic*’s critical assessment of the rise of “white democracy” as its principal contribution, and also raises two concerns: first, regarding the idea that the founders intended to create a republic, not a democracy, and second, whether the result was truly more democratic than what existed before.

In the early 1790s, Judge St. George Tucker, known today as the first major commentator on the Constitution, addressed the republic versus democracy issue head-on. In lectures to his law students at the College of William and Mary, Tucker began by inquiring “how far the Government . . . founded upon the principles of the federal Constitution, is conformable to the nature of a Democracy.” Tucker had expressed reservations about the Constitution during the ratification debate, but he confidently stated that the new nation was a republic—and a democracy: “[w]hen the Body of the people in a republic are possessed of the supreme power it is a democracy.”¹ Tucker clarified that although some authors considered “republic” an umbrella term that included both aristocracy and democracy, “[a]ccording to the principles that prevail in this Country . . . a Republic is to be considered as a [government] of the people;

¹ St. George Tucker, “Ten Notebooks of Law Lectures,” Notebook 1, 1 n.+., Tucker-Coleman Papers, Swem Library, College of William and Mary, Williamsburg, VA. See also Jessica Lowe, *Murder in the Shenandoah: Making Law Sovereign in Revolutionary Virginia* (New York: Cambridge University Press, 2019), 47.

as a pure democracy. We are therefore to consider them as synonymous.”² Contemporaries made similar observations.³

Leonard and Cornell, however, stress that the nation began as a self-conscious republic and that “democracy was anathema to the republican founders” (1–2). They explain that “Madison and the Framers designed the Constitution deliberately to limit the operational influence of the people—‘the democracy’—and instead sought to empower a national, political elite” (1). This assessment stems primarily from a Beardian account of the founding: that the Constitution’s framers intended to protect creditors and dilute the political power of debtors (9, 26–27, 210–11, 213–14).⁴ When Thomas Jefferson was elected in 1800, he promised a new era of strict construction and states’ rights, but the practicalities and exigencies of the presidency led him to wider uses of federal power, “arguably in excess of anything attempted by the Hamiltonians” (117). Eventually, Jefferson’s coalition and its heirs split, and Martin Van Buren steered a new movement that ultimately rallied around Andrew Jackson. “The Democracy,” as it called itself, widened white male suffrage, embraced parties, and pushed against the Supreme Court; it also advocated belligerence towards native peoples, insisted on strict construction to protect enslaved property, and staunchly defended states’ rights (146–47, 220–21).

As “the Democracy” rose, it made sure others fell. Leonard and Cornell compellingly argue that this was not merely a democratic expansion that did not go far enough; rather, the democratic ascendancy transformed the founding generation’s “varied and fluid views” on race and political participation into explicit exclusion (13). While “black Americans did possess some substantial rights in many states at the Founding” and some of the founders had anticipated continued movement towards emancipation in some states, Leonard and Cornell argue that the rise of the white democracy “brought the full, explicit racialization of the constitutional order” (3, 147, 150–58). For instance, under New York’s 1777 Constitution’s property-based regime, “the distinction between the propertied and the poor [had] remained more salient than the distinction between white and black with respect to the suffrage,” but in 1821, delegates at the New York Constitutional Convention rejected the 1777 arrangement in favor of something close to universal white male suffrage, and “explicitly disenfranchised nearly all black New Yorkers” (168). As a result, “[t]he possibilities that many had seen in the Constitution

² Lowe, 47.

³ See Eugene Volokh, “The U.S. Is Both a Republic and a Democracy,” *The Volokh Conspiracy*, <https://reason.com/volokh/2022/01/19/the-u-s-is-both-a-republic-and-a-democracy/> (accessed May 31, 2023).

⁴ See Charles Beard, *An Economic Interpretation of the Constitution of the United States* (New York: MacMillan, 1914).

for some measure of rights for black Americans, women, and for the Indian nations virtually disappeared in the ‘democratic’ reinvention of the Constitution” (6, 167).

This persuasive account, however, raises a question for the book’s “republic to democracy” framework: why should a polity governed by more white men, but fewer of all others—one based on race instead of property, still governed by a minority—be considered more democratic?⁵ *The Partisan Republic* offers several potential criteria: the Jeffersonian/Jacksonian embrace of political parties, a rise in “ordinary” white men’s participation in politics, and particularly the movement’s promotion of what legal scholars call “popular constitutionalism.”⁶ This last especially merits further discussion here.

The Partisan Republic characterizes the epic confrontations between Jefferson and Jackson and Chief Justice John Marshall as a battle between the “language of law or that of democracy” (211). The founding generation, Leonard and Cornell argue, had not intended for federal courts to have the last word on constitutional meaning; rather, their idea of judicial review was “simply applying controlling law to the adjudication of the case before them,” not “reaching beyond their office to strike down the acts of the legislature” (1, 94). Marshall, however, “aimed to substitute Federalist legalism for the sovereignty of the people’s will” and to establish “judicial supremacy” (178, 187). “The party of white democracy,” the authors suggest, was “built substantially in response” to this “overreaching” (179). These opponents of the Court “held a radically democratic understanding of the Constitution” that advanced the position that “the people ... held the final and sovereign word” on its meaning, whether through their state institutions, representatives, or their own popular resistance (5–6, 57, 178–80, 220). They also “insisted the state and federal courts had no coercive relationship to each other,” and on a “departmentalist” view that “each branch of government exercised equal authority to interpret the Constitution within that branch’s own sphere of action” (181, 216). And “for constitutional democrats like Jackson and Van Buren, the democracy”—the “people themselves”—“carried the ultimate authority to interpret the Constitution” (217).

This description of the period’s varying legal approaches offers a useful organizing framework, and there is something to the argument that the people asserting what they believe their fundamental law means, whether through elected representatives or “out-of-doors,” can be seen as more “radically democratic” than a court-based

⁵ Mary Sarah Bilder makes a similar point in “The White Male Aristocracy,” *Balkanization*, <https://balkin.blogspot.com/2020/04/white-male-aristocracy.html> (accessed May 5, 2023).

⁶ See Larry Kramer, *The People Themselves* (New York: Oxford University Press, 2004).

interpretation. But assertions of populist will and democratic action are also not necessarily the same thing; after all, in American history, uprisings by white citizens against the courts have more often been about obscuring true democracy—about a minority asserting the right to dominate as a majority. Moreover, an argument can be made that founding era views on judicial review were fluid and varied as well, and more complex than the book’s account suggests; as early as 1782, lawyers and judges in Virginia had emphasized the judiciary’s province over law, with Tucker in a key case characterizing the Virginia constitution as the “fundamental principles of our Government of which the Judiciary Department is constituted the Guardian,”⁷ and Judge George Wythe expressing, “if the whole legislature . . . should attempt to overlap the bounds . . . pointing to the constitution, [I] will say, to them, here is the limit of your authority; and, hither, shall you go, but no further.”⁸ While Virginia was possibly an outlier in this respect, it was also the home of Marshall, Jefferson, Madison, and many other prominent figures in the story that *The Partisan Republic* tells—and Wythe was, for many, their law teacher. Marshall’s jurisprudence on this point can thus plausibly be seen as an extension of early, pre-1800 Virginia legal culture—itself evidence of pluralism—rather than a sinister later development.⁹

Overall, Cornell and Leonard’s insightful book begs some questions, but does the great service of linking legal and political historiographies in one concise volume. Most importantly, it masterfully shows how, in the first decades of the 19th century, the movement begun by Jefferson and seized by Jackson created the idea that for white men “democracy” meant both their own autonomy and their power over others—assumptions that reverberate today.

Review by Stephen J. Rockwell, St. Joseph’s University

The Partisan Republic, by Gerald Leonard and Saul Cornell, is an insightful contribution to the literature of politics in the early republic. At its best, the work illustrates the pragmatic opportunism that marked American politics from day

⁷ Charles F. Hobson, *St. George Tucker’s Law Reports and Selected Papers, 1782–1825*, vol. 3 (Chapel Hill: University of North Carolina Press, 2013), 3:1741–46.

⁸ *Commonwealth v. Caton*, 8 Va. 5, 13 (1782). Virginia judges also described the review they were exercising in a breadth of ways in *Kemper v. Hawkins*, 3 Va. 20 (1788), which established judicial review in the state.

⁹ Lowe, *Murder in the Shenandoah*, 197–98.

one: inescapable temptations of power, responsibility, and opportunity drove even the most consistent theoretical advocates of limited government to be big-government actors once in power. The book stumbles only in its analysis of Jacksonian Democrats and the “fall” of the founders’ Constitution. This section fails to recognize the same gap between political rhetoric and policy choices in the years before the Civil War that the authors so shrewdly describe in the years before Andrew Jackson’s election.

Leonard and Cornell offer a somewhat traditional tale, smoothly told. They argue that the framers’ original Constitution focused on national governance led by elites, including the important role to be played by the federal judiciary. White, landed, and wealthy men would rule, excluding women, Blacks, Native Americans, and the non-wealthy from “democracy.” Over time, the authors write, democratizing forces would begin to incorporate non-wealthy and unlanded white males into the nation’s polity, even as the nation’s elite leaders continued to exclude women and people of color from full participation. In fact, as poorer whites were folded in, restrictions on Blacks, in particular, resulted in even greater exclusions.

Leonard and Cornell are particularly good at tracking developments in the nation’s first four decades that led to more exclusion, not less, and they incorporate the stories of women, Blacks, and Indigenous peoples in a manner that makes those groups seem less like add-ons to a traditionally white and male-centered story. The authors also pay careful attention to “middling” politicians and antielite small-d democrats. All of this makes for a more three-dimensional narrative than is found in many works about this era.

Importantly, the authors recognize how pragmatism and partisanship overtook ideology in the early republic.

Jefferson presided over a significant increase of federal power, especially executive power, as manifested chiefly in the Louisiana Purchase and the Embargo. The Federalist opposition fervently opposed both policies, resorting to an almost Jeffersonian language of states’ rights, just as Jefferson was embracing an almost Federalist accumulation of federal, executive power (144).

Focusing on the pragmatism and opportunism of the founding generation, particularly leaders like Jefferson, is a prominent recognition of the importance of policy choices over theoretical argument in understanding American governance, even in the nation’s early years.

A problem develops only in the book's final chapter, describing the traditional tale of the "fall" of the founders' Constitution in the Jacksonian era. In Leonard and Cornell's telling, the founders' elite-led nationalistic structures succumbed over time to forces of white democratization and leadership that promoted a states'-rights vision of governance, eroding the founders' Constitution and replacing it with a white democracy subject to more centrifugal forces. By the 1830s, the authors write, the nation was characterized by greater democratic participation by white men and "a commitment to strict construction of federal powers and a fierce defense of states' rights" (3). The opportunistic capitulations of Republicans like Jefferson and Madison to the demands of national governance gave way, they write, to the true states' rights commitments of the Jacksonians. The Marshall Court's last-gasp efforts to unify the country behind the founders' centralized nationalism fell victim to state-led encroachments into Indian territory previously protected by federal commitments to Native nations, and to the strength of the Democrats' democratized party unity.

Leonard and Cornell relate a story deep in our traditions, but that story has been challenged over the years. While the authors recognize the pragmatism and opportunism of the first generation of leaders like Jefferson who talked about limited government but governed large anyway, they miss the same dynamic when it comes to the Jacksonians.

The book's big finish is a chapter on the Marshall Court, particularly its decisions in Indian affairs, with Leonard and Cornell finding that the Court failed in its defense of national supremacy and that the centrifugal forces coming out of the South were emboldened by the Court's unsuccessful attempts to shore up the founders' approach to centralized power. But the book fails to address the ways in which Marshall and the Court succeeded in maintaining the importance of federal treaties and reinforcing federal leadership in Indian affairs, beating back the challenge from southern states. Even Jackson and Martin Van Buren were forced to sign removal treaties—as coercive as they may have been—with Native nations. Notably, when the authors write that Georgia "defied" the Court's crucial ruling in *Worcester v. Georgia* (208), they discard their own telling of the story just two pages prior, which might lead a reader to the very different conclusion that it was precisely the *relevance* of federal power, and the desire of Georgian officials to avoid a showdown with the federal government, that led federal and state officials to find an off-ramp. Georgia governor Wilson Lumpkin's pardon of the missionary at the heart of the *Worcester* case, and the Georgia legislature's repeal of the controversial state law at issue, dissolved the cause of tension between Georgia

and the federal government and can be seen as evidence of the ongoing strength of the federal government's role in Indian affairs even with Jackson as president. The Jackson administration then continued to sign federal treaties with Native nations, remove white squatters from unceded Native lands, and burn unlawful white settlements in Indian country. Jackson and the Democrats also made sure that the federal government would be the dominant player in administering removal and in acquiring, distributing, and managing western lands.

There are similar problems in other policy areas with the argument for a "fall" to states' rights. The authors argue that states' rights became the replacement for the founders' centralized and elite-led nationalism as the country moved through the 1830s, 1840s, and 1850s:

[T]hrough the 1850s, the Democrats in fact remained the dominant party and states' rights the dominant philosophy. For all those years, the party largely prevented the loose construction of the Constitution that would have produced a national bank, a national program of internal improvements, and federal intervention in the slavery question, among other policies (221).

But John McFaul wrote in 1972 that "the Jacksonians with their anti-state, anti-government bias ended up strengthening both state and government," and Jerry L. Mashaw in 2012 documented the Jacksonians' development of centralized monetary policy through developments at the Treasury Department and through the sub-Treasury system, an analysis that "surely justifies McFaul's ironic conclusion that ultimately Jackson's war with the Bank, far from promoting the Democratic Party's small government agenda, substantially strengthened the central government's administrative capacities."¹ Numerous works over many years have emphasized the support Democrats gave to internal improvement projects, with spending increasing through the 1830s and Jackson (for example) approving far more projects than he rejected while in Congress and while serving as president.²

¹ John M. McFaul, *The Politics of Jacksonian Finance* (Ithaca: Cornell University Press, 1972), 14; Jerry L. Mashaw, *Creating the Administrative Constitution: The Lost One Hundred Years of American Administrative Law* (New Haven, CT: Yale University Press, 2012), 173; for a general challenge to the Democrats' reputation, see 147-223.

² See, for example, John Lauritz Larson, *Internal Improvement: National Public Works and the Promise of Popular Government in the Early United States* (Chapel Hill: University of North Carolina Press, 2001), 191 (table 4); Victor L. Albjerg, "Internal Improvements without a Policy," *Indiana Magazine of History* 28 (1932): 168-79; Victor L. Albjerg, "Jackson's Influence on Internal Improvements," *Tennessee Historical Magazine* 2 (July 1932): 259-69; Carlton Jackson, "The Internal Improvement Vetoes of Andrew Jackson," *Tennessee Historical Quarterly* 25 (1966): 261-79.

Spending on such projects peaked under the Democrats, who also continued science and exploration initiatives like the 1838 Pacific Expedition, begun by President John Quincy Adams, authorized by President Jackson, and executed during Martin Van Buren's presidency. John Van Atta documents how, even as the Democrats fought to democratize land policy, it was still the federal government's laws and regulations that would control and manage settlement; William D. Adler describes the pre-Civil War Army's critically important contributions to acquiring land, removing Indians, putting down local rebellions, and expanding markets.³ Combined with the Democrats' role in passing and enforcing federal fugitive slave laws throughout the era—which saw the South utilizing their strength in the federal government to override the states' rights, antislavery, and pro-liberty efforts of New York, Pennsylvania, and Massachusetts—it is difficult to see states' rights as anything other than rhetorical window-dressing to be hung at opportune times.

The book's disturbingly sparse citation scheme, explained in a bibliographical essay at the end of the book, makes it difficult to know if the authors reject the extensive scholarship produced on the Jacksonian Democrats as big-government actors in a wide variety of policy fields, or if they are unaware of these works. This is disappointing, because a more thorough incorporation of this literature might powerfully reinforce the authors' arguments regarding the pragmatism and opportunism of pre-Civil War politicians in the United States: partisan bickering and theoretical jousting often took place on a separate plane, walled off from pragmatic, "flexible" (144) national governance, before the Civil War just as in the early republic that the authors describe so insightfully. But including the implications of this literature might come at the cost of undercutting the argument that the founders' elite-centered, nationally focused Constitution did, in fact, "fall."

In the end, *The Partisan Republic* is an excellent and insightful look at the gaps between rhetoric and governance in the early republic. It is also a traditional and perhaps too-trusting use of historical reputation as a reliable indicator of governance choices in the decades before the Civil War. Throughout, though, the authors offer a clear and well-written tale of the growing inclusions of—and exclusions from—American democracy.

³ John R. Van Atta, *Securing the West: Politics, Public Lands, and the Fate of the Old Republic, 1785–1850* (Baltimore: Johns Hopkins University Press, 2014), esp. ch. 7; William D. Adler, *Engineering Expansion: The U.S. Army and Economic Development, 1787–1860* (Philadelphia: University of Pennsylvania Press, 2021), 30–35, 79–82, 94, 97, 132–38.

Author's Response by Saul Cornell, Fordham University

The contributions to this excellent roundtable on the *Partisan Republic* offer a remarkable snapshot of the current state of early American constitutional history. The thoughtful insights and critiques framed by these authors underscore that *The Partisan Republic* is a preliminary effort to synthesize the various strands of recent historiography into a coherent narrative of early American constitutional development. Indeed, in the short time since its publication, recent works by Mary Sarah Bilder and Greg Ablavsky, among others have extended the historical project of *The Partisan Republics*, deepening our knowledge of the cast of characters who define the dramatic story of early American law.¹

Each of the essays accept *The Partisan's Republic's* contention that early American constitutional culture was marked by conflict, not consensus. As several authors note, the claim that early American constitutionalism was profoundly shaped by the intense partisan divisions of this period is hardly novel. Progressive historians, most notably, Charles Beard, made much the same claim more than a century ago. What differentiates *The Partisan Republic's* conception of conflict from Progressive and neo-Progressive scholarship is that it highlights the tensions within each of the proto-parties involved in early American constitutional conflict. In particular, the Jeffersonian coalition grappled with profound regional, class, and ideological divisions. Proponents of popular constitutionalism advocated for greater democracy and challenged the “legalism” of the Marshall Court. Old Republicans, closely identified with an influential elite in the South, took Jeffersonians to task for exercising Federal power in ways that sometimes, exceeded Hamilton's most ambitious agenda. Finally, a group we label “constitutional outsiders” struggled to articulate their own political legal aspirations under a Constitution that had been crafted, primarily, with the interests of white male property owners in mind.

Another notable area of agreement among the participants in this forum is recognition of the importance of highlighting change over time. Each of the contributors accepts our belief that a profound transformation occurred between 1788 and 1828 in American constitutional law and culture more generally. Each author would complicate and reframe aspects of *The Partisan Republic's* account of this process of transformation, but none of the participants in this forum

¹ Gregory Ablavsky and W. Tanner Allread, “We the (Native) People?: How Indigenous Peoples Debated the U.S. Constitution,” *Columbia Law Review* 123 (2023) 243–318; Mary Sarah Bilder, *Female Genius: Eliza Harriot and George Washington at the Dawn of the Constitution* (Charlottesville, VA: University of Virginia Press, 2021).

would dispute the fact that the meaning of the Constitution was not fixed in 1788 or 1791. Indeed, the broad commitment to understanding the complexity of this change is perhaps the most important difference between constitutional historians and legal originalists. The so-called fixation thesis defended by many prominent originalists, rests on a view of constitutional meaning that is not simply ahistorical, it is profoundly anti-historical. Similarly, even among those originalists who accept that at least some issues of constitutional meaning were not fixed, or liquidated, to use Madison's term in *Federalist* #37, at the Founding moment, the dominant paradigm employed by originalists is largely static. Indeed, in *District of Columbia v. Heller*, the controversial Second Amendment case that Justice Scalia described as his greatest opinion, the majority asserted two claims that *The Partisan Republic* demolishes. In *Heller*, Scalia treated Founding era state constitutions and Jacksonian era constitutions as part of a single constitutional moment. This approach allowed Scalia to erase the profound changes in the constitutional language used in state arms bearing provisions that began with a decidedly republican framing, "bear arms in defense of themselves," to the more individualistic language of the Jacksonian era that asserted the right of each "citizen to bear arms in defense of himself." Secondly, Scalia derided Justice Stevens' claim that in the Founding era Americans approached issues about liberty and rights from distinctly different points of view. No serious constitutional historian could accept Scalia's outmoded version of consensus history.

Even the most sophisticated originalists, the so-called "original law originalists," approach this period as if legal culture were essentially homogenous and largely marked by consensus. None of the contributions to his forum would accept such a simplistic account of American legal and constitutional history. Compounding this irony, modern originalists focused on fixation have unwittingly adopted the perspective of the constitutional losers in early America constitutional debate, not the winners. In this sense, originalism, as currently understood, seeks a version of the Constitution that never existed and could never have existed. Although irony remains the historian's favorite literary trope, sadly, originalism continues to be a largely irony-free zone.

One fascinating point of division that emerges among the participants in this forum arises from the problem of understanding the evolving arc of Jefferson and Madison's constitutional ideas and actions in the decades after *Federalist* political dominance faded. Our treatment of the "Madison Problem," the debate over the best way to interpret the trajectory of Madison's thought between the Confederation Period and the Jacksonian era, does not take a position on this venerable question. Our approach does argue that the best way to understand Madison's oscillations

is situate them in the context of constitutional politics of the period. Neither an ultra-nationalist in Hamilton's mode, nor an ardent states' rights champion, Madison sought to dynamically adjust his constitutional theory to deal with the shifting realities of constitutional debate and reality. Borrowing from the language of common law, Madison sought to address different constitutional mischiefs with specific remedies crafted to address the facts on the ground.

Similarly, unravelling Jefferson's uses of federal power during his presidency poses an equally complex problem. At least two contributors find our discussion of "the plasticity of Jefferson's constitutional theory" preferable to focusing on the debate over the more traditional question about the continuities or discontinuities in this thought. Whatever might have impelled Jefferson to purchase Louisiana or enforce the Embargo with tactics that would have pleased Hamilton, the master of Monticello, did not find any of his former positions on federal power much of an impediment once he decided to act. Nor did he spend nearly as much effort as his friend Madison trying to theorize an approach that could harmonize these seemingly incompatible strains of his constitutional ideology.

Reading these thoughtful and analytically powerful responses, most readers will doubtless conclude that early American constitutional history has emerged from a long slumber and has become an exciting and dynamic field of inquiry. *The Partisan Republic* will not be the last word on the many topics it explores, but hopefully it will remain a useful starting point for those interested in exploring this rich and pivotal moment in American constitutional history.

Author's Response by Gerald Leonard, Boston University

I want to thank our four reviewers for their careful reading and responses to our book, *The Partisan Republic*. I am grateful for the generally very positive reactions as well as the well-considered challenges to aspects of our argument.

The Partisan Republic is a work of constitutional history but one that aims to reach beyond the traditional bounds of constitutional history. So the book does not attend to the Supreme Court alone but relies just as much on histories of politics, governance, society, and culture, while remaining a constitutional history. All of these literatures are essential to our explanation of major changes in the meaning of the Constitution between its drafting in 1787 and the entrenchment of a "partisan republic" of the "white democracy" by the late 1830s.

Jessica Lowe captures a large part of what we are doing in her generous conclusion to her review: “Overall, Cornell and Leonard’s insightful book . . . does the great service of linking legal and political historiographies in one concise volume. Most importantly, it masterfully shows how, in the first decades of the 19th century, the movement begun by Jefferson and seized by Jackson created the idea that for white men ‘democracy’ meant both their own autonomy and their power over others—assumptions that reverberate today.” Katlyn Marie Carter adds an equally important recognition of our concern with early Americans’ understandings of the “rule of law.” Lowe too addresses the rule of law, discussing some of the struggle among early democrats to synthesize the rule of law, democracy, popular sovereignty, and constitutionalism. Lowe points toward questions like how one can know whether a populist uprising is a defense of democracy, an attack on the democratic rights of others, a challenge to the rule of law, a defense of the Constitution against a usurping judiciary, or something else altogether? What exactly is the relationship, in a particular historical setting, between democracy and the rule of law, between the rule of law and popular sovereignty, between any of these notions and constitutional government? And can one even use the word democracy to describe a movement as bent on categorical exclusions as were the ascendant advocates of white democracy? These are not questions that are amenable to settled answers, but they are the sorts of questions that I am pleased to see our book prompting.

Indeed, I am as pleased as I can be by Graham Dodds’s appreciation of the causal complexity we tried to convey in the book. Traditional constitutional history was often satisfied with finding constitutional development predominantly in the sequence of Supreme Court opinions with only light contextualization. We see the sources of constitutional development in a welter of competing efforts in every corner of society to establish the identity of the nation. Or, as Dodds nicely puts it, “instead of clean causality, this is a complex story, with various forces interacting and decisively altering the political and constitutional landscape.” That is, indeed, the complex story we were going for, complete with the implication drawn by Dodds that “just as two centuries ago there was no set or durable consensus on major constitutional issues, many of these questions are still unsettled today”—and will remain so, because the meaning of the Constitution has always been contingent on the interplay of numerous forces, among which the Court typically plays a far more derivative role than is often assumed.

Of course, none of our readers think we got everything right. In particular, I am grateful for Stephen Rockwell’s words of praise for the book but also for his

effort to work up a sustained critique of the book's closing sections. I do think that in some ways Rockwell has misapprehended the book's purposes, but that doesn't mean that I think his criticisms are without value for me and for readers of the book. Rockwell seems to think that the book is an entry in the "literature of politics in the early republic" and that its main concern is "the gaps between rhetoric and governance in the early republic." But, without putting too much stock in labels, our intention was not to address the political history of the period as such, nor to identify and explain gaps between rhetoric and governance. Our aim was to explain a major change in the meaning of the Constitution across the early generations of the republic. It is true that that means a lot of attention to the politics of the period and to some of the realities of policymaking under the Constitution. Policymaking certainly is an important mode of giving meaning to a constitution, just as political debates and campaigns are. But similarly important sources of constitutional meaning in this period included not only judicial opinions and legal argumentation but newspapers, populist (more or less) uprisings like the Whiskey Rebellion, flight from slavery by Black Americans, the practice of White Americans' settling illegally on Indian lands, Native resistance to those settlements by various means, etc. The book's subject is all of these as they bear on the evolving meaning of the Constitution.

Among the many sources of constitutional meaning discussed in the book, Rockwell's focus on policymaking that deviated somewhat from the policymakers' avowed constitutional principles is legitimate and valuable. So I am happy to agree with Rockwell's observation that Democratic Party ascendancy brought with it plenty of federal power in some areas and in some modes, despite the party's states' rights rhetoric. In those years, as Rockwell says, the federal government exercised power over Indian removal, developed administrative structures in the Treasury that did some of the economic regulation once done by the Bank of the United States, funded many internal improvement projects, and much else. All true, but let's remember first that the ideology of states' rights never purported to strip the federal government of all power or to shrink federal power in areas where the Constitution clearly granted it, such as regulation of interstate commerce and at least some dimensions of Indian affairs. The ascendancy of states' rights simply forced political actors to justify the use of federal power by some plausible interpretation of the Constitution as it applied to the policy at issue. Thus, second, that ascendancy had real consequences even if, predictably, politicians were hardly consistent in elevating constitutional convictions over political interests and imperatives. The Democracy's avowed commitment to states' rights changed the ways in which policies were debated, formulated, and implemented. Rockwell's

own examples of federal power illustrate the point: The federal government did indeed retain major power over Indian affairs, but Indian removal was prompted in substantial part by states' unilateral efforts on the ground to vindicate their claims of constitutional sovereignty over the land within their borders. Administrative structures in the Treasury perhaps contributed to expansion of federal power and served to regulate some aspects of the national economy; but that regulation by an administrative department of undoubted constitutional authority was no doubt different from any analogous regulation by the private corporation that was the Bank of the United States. The Bank was buried by a states' rights argument in the Jackson years and kept in the grave by a states' rights resistance to revival of the Bank in the early 1840s. I don't think that the Treasury's expansion of its own administrative capacity—so different from the Bank's workings—somehow exposes states' rights as a fraud. Federal funding of internal improvements was debated within a states' rights framework for decades and took the shape it did in part because of that constitutional framework. Pro-improvement Democrats had to use the language of states' rights and accept probably very different results than if they had operated within an ascendant constitutional culture of expansive federal power like that advocated by John Marshall, Henry Clay, and others. Of course, there is much intellectual room for debate about all these developments, but word limits mean there is very little actual space for debate in this mini-symposium. Still, I think it's important to note that nothing in *The Partisan Republic* suggests that federal power and activity somehow shriveled durably the moment Jackson or Van Buren was elected, because the book is not about the scope of federal power but about the evolution of constitutional meaning in the early republic.

Now, some of Rockwell's remarks would seem to suggest that a history of constitutional meaning in itself is of limited value without some more tough-minded look at policymaking. And he is not wrong to disabuse readers of the notion that ideology is a reliable guide to behavior. But some of his review borders on a rejection of the idea that ideological convictions—in our case convictions about the meaning of the Constitution—matter at all. He says that certain expansions of federal governing capacity render it “difficult to see states' rights as anything other than rhetorical window-dressing to be hung at opportune times.” But, apart from the fact that states' rights is perfectly compatible with expansions of federal power within its legitimate spheres, I think it obvious that ideology does matter quite a bit, an argument that I assume Rockwell would not wholly reject. So, I'll just say that states' rights, like most ideological commitments, takes its operational meaning in the context of other concerns like economic and political interests as well as, maybe less cynically, people's desires for peace, satisfying work,

and the well-being of their communities. Explicit ideological and constitutional convictions don't explain everything or anything by themselves, but our book rests on the assumption—uncontestable in my mind—that they are one very important part of how we make decisions and make sense of our lives, individually and communally.

In sum, we tried to write an account of constitutional evolution that was accessible while nevertheless revealing the daunting array of forces that affected the Constitution's operative meaning and its consequences. It is unavoidable and even pleasing that there should be some debate about our account. But these reviews (and others) suggest we have succeeded as well as we could have hoped, and that is extremely gratifying.

