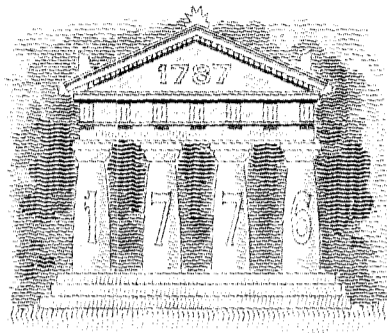




Book Review by Herman Belz

A MORE PERFECT UNION

Heir to the Fathers: John Quincy Adams and the Spirit of Constitutional Government,
by Gary V. Wood. Lexington Books, 249 pages, \$70



AS A NARRATIVE OF NATIONAL DEVELOPMENT, the much maligned though strangely resilient thesis of American exceptionalism can be summarized: "In the beginning were the founders, and then there was Lincoln." Gary V. Wood, in this penetrating and clear-sighted study of John Quincy Adams, renovates and augments one of the most significant "exceptionalist" interpretations of American political history. His book is an important contribution to the recovery of the foundations of American constitutionalism faithfully and vigorously pursued for many years by Harry V. Jaffa and his students.

Adams is best known as an expansionist-minded Secretary of State, unpopular conservative president in the era of rising Jacksonian democracy, and civil-libertarian opponent of the slave power in Congress from 1831 to 1846. Focusing his study on two of Adams's most important writings, Wood offers a revisionist interpretation of him as the leading spokesman for the founders in the early Republic.

Wood's thesis is that Adams was heir to the fathers most significantly in his conviction that the principles of the Declaration were identical to the principles of the Constitution. According to Wood, the founders never felt it necessary "to articulate clearly and systematically" the relationship between these two constitutive documents of American nationality. This was "an unfortunate oversight" that had "dire consequences" when controversy over slavery shattered the moral consensus of the founding. It was left to Adams, who "wrote about the relationship between the Declaration and the Constitution more clearly and articulately than anybody before him," to rectify this oversight. Adams's political thought and statesmanship disclosed the real nature of the nexus between the acts of foundation on which the American Republic was based.

Adams's *The Jubilee of the Constitution* (1839), commemorating Washington's inauguration as president, and his argument in the Supreme

Court in the *Amistad* case of 1841, form the basis for Wood's account of Adams's constitutionalism. In a country as extensive as the United States, consensus on Declaration principles could exist only at a high level of generality. At the level of practical application, the rights of life, liberty, equality, and consent varied according to time, place, and circumstance. Even more perplexing was the question of how the right to revolution in the Declaration of Independence was to be recognized in a permanent constitutional Union. After 1820, debate on these issues was channeled into sectional conflict over slavery, the constitutional status of which had been, from the government's beginning, a political sore point for Northerners and a source of moral resentment and vulnerability for Southerners. In the crisis of American nationality provoked by the slavery controversy, Wood argues, Adams's holistic construction of the Declaration and the Constitution disposed him toward a right understanding of the nature of the Union.

Required to clarify things left implicit by the founders, Adams's *Jubilee* address interpreted the Declaration and the Constitution as interrelated parts of the compact theory of government. He affirmed the Declaration's principle that the people, in virtue of their equality grounded in human nature, are the only legitimate source of power. Yet the sovereignty of the people had limits and was not self-justifying. It was necessary to acknowledge the people's "moral responsibility to the Supreme Ruler of the Universe" in order that the power of government, derived from the people's constituent sovereignty, might be made consistent with the principles of justice. On this condition, Adams wrote, "the institution, dissolution, and reinstitution of government, belong exclusively to THE PEOPLE."

Wood states that Adams, acclaimed as an opponent of the gag rule and other proslavery measures in Congress, participated in the *Amistad* case in the belief that the country must

confront the slavery question, deciding whether it would be a republic based on force or on justice. His argument on behalf of African captives claiming freedom under international law appealed to the Declaration's principle of a natural right to individual liberty. Wood summarizes: "Adams pointed the Court to the authority of God, which is at the same time the authority of right reason. Once again he brought reason and revelation together as partners in the battle against arbitrary power."

WITH AMBITION AND ERUDITION worthy of his mentor, Wood provides a lucid and often dazzling analysis of Adams's thought within the framework of classical philosophy, Jewish and Christian theology, and modern philosophy. Illuminating as is the sweep of Wood's philosophic history, however, its discursive character tends at times to attenuate and obscure the intellectual cogency of Adams's thought in its specific historical context. Wood fails, for example, to consider key passages in *Jubilee* discussing secession and the right to revolution—the most controversial element in Adams's Declarationist constitutional construction.

Jubilee articulates Adams's theory of the nature of the Union, affirming the constituent sovereignty of the people against the pretensions of state sovereignty. He argued that in the Declaration of Independence the "whole people," exercising their "constituent revolutionary power," declared the existence of the United States of America as a "compound nation." The Articles of Confederation, in contrast, asserted "the sovereignty of organized power" in "the separate or disunited States." The Confederation, said Adams, was "an unconscious usurpation upon the rights of the people of the United States"; between it and the Declaration there was "no congeniality of principle." The Constitution rectified this error, restoring the principles of the Declaration as the ground of national Union.

The Federal Convention made a Constitution for the people based on the self-evident truths of the Declaration. By ratifying it in state conventions, the people completed the revolutionary project of dissolving their ties of allegiance from one country, demolishing their old government, and instituting another government for themselves as an independent nation. Washington's inauguration carried the Constitution into execution, "to abide the test of time." Whether it would meet the test depended on the "good providence of Heaven," the character of those who would administer it, and the principles of the Constitution itself.

IN 1839 THE STATUS OF SLAVERY LOOMED AS the most significant question of constitutional principle facing the nation. According to the American way of constitutional politics, this matter was debated not directly on the Declaration's moral grounds, but in terms of the nature of the Union and the relative powers of the general and state governments. Central to this debate was the form and practical meaning of the right to revolution as a constitutional right.

Notwithstanding the commemorative purpose of *Jubilee*, Adams said recent events made it necessary once again to consider, as in the revolutionary era, questions "of the deepest and most vital interest to the continued existence of the Union itself." The key questions were "whether any one state of the Union had the right to secede from the confederacy at her pleasure," and "the right of the people of any one state, to nullify within her borders any legislative act of the general government."

Secession was possible under the confederation. Adams pointed out that the question came up and was "practically solved" in the framing and ratification of the Constitution. The people of Rhode Island, for example, refusing to take part in the Convention, "virtually seceded from the Union." When eleven states formed and ratified the Constitution, North Carolina, although it participated in the Convention, joined with Rhode Island in staying out of the reorganized Union. Adams wrote: "Their right to secede was not contested. No unfriendly step to injure was taken;...the door was left open for them to return whenever the proud and wayward spirit of state sovereignty should give way to the attractions of clearer sighted self-interest and kindred sympathies."

With the ratification of the Constitution, secession assumed a different aspect. Adams explained: "The questions of secession, or of resistance under state authority, against the execution of the laws of the Union within any state, could never again be presented under circumstances so favorable to the pretensions of the separate state, as they were at the organization of the Constitution of the United States." Although a national government had the power

to decide when violation of a contract absolved it from reciprocal obligations, Adams argued that "this last of earthly powers is not necessary to the freedom or independence of states, connected together by the immediate action of the people, of whom they consist."

Nevertheless, in the conduct of American federalism, uncertainty about the boundary line between the constitutional authority of the general and the state governments led to collisions threatening the dissolution of the Union. In different sections of the Union, Adams noted, the right of a state, or of several states in combination, to secede from the Union, and the right of a single state, without seceding, to nullify an act of Congress within the borders of that state, had been "directly asserted, fervently controverted, and attempted to be carried into execution." Fortunately, these examples of state resistance proved abortive, demonstrating in Adams's view the superiority of the Constitution over the Confederation, as a system of government "to control the temporary passions of the people." Adams observed: "In the calm hours of self-possession, the right of a State to nullify an act of Congress, is too absurd for argument and too odious for discussion. The right of a state to secede from the Union, is equally disowned by the principles of the Declaration of Independence." Adams's fundamental argument was that no right of state secession or nullification existed *under the Constitution* because the right to revolution was a natural right of the people. "To the people alone is there reserved, as well the dissolving, as the constituent power, and that power can be exercised by them only under the tie of conscience, binding them to the retributive justice of Heaven." In Adams's theory of the Union, the "whole people" of America, in the Declaration of Independence, declared the existence of a "compound nation." In their dual or compound character, the people were capable of acting as a "whole people" for national purposes in the government of the Union, and as a state people for particular purposes in their state government. "With these qualifications," Adams summarized, "we may admit the same [natural] right as vested in the people of every state in the Union, with reference to the General Government, which was exercised by the people of the United Colonies, with reference to the Supreme head of the British empire, of which they formed a part—and under these limitations, have the people of each state in the Union a right to secede from the confederated Union itself."

THROUGHOUT HIS PUBLIC CAREER Adams struggled with the seeming contradiction involved in maintaining a constitutional order that owed its existence to the right of revolution. At a high level of generality, and more explicitly than in any previous

writing, Adams in *Jubilee* advanced a theory of the right to revolution for Declarationist ends, couched in the language of secession or disunion. The timing and specific form that a division of the Union might take was a contingent matter, to be decided on prudential grounds. A few years later, Adams provoked the fury of Southerners by defending the constitutional right of Massachusetts abolitionists, in order to avert unjust domination by the slave power, to petition Congress for dissolution of the Union, without himself recommending exercise of the right to revolution on the merits.

Adams concluded his discussion of the threat of disunion with an appeal to the founders. Referring to the qualified popular right of secession as he defined it, he wrote: "Thus stands the RIGHT. But the indissoluble link of union between the people of the several states of this confederated nation, is after all, not in the *right*, but in the *heart*." Should the day come when the affections of the people were alienated from each other, it would be better "for the people of the disunited states to part in friendship... than to be held together by constraint." Then would be the time to revert to the precedent of the fathers, "to form again a more perfect union, by dissolving that which could no longer bind, and to leave the separated parts to be reunited by the law of political gravitation to the center."

Was it possible, decades removed from the founding, peaceably to exercise the right to revolution to reunite states in a more perfect union? Adams himself may have doubted it. From the days of the Essex Junto and the Hartford Convention, he pondered how the right to revolution could be exercised in a constitutional Union based on legal obligation. Speculate though one might about the "postulates" under which a division of the Union might be justified, as Adams did, he was convinced that in practice any such project necessarily implied "individual treason and collective rebellion."

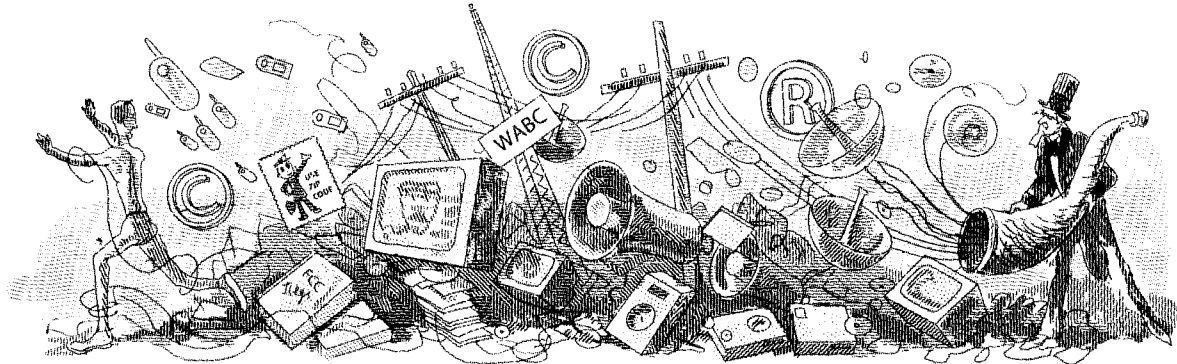
Civil war was always a danger under a federal system in which the Union's authority disposed it to treat state claims of a right of secession, or other intimations of disunion, as rebellion. When controversy over slavery introduced considerations of justice (based on the Declaration's principles) into the politics of constitutional construction, the long-feared "experiment of a civil war," in Adams's words, became all but inevitable. Lincoln's time to assume responsibility for preserving the Union, "conceived in liberty, and dedicated to the proposition that all men are created equal," was fast approaching.

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Book Review by Benjamin Ginsberg

THE REGIME OF FREE SPEECH

The Creation of the Media: Political Origins of Modern Communications,
by Paul Starr. Basic Books, 496 pages, \$27.50



MOST CONTEMPORARY LIBERALS appear to equate political freedom with a state that is weak abroad and strong at home; many conservatives seem to believe that freedom requires a state that is strong abroad but weak at home. But even as liberals need to acknowledge that the world can present dangers requiring the application of national power, conservatives should recognize that without an active and well-constituted government, freedom can become illusory. Indeed, we are often confronted with the apparent paradox that strong government can be a necessary condition for the existence of a free society.

Nowhere is this paradox more apparent than in the realm of freedom of expression and communication. It is tempting to equate such freedom with the absence of state interference. But the freedom of expression found in the United States and the other Western democracies is not the unbridled freedom of some state of nature. It is rather the structured freedom of a public forum, created and sustained by government. The maintenance of this forum, which theorists and jurists have sometimes called the "marketplace of ideas," has entailed more than two centuries of state effort in the areas of education, communication, and jurisprudence. The species of freedom that we enjoy is partly a product of the state's intervention, not merely a function of its benign absence.

In *The Creation of the Media: Political Origins of Modern Communications*, Paul Starr, a professor of sociology at Princeton University, examines the role of the U.S. government, along with the governments of Britain and France, in the construction of such instruments of free expression as the post office, the telegraph, the newspaper, and the radio. He also reviews the development

of a national jurisprudence that has encouraged and protected free expression from efforts by local and parochial forces to limit what could be said or printed in public.

From the beginning the United States government, in particular, played an enormous role in developing and fostering freedom of communication. In the early 1800s, Washington established an extensive system of post offices and post roads. Later, it encouraged the development of the telegraph, the telephone, and the radio. As for newspapers, without a substantial postal subsidy and considerable judicial protection from censorship and libel suits, the American press could never have thrived as it did. In these and many other respects, freedom of expression in the United States owes more to the state's intervention than one might think.

WOULD FREEDOM OF EXPRESSION exist without state intervention? Perhaps, but it would take a different form from the expression and communication that Westerners enjoy today. Without state intervention, local governments and cultural and ethnic groups surely would have maintained distinct languages and frames of reference. Multiculturalism would have been a given. In a similar vein, absent state intervention, regional and local interests almost certainly would have blocked the construction of nation-spanning communications networks. At the very least, different localities would have promulgated different rules.

How did Western countries establish national forums for free expression? Although Starr emphasizes the important differences between the United States and European states, from a broad perspective the similarities are more significant than the differences. First, in

the 19th century, most Western regimes made strenuous efforts to impose a single national language upon their citizens, who often spoke a bewildering array of dialects and tongues. In the U.S., the arrival of successive waves of immigrants during the century meant that, as today, millions of residents spoke no English. In response, national, state, and local governments worked to impose the English language on these newcomers through compulsory school instruction and adult education. Even without significant immigration, other nations had among their residents millions who did not speak the national language. In 19th-century France, for example, most citizens spoke little or no French, communicating, instead, through the Germanic dialects native to Normandy, Brittany, and the other provinces conquered by French kings over the centuries. Successive French governments, like their American counterpart, worked diligently to impose French on the population so that by the 20th century regional dialects remained the primary mode of expression only of elderly individuals in the most isolated areas.

Second, and closely related to the effort to achieve linguistic unity, was the matter of literacy. For ages, widespread illiteracy meant that communication depended upon word of mouth, a situation hardly conducive to the dissemination of ideas. In the last two centuries, however, all Western regimes worked to expand their citizens' ability to read and write. Like the imposition of a common language, the elimination of illiteracy has opened the way for nationwide expression and communication.

The third basic ingredient for the construction of the marketplace of ideas was the reconstitution of perception. Beginning in the 1800s, Western regimes sought, mainly through mass