

Consensus and Celebration



CliffsQuickReview: American Government,, CliffsAP: United States History Preparation Guide, CliffsNotes on The Federalist

Paul Soifer, Abraham Hoffman, and D. Stephen Voss, *CliffsQuickReview: American Government*, New York: John Wiley & Sons, 2001. 180 pp., \$9.99. Paul Soifer and Abraham Hoffman, *CliffsAP: United States History Preparation Guide*, 3d ed., New York: John Wiley & Sons, 2000. 294 pp., \$16.99. George F. Willison, *CliffsNotes*

on *The Federalist*, New York, John Wiley & Sons, 1971. 109 pp., \$4.95.

If this is Wednesday, it must be the bicentennial or the tercentennial of some sacred event in our national history. Celebration of such anniversaries has become a cottage industry in our country, part of a booming economy in popular history that includes growing attendance at historical museums, mushrooming sales for popular histories, and a craze of historical novels. History has become a major item on the World Wide Web, and movie audiences have gravitated to historical films in record numbers.

Paradoxically all of this comes at a time when, as historian Kenneth Jackson put it in his 2002 Organization of American Historians presidential address, history is “flunking as a profession.” Professor Jackson offers a number of reasons for this somber judgment, all of which seem plausible to me, and recent accusations of plagiarism and fabrication of primary sources against some academic historians have not helped the reputation of the profession as a whole, but the study guides under review here offer another reason why our profession is staggering. Top research scholars have failed, despite repeated and earnest efforts, to convey to the general reader, the secondary school teacher, and students the complexity and irony of American history.

This charge is particularly appropriate for those of us who, like me, teach the U.S. history survey. We salute the achievements of the dead. We summon up the yearning and striving of those whose sacrifices made our nation possible. We analyze the thinking of those who framed the laws by which we govern ourselves. True, we recognize the too often empty rhetoric of equality, the broken promises to many left out of the polity for so long, the way that property seems to trump dignity in so much of our law, and the conflict and competition that undermine community. But our story remains one of the progressive fulfillment of an American dream.

In this task of celebration we are aided by “study guides.” When I was a student in the 1960s, I prepared my own study guides by redacting my reading and class lecture notes, but commercial study guides were already widely available. They still are. Some are free standing, like those prepared by CliffsAP (the newest version of CliffsNotes). Others, termed “student guides,” accompany commercial textbooks in American history.

The study guide, official or unofficial, is the least common denominator and the most common purchase at most of our state colleges and universities. All of our boards of regents demand that degree candidates pass courses in the U.S. Constitution and U.S. history. We historians should not complain about such boilerplate “core” curriculums. The survey course requirement forces us to abandon all pose of elitism, and accept the basic proposition that we and our survey courses are the place where college students will learn about our history. And no matter how well we lecture, how well we relate the past to the

present or empower our students to learn for themselves, the study guide and its cousins are going to be there, on the students' desks and in their book bags. How well do these three study guides introduce the federal Constitution to history students? (The editors of *Common-place* and the author of this review had hoped to add to it an *Idiot's Guide to the Constitution* and a *Constitution for Dummies*, but neither exists—a striking lacuna in a list of publications that includes all manner of other guides for the uninformed. The oversight may be an accident, or it may be that the Constitution is not for dummies or idiots. Or it may be that the stakes of historicizing the Constitution are higher than the stakes of writing about computer software and foreign languages.)

How we read the historical Constitution influences how we make law. One school of interpretation of the Constitution, sometimes called the originalism or original intent school, argues that we must understand the Constitution in the light of the meaning given to its provisions by their Framers. The academic debate over originalism occurs in the shadow of appellate courthouses, and judges are wont to reach for an original meaning when it corresponds with their opinion. The foremost modern student of the historical Constitution, Jack Rakove, attempts to disarm the originalism issue by distinguishing among original meaning (which he defines as contemporary late eighteenth-century English and American usages), intention (how the Framers meant the terms to function) and understanding (how the terms were read by contemporary and later audiences). Unfortunately, in textbooks, lectures, and study guides, such precision is rarely attempted. It would go over the heads of students and lay readers.

It would not be fair, thus, to hold the authors of study guides to the high standards of historical detail and analytical breadth in a work as brilliant as Rakove's. What standards ought apply to the study guide, then? Surely clarity, for one, and factual accuracy, for a second. But history is more than one fact after another, and we ought to be able to require the authors of study guides to analyze context. In fact, the study guides pay a good deal of attention to the internal analysis of the Constitution: explaining the division and separation of powers; following the many compromises of the Framers on representation, slavery, the executive; and making intellectual sense of the arguments. Analysis of the external context is much harder but just as necessary. Indeed, the writing *of* the Constitution and the writing *in* the Constitution cannot be understood without looking at the political and economic history of the preceding years, and those years are still the subject of serious controversy among historians.

One can date the onset of that controversy variously, for the debate over the meaning of the Constitution between its advocates and its critics in 1788 was in a fashion a debate over the history of the American Revolution. For modern scholars, the debate began anew with the publication of Charles Beard's *An Economic Interpretation of the Constitution of the United States* in 1913. Beard claimed that the Constitution was the work of creditors and speculators.

Although Forrest McDonald among others questioned that interpretation, historians like Merrill Jensen accepted it, and portrayed the Constitution as the capstone of a Thermidorean counterrevolution. The debate is much more sophisticated now, due in large measure to the work of Gordon Wood, and it is old hat to historians, but one can still ask if a study guide can do—or should try to do—justice to the many scholarly perspectives on the context of the Constitutional Convention and its leaders. The answer is that we cannot expect a study guide to do more than barely outline the various positions. From my own experience I can vouch that students both dislike and refuse to remember historiography. They want someone to tell them which of the positions is the soundest (and to be fair that is what the scholars are trying to do as well). It is we teachers who want to muddy the waters.

Soifer and Hoffman's study guide to United States history is AP-test driven. Its purpose is not to review the material so much as teach the skills necessary to pass the Advanced Placement Examination in United States History. Thus the entirety of the chapter "The Constitution and the Federalists, 1787-1800" is four pages (101-05). Under the heading "things to know" are "the major compromises, representation, slavery, election of the president, the principles embodied in the Constitution . . . Federalists vs. Antifederalists; Amendments to the Constitution." The key terms section and the "important definitions section" follow the same set of implications. There are those who object, but no one is the loser. The era of the Constitution is one of political and legal achievement, and the two are intertwined. That is, the progress in the law is the result of political empowerment of the people. There is a straight line from the Revolution to the Constitution, suggesting that the latter completes the former. There is no mention of the absence of more than two-thirds of the people from the electorate. There is no mention of the vital importance of the concept of property, indeed the emergence of the concept of private property, that the Constitution (and the Bill of Rights) enshrines. For more on the period the authors send the reader to textbooks, after explaining how they are to be read.

Soifer, Hoffman, and Voss's *American Government* devotes an entire chapter to the Constitution. Its central theme is that the Constitution was "a list of Do's and Don'ts" defining the "contract" between "rulers and ruled." The Constitution "evolved" (here meaning came into existence rather than altered itself) "to fulfill this desire for a binding contract," the authors implying that the Constitution was the natural conclusion to the desire for self-government expressed in the Revolution. This is "consensus history" with a vengeance. There's no room for the dissenters, the marginal, the oppressed. They did not exist. In fact, no one is oppressed by these laws because the only people present are the Framers.

According to the authors, the Constitution differed from the constitutions of other nations "because it was a *written* code that the *government lacked authority to change*" (3, italics in original). Perhaps this was the intention of its Framers, but the Constitution has changed as a result of government

action: the powers and purview of the federal government expanding into areas of everyday private life in ways unimaginable in 1787; the relationship between the federal government and the states changing dramatically even before the Fourteenth Amendment was conceived; the role of the presidency and the courts growing in proportion as both of these branches of government took upon themselves new functions. What is more, as the Framers well knew, in the years before 1787 there were a number of written codes that preceded governments and limited them. Ancient Greek city-states, ancient Rome, Swiss cantons, Poland, and the Scandinavian countries at one time or another had such codes. They differed from the federal Constitution not in being oral or open-ended, but in having the wrong balance within the branches of government, or the wrong basis for representation, or the wrong kind of executive.

The authors next summarize the historical context of Revolutionary constitutionalism. The Continental Congress "assumed governmental functions . . . without legal authority to do so." Jefferson based the Declaration of Independence largely on John Locke's *Two Treatises*. He needed little help and no other sources of his ideas are mentioned. The state constitutions reflected the idea that "the people were the source of power." In them, "individual liberties were usually safeguarded" (4). By this time in my course I've lectured on slavery, anti-Catholicism, and the legal debilities of women in the early republic. Most of the state constitutions in various ways supported these positions, even when they prefaced themselves with portions from the Declaration of Independence. Even the author of that document did not support laws freeing the slaves, giving full citizenship to Roman Catholics, or enfranchising women. Mentioning all of this may be presentist on my part (although Thomas Paine, Ethan Allen, Benjamin Franklin, Elbridge Gerry, Benjamin Rush, and other revolutionaries spoke of one or more of these reforms at the time), but surely the study guide ought to warn the students that not all the people were "people" under the law. And please, please, spell Shays's Rebellion correctly; his name was Daniel Shays, not Shay (5).

Slavery finally makes its appearance in a section entitled "Decisions on slavery" near the end of the discussion of the compromises at the Philadelphia convention. "Slaves were a significant percentage of the population of the southern states" is the only demographic or economic depiction of early slavery in the entire book. There is no mention of the many slaves in New York City or Philadelphia at the time of the convention; of the importance of slavery as a system of labor; of the investment that owners had in slave property; or of the threat of South Carolina, whose slave trade was a major industry, and Georgia, whose need for slaves made it the major consumer of the trade, to bolt the convention if some provision were not made for their "peculiar institution." There is also no mention of the Rendition Clause of the Constitution that "No person, held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due" (U.S. Const. Art. IV, Sec. 2). This provision was the explicit sanction for the Fugitive Slave Laws of

1793 and 1850, and was understood at the time and subsequently to be a major concession to the slave-holding states and the slave owners therein. The controversy over the legality of slave catching in the North was one, if not the principal, cause of the Civil War. Leaving out this provision in particular, and the discussion of slavery and the Constitution as a whole, is a serious charge against the value of this study guide. The students, sadly, will not know how much they have missed.

The next portion of the chapter is devoted to "Key Concepts." Two of these, "checks and balances" and "federalism," are not mentioned in the Constitution itself, which raises a number of questions. The word slavery, for example, never appears. The Constitution has in it a number of provisions, like the Three-fifths Clause, the reference to the "migration or immigration of such persons" in Art I, Sec. 9 (the overseas slave-trade provision), and the Rendition Clause, that never mention slavery but clearly reference it. To what extent are other key legal institutions actually extraconstitutional? There is no mention of administration or bureaucracy in the Constitution. How could the new government run without these? Consider political parties. Within a decade of the ratification of the Constitution the two party system had become a hallmark of national politics. Without them, the federal government could not organize itself, but there is no provision for them in the written contract of rulers and ruled drafted in 1787. What about the idea of rights? In the original of the Constitution the word is not used. It first appears in the amendments proposed by James Madison at the first session of the U.S. Congress. If notions of liberty, equality, and freedom were basic to the Revolution, why were they invisible in the language of the Framers at Philadelphia? What might this mean and why would it be important to students?

What it means is that any adequate summary of the Constitution must concern itself with silences and gaps as well as text. The authors had the chance to ask students about these silences in the "critical thinking" section that ends the chapter. Instead, they ask students to make up a new amendment to the Constitution that "establishes a critical 'right' not currently protected." I like this exercise, and will borrow it when I next teach legal history, but wonder if it could have been used to promote historical critical thinking. Perhaps the authors might have asked why the Framers did not voice some of the silences or fill some of the gaps in the letter of the Constitution at the time it was written. One thus comes away from these two study guides with the conclusion that the course of our early constitutionalism was smooth and consensual, a conclusion that fits the celebratory mode of contemporary popular histories.

Willison's *The Federalist* is an able exposition of the essays, prefaced by three short biographies, and divided into expository and analytical sections on each of the numbers. Although it is now thirty years old, and its laudatory tone may be read as early 1970s consensus political science in a time when riotous divisiveness seemed everywhere, Willison's study guide is a model of careful prose and sound judgment. The review questions are thoughtful and

probing. Would that all study guides be this literate, balanced, and informative.

But even Willison's work teeters at the edge of the trap that celebratory history has laid for students and teachers. Such celebrations of events are not intended to offer varying perspectives or controversial interpretations. Instead, the celebrations take the form of rituals to which we all are expected to consent. Despite (or perhaps because of) the controversy over the fashioning of a national curriculum for American history in secondary schools, much of history that we cover in the classroom remains celebratory. There is much to celebrate but the study of American history should be more than mere celebration and our study guides should foster inquiry rather than obeisance.

Further Reading: See Merrill Jensen, *The New Nation: A History of the United States During the Confederation, 1781-1789* (New York, 1961); Kenneth Jackson, "The Power of History: The Weakness of a Profession" *Journal of American History* 88 (March 2002), 1299-1314; Leonard W. Levy, *Original Intent and the Framers' Constitution* (New York, 1988); Forrest McDonald, *We the People: The Economic Origins of the Constitution* (New York, 1958); Gary Nash, Charlotte Crabtree, and Ross E. Dunn, *History on Trial: Culture Wars and the Teaching of the Past* (New York, 1997); Jack Rakove, *Original Meanings: Politics and Ideas in the Making of the Constitution* (New York, 1996), chaps. 7-8; Gordon Wood, *The Creation of the American Republic, 1776-1787* (Chapel Hill, 1969) and *The Radicalism of the American Revolution* (New York, 1991).

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