

France. Madison and Jefferson, writing in Freneau's *National Gazette*, argued that the fate of France and that of the United States were united: "the form our own government was to take depended much more on the events of France than any body had before imagined." When the French Revolution began in 1789, nearly all Americans welcomed what looked like the dawn of freedom, regarding French events as the logical sequel to those that had liberated their own country in the 1770s and 1780s. When heads began to fall to the guillotine in 1793, however, Federalists shrank back in dismay, explaining the Terror as an object lesson in the hazards of popular democracy. Cobbett called its perpetrators, the Jacobins, "a gang of bloodthirsty cannibals" who had "drenched the country with the blood of the innocent." Most Republicans, by contrast, approved, rationalizing the executions as necessary to exorcise the mystique of an old tyranny.

When Citizen Genet, the revolution's emissary, arrived in America in April 1793, Republican editors, led by Freneau, feted him while the Federalists warned that he was trying to draw America out of its neutrality and into war with Britain. Genet's meddling in American domestic affairs soon embarrassed the Republicans and obliged Jefferson to distance himself from Freneau. In 1794 and 1795, on the other hand, Jay's Treaty, by which Britain imposed humbling terms on the Americans, embarrassed the Federalists. Effigies of John Jay, the American negotiator, were paraded through the streets by angry Republican mobs and then burned. Even President Washington suffered lacerating attacks from Republican journalists like Bache. Washington, hitherto venerated on all sides as the Father of His Country, seemed to the Jeffersonians too much the patriarch, too lordly to preside over a democracy. Bache wrote, "no character or place ought to be so sacred in a republican government as to be above criticism. Inviolability and infallibility are royal qualities, which *slaves* only can comprehend." Contributors to the anti-Washington campaign in Bache's *Aurora*

often used such pen names as "Brutus" and "Casca," the killers of the overmighty Julius Caesar.

With the "XYZ Affair" of 1797-98, when French politicians like Talleyrand tried to extract bribes from American diplomats, the pendulum took another swing, giving Federalists a renewed surge of popularity. President Adams struggled to resist popular enthusiasm for war against France while Congress passed the Alien and Sedition Acts, by whose terms "Jacobin" editors in the Republican cause (including Duane and Bache) faced prosecution. The acts are usually deplored retrospectively, sometimes even compared with McCarthyism, but as Daniel notes, they were "not only an effort to secure partisan advantage but ... an effort to 'civilize' the increasingly 'uncivilized' tone of American political discourse." Despite scattered prosecutions and convictions, they failed to silence the Republican press, whose leaders helped bring Jefferson to the White House in the election of 1800.

Daniel ends this superb and timely book with a reminder that America's great and durable institutions—freedom of the press among them—arose not out of the calm meditations of the Founders, but in the heat of acute political crises. "Scandal and political incivility have always been part of American public life," he concludes, and it was from the conflicts of the Founders' age that "their own great acts of collective political creativity emerged. ... Without such conflict the political triumphs of the early Republic would have been impossible." It is amusing to imagine Michael Moore, Sean Hannity, Al Franken, and Ann Coulter being spirited back to the 1790s. They might have to spend a week or two adjusting to simpler technologies and learning a new idiom, but they would find the stridency and rancor of political controversy entirely familiar. ■

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[*Defending the Republic: Constitutional Morality in a Time of Crisis*, Bruce P. Frohnen and Kenneth L. Grasso, eds., 151 Books, 352 pages]

## Constitutional Moralist

By Daniel McCarthy

GEORGE CAREY is the dean of constitutional conservatives. Since 1961, he has been professor of government at Georgetown University, where he's a throwback in the best sense—to the days when faculty cared as much about teaching as about publishing, and political science still had an intimate association with political philosophy. In voluminous essays and a handful of small but densely reasoned books, Carey has kept alive a tradition of scholarship that seeks to understand the American Republic as the Founders understood it.

Over the decades, Carey has made a profound mark upon his peers and generations of students, as *Defending the Republic*, a critical celebration of his thought, shows. Editors Bruce Frohnen and Kenneth Grasso have assembled 14 distinguished contributors to illuminate, and sometimes challenge, Carey's ideas. Their essays explore half a dozen themes of his work: the contrast between a majoritarian republic and mass democracy; the clash between Christianity and the Enlightenment in the American tradition; the usurpation of legislative powers by the executive and judiciary; the fragile basis for public virtue; "constitutional morality"; and the rise of an activist ideology that may already have rendered the Constitution, as Carey fears, "a dead letter."

Frohnen and Paul Gottfried provide the essential background to Carey's thinking in the opening essays. To understand Carey, it helps to understand his friend and collaborator Willmoore Kendall, the "wild Yale don" (in Dwight Macdonald's words) who was "the most

important political theorist ... since the end of World War II" (according to Jeffrey Hart). In the 1960s, Kendall and Carey co-authored several important essays, including an introduction to *The Federalist*. After Kendall's death in 1968, Carey edited and completed another joint project, a slim, remarkable volume called *The Basic Symbols of the American Political Tradition*. After analyzing several of America's foundational documents, from the Mayflower Compact to the Bill of Rights, Kendall and Carey concluded that the "supreme symbol" in American politics was not equality or individual rights but "self-government through deliberative process" conducted under a higher law.

**"CONSTITUTIONAL MORALITY" ITSELF RESTS ON A DEEPER FOUNDATION, ONE FOR WHICH THE FRAMERS COULD NOT PLAN: A VIRTUOUS PEOPLE. THIS NEED IS MET, IF AT ALL, BY CIVIL SOCIETY—ESPECIALLY BY CHURCHES AND FAMILIES.**

Kendall defined himself as a "majority-rule democrat" and believed that the Constitution empowered the legislature over the executive and judicial branches. Carey has taken pains to show that this did not mean the Framers thought a majority should immediately get whatever it wants. They did not envision representatives as taking direct instruction from voters; instead congressmen and senators were to practice reasoned deliberation. The Constitution provides for a slow democracy. Yet even allowing for that, how does legislative supremacy square with the "separation of powers" and "checks and balances" that every schoolboy learns about?

Carey's answer is ingenious. While the Constitution imbues the legislature with power sufficient to dominate the other branches—Congress can impeach presidents and judges, eliminate their salaries and budgets, override executive vetoes, and restrict the courts' jurisdiction—*The Federalist* teaches statesmen not to abuse this authority. As Carey writes, "*The Federalist*, we may go so far as to say, provides us with what can

appropriately be termed a 'constitutional morality' ... it urges upon the rulers and ruled alike standards of behavior conducive to maintaining and perpetuating [the Republic's] coherence." Writing as Publius, Madison, Hamilton, and Jay composed an ethical as well as technical user's manual for the Constitution.

Even the Constitution as modified by *The Federalist* cannot guarantee peace, liberty, and order, however. "Constitutional morality" itself rests on a deeper foundation, one for which the Framers could not plan: a virtuous people. This need is met, if at all, by civil society—especially by churches and families. In the early Republic, despite sectarian

squabbles among Christians and between Christians and deists, a consensus on family and moral life prevailed. As the United States grew more diverse, the common denominator changed from a Protestant to a broadly Judeo-Christian outlook. Today, a nation of 300 million may be too large to have any public orthodoxy. As more than one essay in *Defending the Republic* notes, Carey has become increasingly sympathetic to Antifederalist criticisms of Madison's "extended republic"—a republic too extended to remain republican.

But that is not the "crisis" of *Defending the Republic's* subtitle. The constitutional order has been derailed not merely by a lack of cultural consensus but by the aggressive maneuvers of a new morality opposed to the ethos of the *Federalist* and the religious traditions of the people. Where the Framers emphasized deliberative process, the new morality—progressivism—demands "responsive," plebiscitary democracy. (Particularly in the form of presidential elections, which progressives construe as providing a "mandate" for specific

policies.) And to ensure that the democratic values of equality and tolerance prevail, progressivism requires that courts overrule legislatures. The Supreme Court is the new morality's weapon of choice.

Several of the essays in this volume explore the roots and ramifications of this ideology. Peter Augustine Lawler and Francis Canavan trace the new morality's origins to the individualist philosophy of John Locke—indeed, Canavan follows the trail all the way to William of Ockham. Canavan contends that Ockham's nominalism and Lockean liberalism have been imposed upon Americans through such Supreme Court decisions as *Griswold v. Connecticut* (which discovered a right to privacy—and to contraception) and *Roe v. Wade*. William Gangi, in his essay "The Rule of Men: How Caring Too Much About Important Things is Destroying Constitutional Law," takes the legal critique one step further and points to *Brown v. Board of Education* as, according to judicial progressives, "the birth of modern judicial review" and "causing Americans to care more deeply about all types of discrimination under law than ever before."

Gangi's essay is commendable for broaching, in *Brown*, a subject few conservatives want to revisit. That he does so is important since even well-intentioned judicial activism vitiates self-government. But Gangi's essay also illustrates a weakness of many of the contributions to *Defending the Republic*—they do not carry their analysis far enough. Gangi mixes the structural case against judicial activism with his own policy preferences. For example, "by tying the hands of Congress and state legislatures on the matter of flag burning," he asks, "haven't the courts diminished their ability to foster essential values such as patriotism and communal solidarity?"

In fact, the courts have done something worse—and very nearly the opposite. They have committed an offense not only against republican self-rule but against liberty as well, by depriving civil

libertarians of the need to organize politically, persuade the public, and win power in the legislature. By offering cheap symbolic liberties like the “right” to burn a flag, the courts crowd out the cause of reasoned liberty in the wider political process. Moreover, legislators who will not debate civil liberties seriously will hardly deliberate prudently over questions of war or peace, economic self-responsibility or socialism, either. The result has been a national legislature, under Republicans and Democrats alike, that passes the Patriot Act without reading it, continues to fund the wars in Iraq and Afghanistan, and grants immunity to telecommunications firms that illegally give their customers’ data to federal agencies. The lack of deliberation in Congress, not coincidentally, mirrors the lack of serious and civil debate in our culture wars. The outcome in politics and culture alike has been a perpetual shouting match between antinomian liberals and authoritarian right-wingers, while constitutional traditions of republican liberty languish.

All too many conservatives have grown accustomed to guarding against threats to the Constitution from only one direction, the Left. Given the legacy of Woodrow Wilson, FDR, Harry Truman, Lyndon Johnson, and now Barack Obama—to say nothing of Harry Blackmun and Ruth Bader Ginsburg—that shouldn’t be surprising. But after Nixon and Bush II—to say nothing of Warren Burger, the “liberal” Republican who as governor of California interned Japanese-Americans during World War II—traditional conservatives must recognize that there is an anti-constitutional Right as well.

Carey has always known this, and two chapters in *Defending the Republic* address characteristically right-wing deviations from constitutional norms. Gary Gregg II, in his commanding essay “No Presidential Republic,” observes that “the voices of James Burnham and Willmoore Kendall,” enemies of presidential aggrandizement, “have now grown distant and largely unrecogniz-

able to contemporary conservatives. ... we have become preoccupied by other issues and have become intoxicated by the potent elixir of power politics.” Indeed, it’s ironic that for the sake of appointing another Scalia or Roberts, conservatives vote for the likes of a George W. Bush. They would fix the courts by contributing to the hypertrophy of the executive—while the most republican of our institutions, Congress, degenerates.

Today the Left is not the only vehicle for the new morality. Claes Ryn, in his essay “Neo-Jacobin Nationalism or Responsible Nationhood?,” shows how the revolutionary ethos of neoconservatism has sought to supplant constitutional morality. Ryn finds a parallel between the multiplicity of ways of life in a federal republic and peaceable relations with other nations:

States, counties, local communities, and individuals can, through the responsible exercise of freedom, contribute in their diverse ways to the good of the whole. This traditional American notion can be extended to international affairs and be translated into the kind of cosmopolitanism that is required for responsible nationhood and peace in a multicultural world.

By contrast, the imperial attitudes of neoconservatives toward the outside world have dreadful implications for self-government at home, undermining the humility essential to constitutional morality. “The common good depends on a limiting of egotism,” says Ryn.

Every essay in *Defending the Republic* deserves close attention. Frohnen and Grasso have paid fit tribute to George Carey by assembling a *Festschrift* nearly on par with his own work. In our time, Carey’s writings are as essential a guide to constitutional morality as *The Federalist* itself is to the Constitution. Read him, and consult this book to deepen your understanding of our most distinguished constitutionalist. ■

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[*The Next Conservatism*, Paul M. Weyrich and William S. Lind, St. Augustine’s Press, 147 pages]

## Back to the Future

By Kara Hopkins

IN THE HIGH SUMMER of the Bush era, an administration official inquired about my “view from the cheap seats.” Excellent, thanks. Swaddled in ideological purity, safe above the muck of actual governance, I could spread generous disdain in all directions.

“Do you think that what you do makes any difference?” the Man in the Arena asked. (Never mind that Brooks Brothers’ nattiest wasn’t exactly “marred by dust and sweat and blood” after a bruising day at the laptop.)

Here my vanity got the better of my good sense. I might, ashamed to admit, have answered with an earnest ode to permanent things and the duty of dissent. There’s a chance I even quoted some decontextualized Burke on the subject of helpful antagonists. But he had a point. I snipe much and affect little—an apt definition of modern conservatism.

That’s not to say that he accomplished anything for the conservative cause either. Whatever his personal ideals, as a good soldier, his job required loyalty to the establishment.

No one tells you when you come to Washington that there are two political worlds. Not Democratic and Republican—those share a universe. They’re part of the industry of politics—a monopolistic enterprise with massive barriers to entry—cranking out reams of legislation no sane citizen should ever read. The bipartisan point is power for its own sake. Advancing a program comes second to consolidating and perpetuating control. Thus compromises are struck, convenient marriages blessed and dissolved. Tolkien’s ring is polished from both sides.

Then there’s the world of ideas, of high principle seeking some grounding