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The Founding as Ideology

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Abstract

The "Founding" is a keyword in the United States' constitutional vocabulary. Across popular politics, public law, and civic culture, it signifies a closed moment of constitutional creation—and often much more. Invocations commonly involve vague yet powerful significations about constitutional authority, memory, and meaning-making. Particularly as "originalist" judicial and academic writing leans on these submerged qualities, it is worth asking: what is the Founding? This Article proposes a conceptual answer in historical context. Through a close study of contours of antebellum constitutionalism, it argues for understanding the Founding as an ideology that committed Americans to venerate and defer to an authoritative, originary constitutional era. Forged as citizens grappled with the politics of slavery, the Founding structured language and perception, motivated action and inaction, and delimited boundaries of political possibility. This Article studies two essential sites of inculcation apart from formal power—civic ceremonies and educational practices—to sketch the structure of the constitutional Founding as ideology. Then, it outlines how that ideology authorized constitutional actions of voting, legislating, judging, protesting, and seceding. In conclusion, the Article suggests that its analysis models a broader framework for interpreting the diffuse materials of constitutional life across periodizations of constitutional history. Approaching the Founding as ideology can allow scholars to better see how its relative authority over time and the purposes to which it has been directed have shaped American constitutional experience.

In 1849, the shelves of American bookshops assumed the weight of Richard Hildreth's national creation story, *The History of the United States of America, from the Discovery of the Continent to the Organization of Government under the Federal Constitution*. This three-volume narrative of colonization to Constitution, assembled with unusual attention to primary sources, represented a landmark in American history writing. Yet its circulation during the following year, a

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season of intensifying struggle over slavery's constitutional status, elicited a ripple of dissatisfaction. Critics did not accuse the New England author of sectional bias, partisanship, or inaccuracy. Instead, the chronicle struck readers as too "apathetic" and "coldly impartial" for the subject at hand. Hildreth conceded his failure to pay homage to the providential heroism that, "in the popular idea, the fathers and founders of our American Republic have been invested." His *History*, in other words, had transgressed the conventions of antebellum "Founders' chic." Hildreth's deviation exposed more than literary taste. It cast in relief the contours of a constitutional consciousness that stretched from literature to law. A "mythical and heroic" founding era existed in general conception, Hildreth commented, beyond which human actors become "stripped, in the popular mind, of that super-human magnanimity and disinterestedness so commonly ascribed to all the men of the Revolution." The historian blamed this discontinuity on "patriotic eulogium" suffusing everyday speechifying and print culture that ceaselessly exalted a "golden" founding age—a mystification compounded by "rhetorical effusions" that consigned the post-ratification decades to the "brazen and iron ages." To narrate a national story that ran against this stream of words and images made one an unpopular writer, a voice outside comfortable collective memory. Disappointing sales for the country's most rigorous historical literature validated his point in the marketplace for national ideas.[1]

Hildreth's exceptional *History*, in its temporal continuity and lackluster factuality, proved the rule of "the Founding" in public life. Antebellum Americans enshrined the era of national creation above their own, elevated its participants over themselves, and would not buy a history that did otherwise. Much depended on that venerated Founding. People discovered within its patriotic folds a tremendous governing power. While the whole revolutionary era gleamed in remembrance, antebellum citizens located a singular authority in the event of federal constitutional writing and ratification. By Hildreth's day, that moment was constructed as the telos of independence. The *constitutional* Founding possessed a power that other tales did not: it placed the force of fundamental law behind its stories and lessons.

This Founding married the resonance of collective memory with supreme legal authority. It alloyed the malleable materials of American nationalism with the harder stuff of constitutional directives, and enlisted the sense-making capabilities of narrative to deliver apparent constitutional truths. Origin stories of Constitution-making and associated original meanings, bearing the cultural power of what, per Hildreth, Americans saw as "mythical and heroic times," transformed impersonal text. It was not written words that commanded obedience and devotion but rather an instrument embedded in a "golden"

[1] Richard Hildreth, *The History of the United States of America, from the Discovery of the Continent to the Organization of Government under the Federal Constitution* (New York: Harper and Brothers, Publishers, 1849); Richard Hildreth, *The History of the United States of America: From the adoption of the federal Constitution to the end of the Sixteenth Congress, 1789-1821* (vol. 4, New York: Harper and Brothers, Publishers, 1851), vi–viii; "Hildreth's History of the United States," *North American Review* 73 (1851): 411–47; David Waldstreicher, "Founders Chic as Culture War," *Radical History Review* 84 (2002), 185–94; Arthur Schlesinger, Jr., "The Problem of Richard Hildreth," *New England Quarterly* 13 (1940): 223–45.

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Founding that enriched its authority and expanded its scope. This synthesis was the "Fathers' Constitution," the anchor of relentless antebellum contestation as slavery's dire politics frayed the Union. The Founding provided a framework, both disciplining and enabling, through which Americans strove to govern themselves and others. Fashioned by a generation removed from the originary era, it encompassed a cast of luminaries, compendium of quotations, and corpus of ascribed understandings. The Founding gave Americans the resources to delimit political possibilities and define historically ordained pathways for national being across time. For many, it patterned how to think, speak and act.[2]

Scholars have gone to great lengths to recover the ideological contours of the American Revolution and intellectual foundations of the United States Constitution. From British polemicists and Enlightenment writers to common lawyers and political philosophers, the elite founding-era mental world has been mapped with extraordinary care. Yet a curious shift in political and constitutional discourse can be observed when moving from the foreign country of the eighteenth century into a nineteenth-century world populated by post-Revolutionary generations. A fresh set of touchstones supplanted older landmarks after the 1820s. Absent "fathers and founders" took the discursive field as central referents and symbols, while founding-era terms and invocations attenuated. If adopting the Federal Constitution marked a new departure in politics, then rising generations of interest-pursuing citizenry widened this divide in retrospect by developing a collective memory of an authoritative Founding. As a young Virginian could proclaim by 1857, "Our constitution is not an experiment, but the very climacteric of experience, an everlasting Truth deduced from the Error of past ages. It cannot fall, or history is mere tradition, and humanity false." What national fathers had intended and believed became bedrock as founding era ideas yielded to an ascendant ideology of the constitutional Founding itself. Ironically, while the Revolution had undermined vestigial political deference to elites, popular veneration of a constitutional Founding recommitted Americans to deference toward authorities above democratic will. Active citizens proudly pledged to follow the intentions of departed Constitution-makers, circumscribing majority rule. Defending hard-bargained-for original meanings narrowed lawmaking discretion and displaced other conceptions of political responsibilities under the Constitution.[3]

[2] For my account tracing the nineteenth-century construction and consequences of an authoritative constitutional Founding, see Aaron Hall, *The Founding Rules: Slavery and the Creation of American Constitutionalism, 1789–1889* (New York: Cambridge University Press, forthcoming). The constitutional Founding incorporates but is not interchangeable with "constitutional veneration." This Founding specifies the object of veneration as the Fathers' Constitution, defines the nature of the Constitution in terms of a vessel containing authoritative original expectations, understandings, and intentions, and structures a normative relationship between past and present. On changing perceptions of the Constitution's textual nature, see Jonathan Gienapp, "Written Constitutionalism, Past and Present," *Law and History Review* 39 (2021): 321–60.

[3] Joseph Hodgson, Jr., *An Address Delivered Before the Jefferson Society of the University of Virginia: At Its Anniversary Celebration, Held in the Public Hall, April 13, 1857* (Richmond: J.D. Hammersley & Co., 1857), 14. Touchstones on Revolutionary ideology and constitutionalism include Gordon Wood, *The*

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Where is this ideological Founding in scholarship? Once-heated debates over the temporal reach of republicanism and earlier ideological commitments pass by this new framework for political argument and action. Work on partisan popular constitutionalism, addressing disputes over construction and judicial review, likewise misses its broader cross-party structure and cross-class constraints. Yet the Founding is present across literatures. Historical work on political culture and the politics of slavery, race, and citizenship incorporates it into analytical narratives as an implicit *background condition*. Similarly, in legal scholarship examining constitutional memory, appeals to the Founding are taken as an argumentative constant or naturalized as the ground on which specific "memory games" are played and "memory entrepreneurs" stand. Veneration of the Constitution stands as a kind of truism, an unremarkable just-is baseline cultural context. This familiarity misleads: it preempts questions about the object, source, structure, function, reproduction, and consequences of a constitutionalism that veneration only begins to describe. Recognizing the Founding as a discrete conceptual innovation clears a sightline into how constitutional authority was configured in far-reaching and durable terms.[4]

This inquiry carries forward the study of dynamic early national constitutionalism and links it to more contemporary forms. Significant recent scholarship illuminates how the founding era opened pathways for new arguments, assumptions, and authorities to evolve concerning the nature and interpretation of the Federal Constitution. From this unsettling founding, an open-ended post-Ratification era follows as a site of conceptual change.

Creation of the American Republic, 1776–1787 (originally published 1969; Chapel Hill: University of North Carolina Press, 1998 ed.); Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, MA: Harvard University Press, 1967); Forrest McDonald, *Novus Ordo Seclorum: The Intellectual Origins of the Constitution* (Lawrence: University Press of Kansas, 1985); John Phillip Reid, *Constitutional History of the American Revolution: Abridged Edition* (Madison: University of Wisconsin Press, 1995); Jack Greene, *The Constitutional Origins of the American Revolution* (New York: Cambridge University Press, 2010); Daniel Hulsebosch, *Constituting Empire: New York and the Transformation of Constitutionalism in the Atlantic World, 1660–1830* (Chapel Hill: University of North Carolina Press, 2004); Mary Sarah Bilder, *The Transatlantic Constitution: Colonial Legal Culture and the Empire* (Cambridge, MA: Harvard University Press, 2005). For context on deference, see Billy Smith and Simon Middleton, eds., "Deference in Early America: The Life and/or Death of a Historiographical Concept," *Early American Studies* 3 (2005): 227–401.

[4] On republicanism debates, see Daniel Rodgers, "Republicanism: The Career of a Concept," *Journal of American History* 79 (1992): 11–38; On partisan popular constitutionalism, see Gerald Leonard and Saul Cornell, *The Partisan Republic: Democracy, Exclusion, and the Fall of the Founders' Constitution, 1780s–1830s* (New York: Cambridge University Press, 2019). Representative recent works involving the Founding include Jordan Watkins, *Slavery and Sacred Texts: The Bible, the Constitution, and Historical Consciousness in Antebellum America* (New York: Cambridge University Press, 2021); Kate Masur, *Until Justice Be Done: America's First Civil Rights Movement, from the Revolution to Reconstruction* (New York: W. W. Norton & Company, 2021); Michael Conlin, *The Constitutional Origins of the American Civil War* (New York: Cambridge University Press, 2019); James Oakes, *The Crooked Path to Abolition: Abraham Lincoln and the Antislavery Constitution* (New York: W. W. Norton & Company, 2021). On constitutional memory, see Jack Balkin, *Memory and Authority: The Uses of History in Constitutional Interpretation* (New Haven: Yale University Press, 2024); Reva B. Siegel, "Memory Games: *Dobbs*'s Originalism as Anti-Democratic Living Constitutionalism—and Some Pathways for Resistance," *Texas Law Review* 101 (2023): 1127–205.

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To this point, other recent scholarship shows that lawyers and communities during the "interbellum" period developed novel ways of asserting meaning and posed exploratory arguments for how the Constitution ought to work. Within this context, examining how "the Founding" established a relationship between people and the Constitution in the decades before the Civil War clarifies the nexus of thought and action undergirding constitutional politics. Taking a longer view, this inquiry also identifies the production of powerful cultural resources that have shaped serial constitutional conflicts—including resources on which the political tradition of "originalism" has depended. To account for the Founding's persistence in public life, its ideological ascendance in antebellum America is an instructive place to start.[5]

Consider "the Founding" as an *ideology* dominant during the four decades preceding the Civil War. Assigning this term is an argument: that the Founding was a coherent system structuring language and perception, mediating information, and motivating action and inaction. The designation indicates the performance of significant political and legal work in describing the world adherents saw and in directing what they must do in it. The premise of an authoritative original constitutional moment, obligatory deference to its content, and plural methods for gleaning meaning together delineated a field of struggle with a shared code. Without determining uniform responses to events, Founding ideology shaped how adherents understood the nature of conflicts and what was plausible or unthinkable. See, for instance, how deference, veneration, and legitimation coalesced in Abraham Lincoln's pivotal Cooper Institute speech during his 1860 presidential nomination campaign. After Democrat Stephen Douglas claimed to follow the understanding of "Our fathers,

[5] On initial constitutional conceptions and developing arguments, see Jonathan Gienapp, *The Second Creation: Fixing the American Constitution in the Founding Era* (Cambridge, MA: Harvard University Press, 2018); David Schwartz, Jonathan Gienapp, John Mikhail and Richard Primus, "Forward: The Federalist Constitution," *Fordham Law Review* 89 (2021): 1669–75; Richard Primus, *The Oldest Constitutional Question: Enumeration and Federal Power* (Cambridge, MA: Harvard University Press, 2025); Jud Campbell, "Determining Rights," *Harvard Law Review* 138 (2025): 921–84; Alison LaCroix, *The Interbellum Constitution: Union, Commerce, and Slavery in the Age of Federalisms* (New Haven: Yale University Press, 2024); Simon Gilhooley, *The Antebellum Origins of the Modern Constitution: Slavery and the Spirit of the American Founding* (New York: Cambridge University Press, 2020). I use the phrase "political tradition of originalism" to refer to the evolving theorization of jurisprudential "originalism," along with popular mobilization, policymaking, and judicial reasoning centered on original meanings. On this tradition, see Logan Sawyer, "Originalism and the Path to Partisan Jurisprudence: The Guidelines on Constitutional Litigation inside the Reagan Administration," *Journal of American Constitutional History* 4 (2025): 225–338; Calvin TerBeek, "'Clocks Must Always Be Turned Back': Brown v. Board of Education and the Racial Origins of Constitutional Originalism," *American Political Science Review* 115 (2021): 821–34; Ken Kersch, *Conservatives and the Constitution: Imagining Constitutional Restoration in the Heyday of American Liberalism* (New York: Cambridge University Press, 2019); Aaron Hall, "'Plant Yourselves on Its Primal Granite': Slavery, History, and the Antebellum Roots of Originalism," *Law and History Review* 37 (2019): 743–61; Robert Post and Reva Siegel, "Originalism as a Political Practice: The Right's Living Constitution" *Fordham Law Review* 75 (2006): 545–74. On the impact of constitutional culture on modern collective life, see Aziz Rana, *The Constitutional Bind: How Americans Came to Idolize a Document That Fails Them* (Chicago: University of Chicago Press, 2024).

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when they framed the Government under which we live," Lincoln welcomed this ground. Using documentary sources that public interest had drawn into print, he established that "of our thirty-nine fathers who framed the original Constitution, twenty-one—a clear majority of the whole—certainly understood that no proper division of local from federal authority, nor any part of the Constitution, forbade the Federal Government to control slavery in the federal territories; while all the rest probably had the same understanding." Exercising this power while maintaining all "guarantees those fathers gave it" was "all Republicans ask—all Republicans desire." Means and ends were governed by what they believed had been originally understood. Following the Founding at once mobilized, sanctioned, and constrained Lincoln's Republicans.[6]

This constitutionalism, more than a culture of veneration, was ideological in nature. To draw on political theorist Michael Freeden's prominent "morphological" account, it was a pervasive "form of political thinking" exhibiting an *action orientation* mediation of the world, internal conceptual coherence, a robust linkage between *discourse and power*, and the capacity to *legitimate and delegitimate*. To be sure, it was a "thin-centered" ideology that assimilated the commitments of oppositional groups. Most significantly, the Founding was compatible with a limited range of antislavery and proslavery ideation. But adherence structured and bounded the intellectual and practical expression of each, as the Founding delivered meaning along two avenues. First, it demanded that Americans heed specific commands for what was originally envisioned. Second, it demanded that an original Constitution be preserved, not doubted. In effect, the Founding transformed the Constitution into a monument transcendently durable and yet always endangered by the hands of wayward descendants. If revolutionary ideology feared republican decay and corruption through passing time, antebellum Americans came to understand "constitutional rot" in a different way: deviation from original visions. From this perspective, the Founding marked the end of constitutional history and authorized restorative action in accord with a political community's constitutional memory. As people make meaning through shared narratives, Founding stories situated antebellum Americans in an intergenerational national plot that defined their duties as constitutional heirs.[7]

[6] "Address at Cooper Institute, New York," in *Complete Works of Abraham Lincoln*, ed. John Nicolay and John Hay (vol. 1, New York: Century Company, 1894), 599–612; Eric Foner, *The Fiery Trial: Abraham Lincoln and American Slavery* (New York: W. W. Norton & Company, 2011), 136–38.

[7] Michael Freeden, "The Morphological Analysis of Ideology," in *The Oxford Handbook of Political Ideologies*, ed. Michael Freeden et al. (New York: Oxford University Press, 2013), 115–16; Michael Freeden, *Ideology Studies: New Advances and Interpretations* (New York: Routledge Press, 2021), 92; Michael Freeden, "Is nationalism a distinct ideology?," in *Liberal Languages: Ideological Imaginations and Twentieth-Century Progressive Thought*, ed. M. Freeden (Princeton: Princeton University Press, 2005), 204–24. Jack Balkin, *The Cycles of Constitutional Time* (New York: Oxford University Press, 2020), 44–68. "Ideology" is a notoriously contested analytical category with "a whole range of useful meanings" and fragmented usage among fields. Terry Eagleton, *Ideology: An Introduction* (London: Verso Books, 1991), 1; John Gerring, "Ideology: A Definitional Analysis," *Political Research Quarterly* 50 (1997): 957–94. Within American historical scholarship treating law and society, for instance, Geertz cultural systems and post-Marxian approaches are evident. See, e.g., Bailyn, *The Ideological*

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At the confluence of words and deeds, an ideology of the Founding legitimated configurations of power and delegitimated alternatives. In antebellum America, this work revolved around slavery. As a crisis of humanity, political power, and material interest, expanding enslavement exerted enormous pressure on governing institutions. It spurred popular investment in an authoritative Founding as proslavery forces, constitutional conservatives, and antislavery nationalists vied within its paradigm. The freedom-seeking, slavery-opposing, union-preserving, and slavery-promoting activities of discordant communities stoked demand for a government true to the Founding while pressing the question of what order was so ordained. Meanwhile, a radical abolitionist movement dividing over what to do about the Fathers' Constitution attested to the ideology's hold upon the broader public.[8]

Founding ideology flourished through the practices of countless Americans. Persuasive power and pervasive presence grew through rehearsal and use. From civic life to legal controversy to political strife, the elements of an authoritative Founding were reinforced during events routine and climatic, and they were communicated through participatory oral and print culture. This article visits in successive sections two core domains of ordinary ideological reproduction—civic gatherings and educational spaces—between the 1820s and 1860. Examining these common sites discloses the Founding's conceptual structure, once it had coalesced, at a remove from the campaigns, courts, and legislatures where constraint and contestation occurred within its framework. Civic and educational life makes visible a kind of popular constitutionalism that scholarship has not registered as such, and it demonstrates the cultivation of a shared constitutional consciousness integral to struggles over formal power. The public who rallied and studied to defer to the Founding was the public that spurned Hildreth's "apathetic" history. It was the public to whom Justice Taney justified *Dred Scott* with the "fixed opinions… upon which the statesmen of that day spoke and acted," and the public to whom Douglas and Lincoln offered opposing original understandings of "our fathers." In a third section, this article traces connections between constitutional ideas and actions of voting,

and Origins of the American Revolution; William Forbath, "The Ambiguities of Free Labor: Labor and the Law in the Gilded Age," *Wisconsin Law Review* 4 (1985): 767–816; Christopher Tomlins, *Law, Labor and Ideology in the Early American Republic* (New York: Cambridge University Press, 1993); Karen E. Fields and Barbara J. Fields, *Racecraft: The Soul of Inequality in American Life* (London: Verso Books, 2012); Alison LaCroix, *The Ideological Origins of American Federalism* (Cambridge, MA: Harvard University Press, 2011). With the instant approach, we can recognize how Founding ideology sustained a constitutional "universalization project," while its programmatic action contained sufficient ambiguity and autonomy to foster conflicts that could challenge that order. Duncan Kennedy, *A Critique of Adjudication {fin de siècle}* (Cambridge, MA: Harvard University Press, 1997).

[8] My focus on slavery reflects the constitutional politics that Americans made. The Constitution sustained an expansionary settler-colonial order, but it was intra-citizen struggles over slavery that propelled Founding discourse. Native dispossession elicited immeasurably less dissension among citizens; yet it was settlement in Native lands that intensified conflict over slavery. On the settler Constitution, see Mark Peterson, *The Making and Breaking of the American Constitution: A Thousand-Year History* (Princeton: Princeton University Press, 2026); Maggie Blackhawk, "Foreword: The Constitution of American Colonialism," *Harvard Law Review* 137 (2023): 1–152; Gregory Ablavsky, *Federal Ground: Governing Property and Violence in the First U.S. Territories* (New York: Oxford University Press, 2021).

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legislating, and judging. Seeing these Founding effects brings greater clarity to the rules and norms governing national public life before the Civil War and, arguably, beyond it. The article concludes that the Founding's power and purposes present a central variable for the study of constitutional history as an integrated domain of law and culture. Approaching the Founding as an ideology—one that may wax or wane, is pliable yet constraining, and bridges civic, political, and legal life—offers meaningful insight into United States constitutionalism up to the present.[9]

Founding Days

Antebellum America commemorated constitutional creation annually. The story of the Federal Constitution colonized Independence Day celebrations after the 1820s and recurred in other civic gatherings. In 1826, for instance, when Mississippi lawyer Powhatan Ellis addressed a Vicksburg crowd fifty years post-Declaration, he rallied members to see themselves as dutiful constitutional heirs. Proclaiming the "sacred instrument [] a splendid monument of the wisdom, intelligence and patriotism of our fathers," Ellis asked his community, rhetorically: "shall we, the descendants of those great and good men, lay the rude hand of the spoiler upon that venerable memorial of their revolutionary deeds, and make it sink under the consolidating powers of General Government?" Old battles could be remembered; but, more importantly, the Fathers' Constitution must be defended. Ellis's oratory showed separate historical events being drawn together in public recollection. Constitution-making, once distinct from the Revolution, became its culminating triumph over adversity. As Samuel Yorke Atlee concluded in his Fourth of July remarks to a Maryland Odd Fellows Lodge in 1854, the "severest trials" had arrived after war ended and were only resolved by a Constitution for which "experience daily inculcates the sacred duty of maintaining its obligations." A peripatetic civil servant and civic organizer, Atlee shared grand plans for how to carry out that duty at a subsequent teachers' association convention: state legislatures should require "the first page of every newspaper" to bear the Constitution; "societies [should] be formed for supplying every family with a copy"; and more systematic laws should ensure that schools "impress the Constitution of the United States upon the minds of the children of the Republic." While AtLee sought official measures, this consciousness-forming work had been carried out for decades at commemorative and associational gatherings where discrete publics rehearsed a possessive sense of the Founding.[10]

[9] *Dred Scott v. Sandford*, 60 U.S. 393 (1856), 409.

[10] *Address, delivered by the Hon. Powhatan Ellis at a Public Dinner given to him by the citizens of Vicksburg* (n.p., 1826), Broadsides 1826: 1, Virginia Historical Society, Richmond, VA; *Address of Samuel Yorke Atlee, at the Request of Concord Lodge, IOOF at Rockville, Maryland, July 4, 1854* (Washington D.C.: John T. & Lem. Towers, 1854); Samuel Yorke Atlee, *Essay; Submitted by Request, to the Teachers' Association of the City of Washington* (Washington D.C.: H. Polkinhorn, 1857), 11–13; Edwin Barber, *Genealogical Record of the Atlee Family* (Philadelphia: Wm. F. Fell & Co., 1884), 64. Influential studies of Independence Day have focused on the pre-1820 early national period with attention to class and nationalism. Simon Newman, *Parades and the Politics of the Street: Festive Culture in the Early American Republic* (Philadelphia:

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More than an occasion for reciting hoary rhetoric, Independence Day celebrations offered thousands of wooden platforms for Americans to connect their troubled present to authority from 1787-1789—and to deploy that past as warning or weapon against other Americans. Across regional, partisan, and ethnic divides, speakers stood at ritualized proceedings in rural towns and growing cities to talk about the constitutional Founding. Representative rhetoric, reflecting Hildreth's "glare of patriotic eulogium," attests to this ideological convergence. In the modest New York village of Liverpool, John Martin Vincent, newly admitted to the bar, enjoined his audience in 1849 to make "the union, and the constitution your idols." In politics, they must: "See to it, that their keeping be entrusted to men who venerate them, rather than confide their preservation to those who hold them secondary to any earthly consideration." Orators defined a category of public enemies when promising the Constitution would, as youthful lawyer Daniel Dougherty uttered in 1856, guarantee liberty "until the earth shall crumble" *only if* "preserved unaltered and untouched." Dougherty painted this relationship in plainspeak when he warned Philadelphians at the Old Statehouse that although the "Hall stands untouched by time, there are Americans—degenerate sons—cursed with ingratitude" who would "wither the hopes of the future" by violating the Constitution made there. Patriotic ceremonies routinely constructed this internal foe—"degenerate sons"—who dared transgress the Founding.[11]

Partisan politicking during the 1830s and 1840s, tending to submerge sectional conflict under other cultural and constitutional differences, saw Democrats and Whigs sometimes spar within a Founding framework. In 1834, for example, aspiring anti-Jackson Pennsylvania politician James Gowen made his Independence Day address to "Friends of the Constitution" about its faultless authorship. At the Federal Convention, national fathers "capable of penetrating into the future" had scrutinized their text's "susceptibility of being interpreted or construed at any future time contrary to its spirit" and produced a work of such clarity that Andrew Jackson's maneuvers against the Second Bank of the United States could only be a deliberate violation

University of Pennsylvania Press, 1997); Len Travers, *Celebrating the Fourth: Independence Day and the Rites of Nationalism in the Early Republic* (Amherst, MA: University of Massachusetts Press, 1997). Informative scholarship on antebellum practices and language include Michael Hattem, *The Memory of '76: The Revolution in American History* (New Haven: Yale University Press, 2024); Michael Conlin, *One Nation Divided by Slavery: Remembering the American Revolution While Marching toward Civil War* (Kent, OH: Kent State University Press, 2015); Adam Criblez, *Parading Patriotism: Independence Day Celebrations in the Urban Midwest, 1826–1876* (DeKalb: Northern Illinois University Press, 2013); Paul Quigley, "Independence Day Dilemmas in the American South, 1848–1865," *Journal of Southern History* 75 (2009): 235–66. Focusing on constitutional ideology surfaces changes and meanings that this literature does not convey: identifying the introduction of the constitutional Founding's distinct governing force, as distinguished from the Revolution's amorphous affective ties, shows independence and the Revolution not to be stable temporal events but rather popular historical categories re-periodized to serve antebellum constitutionalism.

[11] "Fourth of July Address, Liverpool, NY, 1849, Box 30, John Martin Vincent papers, Huntington Library, San Marino, CA; Daniel Dougherty, *Oration delivered before the Democracy of the City and County of Philadelphia, in Independence Square, July 4, 1856* (Philadelphia: William Rice, 1856), 10; A. Oakey Hall, "Daniel Dougherty and the Philadelphia Bar," *Green Bag* 9 (1897): 141–46.

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of original designs. The same approach informed anti-Bank discourse. Massachusetts Democrat Benjamin Hallett devoted multiple Independence Day speeches to arguing that constitutional history must end the Bank debate. In 1838, his oration deployed the Convention journal and anti-Federalist delegate Luther Martin's report to prove that "contemporaneous exposition of the intention of the framers of the Constitution, settles this question." Following the shock of Whig victories, Hallett returned with new materials in 1841. The "Convention expressly refused to give Congress the power to make a bank or erect any other kind of corporation," he rejoiced, as the just-published "Madison papers confirm."[12]

Far more than party disputes, however, slavery's irrepressible politics brought an original Constitution to the center of commemorative activity. When sectional conflict intensified, Founding ideology grew more pronounced. On the Fourth after the shaky "Compromise of 1850," for instance, Centre College professor William Scott guided his Danville, Kentucky audience to behold a Fathers' Constitution that had produced sixty years of "Liberty, prosperity, security, boundless growth, glorious prospects." Then he warned that "enemies" jeopardized this "priceless heritage… and we must not gamble upon orphans' trust funds, nor rattle the dice upon our fathers' gravestones, nor allow it to be done." Moved by explosive political conflicts and haunting moral tensions, voices rang out advocating constitutional veneration, obedience, and preservation. Communities made sense of strife through a ruling Founding. The Fourth of July oration that farmer David Heaton delivered in Middletown, Ohio in 1855 illustrated these enveloping dynamics. A novice politician who entered the state legislature that year, Heaton dwelt on the Constitution and fate of republics. Martial events merited scant attention. In mourning the passing of those "who composed that celebrated Convention," Heaton and his constituency recognized themselves as continuously blessed and bound by original wisdom. Yet this was no happy pean. It was an impassioned call against "permit[ting] the great work committed to our hands to go to ruin and decay." Americans, he explained, were lulled into dangerous complacency. These fortunate sons learned their national fathers "bequeath[ed] to us the most perfect government on earth, and that all we have to do is simply to live in the great Temple provided for us." But the duty of preservation demanded greater vigilance against the threat "within our own border." Then this free white farmer described the place of slavery in the constitutional Founding. His framers had:

> approached the subject of human bondage with the deepest feelings of regret and disgust. But from it there was no escape. In order to frame the Constitution at all, they were *compelled* to handle the question. It was done

[12] *Mr. Gowen's Address, at the Celebration of the Fifty-Eighth Anniversary, of American Independence, by the Friends of the Constitution in the First Congressional District, Celebrating the Day at the Hermitage* (Philadelphia: n.p., 1834), 4; Benjamin Hallett, *An Oration Delivered July 4th, 1838, at the Plymouth County Democratic Celebration: Held at Middleborough Four Corners, in the Tenth Congressional District, Massachusetts* (Boston: Beals and Greene, 1838), 24; Benjamin Hallett, *Oration before the Democratic Citizens of Oxford, and the Adjoining Towns in Worcester County, Massachusetts* (Boston: Beals and Greene, 1841), 18.

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> in the most cautious and tender manner…. Just so many words as was necessary to recognize the simple *existence* of the "peculiar institution" in the different states where it was *at the time*, was used, and when this was accomplished, the subject was thrown from them as though they had been handling some putrid carcass! They had not the most distant idea that the withering, blighting curse would ever be extended outside of the States in which it originally existed.

This story did not display Heaton's creativity. He extended a common sense of a Founding that had condemned the territorial extension of slavery. In the same breath, however, Heaton signified a Founding that excluded abolitionist action. Citizens must "hope" and "trust" that in another half century the tyranny of slavery would "dissipate." This conclusion was no less crucial than the antislavery story. General and particular elements composed a structure that encouraged political organization while limiting its aims.[13]

Most white political communities spent Independence Day observing a constitutional Founding that defined a Union with slavery. This was the case even among those disaffected with the existing order. "Our 4th of July was celebrated with considerable spirit at several places in the District, which shows there is some patriotic feeling & pride still extant," reported one South Carolina slaveholder to another in 1844. He recounted that "addresses were mostly of a political kind: bitter & denunciatory of our General Government as being administered by a reckless & dominant majority, without any regard to its constitutional restrictions." On the margins, meanwhile, abolitionists sought alternatives. Some intellectual leaders like Frederick Douglass labored to refashion the Constitution as an emancipatory text unencumbered by an authoritative originary moment. Others, like William Lloyd Garrison, concluded that the Constitution was unredeemable. Both abolitionists used Independence Day—Garrison to incinerate a tyrannical Constitution and Douglass to urge people to "do with the past only as we make it useful to the present and to the future." These opposing positions responded to the power of Founding ideology in preserving a Union with slavery. It was precisely this anchoring effect that so many civic events cultivated. The Fourth was for constitutional discipline, not revolutionary aspiration.[14]

Proceedings at New Haven, Connecticut in 1851 exemplified this Founding work. Civic leaders had requested esteemed attorney Hiram Ketchum to make "a salutary and enduring impression in regard to our great duties to the Union, the Constitution, and the Laws." He answered the call. Declaring

[13] William Scott, *An Address Delivered at a Barbacue, given by the Citizens of Boyle County, Ky. at Danville, July 4th, 1851* (Philadelphia: n.p., 1851); "The Fourth at Middleton," *Hamilton Intelligencer*, July 19, 1855, p. 1; "David Heaton," *Dictionary of North Carolina Biography*, ed. William S. Powell (vol. 3, Chapel Hill: University of North Carolina Press, 1988), 91.

[14] John Wallace to Beaufort Watts, July 6, 1844, Beaufort Taylor Watts papers, South Caroliniana Library, University of South Carolina, Columbia, SC; "The Meeting at Framingham," *The Liberator*, July 7, 1854, p. 106; Frederick Douglass, *Oration, Delivered in Corinthian Hall, Rochester: July 5th, 1852* (Rochester: Lee, Mann & Co., 1852), 13.

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independence and waging war were beside the point. They were "but the beginning of the contest," Ketchum explained, as "the great question arose how shall we preserve the liberty which has been acquired." He led listeners back to the Convention where Washington, "the ablest man of any age," along with "a host of other worthies," had created the best possible Constitution. The crowd traveled between the 1780s and 1850s, as Ketchum recalled how nobody in 1789 had "dispute[d] the right of their masters" to seize absconding slaves. The lesson was to follow the Founding in values and law, tolerating slavery and obeying its commitments. The Constitution, Ketchum instructed, was a "whole bargain… of the most binding character" and "has done more to advance the happiness of man than any other that was ever made." Peals of laughter rewarded the sarcastic portrayal of antislavery citizens—"so much wiser than Washington, and Franklin, and Hamilton, and Madison, and Roger Sherman, and Oliver Ellsworth"—whom Ketchum mocked as Constitution-destroying fools. Asked if Americans could "do anything better than to sustain" the Fathers' Constitution, the audience erupted in a roar of noes. Shouting constitutional deference to a Founding that settled slavery was how many patriotic citizens celebrated the Fourth. In their cheers, references, and assumptions, they grasped and reproduced Founding ideology.[15]

With holidays such as these, it is little wonder that Americans did not establish a Constitution Day. Beyond the Fourth and other patriotic commemorations, the Founding infiltrated everyday civic life. For instance, local lyceums and debating societies staged events where residents rehearsed constitutional memory between holidays. As one avid participant explained, these civic institutions performed invaluable service because "there is a possibility of the humblest citizens aspiring someday to a seat in the councils of the nation." When groups like the Barboursville, Kentucky Debating Society or the Good-Will Debating Society in Montgomery, New York convened, they debated the same questions of constitutional politics—such as Congress receiving antislavery petitions or the annexation of Texas. In Troy, Ohio, Zelona Eaton "read & thought" about slavery's constitutional status for many days in 1843 before entering a three-day argument at his town's lyceum urging abolition in the District of Columbia. James Coon reflected in his diary on his experience arguing the affirmative "for the United States to take speedy measures for the abolition of Slavery in the Southern States" in 1841. The Salem, New York lawyer noted that in two years, he had argued it "five several times and always have gained it when on the Neg and lost it when vice versa" because "no presiding officer can be found who will do justice to the disputants of this question." These civil society engagements nurtured inhabitants' shared recognition of a governing Founding. In Tunbridge, Vermont, a rural association debated which founder had the greatest influence and whether "the people of the United States [ought] to make slavery a Political question." They agreed: Washington and Nay. At the nearby Montpelier Lyceum in 1830,

[15] Hiram Ketchum, *An Oration Delivered on the Public Square at New Haven: At the Request of Its Citizens, July 4, 1851* (New Haven: Thomas J. Stafford, 1851); "Hon. Hiram Ketchum," *New York Times*, Sept. 17, 1870, p. 1.

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one member volunteered to deliver a lecture on "The History and Principles of the American Constitution," and another prepared a "Lecture on the Duties of an American Citizen." Learning, affirming, and thinking with the Founding was part of the social fabric of active citizenship.[16]

Yet one well-to-do Delaware man campaigned persistently during the 1850s to establish a yearly "National Jubilee" honoring the Constitution. If it was "important to celebrate, annually, our National Independence," John Connell argued, "how much more so, ought it to be, to commemorate our National Union?" That the Fourth had been rededicated to constitutional memory did not satisfy his conscience. "We are trustees for posterity," he believed, imagining divine retribution for breaching that trust. Beset by ideological anxieties that required dissatisfaction with the sufficiency of commemorative practices, this civic campaign reflected the Founding's inner reach.[17]

Governing Lessons

How did antebellum Americans learn the Founding? Sources were plural, abundant, and diffuse. The civic gatherings where communities practiced their idioms and imperatives took place within a thick field of constitutional memory. From political rallies and legislative speeches to circulating newspapers and patriotic biographies, words spoken and printed cemented the Founding in language and thought. Yet the question of assimilation can also be examined directly, albeit partially, by observing reproduction through education—a domain where society transmits core intergenerational ideological commitments. Among the host of sources from which people learned the Founding was an antebellum curriculum that incorporated its structure into educational life across levels and regions. Boys and girls were taught precepts of veneration and obedience, though the normative pupil was a figurative son of national fathers. Students in academies and colleges practiced speaking and writing within the framework. Meanwhile, booksellers and associational libraries provided an ever-growing supply of didactic texts directed to the citizen-student outside formal education. For free white Americans, educational access varied widely by geography, class, and gender; but in innumerable schools and homes, the Founding was learned—an accessible, uncontested form of constitutional understanding distinct from precise textual and doctrinal knowledge. As the

[16] Arthur Machen, "Address delivered Oct. 30, 1841," Box 20, Lewis H. Machen Family Papers, Manuscript Division, Library of Congress, Washington D.C.; Entries for April 28, 1838 and May 25, 1839, Barbourville Debating Society Minutes, William L. Clements Library, University of Michigan, Ann Arbor, MI; Entries for Dec. 1841 and Dec. 27, 1842, Montgomery (N.Y.) Farmers & Mechanicks Debating Society and Good-Will Debating Society Record Book, Clements Library; Entry for Jan. 11, 1841, James C. Coon Diary, Clements Library; Entries for Dec. 11–15, 1843, Zelona Eaton journal, Clements Library; Minutes for June 20 and June 2, 1830, Records of the Montpelier Lyceum, 1829–1855, Vermont Historical Society, Montpelier, VT; Minutes for Oct. 15, 1838 and Feb. 23, 1842, Records of the Tunbridge Lyceum, 1838–1844, Vermont Historical Society.

[17] John Connell, *A Letter to the People of the United States in the Propriety of Establishing an Annual National Jubilee, to Commemorate the Adoption of the Constitution of the United States* (Wilmington: Henry Eckel & Co., 1856).

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first words of a leading constitutional handbook announced: "The Constitution, as the fireside companion of the American citizen, preserves in full freshness and vigor the recollection of the patriotic virtues and persevering courage of those gallant spirits of the Revolution who achieved the national independence, and the intelligence and fidelity of those fathers of the republic who secured, by this noble charter the fruits and the blessings of independence." In discursively representative samples of popular constitutional education, rising generations can be seen learning to be governed by the Founding.[18]

Schoolbooks put students in their constitutional place. Across elementary histories, civic instructors, and introductory lawbooks, young Americans received a common lesson on their relationship to a Constitution made for them, not by them. Beginning in the late 1820s, this didactic literature, "inhabiting a space in between the elite and the average person" according to Margeret Nash, emerged at the conjuncture of growing sectional tensions, generational change, and concerns over democratic competence. It departed from regionalized early national history and civic materials in which the Constitution was neither central nor historical. The closing words of Arthur Stansbury's *Elementary Catechism on the Constitution of the United States* summarized the ascending ideal relationship between pupils and their Fathers' Constitution in 1828. Students took to heart that: "though the glory of giving to their country such a Constitution as this, is what none but [the framers] have been so blessed as to enjoy, yet you succeed to a task, but one degree removed from it, that of preserving what they have committed to your virtue, unsullied and unimpaired." Republican virtue narrowed into constitutional preservation under this educational regime. As Stansbury was composing this lesson, educator Isaac Jones was also struck by the short life of republics and feared the "rising generation" would undermine their own. His short volume, *Questions, Adapted to the Constitution of the United States*, explained that important answers were "not found in the Constitution" as a text, and students would need guidance to achieve a "full and correct" understanding through history.[19]

[18] William Hickey, *The Constitution of the United States of America, the Declaration of Independence, the Articles of Confederation, the Prominent Political Acts of George Washington…* (Philadelphia: T.K. & P.G. Collins, 1854). For background on educational development, see Mark Boonshoft, *Aristocratic Education and the Making of the American Republic* (Chapel Hill: University of North Carolina Press, 2020); Kabria Baumgartner, *In Pursuit of Knowledge: Black Women and Educational Activism in Antebellum America* (New York: New York University Press, 2019); Johann Neem, *Democracy's Schools: The Rise of Public Education in America* (Baltimore, 2017); Sarah L. Hyde, *Schooling in the Antebellum South: The Rise of Public and Private Education in Louisiana, Mississippi, and Alabama* (Baton Rouge: Louisiana State University Press, 2016); Nancy Beadie, *Education and the Creation of Capital in the Early American Republic* (New York: Cambridge University Press, 2010); Hilary Moss, *Schooling Citizens: The Struggle for African American Education in Antebellum America* (Chicago: University of Chicago Press, 2009); Carl Kaestle, *Pillars of the Republic: Common Schools and American Society, 1780–1860* (New York: Hill and Wang, 1983). The longstanding question of antebellum schooling's overall reach is outside the scope of the article, which analyzes education as an important sphere exposing ideological structure and transmission.

[19] Arthur Stansbury, *Elementary Catechism on the Constitution of the United States: For the Use of Schools* (Boston: Hilliard, Gray, Little and Wilkins, 1828), 78; Isaac Jones, *Questions, Adapted to the*

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This counsel suggests how teachers mediated constitutional learning. The Founding gained life in the classroom and home. The language of fathers, norms of gratitude, and duty of deference drew strength through social reinforcement. Educational authorities pursued this effect. In the mid-1830s, for instance, a Pennsylvania committee planning a seminary to train public schoolteachers reported that learning the "civil history of the colonies and of the United States will be a natural introduction to the careful study and interpretation of the Constitution of the United States." Teachers, many of whom would be women, must be able to inspire "a pure and unadulterated love of country and reverence for the laws and institutions of their native land." Beyond endorsing general patriotic instruction, this undertaking placed a historically embedded Constitution at its center. That numerous women taught and that some authored educational texts buttressed this Fathers' Constitution: it was a rhetorically gendered ideology joined across gender. For instance, when Emma Willard's widely adopted *History of the United States* narrated framers compromising over slavery, students learned that the "convention was an example to future times of the triumph of strong patriotism, honest zeal for the public welfare over party feeling, and sectional prejudice." This Founding-anchored view of dutiful constitutionalism was confirmed by an example from those future times. In depicting sectional conflict, Willard excerpted and lauded a northern senator's speech denigrating abolitionists as "people who believed themselves charged with a mission, not only to amend the constitution framed by the wisdom of our fathers, but also to assist the Almighty in the correction of sundry mistakes which they had discovered in his works."[20]

Inculcation of an authoritative Founding proceeded across educational levels. Proud constitutional deference laced through schoolbooks by the prolific Samuel Goodrich, often writing under the pseudonym Peter Parley. As his *The Young American: Or Book of Government and Law* expressed, "Why should not every boy and girl in our country be instructed in the nature and history of that government which our fathers founded, and which gives protection to the people, and looks to the people for support?" This paternal force of fathers who founded, a mainstay in textbooks, signified the bounded constitutional responsibility of youth "to perpetuate it; to obey its laws, to maintain its institutions and to carry it into effect, according to the wise and patriotic intention of its framers." That final clause was crucial: nowhere were young Americans encouraged to revise or reconsider. Basic civics texts delivered this message and gestured toward practical implications. Joseph Burleigh's *American Manual*, a prominent schoolbook in Border State classrooms, featured an extended "Commentary on the Constitution" explaining delicately that national fathers had faced "sectional jealousies" like those in the present

Constitution of the United States; Designed to be Used in Academies and Common Schools (Boston: Richardson and Lord, 1827), 5, 12; Margeret Nash, "Contested Identities: Nationalism, Regionalism, and Patriotism in Early American Textbooks." *History of Education Quarterly* 49 (2009): 418.

[20] Gilbert Morgan, *Report on Public Instruction in Pennsylvania* (Philadelphia: E. G. Dorsey, 1836), 9; Emma Willard, *Abridged History of the United States, or Republic of America* (New York: A. S. Barnes, 1852), 253, 399.

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and wisely resolved them with mutual "concessions." Most important for students was to appreciate the unparalleled "success of the labors of the framers" and follow their design. As the *Manual* put it with dire veneration, "now, for the people to disregard the injunctions of the Constitution, and cast it aside, would denote political insanity."[21]

Specialized materials maintained this posture. Delaware attorney James Bayard Jr.'s well-received *Brief Exposition of the Constitution of the United States*, a textbook introducing constitutional law, explained that the very knowability of the Founding rendered it a revelatory historical rupture. Bayard, a future United States senator, instructed that while the "origin of most other governments is lost," "it was reserved for our immediate ancestors to give to the world an example of a government, deliberately framed by the people," and the Constitution's "history, will be the best introduction to an examination of its principles." This meaning-making history included slavery's inviolability as a state institution, as "southern States would probably not have consented to the Union" without a constitutional promise of non-interference. The country's most prominent jurist, Justice Joseph Story, joined this project of developing constitutional discipline. Story found time between judging and teaching to winnow his constitutional treatise into *A Familiar Exposition of the Constitution* for "Common Schools and Academies." Studying the framers' visions and values, he coaxed, would cause preexisting gratitude to "kindle into a holier reverence, and their memories will be cherished among those of the noblest benefactors of mankind." The felt urgency for constitutional inculcation can also be seen in the striking fact that two of the first thirty-four embossed alphabet books manufactured for the Perkins Institution for the Blind concerned the Constitution. The first contained the text itself. The second was a common civics text, William Sullivan's *Political Class Book*, which introduced the Constitution by teaching that the "framers of this system are entitled to the gratitude of their countrymen; and the people who adopted their work well deserve to be honored by their fortunate descendants."[22]

[21] Samuel Goodrich, *The Young American: Or Book of Government and Law; Showing Their History, Nature and Necessity. For the Use of Schools* (New York, 1844), iii, 214; Joseph Burleigh, *The American Manual: Containing a Brief Outline of the Origin and Progress of Political Power, and the Laws of Nations, a Commentary on the Constitution of the United States of North America, and a Lucid Exposition of the Duties and Responsibilities of Voters, Jurors, and Civil Magistrates; with Questions, Definitions, and Marginal Exercises; Designed to Develop and Strengthen the Moral and Intellectual Powers of Youth, and Impart an Accurate Knowledge of the Nature and Necessity of Political Wisdom. Adapted to the Use of Schools, Academies, and the Public* (Philadelphia, 1848), 154. For background on Peter Parley and history textbooks that does not discuss embedded constitutional lessons, see Barry Joyce, *The First U.S. History Textbooks: Constructing and Disseminating the American Tale in the Nineteenth Century* (Lanham: Lexington Books, 2015).

[22] James Bayard, *A Brief Exposition of the Constitution of the United States: With an Appendix, Containing the Declaration of Independence and the Articles of Confederation* (Philadelphia: Hogan & Thompson, 1833), 14, 122; Joseph Story, *A Familiar Exposition of the Constitution of the United States: Containing a Brief Commentary on Every Clause* (New York: Harper and Brothers, Publishers, 1840), 36. *Fourteenth Annual Report of the Trustees of the Perkins Institution and Massachusetts Asylum for the Blind* (Cambridge, MA: Metcalf and Company, 1846), 54; William Sullivan, *The Political Class Book: Intended to Instruct the*

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Enthusiastic adoption of Burleigh's *American Manual* by Virginia educators as "the best book for training the young mind" reflected the Founding's cross-sectional resonance. While white southern communities had much less educational development than did northern states, the core ideological structure was the same. For instance, the rare southern-printed history textbook *Catechism of United States History* celebrated the "not every-day men that made this government" and were "[l]ike stars scattered across the darkness of Heaven." Of vastly greater reach in the South, however, were northern-produced schoolbooks that, like Emma Willard's *History*, communicated a binding Founding compatible with proslavery constitutional memory. As the publishing house Harper & Brothers wrote in an open letter to southern newspaper readers, "it must be pretty generally understood in your section, as well as elsewhere, that we uniformly decline publishing works calculated to interfere, in any way, with Southern Rights and Southern Institutions." Later, Fletcher Harper reflected, "I grew up under the Union and the Constitution…. I don't believe what the abolitionists print weekly in their organ, that the Union or the Constitution is a covenant with hell." He believed and reproduced Founding ideology. Southern writers sometimes objected to specific nationalist interpretations of constitutional text and history, but they had no objection to Founding authority essential to delegitimating antislavery democratic capacity. It was this cross-sectional instruction that led Dr. James McCune Smith to conclude that "A School History, sound on the principles of liberty… would be entirely too Anti-slavery to command *the market*" and to hope that an abolitionist lawyer would author a counter-textbook on the "Constitution of the United States with questions and answers for the use of schools."[23]

It is important to see that Founding apostles such as Burleigh, Story, Bayard, and Sullivan, along with American history writers who spread constitutional education, were reaching beyond classrooms to instruct the citizen-student. Books were addressed and marketed to a larger reading public outside of schools. Catalogues of mercantile libraries, young men's associations, and public libraries reveal a canon of texts that developed quickly and expanded over time. In Baltimore, Cincinnati, New Orleans, Boston, Lowell, Saint Louis, Philadelphia, New York, Brooklyn, Albany, Troy, Buffalo, Newark, Detroit, Milwaukee, Hartford, Chicago, Richmond, and San Francisco, eligible readers perused constitutional commentaries and instructors, national histories and records from the Convention and ratification debates. At New Bedford, Massachusetts' Free Public Library, for instance, visitors could borrow works by Story, Sullivan, and Bayard, choose from three additional instructors, consult two handbooks, read national histories, and study ratification records. At this

Higher Classes in Schools in the Origin, Nature, and Use of Political Power (Boston: Carter, Hendee & Co., 1832 ed.), 73.

[23] Burleigh, *The American Manual*, 6; Bartholomew Rivers Carroll, *Catechism of United States History, Embracing the Chief Events in the History of the Nation from the Earliest Period to the Present Time* (Charleston, SC: McCarter & Co., 1858), 263; "The Harper's School Library," *The Philanthropist*, March 10, 1841, p. 2; Joseph Harper, *The House of Harper: A Century of Publishing in Franklin Square* (New York: Harper and Brothers Publishers, 1912), 177–78; James M'Cune Smith, "Citizenship," *The Anglo-African Magazine* 1 (1859): 146; Joyce, *The First U.S. History Textbooks*.

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hub of Black abolitionism, such resources may have illuminated oppressive structures rather than inculcating reverence. More broadly, however, they permitted white citizens to become informal students of the Founding.[24]

After learning basic ideological precepts, some pupils went further. Constitutional government formed a part of collegiate curricula, evident in dozens of catalogs from northern, western, and southern schools. Collegiate men obtained fluency with the Founding. At Trinity College, for instance, one student in a Constitution class jotted that "to understand the phrase 'Consolidation of the Union' we must go back & understand what the framers of the Constitution had in their minds, for in interpreting any such thing we must see what the phrases were to those who used them." Doing so would establish the "cardinal principle of the Constitution that it is a union made by the people & not a league made by states." At South Carolina College, John McMaster recorded that the Constitution was framed by a "convention of deputies from all the States," and that the original states had "preserved" and "only suspended" their sovereignty in creating a limited national government. Harvard law student Charles McIntire took down his professor's account that the Constitution "is an instrument to which the states as an entire people are parties, it was adopted by conventions. One should go back to the first settlement of the country & to the revolution in order to understand the constitution, it emanated from the Declaration of Independence." Beneath these divergent origin stories, the students received the shared lesson of an authoritative Founding.[25]

Learning was not passive. Students might craft and read aloud a paper like the one Phillip Blanton of Hampton-Sydney College wrote in 1847. He proposed that the "two most prominent events in American history are undoubtedly the Declaration of Independence of 1776 and the formation of the Constitution of 1787," and "the latter, I think, must be acknowledged the greater of the two." After defending this claim, Blanton's conclusion translated fears of republican declension into duties of constitutional fidelity. He prayed that the "government our fathers have built for us, be a stranger to decay forever." An instructor scrawled a note of satisfaction, stating that the essay contained "nothing which requires to be altered." Blanton garnered this approval because it was what he declared of the Constitution.[26]

Students like Blanton practiced the art of historical veneration beyond the classroom. In a speechifying age when oratory commanded influence, stirring

[24] *Catalogue of the Free Public Library, New Bedford, Mass* (New Bedford: B. Lindsey, 1858). Catalogues from two dozen libraries support this analysis. For a contrasting dismissal of antebellum constitutional education, see Michael Kammen, *A Machine That Would Go of Itself: The Constitution in American Culture* (New York: Alfred A. Knopf, 1986), 75–86.

[25] "Constitution of the U.S., 1859" Henry K. Leaver Lecture notes, New Hampshire Historical Society, Concord, NH; "Questions & Answers adapted to Four Lectures Delivered by Prof R Henry on the Constitution of the United States," John Creighton McMaster Papers, 1834, South Caroliniana Library; "3rd Lecture Constitutional Law," 6–7, Charles McIntire notes, 1860, HLS MS 5545, Harvard Law School Library, Cambridge, MA.

[26] Phillip Blanton, "Speech on the Federal Constitution of the U. States," Section 7, Blanton Family Papers, 1818–1961, Virginia Historical Society.

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Founding reverence was a powerful competency. At the University of North Carolina, Frederick Toomer demonstrated this ability as a student commencement speaker in 1851. Soon to become a slaveholding planter, Toomer apprehended national politics through the Founding. He enshrined the Constitution as revolutionary fulfilment, extolling its "fram[ing] by heroes fresh from the field of the American Revolution, glowing with the love of liberty, aided by experienced statemen whose heads were filled with wisdom and whose hearts were burning with the fire of patriotism." Public veneration for this Founding had just saved the country, Toomer contended, through the ostensible Compromise of 1850: politicians and people had "realized that the constitution was framed by sages and heroes, from every section," and obeyed their fathers' rules. Especially in the South, a highly oral political culture led by the slave-owning class positioned educated speakers as conduits of Founding ideology to communities and constituencies. Promising capability for this role was what John Randolph Tucker displayed when addressing his University of Virginia law class in 1844. "Never was so august an assemblage convened" than when the constitutional fathers secured liberty and independence, he announced, glorifying various framers, most of all "just, noble, great and patriotic Washington," who had ensured state rights in settling the "permanence of our glorious union." This Founding fluency saw use before and after the Civil War during Tucker's long political, legal, and professorial career dedicated to denying the rights of Black citizens.[27]

Just as Independence Day speakers constructed constitutional enemies, collegians learned how to heap scorn on skeptics and apostates. This was the art of governing through the Founding. At the University of the City of New York, Representative Daniel Barnard modeled this approach in 1845. "There are those who think that this generation, and they themselves, are wiser, better instructed and grounded in political doctrine, and understand better the true relations between government and the governed than the generation and the men of 1776 and 1787," Barnard scoffed. Lengthy mockery of antislavery constitutional impiety resolved into thundering denunciation: "I believe it is all a miserable delusion." The framers' work could not be surpassed, he taught, but modern hubris could destroy it. This scornful principle, a corollary to reverence and deference, produced a distinct form of condemnation. Speaking a month later at Ohio's Miami University, attorney James Taylor demonstrated how this same form could be wielded against Barnard's doughface constitutionalism. First, he recalled a Founding moment when there was "unanimous condemnation of slavery," an understanding borne out by the Northwest Ordinance. Then Taylor scorned. "We have changed all this," he lamented,

[27] "Valedictory delivered by Tucker to Law Class, July 3, 1844," Box 1, Folder 6, Tucker Family Papers, Southern Historical Collection, Wilson Special Collections Library, University of North Carolina, Chapel Hill, NC; Frederick Toomer, "The Late Crisis in our National Affairs," March 1851, Folder 283, Dialectic Society of the University of North Carolina Records, University Archives, Wilson Library; Carolyn Eastman, *A Nation of Speechifiers: Making an American Public After the Revolution* (Chicago: University of Chicago Press, 2009); Alfred Brophy, *University, Court, and Slave: Pro-Slavery Thought in Southern Colleges and Courts and the Coming of Civil War* (New York: Oxford University Press, 2016).

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allowing slavery to invade "the very temple of the Constitution." The force of his censure derived from the authority of original visions that measured a failure to preserve.[28]

Ultimately, students assumed the mantle of political, civic, and legal expounders of Founding ideology. A writer exemplified this mission in his 1851 *Yale Literary Magazine* article, "Reverence for Law," reproving peers tempted to follow their own moral compass. The Constitution, "was received with all the veneration due to the greatness and genius of its authors," he insisted, and "while we as a people revere its origin and prize its intrinsic worth, it proves itself adapted to our necessities and the stay of National honor and prosperity." Historical description and contemporary prescription merged in the linkage of perpetual constitutional vitality to unflagging deference. Through this framework, making good on the Constitution's Fugitive Slave Clause enacted civic virtue. Another Yale student, Benjamin Martin, joined this campaign by assembling framer and ratifier quotations to present the 1850 Fugitive Slave Act as Founding-ordained. He argued that "strong assurances" had "reconciled the people of the South to the Constitution, and secured its ratification," and "the same views of the subject were held by the statesmen of the North." Then Martin judged that "[i]t has been reserved for the sophistry of our times to deny the existence of one of the plainest provisions of the Constitution." Framer authority, historical foreclosure of choice, and present-facing derision operated together. From these premises, the novice expounder demanded Americans prove their constitutional devotion "by transmitting it unimpaired to posterity, and by defending it, if necessary, to the last drop of our blood." Martin, soon passing from illness, would not see the bloodshed. "As a school-boy, he was remarkable for his knowledge of political and constitutional history," memorialized a friend.[29]

These student exercises suggest how Founding ideas shaded toward action and, as powerfully, *inaction*. General rules of reverent deference supported specific injunctions to never interfere with slavery or aid freedom-seeking people. The Founding marked the course that citizens took. Authority-bearing narratives gave clarity amid crisis. In 1832, for instance, young North Carolina Unionist Junius King told peers that nullifiers committed "a daring insult to heaven" by jeopardizing the Constitution, and that it was absurd to think that lesser, living persons could match the genius of the "preeminently distinguished" framers. By the early 1850s, when college students formed Southern Rights Associations, they conceived of their militancy as constitutional preservation against a government "perverted from its original design." And by the decade's end, another North Carolina student, Elijah Withers,

[28] Daniel Barnard, *A Plea for Social and Popular Repose; being an address delivered before the Philomathean and Eucleian Societies of the University of the City of New York, July 1, 1845* (New York: Tribune Job Printing Establishment, 1845), 16; James Taylor, *Address Delivered Before the Erodelphian Society: of Miami University, Oxford, O., at Their Late Anniversary, Tuesday, August 12th, 1845* (n.p., n.d.), 20–21.

[29] "Reverence for Law," *Yale Literary Magazine* 16 (1851): 231–37; B. F. M., "The Fugitive Slave Law," *Yale Literary Magazine* 16 (1851): 128–37; *Statistics of the Class of 1851 of Yale College* (Boston: John Wilson and Son, 1854), 40.

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accepted disunion through the logic of a Founding betrayed. Schooled to believe that constitutional permanence required veneration and obedience, Withers concluded that both elements had ceased in the North. While the "founders of this Union pledged their sacred words and honor to observe these compromises," Withers argued, their successors "have proven recreant to every filial duty." The Republic was ending not because the Founding had failed but because it had been failed. While the fathers had introduced a golden period of constitutional virtue, antislavery rot had set in, rendering the United States "like all other governments" that had fallen. The 1860 election, he expected, would end "her short-lived existence." When it seemed to do just that, this student joined a Confederate regiment. When it did not, he entered political office to help topple Reconstruction.[30]

Ideological Action and Inaction

Naming the constitutional Founding as an ideology urges recognition of the power that Americans vested in their ideas about constitutional history. It identifies relentless storytelling and claims-making as much more than background conventions. It emphasizes, instead, that people felt governed by a Constitution inseparable from an authoritative moment and made sense of grave conflicts through that relationship. As ideology, the Founding raised the stakes of constitutional difference, informed the valence of compromise, and configured conflicting positions over slavery and sovereignty. This account captures the social and subjective experience of constitutional life in which certain assumptions, methods, and principles could move people or hold them in place. If there is an elusiveness to this Founding's force, it is because the work performed so often lay in producing quiescence.

As it narrowed moral and democratic imaginations and cast preservation as civic virtue in the antebellum era, the Founding governed people through their implicit consent to national fathers' *temporal sovereignty*—that the Founding had settled the national future in ways that contemporary popular sovereignty could not challenge. This Founding performed work when people dismissed doubts, left contradictory ideas unsaid, and rejected unthinkable innovations. A Boston man exposed this disciplined self when he told an Iowa Territory relative of his dim hopes for slavery's end: "Political action is so restricted by the Constitution itself" and people, himself included, would never support abolitionists who, "think[ing] the Constitution uphold it… rush madly on, trampling down everything sacred, to reach the evil." All that was possible, he thought, was to "resist its further extension and to seek some way of producing

[30] Junius King, address, June 20, 1832, Folder 175, Dialectic Society of the University of North Carolina Records; *Address of the Southern Rights Association of the South Carolina College, to the Students in the Colleges and Universities, and to the Young Men, Throughout the Southern States* (Columbia: A. S. Johnson, 1851), 8; Elijah Withers, "The American Union a Failure," Nov. 7 1858, Folder 375, Dialectic Society of the University of North Carolina Records; "Elijah Benton Withers," *Encyclopedia of Virginia Biography*, ed. Lyon Gardiner Tyler (vol. 5, New York: Lewis Historical Publishing Company, 1915), 965.

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the great staples of slave labor by free labor." It was this constitutionalism's restraining power that a colleague conveyed to Justice John McLean amid public digestion of *Dred Scott*. "I assure you, there will be real danger of disunion, when the conservative public opinion at the north shall become dissatisfied with the Constitution. I think we have not fully appreciated the strength & fidelity of northern devotion to that instrument," he confided. It was this same power that struck a doleful observer of a Cincinnati anti-abolitionist meeting when he remarked how "many find a ready opiate for their conscience, by alleging, that the framers of the constitution were wise and good men."[31] It was not chiefly ratified text but rather the structure of the Founding itself that sustained their anti-antislavery activity.

This Founding ideology was anchored by a sense of inspired, even providential, paternal settlements. Such original understandings derived from Hildreth's "mythical and heroic times," as exalted by patriotic orators and invoked by polemicists, judges, and lawmakers. In blunt form, it was held that "If God was ever visibly in history, it was surely when our Fathers fixed upon our present form of government," as the Reverend Clement Butler explained in a Thanksgiving Day sermon. Compromises in the Convention came "not… altogether from the wisdom of our fathers" because "the Lord of Hosts was with us," Butler announced. Mythical thinking can be a "*register* of ideology," notes Terry Eagleton, one that "elevates certain meanings to a numinous state." According to Richard Slotkin, myth is the "language of historical memory: a body of traditional stories that have, over time, been used to summarize the course of our collective history and to assign ideological meanings to that history." But the Founding's mythic times had no traditional existence. An original constitutional moment sounding in a mythic register was co-constructed with the ideology itself, summoned to provide "decontested meanings" about what the Constitution is and how a citizen must relate to it. Synthesizing emotive and rational political thought and bearing corollary imperatives of deference, preservation, and restoration, a sublime Founding established the thin-centered ideological framework that contained and channeled intense political conflict.[32]

The Founding, as ideology, mediated proceedings at central sites of constitutional action. Commitments voiced at celebrations and schoolhouses echoed at the ballot box, legislature, and courtroom. Didactic writers made this connection explicit. Vermont author Daniel Parker's *The Constitutional Instructor* taught that voters must act "in accordance with the Constitution and genius of our government," and the "true exposition of the Constitution must therefore always agree with [the framers'] understanding." Parker

[31] Eliab Mackinire to William Salter, Aug., 18, 1856, in *Letters of Eliab Parker Mackintire of Boston*, ed. Phillip Jordan (New York: New York Public Library, 1936), 104–105; J.H. Martindale to John McLean, March 21, 1857; Reel 12, Series 1, Correspondence, John McLean Papers, Manuscript Division, Library of Congress, Washington, D.C.; "Cincinnati Resolutions," *The Philanthropist*, March 25, 1836, p. 1.

[32] Clement Butler, *Our Union-God's Gift* (Washington, D.C.: Jno. T. Towers, 1850), 17; Eagleton, *Ideology*, 188; Richard Slotkin, "Myth and the Production of History," in *Ideology and Classic American Literature*, ed. Sacvan Bercovitch and Myra Jehlen (New York: Cambridge University Press, 1986), 70; *Mississippi Creole*, Jan. 29, 1842, p. 2; Michael Freeden, *Ideology: A Very Short Introduction* (New York: Oxford University Press, 2003), 42–43.

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boasted of providing authoritative meanings because "the Madison Papers… has been my constant guide." Similarly, Pennsylvania doughface Ezra Chase's *Teaching of Patriots and Statesmen* asserted that voters, bound to heed the course "marked out by their fathers," craved knowledge of framers' settlements about slavery. Chase likewise noted his reliance on Madison's notes to give "a clear notion of the intentions of the Convention." These invocations reflected the assumption that Founding visions governed electoral choices. As a Mississippian wrote in 1842, Madison's newly published notes belonged in the "possession of every voter in the country." Yet except for disillusioning some abolitionists, their appearance did not change many minds: Americans received such historical materials as proving their preexisting, conflicting constitutional memories that occupied a limited range of possibilities. Parker and Chase, for example, delivered starkly opposing original meanings about congressional power over slavery in western territory, while neither fathomed a federal power of emancipating or enslaving. In their convictions about voters' deferential duties, however, these authors were kindred constitutional thinkers.[33]

The anxieties and obligations of Founding ideology infused electoral appeals. As an address to "free voters of Ohio" exhorted, "Will you dishonor the dead—will you despoil the living—will you deprive posterity of its inheritance" by pretending "the doctrines of Calhoun are the true doctrines of those who framed the Constitution?" For elected officials, narratives of original meaning authorized action. After Massachusetts Whig Samuel Eliot voted for the 1850 Fugitive Slave Act, he penned a letter explaining how the Founding had directed his course. In the language of a civics instructor, he limned a providential consensus about slavery that enabled the "fathers [to] bequeath us this glorious constitution." With familiar scorn, Eliot depicted the internal enemy of latter-day "parties who have so far misunderstood, or forgotten, or disregarded the compact of their fathers." Rather than a discretionary policy choice, Eliot's vote became a defense of the Fathers' Constitution. In Congress, he explained, "the struggle for the constitution was renewed," until it was "settled… on precisely the same principles as those on which it was first enacted." When an antislavery writer critiqued this "historical disquisition," it was not for Eliot's reliance on the framers but rather for misusing their records. Founding ideology impelled these citizens to deny or justify political discretion through original visions. Legitimate lawmaking depended on Founding authority. As a Detroit resident wondered in 1860, "I see not why the compromises and compacts of the Constitution, especially in all matters not interpretative by the principles of party policy, should not be regarded as sufficient & solid ground, on which all patriotic & good citizens might rally for the maintenance of the Union." Political actors rallied on the ground that they believed the Founding provided a vantage from which opposing political stands appeared unconstitutional.[34]

[33] Daniel Parker, *The Constitutional Instructor, for the Use of Schools* (Boston: Crocker and Brewster, 1848), 12, 37; Ezra Chase, *Teachings of Patriots and Statesmen: Or, The "Founders of the Republic" on Slavery* (Philadelphia: J. W. Bradley, 1860), 8.

[34] *The slavery question. Dred Scott decision.: to the free voters of Ohio.* (n.p., n.d.); "Letter from the Hon. Samuel. A Eliot," *National Intelligencer*, Nov. 2, 1850, p. 2; Hancock, *A Letter to the Hon. Samuel A. Eliot:*

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Inside courtrooms, this ideology structured judicial and juror responsibilities in cases implicating slavery's constitutional politics. When a Kentucky slaveholder sued Michigan residents for aiding a fugitive family, circuit-riding Justice McLean instructed an unsympathetic jury in 1848 that rendition was "deemed so important, that, as a matter of history, we know the Constitution could not have been adopted without it." He pressed the body to demonstrate fealty to the Fathers' Constitution as the especial virtue of American constitutionalism. "The chief excellence of our institutions consists, not so much in our written constitutions and laws, as in the moral power which they embody," McLean stated. Despite an initial hung jury, the slaveholder was eventually awarded damages. Under different circumstances, so too did Pennsylvania judge John Pearson instruct jurors on Founding imperatives when Dauphin County prosecuted a slave-catching gang for violence committed during an attempted seizure. "Whatever may be our own individual opinions concerning the institution of slavery, the history of the times when the Constitution was adopted clearly shows that without [the Fugitive Slave Clause], the union of these states would never have taken place, and… without its faithful fulfillment on the part of the non-slaveholding states, it cannot be continued," directed Pearson. Here, the Founding authorized slave-catchers' force and delegitimized legal countermeasures.[35]

In jurists' hands, the Founding produced supreme legal meaning and moral compulsion. Ohio Supreme Court judge William Peck warded off challenges to the 1850 Fugitive Slave Act through popular constitutional memory. "A careful perusal of the 'History of the Origin and Formation of the Constitution,' etc. by Curtis, and the supplement to Elliott's Debates," opined Peck, established that rendition "was deemed by many of the members, and those they represented, of great if not of vital importance, and contributed largely to its adoption by some of the southern states." He concluded that the framers never "designed or intended to commit such necessary legislation to the states." Founding ideology elevated constitutional slavery cases beyond a conflict between ordinary law and ethical convictions; they became proving grounds for subjection to the Fathers' Constitution. As District Judge Peleg Sprague lectured a Boston jury, citizens with "the strongest convictions of the immorality of the institution of slavery are not thereby authorized to conclude that the provision for delivering up fugitive slaves is morally wrong, or that our fathers in Massachusetts did not act wisely, justly, humanely, in acceding to the compacts of the Constitution." This was because no reasonable person could "hope of establishing a better" Constitution. Yet jurists and publics, such as politicians and constituents, could assert divergent original meanings on *some* matters within the Founding framework. Attorney John Andrews castigated the "remarks of Judge Sprague," arguing that antislavery

Representative in Congress from the City of Boston, in Reply to His Apology for Voting for the Fugitive Slave Bill (Boston, 1851), 7; George Duffield to Lewis Cass, Dec. 10, 1860, Box 4, Lewis Cass Papers, Clements Library.

[35] *Giltner v. Gorham*, 10 F. Cas. 424 (C.C.D. Mich. 1848), 426; "Commonwealth v. William Taylor, et al.," *American Law Journal* 10 (1850): 258.

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Americans "venerate the constitution. And, because they do so, they will not be contented victims of unconstitutional attempts to rob them of the liberties & rights, of which the constitution is their guaranty." *Dred Scott*'s dueling opinions, heavily reliant on historical narratives, elicited exactly this contestation within the Founding's parameters. Such was the pointed reaction of one editor: "the case runs far outside of the exclusive domain of the lawyer, into a field where the student of history and of politics can walk by his side, and weigh his arguments, and, if necessary, judge over him." But the possibility of disputes and plausibility of arguments rested on what people believed the Founding allowed. In antebellum America, most agreed it disallowed much, including federal action against slavery in states.[36]

The enormity of the Founding's popular and juridical power in sustaining a slaveholding Union is precisely why some abolitionists committed themselves to tearing it down. By the 1840s, one abolitionist faction agreed with the view of the Constitution expressed by Bostonian Francis Jackson when he resigned as a justice of the peace: "Henceforth it is dead to me, and I to it." This Constitution appeared irredeemable because, as Wendell Phillips wrote, "history, unbroken practice, and the courts prove that our fathers intended to make it, and what too, their descendants, this nation say they did make it" a proslavery compact. Black abolitionist Charles Remond rejected special pleading on behalf of the framers: "What if the word 'slave' is not in it? It does not matter to me nor mine. Slavery was in the understanding that framed it—Slavery is in the will that administers it." In view of the same enormity, other abolitionists aspired to loosen the Constitution-as-text from its Founding anchor. Seeking escape from original understandings, they vaunted abstract text into which Americans might read freedom. At an Ohio Colored Citizens' Convention, William Day, future editor of the *Aliened American*, spurned the anti-constitutional approach: "I would plant myself upon the Constitution, and using the weapons they have given me, I would appeal to the American people for the rights thus guaranteed." Day and many free Black citizens calculated that it was better to wield the weapon of constitutionalism than to unilaterally disarm. As Frederick Douglass came to argue, anti-Constitution abolitionists' "chief energies are expended in confirming the opinion that the United States Constitution is and was intended to be a slave holding instrument; thus piling up between the slave and his freedom the huge work of the abolition of the Government." But some contemplated escape from a Constitution that seemed durably anchored to the Founding. In 1854, a National Emigration Convention observed that "Democrat, Whig, or Free Democracy—all have thrown themselves upon the declaration: To sustain the Constitution as our forefathers understood it, and the Union as they formed it," which meant continued "slavery and degradation." From

[36] *Ex parte Bushnell*, 9 Ohio St. 76 (1859), 201; *Decisions of Hon. Peleg Sprague, in Admiralty and Maritime Causes* (Boston, 1868), 598–601; undated manuscript, Folders 5–14, Box 22, John Andrews Papers, Massachusetts Historical Society, Boston, MA. This point builds on the "moral-formal dilemma" in Robert Cover, *Justice Accused: Antislavery and the Judicial Process* (New Haven: Yale University Press, 1975).

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outside the mainstream of constitutional culture, these various approaches responded to the Founding's force by confronting it head-on, trying to extract an ahistorical Constitution, or considering emigration to Canada under the British Constitution. But it would be none of these approaches that would breach the Fathers' Constitution.[37]

The thin-centered Founding itself facilitated national rupture and nationalist war. For all its constraining influence, the ideology galvanized dramatic actions and uncompromising inactions when conflicting publics believed themselves to be defending original commitments. Where this occurred, precepts of reverence, obedience, preservation, and restoration merged with incompatible narratives to explosive effect. The defining jurisdictional struggles over federal territory and the constitutional place of slavery—culminating in Republican Party coalescence, Democratic Party fracture, and southern state secession—bore this influence. As officials and constituents grappled over a continental empire, they saw themselves as enforcing original understandings and settlements. Within the Founding framework, divergent narrative streams cascaded forward, one encouraging slavery's restriction and one prohibiting it. The result was dissonant voices proclaiming deference while pursuing agendas that struck opponents as betraying the Founding.[38]

This disjunctive experience is what led future Confederate constitutional framer Howell Cobb, a Georgia congressman in 1847, to exclaim, "When gentlemen from the North inform us that they are prepared to stand by the compromises of the Constitution, what say they are those compromises?" Likewise, two days later, it induced upstate New York congressman Samuel Gordon to wonder "in what school these gentlemen studied the Constitution" and then conclude, "not in the school of the founders of this Government and the framers of the Constitution," all of whom "concurred in the power of this Government to exclude slavery from, or abolish it in, the Territories that belonged to the Union." Northern Democrats like Gordon thought they were dutifully leaving slavery where the framers had left it. Concurrently, white southerners like Cobb became convinced that slavery must spread unrestricted by right of original understanding. Speaking to his Mississippi constituency, Representative Albert Gallatin Brown asked and answered: "Would Washington, and Jefferson, and Madison, have entered into such a union with Adams, and

[37] *Thirteenth Annual Report, Presented to the Massachusetts Anti-Slavery Society, By its Board of Managers, January 22, 1845* (Boston: Andrews, Prentiss & Studley, 1845), 38; Speech by Charles Lenox Remond, "Delivered at Marlboro Chapel, Boston, Massachusetts, 29 May 1844," in *The Black Abolitionist Papers* (vol. 3, Chapel Hill: University of North Carolina Press, 1991), 442–45; Wendell Phillips, *Can Abolitionists Vote or Take Office under the United States Constitution?* (New York, 1845), 14; Frederick Douglass, *The Anti-slavery Movement: A Lecture Before the Rochester Ladies' Anti-slavery Society* (Rochester: Lee, Mann & Co., 1854), 33; *Minutes of the State Convention of the Colored Citizens of Ohio* (Columbus: E. Glover, 1851), 10; *Proceedings of the National Emigration Convention of Colored People, Held at Cleveland, Ohio, Thursday, Friday and Saturday, the 24th, 25th and 26th of August 1854* (Pittsburgh: A. A. Anderson, 1854).

[38] Michael Morrison, *Slavery and the American West: The Eclipse of Manifest Destiny and the Coming of the Civil War* (Chapel Hill: University of North Carolina Press, 1997).

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Hancock, and Jay? … Every thinking, reasoning man knows, that in the war on slavery, the Constitution and the Union have been diverted from their original purposes."[39]

By the late 1850s, Founding ideology—with its complex of veneration, obedience, scorn and defense—structured how sectional publics proceeded. This complex sanctioned the *inaction* of refusing to compromise original meanings and valorized militancy. The Republican Party arose on a platform of administering the Constitution "as it was understood by the great men who framed and adopted it," which in their telling meant admitting no more slave states. For wide-awake Republicans, Founding ideology pushed toward confrontation. Similar dynamics moved white southerners. At an early 1860 meeting in Prince George's County, Virginia, a slaveholding community showed how Founding ideology made secession thinkable. With a single dissenting vote, it resolved:

> That we are still devoted to the Union of these States, but it must be a Union such as our forefathers formed—a Union of equal rights, privileges, and immunities. We claim an equal right to settle with our property in the public domain with the same protection for ourselves and property as that enjoyed by our Northern confederates. We claim the right to pass in transit with our property through the Northern States as their citizens have to pass with theirs through ours…. That the election of a Black Republican or Abolitionist to the President would forever preclude all hope of the re-establishment of these rights in the Union, and, therefore, would furnish just and proper grounds of secession of the part of the Southern States.

These Virginians believed they had revered and obeyed their fathers' slavery-securing Constitution. But doing so would become an impossibility if the United States elected an antislavery government: that Union would not be the one their fathers had made.[40]

Of course, a so-called "Black Republican" prevailed. Lincoln had run on constitutional redemption, vowing to follow the first principles and practices of the Founding—the theme of his Cooper Union speech. All parties had flown the banner of constitutional fealty, including the new Constitutional Union party. An "Abolitionist" did not take office in 1861, but the occupant was gradually remade into one. Amid wartime exigency, Black national service, and white treason, the Union would indeed cease to be the one that national fathers had constituted, regardless of which Founding story it was measured against.[41]

[39] *Congressional Globe*, Feb. 9–11, 1847, 361–68; *Speech of A. G. Brown, of Mississippi: Delivered at Elwood Springs, Near Port Gibson, Miss., November 2, 1850* (Washington, D.C.: Globe Office, 1850).

[40] *Republican Campaign Edition for the Million* (Boston: J.P. Jewett and Company, 1856); Entry for Feb. 9, 1860, Diary of Richard Eppes, Section 46, Eppes Family Papers, Virginia Historical Society.

[41] Foner, *The Fiery Trial*.

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The Founding Over Time

The destruction of the Union with slavery did not consign the Founding to a bygone era. Yet neither its popular hold nor the purposes it served could remain static as the country and Constitution transformed. Ideologies are not fixed. Their resonance may fade as the world they mediate shifts; or they may be adapted to fit, explain, and construct an emerging world. Having arisen in a slaveholding republic amid the attenuation of revolutionary ideology, the Founding's sense-making power waned during a protracted struggle that many hoped would amount to a second founding. But it could rise again. What became of this constitutional ideology once Black Americans seized freedom and an empowered demos reclaimed temporal sovereignty to amend the Constitution over massive resistance is a history beyond the scope of this article. But it is material to specify here that it was not a linear one of continuity, decline, or restoration between then and now. Power and purposes have fluctuated, changed, and endured. Approaching the Founding as ideology not only offers resources for studying this evolution and persistence in the interconnected realm of constitutional politics, culture, and jurisprudence but also for understanding the histories that bear its imprint. By considering the Founding's relative authority and shifting applications in that confluent realm as variables in constitutionalism across eras—from Jim Crow reasoning and New Deal narratives to civil rights movement litigation and conservative legal organizing—explanatory accounts sensitive to its integrated legal, political, and civic power and purposes can avoid foreshortening accounts of particular moments and reducing constitutional culture to static background context.[42]

Consider in the broadest strokes how the Founding's long-run force and analytical significance may be observed across the punctuated ages of United States constitutional history. Just as it took innumerable rites and rituals to inculcate the ideology in antebellum America, it took analogous work to rejuvenate it from a postbellum nadir when original authority receded. In this light, the Founding's future became pivotal in the survival and substance of Reconstruction. Political campaigns, civic commemorations, judicial opinions, didactic literature, and paramilitary violence, together summoning a mythic, still-governing first Founding, sought to control the relationship between citizens and the Constitution. These efforts reestablished reverent deference to the Fathers' Constitution as a potent constitutional ideology. In doing so, they initiated an enduring struggle within American constitutionalism over delimiting and hierarchizing the scope of latter-day change. The close connection between the Founding and politics of slavery faded after the Thirteenth Amendment. But the ideology's premises concerning authority and its disciplinary qualities against democratic capacity held enormous potential to mediate constitutionalized conflicts in modern America. The Founding, for instance, could assist in forging white reunion and narrowing enforceable civil

[42] Eric Foner, *The Second Founding: How the Civil War and Reconstruction Remade the Constitution* (New York: W. W. Norton & Company, 2019); Laura Edwards, *A Legal History of the Civil War and Reconstruction* (New York: Cambridge University Press, 2015).

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rights; it could authorize Jim Crow and challenge the New Deal; it could rally coalitions against legal liberalism and justify novel gun rights narratives. Here, as in antebellum America, the recurrent *nesting* of constitutional memory can be observed: specific narratives of meaning, resting on plausibility cultivated in different broad communities, fill the Founding's thin-centered ideology while operating through its imperatives, constraints, and mythic anchor.

To the extent that the Founding reoccupied pride of place in constitutional culture and jurisprudence, it could steer, as it did for antebellum Americans, how people articulated plausible, "on the wall" arguments. This ideological force could induce popular and juridical constitutional actors to thread liberal, egalitarian, and social justice aspirations through the eye of an original moment or cast later amendments as fulfilling Founding ideals rather than toppling an ancien régime. Whether because of earnest belief in the Founding or because it commanded the belief of others, such constitutional reasoning developed pathways to translate the Founding or explain constructive development in light of ascribed original commitments. Yet the Founding as ideology faced significant opposition from various communities, and its relative influence waxed and waned. Branches of mainstream constitutionalism rejected or stretched the premises of faith in the Fathers' Constitution, preferring to honor a "living document" that reflected, per Justice Thurgood Marshall, the "suffering, struggle, and sacrifice" to fix "what was wrong with the original." More radical voices decried a Constitution fatally anti-democratic by design yet insulated by patriotic constitutionalism. Just as antebellum abolitionist attacks exposed the borders of the Founding as ideology, these critiques showed the Founding as powerful but contestable "political thinking" about how Americans must live under the Constitution.[43]

This forceful presence is why explaining the Founding is meaningful across eras and inquiries in the constitutional life of the United States. The politics that it has enabled and precluded, tensions it has contained, and opposition it has engendered make the modern history of the Founding a vital consideration for understanding American constitutionalism. Recognizing how the ideology shaped antebellum politics gives insight into this longer view of constitutionalism by identifying the Founding as a prescriptive relationship cultivated through

[43] Thurgood Marshall, "The Constitution's Bicentennial: Commemorating the Wrong Document?," *Vanderbilt Law Review* 40 (1987): 1342; on dissenting visions, see, Rana, *The Constitutional Bind*; for works evidencing the influence of the Founding since Reconstruction, see David Blight, *Race and Reunion: The Civil War in American Memory* (Cambridge, MA: Harvard University Press, 2001); Farah Peterson, "Our Constitutionalism of Force," *Columbia Law Review* 122 (2022): 1539–626; Pamela Brandwein, *Reconstructing Reconstruction: The Supreme Court and the Production of Historical Truth* (Durham: Duke University Press, 1999); Julia Bowes, "'Every Citizen a Sentinel! Every Home a Sentry Box!' The Sentinels of the Republic and the Gendered Origins of Free-Market Conservatism," *Modern American History* 2 (2019): 269–97; Jared Goldstein, *Real Americans: National Identity, Violence, and the Constitution* (Lawrence: University of Kansas Press, 2022); On aspirational constitutionalism, see Hendrik Hartog, "The Constitution of Aspiration and 'The Rights That Belong to Us All,'" *Journal of American History* 39 (1987): 1013–34; on argument plausibility, see Jack Balkin, "Bush v. Gore and the Boundary Between Law and Politics," *Yale Law Journal* 110 (2001): 1407–58; on twentieth-century anti-veneration, see Rana, *The Constitutional Bind*.

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a thick field of words, deeds, and events—neither a "given" feature of the Constitution nor simply window-dressing rhetoric. This view provides a framework to interpret power and purposes across the diffuse sights, sounds, and materials of constitutional culture—to recognize, for example, how the reception of Richard Hildreth's *History* illuminates certain boundaries of dominant constitutional discourse. Studying the Founding as ideology concentrates attention on the dynamic connections among civic life, political culture, and formal constitutional interpretation. It can make sense of how nested memory claims have enabled action and inaction over time by attending to the interplay between diffuse expression that reproduces a "mythical and heroic" Founding and judicial narratives of specific meanings—what, for instance, the Taney or Roberts Court has said constitutional history requires or forecloses.[44]

Just as approaching the Founding as ideology clarifies antebellum constitutionalism, it can do so for modern America's conflicted constitutional traditions. In particular, it can locate "originalism" in historical perspective as a program of constitutional politics before and beyond the legal community that identifies with the term. The ideology of an authoritative original moment, as built and rebuilt to mediate struggles over democracy, rights, and government authority, should be understood as providing resources that underwrite originalist discourses, scholarly, legal, and popular. Originalism involves the articulation of a strong form of the ideology as the only legitimate way to understand the Constitution—claiming not merely that constitutional history matters but that a meaning-fixing Founding governs. As such, efforts to rationalize and elaborate imperatives of recovery and obedience in legal literature, judicial opinions, and other constitutional law talk are bound up in reproducing the authority of a mythic original moment to settle the present. Indeed, as the federal judiciary has become central to shaping popular constitutional understandings, the approach makes "originalist" judges and academics legible as constitutional politicians iterating Founding ideology and scorning ideas that contradict both nested constitutional memories and premises of Founding authority.[45]

In a wide, long view of United States constitutionalism, these recent constitutional politics can be recognized as operating through concepts and convictions cultivated in antebellum America and reformulated for subsequent struggles. This view of the Founding's presence does not appear in originalists' internal histories, of course. Nor does it ground critical external histories that begin with Warren Court backlash and the Reagan Justice Department. But both intellectual and political stories depend on idioms, ideas, and imperatives

[44] Jonathan Gienapp, "The Myth of the Constitutional Given: Enumeration and National Power at the Founding," *American University Law Review Forum* 69 (2020): 183–211.

[45] For related analysis of the claims and appeal of originalism, see Jonathan Gienapp, *Against Constitutional Originalism: A Historical Critique* (New Haven: Yale University Press, 2024); Eric Siegel, *Originalism as Faith* (New York: Cambridge University Press, 2018); Jamal Greene, Nathaniel Persily and Stephen Ansolabehere, "Profiling Originalism," *Columbia Law Review* 111 (2011): 356–418; Post and Siegel, "Originalism as a Political Practice."

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outside and prior to originalist theory as such. The ideological Founding presents a framework that scrutinizes how and why appeals to an authoritative constitutional past arise, galvanize, and falter over time, including how invocations in law depend on popular notions about authority and history. The United States has long been home to a constitutional cacophony of claiming, believing, ruling, and dissenting. Approaching the Founding as ideology is a way to listen across eras and forums to understand the relationship between an ever-changing people and a Constitution that may or may not be conceived of as capable of changing with them.

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