

Creating Constitutional Conservatism

Michael Lienesch

University of North Carolina at Chapel Hill

Although “constitutional conservatism” has become commonplace among American conservatives, its meaning has proven elusive. Revisionist historians and political scientists have looked to its origins in the early twentieth century, when Republican Party elites constructed a conservative interpretation of the Constitution and put it into practice in the era of Harding, Coolidge, and Hoover. Yet these revisionists have told only part of the story, because constitutional conservatism was also the creation of a network of activists and groups who in the 1920s constructed a nationwide campaign to instill a conservative understanding of the Constitution in the American public. This study examines how they built their campaign, defined its purpose, framed a conservative reading of constitutional history and theory, and conveyed it to the public in a bitterly contested political process. By telling this fuller story, it provides a more complete understanding of constitutional conservatism, both in the past and today.

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“Constitutional conservatism” has become a rallying cry of the right. Popularized in recent years by Tea Party activists, the term has become pervasive in conservative politics, embraced with equal fervor by libertarians, neoconservatives, and members of the religious right. But as the term has come to be adopted by conservatives of almost every cast, advocates and critics alike have begun to ask exactly what it means. In fact, for all its popularity, constitutional conservatism has seldom been clearly defined, and thinkers such as Harvey C. Mansfield, Peter Berkowitz, and Yuval Levin have struggled to give content to the concept. Nevertheless, the idea is important, not only because it resonates strongly with so many conservatives, but also because it is seen by some of them as a theoretical structure on which to build a broadly popular version of American conservatism. As Senator Orrin Hatch put it in a 2014 speech to conservative policymakers

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meeting at the Reagan Ranch, constitutional conservatism “will unite the conservative movement and win the hearts and minds of a broad majority of Americans looking for change.”¹

In attempting to define constitutional conservatism, scholars have sought its origins in a diverse collection of sources. Although most see anticipations of the concept in Edmund Burke, and many find fuller elaborations of it in Tocqueville, Madison, and Lincoln, their views become more convoluted when it comes to post-World War II writers, with variations on the theme being found in the thinking of Russell Kirk, Friedrich A. Hayek, and William F. Buckley, along with a host of lesser known conservatives.² Over the last few years, however, a growing number of revisionist historians and political scientists led by Johnathan O’Neill, Joseph Postell, and William Schambra have turned their attention to a different set of sources, examining the writings of a select group of early twentieth-century conservatives who in the decades after 1912 created a modern version of conservatism grounded in the American Constitution.³ In this group, whose numbers included not only Presidents and Supreme Court Justices, but also prominent Republican Party leaders such as Elihu Root, James M. Beck, and David Jayne Hill, they have found champions of the Constitution who acted to defend it against a deluge of Progressive era reforms.⁴ Countering conventional views of these early constitutional conservatives as Social Darwinists and reactionaries, they describe them instead as advocates of a philosophy of individual freedom and limited government who sought to preserve the Constitution of the framers and

1. Quoted in Jennifer Pompei, “Hatch Calls for GOP to Unite Around ‘Constitutional Conservatism,’” *Washington Times*, October 8, 2014. On constitutional conservatism, see Harvey C. Mansfield, “A Plea for Constitutional Conservatism,” in *The Future of Conservatism: Conflict and Consensus in the Post-Reagan Era*, ed. Charles W. Dunn (Wilmington, Del.: ISI Press, 2007), 43–55; Peter Berkowitz, “Constitutional Conservatism,” *Policy Review* 153 (2009): 3–23; and Yuval Levin, “What Is Constitutional Conservatism?,” *National Review* 63 (November 28, 2011): 30–32. See also Berkowitz, *Constitutional Conservatism: Liberty, Self-Government, and Political Moderation* (Stanford, Calif.: Hoover Institution Press, 2013). For critical views, see Jill Lepore, “The Commandments: The Constitution and Its Worshipers,” *The New Yorker* 86 (January 17, 2011): 70–76; Brian Glenn, “What Is A Constitutional Conservative, Anyway?” *Salon*, July 4, 2011, at http://www.salon.com/2011/07/04/brian_glenn_conservative/; Ed Kilgore, “The Hidden Meaning Behind Michele Bachmann’s ‘Constitutional Conservatism,’” *The New Republic*, July 5, 2011, at <https://newrepublic.com/article/91205/michele-bachmann-president-constitution>; and Heather Digby Parton, “Tea Party’s Horrifying Cousin: Here Comes ‘Constitutional Conservatism,’” *Salon*, August 11, 2014, at http://www.salon.com/2014/08/11/tea_partys_horrifying_cousin_here_comes_constitutional_conservatism/.

2. The best treatment of post-war constitutional conservatism is Ken I. Kersch, “Ecumenicalism Through Constitutionalism: The Discursive Development of Constitutional Conservatism in *National Review*, 1955–1980,” *Studies in American Political Development* 25 (2011): 1–31.

3. The best collection of recent studies on the topic is *Toward an American Conservatism: Constitutional Conservatism During the Progressive Era*, ed. Joseph Postell and Johnathan O’Neill (New York: Palgrave Macmillan, 2013).

4. On Root, see Richard William Leopold, *Elihu Root and the Conservative Tradition* (Boston, Mass.: Little, Brown and Co., 1954); on Beck, see Morton Keller, *In Defense of Yesterday: James M. Beck and the Politics of Conservatism, 1861–1936* (New York: Coward-McCann, Inc., 1958); and on Hill, see Aubrey Parkman, *David Jayne Hill and the Problem of World Peace* (Lewisburg, Pa.: Bucknell University Press, 1975).

apply it to the changing character of a modern nation. Moreover, although they allow that this early constitutional conservatism was eventually overwhelmed by the Great Depression and the New Deal, they see it as successful in its time and potentially successful in ours. Indeed, these revisionist scholars – most of whom are themselves conservatives – consider these early twentieth century constitutional conservatives to be models for those today. As Charles R. Kesler puts it, “they have much to teach twenty-first century conservatives about the essence of American conservatism.”⁵

Yet in recovering these early constitutional conservatives, revisionists have told only part of the story. More than the product of a small band of political elites working within the Republican Party, constitutional conservatism was also the creation of an extensive network of conservative activists and groups who in the 1920s constructed a nationwide campaign to instill a conservative understanding of the Constitution in the American public. Although committed to defending the Constitution against Progressive critics, these activists and groups were motivated by other concerns as well, being troubled by the impact of immigration, fearful of domestic radicalism, and opposed to progressive political campaigns such as those to abolish child labor and assure equal rights for women. While not all Social Darwinists or reactionaries, many of these conservatives were deeply anti-democratic thinkers who were also thoroughly suspicious of conventional notions of progress. And their successes notwithstanding, their eventual defeat can be explained not only as a consequence of the Depression and the New Deal, but also as a result of their own political failings. This study examines how they built their campaign, defined its purpose, framed a conservative reading of constitutional history and theory, and conveyed it to the public in a bitterly contested political process. By telling this fuller story, it provides a more complete understanding of constitutional conservatism, both as it was created in the past and as it continues to be created today.

Claiming the Constitution

In the wake of the 2008 election, in which Barack Obama was swept into office in an electoral college landslide and liberal Democrats gained control of both houses of Congress, conservative thinkers began to reconsider the character of contemporary conservatism. Writing in early 2009 in the Hoover Institution’s *Policy Review*, Peter Berkowitz made the case for constitutional conservatism, arguing that in the face of the recent liberal resurgence, conservatives of all stripes would

5. Charles R. Kesler, “Epilogue,” in Postell and O’Neill, *Toward an American Conservatism*, 267–72, at 272 (see note 3 above).

do well to concentrate on maintaining the Constitution and protecting the principles embodied in it. While rank and file activists eagerly embraced the idea, scholars sought to add meaning to it by turning to the past for examples of earlier constitutional conservatives. Thus, revisionists looked to the early twentieth century, making the case that it was in the presidential election of 1912, when Republican Party elites prevented Theodore Roosevelt from capturing the presidential nomination on a platform that included radical constitutional reforms, that conservatives first articulated a coherent concept of constitutional conservatism. Blocked from the nomination, Roosevelt bolted to the Progressive Party, dividing the Republican share of the popular vote and allowing the election of the Democrat Woodrow Wilson. Nevertheless, revisionists contended that although these early constitutional conservatives had divided the Republican Party and lost the election, they had saved the Constitution, preventing it, in the words of William Schambra, "from being consigned to the ash heap of history."⁶

Although revisionists have rightly pointed to the importance of the 1912 election, and to the role of Republican Party leaders in launching the constitutional conservatism that followed from it, they have told only part of the story. For constitutional conservatism was also the product of a popular political campaign that commenced in the wake of World War I and continued throughout the 1920s and beyond. The campaign was organized by an alliance of politicians, lawyers, and intellectuals who were determined to extend the patriotic nationalism of wartime into the postwar period and to bring it to bear on the problems associated with immigration, the rising threat of international socialism, and the continuing demand for progressive reform. Although the organizers consisted primarily of prominent Republicans, they acted for the most part independently of government agencies or political parties, operating instead through elite civic organizations like the National Security League (NSL), the American Defense Society, and the National Association for Constitutional Government (NACG), which billed themselves as "non-partisan" and even "non-political."⁷ These groups reached out in turn to a wider circle of patriotic and veterans associations, including the Sons of the American Revolution and the American Legion, and to what at the time was the stolidly conservative American Bar Association (ABA). In this way, they built a public base while at the same time acting to avoid, in the words of the NSL's Robert McElroy, "even the appearance of being reactionary."⁸ Corresponding regularly,

6. William Schambra, "The Saviors of the Constitution," *National Affairs* 10 (2012): 91–107, at 107. See Schambra, "The Election of 1912 and the Origins of Constitutional Conservatism," in Postell and O'Neill, *Toward an American Conservatism*, 95–119 (see note 3 above). See also Peter Berkowitz, "Constitutional Conservatism," 3–5 (see note 1 above).

7. Charles Stewart Davison to Charles F. Brown, August 26, 1920, Box 5, American Defense Society Records, The New-York Historical Society, New York, N.Y.

8. Robert M. McElroy to Elihu Root, December 7, 1918, Box 136, Elihu Root Papers, Manuscript Division, Library of Congress, Washington DC. Subsequent citations are to Root Papers.

meeting in conferences and coordinating committees, reprinting one another's publications in their journals and newsletters, these bodies became the core of a network that would eventually extend, according to the ABA's American Citizenship Committee, into "practically every community in this country."⁹ The plan was to create a campaign to educate citizens in the fundamentals of the American Constitution, thereby instilling patriotism in the general public and inoculating it against radicalism and progressive reform. As McElroy told Root in a 1919 letter, "a better popular understanding of our Constitution and a feeling of pride in its possession will put an end to the menace of Bolshevism, and help to prepare the country for the task of solving the great problems which lie before us."¹⁰

From the start, organizers sought to build a broad popular base of support for their cause. Beginning at least as early as 1916, leaders of military and patriotic organizations had been discussing the notion of creating a national holiday to commemorate the Constitution. Postponed because of World War I, the idea reappeared when NSL representatives announced plans in early 1919 to initiate nationwide celebrations on September 17, the anniversary of the Constitution's signing. Drawing on their experience in mobilizing popular support for the war, and working with contacts in the NACG and Sons of the American Revolution, NSL organizers in the same year created a coordinating structure called the National Constitution Celebration Committee, which in turn established state and local organizing committees of business and civic leaders who scheduled events, placed advertisements in community newspapers, and solicited support from church and community groups.¹¹ Public officials issued proclamations; speakers addressed banquets and mass meetings; and civic groups staged readings of the Constitution, or reenacted its signing. There were parades, band concerts, and community dances. Pageants and plays were produced, some with casts of hundreds, like the one in Louisville, Kentucky that featured processions of children in red, white, and blue led by the "Spirit of the Constitution in purple robes and gilded scroll."¹² The events proved extraordinarily popular, and over the next several years, Constitution Day came to be celebrated in cities and towns across the

9. "American Citizenship Committee's Report," *American Bar Association Journal* 9 (1923): 653–56, at 655.

10. McElroy to Root, June 9, 1919, Box 137, Root Papers (see note 8 above).

11. "Nation to Observe Constitution Day," *New York Times*, September 17, 1919. See also McElroy to Root, January 13, 1919 and June 4, 1919, Box 137, Root Papers (see note 8 above). On the National Security League, see John Carver Edwards, *Patriots in Pinstripe: Men of the National Security League* (Washington DC: University Press of America, 1982). For background, see Michael Kammen, *A Machine That Would Go Of Itself: The Constitution in American Culture* (New York: Alfred A. Knopf, 1986), 219–54.

12. Ethel Allen Murphy, "America's Rock of Ages," in Wallace McCamant, Ethel Allen Murphy, and Nannie Lee Frayser, *Constitution Week Celebration in Louisville* (Louisville, Ky.: n.p., 1923), 19–27, at 19.

country. In 1922 alone, the Sons of the American Revolution estimated the total number of celebrations to be “in excess of 60,000.” In some states, reported its Constitution Day committee, “scarcely a church, school, civic or commercial organization failed to hold special services in honor of the day.”¹³

But the celebrations were only the beginning, because organizers were determined to extend their efforts into an ongoing campaign of constitutional civic education. In 1923, the American Bar Association announced plans to turn Constitution Day into Constitution Week, with programs focusing on separate topics each day. Adopting strategies introduced by George Creel’s wartime Committee on Public Information, the ABA’s Citizenship Committee sent “four-minute speakers” into factories and movie theaters to talk about the Constitution. State and local bar associations were particularly supportive, encouraged by the Citizenship Committee, which called on “all the lawyers of this country” to become “‘Minute Men of the Constitution,’ equipped and ready upon a moment’s notice to serve and defend our country in times of peace as well as war.”¹⁴ The American Defense Society announced plans to bring the Constitution to the American people by distributing an estimated 100,000 copies of its *People’s Edition of the Constitution of the United States* to clubs, schools, and public libraries.¹⁵ In California, the Better America Federation, a conservative business lobby, initiated oratorical contests on the Constitution that by mid-decade had expanded to include some three million contestants in 28,000 high schools and over 300 colleges across the country.¹⁶ The ABA’s Citizenship Committee sponsored radio addresses on the Constitution that went out to audiences in the millions. “It is easily true,” reported the Committee in 1926, “that there is more interest in and more discussion of the Constitution today than there has been within the memory of living men.”¹⁷

Even more ambitious was the goal of making the teaching of the Constitution compulsory in the nation’s public schools. Taking the initiative again was the NSL, whose Committee on Patriotism through Education had sponsored extensive school-based programs to build popular support for the war. In 1922,

13. “Report of the Committee on the Observance of Constitution Day, September 17, 1922,” *Official Bulletin of the National Society of the Sons of the American Revolution* 17 (1922): 19–31, at 31, 30.

14. “American Citizenship Committee’s Report,” 655 (see note 9 above). On Creel’s “four-minute men,” see Stephen Vaughan, *Holding Fast the Inner Lines: Democracy, Nationalism, and the Committee on Public Information* (Chapel Hill: University of North Carolina Press, 1980), 117–40.

15. See *American Defense Society Inc. Program for 1926*, 8, Reel 52, Volume 331, American Civil Liberties Union Records, Public Policy Papers, Department of Rare Books and Special Collections, Princeton University Library, Princeton, N. J. Subsequent citation to ACLU papers.

16. “Study of the Constitution,” *Better America Federation of California Weekly News Letter* 346 (January 12, 1926): 1.

17. “American Lawyers Support the Constitution,” *Constitutional Review* 10 (1926): 185–89, at 186.

it established a Committee on Constitutional Instruction consisting of one hundred educators from around the country, who set to work contacting teachers, school superintendents, and legislators in every state, and providing model statutes requiring courses on the Constitution.¹⁸ Aided by the ABA and the American Legion, the Committee's efforts were astonishingly successful: between 1923 and 1924, no fewer than twenty-five states with schools serving three million students passed compulsory Constitution education laws, many of them copied verbatim from the model statutes.¹⁹ With funds from business and financial leaders such as Secretary of the Treasury Andrew W. Mellon, the Committee provided public school systems with lesson plans and textbooks, including an estimated 250,000 copies of its own *Catechism of the Constitution of the United States*.²⁰ As compulsory course statutes were passed, the ABA took it upon itself to make sure they were carried out, recommending the establishment of a committee "in every community" whose duty was "to see that the Constitution is taught in every school, public and private," and to report on "the courses in each state, the textbooks used, and the qualifications of teachers."²¹ By 1926 NSL Secretary Lloyd Taylor was announcing that over 200,000 teachers in 37 states were required to teach the Constitution to more than 4 million school children.²² Nor did the campaign show any signs of stopping there. "Let us therefore continue our work in the schools," as Spokane businessman and lawyer Samuel Weaver told the Washington State Bar Association in the same year, "until every student and every citizen thoroughly understands the Constitution of the United States and is loyal to it."²³

18. On the creation of the campaign, see Lloyd Taylor to Alton B. Parker, February 4, 1922, Box 7, Alton B. Parker Papers, Manuscript Division, Library of Congress, Washington DC

19. See *National Security League 1924. Annual Report of S. Stanwood Mencken, President. May 8, 1924* (New York: National Security League, 1924), n.p., Reel 53, Volume 334, ACLU Records. See also "Americanism Activities," *American Legion Weekly* 3 (June 17, 1921): 15. The ABA's model statute is included in R.E.L. Saner, "How Bar Can Promote Better Citizenship," *American Bar Association Journal* 9 (1923): 113–14, at 114. In addition to the compulsory course requirements, legislation passed in 33 states required all teachers, regardless of the subjects they taught, to pass tests demonstrating their knowledge of the United States Constitution. See Richard J. Ellis, *To the Flag: The Unlikely History of the Pledge of Allegiance* (Lawrence: University Press of Kansas, 2005), 78.

20. See Henry L. West to Root, August 13, 1919, Box 137, Root Papers (see note 8 above). See also James M. Beck to Andrew W. Mellon, January 10, 1925, Box 5, James M. Beck Papers, Public Policy Papers, Department of Rare Books and Special Collections, Princeton University Library, Princeton, N.J. Subsequent citations are to the Beck Papers

21. "American Bar Association to Promote American Ideals," *Constitutional Review* 7 (1923): 55–60, at 59. In the same spirit, the American Legion at this time called for all teachers to swear allegiance to the Constitution of the United States and their state constitutions. See Bessie Louise Pierce, *Citizens' Organizations and the Civic Training of Youth* (New York: Charles Scribner's Sons, 1933), 39.

22. "Constitution Study Required in 37 States," *New York Times*, August 15, 1926.

23. Samuel P. Weaver, "The Constitution in Our Public Schools," *Constitutional Review* 11 (1927): 105–12, at 112.

Defending the Constitution

Claiming the Constitution was only the beginning. In building their campaign, constitutional conservatives made it clear that the Constitution was very much in danger, threatened by enemies who were determined to destroy it. According to the revisionist account, they found these enemies among American Progressives like Herbert Croly, who argued that the constitutional system was antiquated and reactionary, requiring radical restructuring in order to adequately address modern social problems. In calling attention to American Progressivism, revisionist scholars were not alone, because after 2008, many conservative thinkers could be found making the case that Obama-era liberalism was really only an extension of Progressive-era pragmatism. Thus in a 2011 *National Review* article entitled “What is Constitutional Conservatism?,” Yuval Levin argued that Obama and his followers could be best understood as carrying out the plans of their populist and technocratic Progressive predecessors to bring about radical democratic reforms while also enlarging the scope of the federal government and elevating a class of unelected experts to run it. At the same time, armed with studies by scholars such as Ronald Pestritto, Richard Epstein, and Charles R. Kesler, conservative commentators like Andrew Napolitano were producing similar indictments of the Progressive era, while media personalities led by Glenn Beck alerted their followers to the socialist sympathies of Theodore Roosevelt and Woodrow Wilson. Meanwhile, revisionists demonstrated how the first constitutional conservatives protected the Constitution against its early Progressive enemies, arguing that they should serve as examples for those who continue to defend it against its modern liberal ones. As O’Neill put it, “those who would resist the further elaboration of the Progressive vision would do well to study the arguments and limitations of those who first opposed it.”²⁴

But while revisionists are right in arguing that constitutional conservatism arose as a response to Progressivism, they are only partly right, since constitutional conservatives were reacting to a diverse collection of other threats as well. Among these, immigration was a serious concern. Campaign leaders, many of them pillars of the Anglo-American Protestant establishment, commonly expressed dismay at the millions of newcomers who had arrived on America’s shores over the previous

24. Johnathan O’Neill, “The First Conservatives: The Constitutional Challenge to Progressivism,” *First Principles Series Report* 39 (Washington, D.C.: Heritage Foundation, 2011): 2. See Levin, “What Is Constitutional Conservatism?,” 31. See also Ronald J. Pestritto, *Woodrow Wilson and the Roots of American Liberalism* (Lanham, Md.: Rowman & Littlefield, 2005); Richard A. Epstein, *How Progressives Rewrote the Constitution* (Washington, D.C.: Cato Institute, 2006); and Charles R. Kesler, *I Am the Change: Barack Obama and the Crisis of Liberalism* (New York: Broadside Books, 2012). For Napolitano, see Andrew P. Napolitano, *Theodore and Woodrow: How Two American Presidents Destroyed Constitutional Freedom* (Nashville, Tenn.: Thomas Nelson, 2012). On Beck, see Ronald J. Pestritto, “Glenn Beck, Progressives and Me,” *Wall Street Journal*, September 15, 2010.

several decades, many of them completely ignorant of the Constitution and some of them actively opposed to it. Throughout the early postwar period, patriotic groups led by the American Legion and the Daughters of the American Revolution made the Constitution a central focus of their Americanization programs, insisting that all who wished to become citizens be able to demonstrate a requisite understanding of it. As the Legion's Americanism Commission Director Garland W. Powell explained, "people cannot be law-abiding citizens or stand for law and order when they do not know the fundamental principles of the foundations upon which the laws of their land are based."²⁵ Other organizations worked to put copies of the Constitution directly into the hands of immigrants. The NSL, for example, distributed pamphlets on *How To Obtain Citizenship Papers* that began with a synopsis of the document, along with the reminder that all applicants for citizenship must be "attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same."²⁶ The American Defense Society established a special program to provide its *People's Edition of the Constitution* to Russian immigrants, many of them Jewish refugees whom it suspected of holding radical political views. The NACG announced that its *Pocket Edition of the Constitution of the United States* would be "translated into several foreign languages." And in 1925 the United States Patriotic Society, an anti-radical group made up primarily of New York businessmen and lawyers, declared its intention to translate a "simplified form" of the American Constitution "into all languages," explaining that immigrants from every country "must be taught by us in their own tongue how our Constitution provides better and safer means of correcting causes for discontent."²⁷

Closely connected was the continuing challenge of domestic radicalism. With the Russian revolution abroad and postwar recession at home encouraging radical protest, constitutional conservatives offered their enthusiastic support to the state sponsored campaigns of investigation and repression that collectively came to be known as the Red Scare. Speaking to a Constitution Day audience at Carnegie Hall in 1919, Root described radicalism of all forms (he singled out the recent Boston police strike as one instance) as a threat not just to law and order, but to the very existence of American government. "We cannot maintain this Constitution without insisting upon its being followed," he told his audience. "We must stand for it when

25. Garland W. Powell, *Service for God and Country* (Indianapolis, Ind.: Cornelius Printing Company, [1924]), 67. See *Manual of the United States For the Information of Immigrants* (n.p.: [Washington, D.C.]: National Society of the Daughters of the American Revolution, 1921).

26. Henry D. Thompson, *How to Obtain Citizenship Papers*, 4th ed. (New York: National Security League, 1919), 2.

27. "Pocket Edition of the Constitution of the United States," *Constitutional Review* 4 (1920): 63–64, at 64; *Whither America?: The Menace to Americanism and How to Overcome It* (New York: United States Patriotic Society, 1925), 9, 8. See also *American Defense Society Inc. Program for 1926*, 8 (see note 15 above).

it is challenged. And it is being challenged today, here and there, in a hundred directions.”²⁸ Even as popular fears of radicalism began to subside in the early 1920s, constitutional conservatives persisted in warning of the continuing insidious influence of radical propaganda. “It is stated on competent authority that there are 1,500,000 radicals in this country who are clamoring for a change in the nature of our government from its present form to one of various degrees of a communistic state,” announced the ABA Citizenship Committee in its 1923 annual report.²⁹ In making the case for a campaign to counter this radical threat, these conservatives turned to the Constitution. In fact, many freely admitted that a principal purpose of constitutional instruction was to indoctrinate the public against the spread of radicalism. As Henry Campbell Black, editor of the NACG’s *Constitutional Review* put it, “denouncing the ‘reds’ does no good. There must be a campaign of counter-education.”³⁰ Some minced no words in calling their efforts an exercise in propaganda. Put simply, said ABA President Cordenio A. Severance, noting the pervasiveness of radical publications, the task was “to conduct a propaganda of our own.”³¹

Progressivism continued to be a major concern. Far from having put the problem to rest in 1912, constitutional conservatives faced a continuing Progressive threat throughout the following decade, culminating in the 1924 third party presidential campaign of Senator Robert M. La Follette.³² With La Follette running on a Progressive Party platform that called for constitutional reforms to ease the amendment process, allow for recall of judges, and make it more difficult for the Supreme Court to declare acts of Congress unconstitutional, conservative organizers worked furiously to frame the election as a referendum on the Constitution. In an essay published by the NSL, the legal historian Charles Warren singled out the candidate and those around him – “disappointed reformers, labor leaders and radical politicians” – as being embarked on a course that would turn the Constitution into “a scrap of paper, whenever Congress chose so to regard it.”³³

28. “Root Denounces Police of Boston,” *New York Times*, September 18, 1919.

29. “American Citizenship Committee’s Report,” 653 (see note 9 above). In 1924 Beck stated that he was “reliably informed that a sum of over \$400,000 was sent from Moscow for use this year in aligning the negro portion of our population with the Third International”; James M. Beck, “A Rising or a Setting Sun?,” *Constitutional Review* 8 (1924): 3–15, at 12.

30. “Popularizing the Federal Constitution,” *Constitutional Review* 4 (1920): 235–39, at 235.

31. Cordenio A. Severance, “The Attack on American Institutions,” *Constitutional Review* 6 (1922): 96–101, at 100. National Security League Secretary Charles Orth boasted that his organization was “undoubtedly the best propaganda machine in existence”; Charles D. Orth to Root, December 4, 1919, Box 137, Root Papers (see note 8 above).

32. On the 1912 election, see Sidney M. Milkis, *Theodore Roosevelt, the Progressive Party, and the Transformation of American Democracy* (Lawrence: University Press of Kansas, 2009), 185–251. On the 1924 campaign, see Nancy C. Unger, *Fighting Bob La Follette: The Righteous Reformer* (Chapel Hill: University of North Carolina Press, 2000), 281–304.

33. Charles Warren, *Borah and La Follette and the Supreme Court of the U.S.* (New York: National Security League, 1923), 3; 15.

Members of the League's "Flying Squadron" of speakers fanned out across the country to warn audiences of businessmen and club women about La Follette's socialist views and ties to radical organizations. As the election approached, constitutional conservatives kept up a drumbeat of criticism, so much so that many Constitution Day celebrations, falling only weeks before the election, took on the character of anti-La Follette political rallies.³⁴ With his defeat in the 1924 election, they breathed a collective sigh of relief. As James Beck would confide to a colleague, "the recent election convinced me that there is a real sense of constitutional morality in the American people."³⁵

But Progressivism was only part of a bigger problem. The election of 1924 may have thwarted Progressive Party proposals to recast the relationship between Congress and the Court, but it had not diminished popular demands for constitutional reform. Throughout the 1920s, reformers would continue to propose amendments to the Constitution to abolish child labor, assure women equal rights, establish uniform marriage and divorce standards, set limits on the power of Congress to declare war, and restrict the use of injunctions in industrial disputes, along with amendments to ease the process for amending the Constitution. In almost every session of Congress, they introduced bills to establish a Department of Education and provide funding for the Children's Bureau of the Department of Labor. They also repeatedly sponsored reforms providing national child and maternal health programs, setting federal standards for food quality, and ending civil service discrimination against women.³⁶ The Child Labor Amendment, passed by Congress and sent to the states for ratification in 1924, was particularly ominous, threatening to continue a string of successful amendments that included the direct election of U. S. Senators, prohibition, and women's suffrage, each of which, as one speaker told a Constitution Day luncheon at the Baltimore Engineers' Club, had been "an even greater error."³⁷ Not lost on constitutional conservatives was the fact that women were now able to vote, and that progressive women had become a

34. See for example "Chicago Rises to Pay Respect to Constitution," *Chicago Daily Tribune*, September 19, 1924; "Beck Sees Menace in La Follettism," *New York Times*, September 18, 1924; "Constitution Day Celebrated in City," *The [Baltimore] Sun*, September 18, 1924; and "Speakers Hail Constitution," *Los Angeles Times*, September 18, 1924.

35. Beck to F. Dumont Smith, November 13, 1924, Box 7, Beck Papers (see note 20 above). Speaking several months after the election, at the finals of the National Oratorical Contest, President Calvin Coolidge went so far as to ascribe La Follette's loss to the fact that millions of students in the contest had convinced their parents "to maintain the Constitution"; see "Orators Compete in National Final and Hear Coolidge," *New York Times*, May 9, 1925.

36. On campaigns in the 1920s, see Jan Doolittle Wilson, *The Women's Joint Congressional Committee and the Politics of Maternalism, 1920–1930* (Urbana: University of Illinois Press, 2007); Kristi Andersen, *After Suffrage: Women in Partisan and Electoral Politics Before the New Deal* (Chicago: University of Chicago Press, 1996); and Lynn Dumenil, *The Modern Temper: American Culture and Society in the 1920s* (New York: Hill and Wang, 1995).

37. "Constitution Day Celebrated in City," *The [Baltimore] Sun*, September 18, 1924. On the Child Labor Amendment, see Wilson, *Women's Joint Congressional Committee*, 110–32 (see previous note).

strong voice for reform. Thus organizers for patriotic groups like the Sentinels of the Republic, a Boston-based coordinating committee, worked to mobilize conservative women, many of whom had been active in opposing suffrage, by establishing women's study groups, sending speakers to Republican Women's Clubs, and instructing local chapters on the importance of "organizing women in defense of the Constitution."³⁸ Indeed, especially after 1924, women became central to the cause, taking visible roles in fighting the Child Labor Amendment, calling for disestablishment of the Children's Bureau, and working to roll back the Sheppard-Towner Act, which provided funds for child and maternal health programs.³⁹ As Mrs. Reuben Ross Holloway of the Women's Constitutional League of Maryland put it in her testimony to Congress opposing the Child Labor Amendment, constitutional conservatives were committed to protecting the Constitution against all violations, "whether in the name of socialism, feminism, or in the name of humanity."⁴⁰

Redefining the Constitution

Defending the Constitution required defining it, or more precisely redefining it. According to revisionist scholars, constitutional conservatives began this task by constructing an account of the American founding that provided a more authentic alternative to the ones offered by J. Allen Smith, Charles A. Beard, and other Progressive historians.⁴¹ Admittedly, revisionists were by no means the only conservatives of the early Obama era who were turning back to the founding in search of conservative principles. Especially after the arrival of the Tea Party in 2009, as activists donned tricorne hats and politicians such as Rand Paul and Sarah Palin rushed to pay homage to the founding fathers, conservative writers of many stripes could be found elaborating on the example of the Constitution's framers, offering sometimes startlingly different depictions of them as (variously) radical individualists, pious communitarians, and

38. "First National Convention of Sentinels," *The Woman Patriot* 7 (December 15, 1923): 1. On the role of conservative women's groups in the period, see Kim E. Nielsen, *Un-American Womanhood: Antiradicalism, Antifeminism, and the First Red Scare* (Columbus: Ohio State University Press, 2001), and Kristen Marie Delegard, *Battling Miss Bolshevik: The Origins of Female Conservatism in the United States* (Philadelphia: University of Pennsylvania Press, 2012).

39. On the Sheppard-Towner fight, see Wilson, *Women's Joint Congressional Committee*, 113–47 (see note 36 above).

40. "Statement of Mrs. Reuben Ross Holloway, of Baltimore, Md., Representing the Women's Constitutional League of Maryland," *House Committee on the Judiciary, Proposed Child Labor Amendments to the Constitution of the United States: Hearings, 68th Congress, 1st Session, February and March 1924* (Washington DC: Government Printing Office, 1924), 106–08, at 107.

41. See Johnathan O'Neill, "Constitutional Conservatism During the Progressive Era: The National Association for Constitutional Government and *The Constitutional Review*," in Postell and O'Neill, *Toward an American Conservatism*, 13–34, at 25 (see note 3 above).

staunch traditionalists.⁴² Attempting to find areas of agreement among competing camps, a broad cross section of conservative leaders met together in a 2010 ceremony (presided over by a George Washington re-enactor) to adopt the “Mount Vernon Statement,” a faux parchment document designed to bring conservatives together around a shared set of “founding principles.”⁴³ Yet as different conservative thinkers harkened back to different founders with different views, revisionists led by O’Neill and Postell argued that the clearest depiction of the Constitution’s history and theory could be found in the writings of the early twentieth century constitutional conservatives who had rescued the reputation of the framers and passed their principles on to future generations. After all, they explained, constitutional conservatism was from its inception an exercise in “articulating the principles of the American founding.”⁴⁴

Nevertheless, revisionist scholars have not provided a completely convincing account of how these early constitutional conservatives thought about the founders and their principles. Their treatment begins with the American Revolution, where they contend that constitutional conservatism found a firm grounding in a theory of natural rights articulated in the Declaration of Independence. It is true that some conservative political figures of the day, notably President Calvin Coolidge in his speech on the Declaration’s 150th anniversary, did speak in glowing terms about the principles of individual rights and human equality that were enshrined in the document.⁴⁵ However, it is also striking that many constitutional conservatives of the time showed little if any interest in the Declaration (even during its sesquicentennial celebrations), and some went out of their way to criticize it. Hence James Beck argued that it had been too heavily influenced by what he called “the emotional, and at times hysterical, abstractions of French encyclopedists.” Particularly troubling to Beck was its preamble, “with its unqualified assertion of the equality of men and the absolute right of self-determination.” Carried to its logical conclusion, he wrote, such “visionary idealism” could only result in what he called “rampant individualism.”⁴⁶ As to natural rights, David Jayne Hill made it clear that American revolutionaries viewed them as neither abstract nor universalistic. As he told a Sons of the American

42. Compare, for example, Mark R. Levin, *Liberty and Tyranny: A Conservative Manifesto* (New York: Threshold Editions, 2009); David Barton, *The Founder’s Bible: The Origin of the Dream of Freedom* (Newbury Park, Calif.: Shiloh Road Publishers, 2012); and Scott E. Yenor, “The True Origins of Society: The Founders on the Family,” *First Principles Series Report* 48 (Washington, D.C.: Heritage Foundation, 2013).

43. “The Mount Vernon Statement,” at <http://www.themountvernonstatement.com>.

44. Johnathan O’Neill and Joseph Postell, “The Conservative Response to Progressivism: Myth and Reality,” in Postell and O’Neill, *Toward an American Conservatism*, 1–11, at 4 (see note 3 above).

45. On Coolidge and the natural rights tradition, see Joseph Postell, “‘Roaring’ Against Progressivism: Calvin Coolidge’s Principled Conservatism,” in Postell and O’Neill, *Toward an American Conservatism*, 181–208, at 186–88 (see note 3 above).

46. James M. Beck, *The Constitution of the United States* (New York: George H. Doran Company, 1922), 112, 111, 112.

Revolution gathering in 1919, the Revolution was not the result of any theorizing about rights. "I cannot believe that the average American mind was profoundly affected by any mere theory of political philosophy," he insisted, "such as that of John Locke, or Jean Jacques Rousseau, whose writings were known to very few readers." Instead, Hill maintained that Americans of the time saw rights not as the product of a social contract, but of a unique colonial experience of individual independence and self-government. "The Revolution was born," as he put it, "in the souls of the people."

Moreover, because American revolutionaries believed that rights inhered in the individual, and that states existed to protect those rights, they were not hostile to government as such, asking only for a limited government "of laws, not of men." As Hill explained, "to them government meant restraint, and they were quick to discern that the only true and permanently effective government must be sought in self-restraint, accompanied by an organized protection of personal rights against the evil doer."⁴⁷ It followed that constitutional conservatives saw even the most radical of revolutionaries as really not all that radical at all. Senator Henry Cabot Lodge expressed this view in a 1922 speech at a celebration of the birth of revolutionary leader Samuel Adams: "But when we speak of Sam Adams as 'the Man of the Revolution,'" he told his Boston audience, "do not suppose that by Revolution he proposed to have the hideous tyranny of anarchy and violence enthroned here. He did not. Far from it. Adams was preeminently a man of law and order. He intended that all the substantial progress which he and his companions were seeking should be achieved by law and order."⁴⁸

In contrast to their surprisingly constrained treatment of the Revolution, constitutional conservatives provided a predictably impassioned description of the post-Revolutionary "critical period." Here revisionists have had little to say, overlooking the fact that early constitutional conservatives described the period in florid detail, depicting it as a time of economic chaos and political collapse. In drawing attention to the time, they relied heavily on John Fiske's 1888 *Critical Period in American History*, resurrecting the decades-old study for its dramatic portrayal of how the new nation struggled under what Beck called "the worthless Articles of Confederation."⁴⁹ Their descriptions cited economic concerns – credit evaporated, business paralyzed, currency valueless – that arose in the absence of

47. David Jayne Hill, "Our Charter of Law and Liberty," *Constitutional Review* 4 (1920): 75–87, at 77–78, 78. See also Hill, *Human Nature in the Constitution* (Rochester, N.Y.: University of Rochester, 1926), 18, 55.

48. Cited in "Sentinels Celebrate Sam Adams' Bicentenary," *The Woman Patriot* 6 (October 1 and 15, 1922): 1.

49. Beck, *Constitution of the United States*, 47 (see note 46 above). In private correspondence, Beck admitted to Hill that Fiske's account of the period was romanticized, but thought that "no useful purpose is served by saying it"; in Beck to Hill, September 3, 1924, Box 4, Beck Papers (see note 20 above).

strong national government. But the writers gave even more attention to political problems, detailing the tide of popular lawlessness that swept the country in the wake of the war, when “the offices of government and the court-houses were seized, the collection of debts was forbidden, and private property was forcibly appropriated to meet the common needs.”⁵⁰ Some went so far as to argue that the real problem with the critical period was the desire for equality that had been set loose by the Revolution. “The idea of equality before the law was distorted by some into a demand for equality in economic condition,” explained Hill, “and a few extremists demanded that government should abolish not only poverty but the inequalities and misfortunes of life.”⁵¹ All agreed that with Shays’ Rebellion, responsible revolution had been transformed into lawless anarchy. As Beck told the American Bankers’ Association, “the spirit of anarchy, or, as we would now say, bolshevism, had swept a people who had already been gravely tried in the fiery furnace of war.”⁵²

Moving on to the Philadelphia Convention, constitutional conservatives depicted the delegates, not surprisingly, as constitutional conservatives. At points, their histories seemed written to directly confound Beardian descriptions of the framers as self-serving elitists. Thus in his *The Constitution: Its Story and Battles*, the lawyer and popular writer F. Dumont Smith described the delegates to the Philadelphia convention as consisting not of aristocrats and large landowners, but men of modest means like Alexander Hamilton, an immigrant who had come to America “practically penniless,” and Roger Sherman, “a poor boy who owed everything to his own exertions.” Indeed, according to Smith, “nine out of ten” members of the convention were “self-made.” (Smith had to admit that those such as the Pinckneys of South Carolina did belong to the “landholding class,” but even they “were ardently for a Democratic form of government.”⁵³) More often, however, constitutional conservatives described the framers as anything but democratic figures. The convention’s delegates, wrote Martin J. Wade and William F. Russell in their *The Short Constitution*, consisted of “almost all the prominent men of the time.”⁵⁴ Among their numbers, admitted Smith himself, were sixteen lawyers, “the most eminent in the country and in fact in the world.”

50. Beck, *Constitution of the United States*, 42 (see note 46 above).

51. Hill, “Our Charter of Law and Liberty,” 81 (see note 47 above).

52. Beck, “A Rising or a Setting Sun?,” 4 (see note 29 above).

53. F. Dumont Smith, *The Constitution: Its Story and Battles* (Los Angeles: Kerr-Jefferson Company, 1926), 101, 108, 102. A pamphlet version of the book was published by the ABA Citizenship Committee in 1923. See F. Dumont Smith, *The Story of the Constitution* (Chicago: American Citizenship Committee of the American Bar Association, 1923).

54. Martin J. Wade and William F. Russell, *The Short Constitution* (Iowa City, Iowa: American Citizen Publishing Company, 1921), 69. A United States District Court Judge from Iowa, Wade served as a member of the National Security League’s Committee on Constitutional Instruction and as chair of the ABA’s Committee on Citizenship. See *Ibid.*, 7–8 for information on Wade.

Indeed, borrowing from Lord Bryce, Smith went on to describe the signers as “the greatest body of men that ever sat in a single chamber.”⁵⁵ Others saw them as divinely inspired, with Wade and Russell explaining how “a wise Providence guided their selection and inspired them in their wonderful work.”⁵⁶

Nevertheless, even when constitutional conservatives spoke of the framers in idealized terms, they made it clear that their purpose in creating the Constitution was eminently practical. In the anarchy that followed the War of Independence, they “had learned a rude and terrible lesson,” wrote Beck, having come to the realization that the American Revolution had unleashed a flurry of popular passion “which was about to culminate in the French Revolution.” Thus they saw themselves as providing a conservative course correction to this rampant radicalism, being “not so much concerned about the rights of man, as about his duties.” After all, Beck observed, they were “practical men,” with a “distaste for mere phrase-making,” who were “less concerned about Rousseau’s social contract than to restore law and order.”⁵⁷

Having recast the framers, constitutional conservatives turned to the Constitution itself, describing its role in America’s development as a modern nation. Revisionists such as Sidney M. Milkis and James R. Stoner have shown that some constitutional conservatives saw the Constitution as a changing – though not a “living” – document that embodied a conservative conception of progress.⁵⁸ But in making that case, they have ignored the many other constitutional conservatives who described the Constitution as for all practical purposes perfect, while decrying any and all changes to it. Thus their histories invariably quoted (and often misquoted) Gladstone’s description of the Constitution as “the most wonderful

55. Smith, *Story of the Constitution*, 30, 33 (see note 53 above). See also “The Makers of the Constitution,” *Constitutional Review* 8 (1924): 160–74; Harry F. Atwood, *Safeguarding American Ideals* (Chicago: Laird & Lee, Inc., 1921), 43–56; and Randolph Leigh, *The Constitution of the United States: Its Origin, Adoption and Interpretation* (Philadelphia: The Bulletin Library), 1924), 9.

56. Wade and Russell, *Short Constitution*, 68 (see note 54 above). See also Harry F. Atwood, *Keep God in American History* (Chicago: Laird and Lee, 1919). Many of these writers told the story of Benjamin Franklin’s request for prayer at a deadlocked convention, and while some correctly pointed out that his proposal was voted down, others insisted that it had passed, and that from that point on, “the reverent student of history cannot fail to see the hand of God in the deliberations of the Convention.” Wallace McCamant, “The Constitution Maintained is Freedom Preserved,” in *Constitution Week Celebration in Louisville*, 7–18, at 9–10 (see note 12 above). McCamant was President General of the Sons of the American Revolution.

57. Beck, *Constitution of the United States*, 112, 111, 113, 112–13 (see note 46 above). While they sometimes referred to the framers as “founders,” and on rare occasions as “fathers,” constitutional conservatives did not as a rule use the term “founding fathers,” which was coined by Warren G. Harding at this time. On the origins of the term, see R. B. Bernstein, *The Founding Fathers Reconsidered* (Oxford, U.K.: Oxford University Press, 2009), 4.

58. See Sidney M. Milkis, “William Howard Taft and the Struggle for the Soul of the Constitution,” in Postell and O’Neill, *Toward an American Conservatism*, 63–93, at 84–89, and James R. Stoner, “Rational Compromise: Charles Evans Hughes as a Progressive Originalist,” in Postell and O’Neill, *Toward an American Conservatism*, 209–34, at 209–12 (see note 3 above for both sources).

work ever struck off at a given time by the brain and purpose of man.”⁵⁹ Over the course of its first hundred years, as Hill described it, the document had operated in almost flawless form, establishing a constitutional union that had been consolidated by Marshall, protected by Webster, and renewed by Lincoln. Admittedly, the Civil War had been “a trying test.” Yet on the whole the Constitution had been a spectacular success, so much so that as late as 1887, at the celebrations of the centenary of the Philadelphia convention, Americans “were happy at that time in the belief that they possessed the best government ever devised by man.”⁶⁰

Since that time, however, constitutional conservatives saw steady decline, as a long line of amendments had marred the Constitution’s original perfection. Although sometimes debating the desirability of specific amendments, they were in agreement that in most cases amending the Constitution made it worse. Thus Smith spoke for many in deriding the amendments passed during the previous decade: the Sixteenth, establishing a federal income tax, “should never have been necessary;” the Seventeenth, providing for the direct election of U. S. Senators, had “lowered the level of intelligence and distinction in the Senate;” the Eighteenth (Prohibition) Amendment had “weakened the states without accomplishing its object;” while the Nineteenth, instituting woman suffrage, had “accomplished nothing governmentally,” and had only “given a few ambitious self-seeking ladies publicity and the spotlight.”⁶¹ With demands arising for new amendments on issues ranging from equal rights for women to a national minimum wage, constitutional conservatives declared that it was time to stop. Recalling the example of the Constitution’s framers, Charles Warren advised citizens “to consider carefully whether the men who urge such changes are equally great and whether their motives and ideals are equally high.”⁶²

Above all, constitutional conservatives saw continuing challenges to the Constitution in the growing demand for democracy. On this point, the revisionist narrative is misleading, as those such as Schambra have described them as democratic thinkers, albeit anti-majoritarian ones.⁶³ In fact, many were opposed to democracy in any form. Writing in the *Constitutional Review* in 1925, Denver lawyer Frank Exline lamented how Woodrow Wilson’s custom of calling the American government a democracy had become commonplace over the

59. McCamant, “The Constitution Maintained is Freedom Preserved,” 9 (see note 56 above). Some writers went further, describing the Constitution as “the greatest human achievement since Creation, and it marked the greatest event in the history of the world, save only the Birth of Christ.” Atwood, *Safeguarding American Ideals*, 43 (see note 55 above). For variations on the Gladstone quote, see Smith, *Story of the Constitution*, 33 (see note 53 above); James M. Beck, “Washington’s Supreme Achievement,” *Constitutional Review* 3 (1919): 131–45, at 135; and R. E. L. Saner, “American Citizenship,” *Constitutional Review* 7 (1923): 175–83, at 176.

60. Hill, “Our Charter of Law and Liberty,” 84 (see note 47 above).

61. Smith, *The Constitution*, 392, 394. (see note 53 above).

62. Charles Warren, *The Trumpeters of the Constitution* (Rochester, N.Y.: University of Rochester, 1927), 69.

63. See Schambra, “The Election of 1912,” 114–16 (see note 6 above).

previous decade. Even more lamentable, Exline went on, was the failure of conservatives to challenge the custom, let alone question what he called “the present revolutionary movement for the repudiation and overthrow of the Republic and the substitution of an actual Democracy in its place.”⁶⁴ Citing Burke and Madison, others criticized the concept of direct democracy, with the initiative, referendum, and recall coming in for special scorn. In 1924, Randolph Leigh, the director of the National Oratorical Contest, warned that if not stopped such measures would soon “usher in an era of undisguised mobocracy.”⁶⁵ Beck pushed the point even further, making it clear that such forms of direct democracy were the very antithesis of the republican system of representation the framers had so carefully crafted. The American Constitution, he insisted, was not only “an undemocratic document,” but also “as emphatic a negation of an absolute democracy as can be found in any form of government.”⁶⁶ Throughout the 1920s, they repeated this refrain, cautioning against the dangers of democracy while celebrating the virtues of republicanism. “The United States of America, under the Constitution,” concluded Henry Campbell Black, “is not a socialist democracy. It was established and shall remain a representative republic.”⁶⁷

Amidst the calls for change, constitutional conservatives made it clear that the overriding responsibility of citizens was to preserve the Constitution by treating it with respect and even reverence. O'Neill has chided critics who describe some of the early constitutional conservatives as creating a cult-like worship of the Constitution, overlooking the fact that many of them advocated a form of political religion centered on the document.⁶⁸ As early as 1920, writing in his *Service for God and Country*, the American Legion's Powell was quoting Abraham Lincoln's 1838 Springfield Lyceum address on the importance of making “reverence for the laws” into “the political religion of the nation.”⁶⁹ In their speeches and writings, constitutional conservatives repeatedly described the Constitution in religious terms, as “the articles of our political faith,” “our holy of holies,” “a pillar of cloud by day and of fire by night,” “the American Rock of Ages.”⁷⁰ Their use of such terms

64. Frank Exline, “Repudiation of the Republic,” *Constitutional Review* 9 (1925): 18–26, at 19.

65. Randolph Leigh, *The Citadel of Freedom: A Brief Study of the Constitution and Its Builders, and of the Movement to Destroy It* (New York: G. P. Putnam's Sons, 1924), 181. See also Harry F. Atwood, *Back to the Republic*, 9th ed. (Chicago: Laird & Lee, 1924), 18.

66. Beck, *Constitution of the United States*, 116 (see note 46 above).

67. “Popularizing the Federal Constitution,” 238 (see note 30 above). See also Leslie M. Shaw, “A Republic, Not a Democracy,” *Constitutional Review* 9 (1925): 140–43.

68. See Johnathan O'Neill, “Constitutional Maintenance and Religious Sensibility in the 1920s: Rethinking the Constitutionalist Response to Progressivism,” *Journal of Church and State* 51 (2009): 24–51, at 24.

69. Powell, *Service for God and Country*, 142 (see note 25 above).

70. William W. Morrow, “The Americanism of the Constitution of the United States,” *Constitutional Review* 4 (1920): 21–38, at 32; “Calls Constitution ‘Our Holy of Holies,’” *New York Times*, March 7, 1928; McCamant, “The Constitution Maintained is Freedom Preserved,” 18 (see note 56 above); “Constitution Safeguards,” *Better America Federation of California Weekly News Letter* 361 (April 27, 1926): 1.

was by no means simply rhetorical. “If free government is to function,” explained Beck, “man must have a deep and abiding respect akin to a religious feeling for the authority of the state.”⁷¹ Some cast the Constitution in what can only be described as sectarian terms. Citizens should be able to recite its fundamental principles, observed Federal Judge William W. Morrow in the *Constitutional Review*, “as we do the Lord’s Prayer or the litany of the church to which we belong.”⁷² Above all, in bringing their version of the Constitution to the public, they saw themselves as not only educating citizens about the document, but also instilling faith-like devotion to it. It was the duty of “every man, woman, and child in America,” wrote Wade and Russell, to “approach this sacred document in the same reverent spirit we would have if we were entering upon some holy shrine.”⁷³

Conveying the Constitution

With the Constitution recast as a conservative document, constitutional conservatives still had to convey it to the American public. On this point, revisionists have fallen short, having failed to examine how the constitutional conservatism that these thinkers constructed in theory fared when they attempted to put it into political practice. Among contemporary constitutional conservatives, the issue continues to be important. For in recent years, especially following the re-election of Barack Obama in 2012, constitutional conservatism has appeared to be increasingly in disarray, characterized by continuing conflicts among its proponents within both the Republican Party and the conservative movement. Some constitutional conservatives, dismayed by Supreme Court decisions affirming the Affordable Care Act and same-sex marriage, have begun to reconsider their commitment to the concept of judicial review, deeming such decisions to be “illegitimate,” in the words of Bradley C. S. Watson, and calling on conservatives to “demand resignations, suggest impeachments, and advise their federal colleagues to act against the Court.”⁷⁴ Others, such as radio host Mark Levin, have advocated an “Article V convention” of states to consider conservative constitutional amendments, bringing into question their unqualified support for the Constitution itself. Meanwhile, liberals like E. J. Dionne, cheered by recent court decisions, have advised

71. Beck, “A Rising or a Setting Sun?,” 13 (see note 29 above).

72. Morrow, “The Americanism of the Constitution,” 32 (see note 70 above).

73. Wade and Russell, *Short Constitution*, 207 (see note 54 above). On President Coolidge’s 1924 dedication of the “Shrine of the Constitution and Declaration of Independence,” see Kammen, *Machine That Would Go Of Itself*, 223 (see note 11 above).

74. Bradley C. S. Watson, “Reclaiming the Rule of Law After *Obergefell*,” *National Review*, July 9, 2015, at <http://www.nationalreview.com/article/420934/reclaiming-rule-law-after-obergefell-bradley-c-s-watson>.

progressives to “think constitutionally.”⁷⁵ In the face of this discord, revisionists have offered little in the way of advice, other than urging a longer historical view. As Gordon Lloyd and David Davenport have observed, the constitutional conservatives of the early twentieth century survived successes and failures in their own time, and “lived to fight another day.”⁷⁶

That said, it is by no means certain that these prototypical constitutional conservatives offer an entirely positive example for present ones to follow. The revisionist account suggests that constitutional conservatism flourished under Harding, Coolidge, and Hoover, only to falter in the following decade, being swept away by the Great Depression and the New Deal. In fact, the record is far more complex, since constitutional conservatives of the time were both less successful and more responsible for their failings than the revisionist account allows. Admittedly, conservative activists of the 1920s appeared in many ways to have succeeded in their campaign to create a conservative conception of the Constitution and to instill it in the hearts and minds of American citizens. By the end of the decade, 43 states had statutes requiring some form of constitutional instruction in their public schools; over 2 million students every year were writing speeches for annual competitions of the National Oratorical Contest; and millions of citizens continued to participate in celebrations of Constitution Day and Constitution Week.⁷⁷ Writing in 1929, Harry Atwood, director of the Constitutional Anniversary Association, could boast “that during the past seven years there has been more discussion of the Constitution than during any previous fifty year period.”⁷⁸ Yet in spite of their apparent success, by the close of the decade some constitutional conservatives seemed unsure whether their programs had in fact produced a significant increase in public support for the Constitution. Speaking in late 1929, Regis Noel, head of the ABA’s subcommittee on Constitution Week, lamented that for all the emphasis placed on constitutional education during the last decade, many citizens still remained confused about the document, and “not more than one out of every 2,000 Americans have read it.”⁷⁹

75. E. J. Dionne, “It’s Time for Progressives to Reclaim the Constitution,” *Washington Post*, July 6, 2014. See also Mark R. Levin, *The Liberty Amendments: Restoring the American Republic* (New York: Threshold Editions, 2013).

76. Gordon Lloyd and David Davenport, “The Two Faces of Herbert Hoover’s Constitutional Conservatism,” in Postell and O’Neill, *Toward an American Conservatism*, 235–66, at 261 (see note 3 above).

77. On required courses, see H. Arnold Bennett, *The Constitution in School and College* (New York: G. P. Putnam’s Sons, 1935), 106. On the National Oratorical Contest, see Charles S. Sprague, “Millions Will Compete in National Oratorical Contest,” *Los Angeles Times*, December 14, 1930. On Constitution celebrations, see F. Dumont Smith, “Constitution Week, 1929,” *American Bar Association Journal* 15 (1929): 707–09, at 707.

78. Harry Atwood, “The Constitution Week Movement,” *Constitutional Review* 13 (1929): 181–85, at 185.

In bringing their campaign to the public, constitutional conservatives faced a formidable political task. From the start, their efforts attracted critics and enemies, with opposition coming from several directions. Most vocal were the academics, led by those like the Harvard Law School's Thomas Reed Powell, who blasted constitutional conservatives for their "mystical adulation of the Constitution," singling out "self-styled patriotic societies" that had "spent themselves lavishly in expounding the gospel according to Mammon and identifying it with the parchment that came from Philadelphia."⁸⁰ Muckraking journalists like the *New Republic*'s Sidney Howard skewered what he called "the Constitution worshippers," calling them "the most formidable and the most inarticulate obstructionist bloc in the country."⁸¹ For their part, politicians seemed less critical, or at least more circumspect in their criticism, although on occasion some spoke out. In 1924, for example, Alabama Democrat George Huddleston went to the floor of Congress to complain that the nation was "being propagandized in behalf of reverence for the Constitution."⁸² Some mainstream civic organizations evinced concern about the content of educational materials, as when the YWCA refused to participate in American Education Week, citing its advocacy of programs that indoctrinated students about the threat that radicals and pacifists posed to the Constitution.⁸³ Finally, there were church leaders who publicly expressed reservations about what one called "canonizing the Constitution." To turn the Constitution into "a bit of sacred scripture," the Unitarian pastor T.C. Abel told his Los Angeles congregation, "will bring us perpetually under the domination of the dead."⁸⁴

Then there was the issue of implementation, with the process of civic education proving to be more difficult than expected. The newly minted constitution courses provided a case in point. As early as 1923, the ABA's Citizenship Committee was complaining bitterly that in spite of the recent passage of state statutes, schools were often not offering the new classes, and even when they were offered, their quality was questionable, being "very indifferently taught by the great mass of our teachers."⁸⁵ Classes frequently consisted of little more than memorization and rote recitation of the document itself, leading advocates like Samuel Weaver to confess

79. Cited in "Capital to Unfurl Flags in Observing Constitution Week," *Washington Post*, September 15, 1929.

80. Thomas Reed Powell, "Constitutional Interpretation and Misinterpretation," *The New Republic* 33 (February 7, 1923): 297–99, at 297. Other academics published studies showing conservative bias in school textbooks about the Constitution. See Malcolm M. Willey, "Education for Citizenship," *Journal of Social Forces* 2 (1924): 676–79.

81. Sidney Howard, "Our Professional Patriots: The Constitution Worshipers," *The New Republic* 40 (October 15, 1924): 171–73, at 172.

82. Quoted in "Teaching the Constitution in the Schools," *Constitutional Review* 9 (1925): 117–20, at 120.

83. "Y.W.C.A. Refuses to Aid U.S. Bureau in Education Week," *Washington Post*, November 4, 1924.

84. "Would Not Canonize Our Constitution," *Los Angeles Times*, May 28, 1928.

85. "American Citizenship Committee's Report," 654 (see note 9 above).

that rather than developing devotion to the Constitution, many students “form more or less an aversion for it.”⁸⁶ In 1924 the NSL attempted to construct a more accessible curriculum for the courses, announcing a contest with ten prizes of \$750 each to be awarded for the best articles on ten selected clauses of the Constitution. The purpose of the contest was to encourage professional writers to craft essays and stories demonstrating that the Constitution was “not a dead, dull document,” but rather a source of “romance, history and poetry.” (“We are looking for a ‘Robinson Crusoe,’ ‘Alice in Wonderland,’ or ‘Treasure Island,’” explained Lloyd Taylor.)⁸⁷ The contest was a flop, with no entries meeting the organization’s expectations. “It seems impossible to get the right articles,” complained the League’s new president S. Stanwood Mencken, “or even to awaken the proper interest.”⁸⁸ Even more embarrassing was the ill-fated attempt of the American Legion, working with a score of patriotic societies, to sponsor the writing of a textbook on American history that would instill a love of country in students. The outcome, Charles F. Horne’s *The Story of Our American People*, a two-volume text intended for seventh and eighth graders, was a publishing disaster, criticized by educators for its shoddy scholarship and by conservative sponsors for its flat and predictable prose.⁸⁹ Other authors tried different strategies for reaching students, among them Wade and Russell’s *Short Constitution*, billed as “the first real attempt to popularize Constitutional law,” which was framed as a series of talks by a fictional Judge Garland of the Juvenile Court, who introduced himself to students as having sentenced hundreds to “long terms of years in the penitentiary” because they had “shown themselves rebels against the authority of their country.”⁹⁰ Perhaps predictably, students did not exactly warm to such texts, and teachers were often left, in the words of critic Norman Hapgood, “to serve canned constitution to the school children.”⁹¹ By 1935, political scientist H. Arnold Bennett could declare the efforts at constitutional education a failure, being of little or no benefit to students. Much of the problem, Bennett concluded, was the demand of its advocates that the Constitution “be taught uncritically, or essentially so.”⁹²

In addition, constitutional conservatives were sometimes their own worst enemies. Throughout the 1920s, conservative groups of all kinds flourished,

86. Weaver, “The Constitution in Our Public Schools,” 111 (see note 23 above).

87. “To Teach Constitution To Children,” *Nashua* (New Hampshire) *Telegraph*, February 25, 1924.

88. *National Security League 1924 Annual Report of S. Stanwood Mencken, President* (see note 19 above).

89. See Charles F. Horne, *The Story of Our American People* (Washington, D.C.: U.S. History Publishing Co., 1926). On the failure of the Horne volume, see William Pencak, *For God and Country: The American Legion, 1919–1941* (Boston: Northeastern University Press, 1989), 275–77.

90. Wade and Russell, *Short Constitution*, 7, 17 (see note 54 above).

91. Norman Hapgood, *Professional Patriots* (New York: Albert & Charles Boni, 1928), 146.

92. Bennett, *Constitution in School and College*, 42 (see note 77 above).

often duplicating efforts and occasionally disagreeing on matters of principle or strategy. Among the advocates of constitutional conservatism, such problems were pervasive, as an increasingly unlikely collection of proponents sought to adopt the Constitution as a means to divergent ends. Prohibition in particular proved divisive, separating those like Beck, who considered the Eighteenth Amendment to be the Constitution's "crowning atrocity," from those like New York lawyer Louis Marshall, who described attempts to repeal it as "lynching the Constitution."⁹³ Conflicts became so common that by the end of the decade the American Bar Association was reporting difficulty in organizing Constitution Day celebrations. "From points as widely separated as Texas, Central New York and Vermont," confessed the ABA's Citizenship Committee, "lawyers write us they are afraid to undertake such a celebration this year because the wets will consider it a dry move and the dries will consider it a wet move."⁹⁴ Attention to the Constitution inspired debates about it, even among its strongest supporters. Thus some church leaders demanded an amendment "to make the Constitution Christian," while others denounced such efforts, with Adventists describing the addition of "the name of Jesus Christ" to the Constitution as "an image of the beast."⁹⁵ At times, constitutional conservatives found themselves in alliance with questionable supporters. In many states, for example, campaigns to establish Constitution courses in the public schools brought the enthusiastic endorsement of the Ku Klux Klan.⁹⁶ Finally, political partisanship was a complicating factor. Hence in the midst of the bitter 1928 presidential election campaign, New York City's Constitution Day celebration commenced with the National Republican Club placing wreaths on the tomb of Alexander Hamilton in Trinity Church cemetery. The tribute, explained House Republican Leader John Q. Tilson, while "distinctly patriotic and nonpartisan," was "intended as a refutation of the keynote attack made on Hamilton at the Democratic National Convention."⁹⁷

But the biggest problem for constitutional conservatives may have been that liberals were eager to espouse the Constitution too. The attacks of a few notwithstanding, most early twentieth-century critics of the document insisted that their attempts at reform were designed to energize and enhance rather than

93. "Constitution Is Breaking Down, Beck Warns Us," *Chicago Daily Tribune*, March 27, 1930; "Nation-Wide Move To Enforce Dry Act," *The [Baltimore] Sun*, October 16, 1923.

94. "Constitution Day," *The [Baltimore] Sun*, September 17, 1930. See also "Debasing the Constitution," *Washington Post*, September 19, 1930.

95. *Is The Constitution of the United States Christian?* (Allegheny, Pa.: Committee on Testimony Bearing, Appointed by Synod of the Reformed Presbyterian Church, n.d.), 17; "Church Entangling America, Charge," *Washington Post*, February 13, 1928.

96. See "Constitution Day," *The American Standard* 2 (September 15, 1925): 4. See also Adam Laats, "Red Schoolhouse, Burning Cross: The Ku Klux Klan of the 1920s and Educational Reform," *History of Education Quarterly* 52 (2012): 323–50.

97. "Ceremonies Open Constitution Week," *New York Times*, September 17, 1928.

weaken it. Scholars began to press the point. The Constitution, wrote political scientist Charles E. Merriam, was “not an idol but a spirit,” and that spirit was one of “change and adjustment.”⁹⁸ Teachers taught students about its progressive character. Condemning the conservative bias of the National Oratorical Contest, Willis T. Newton, president of the Los Angeles High School Teachers’ Association, commented on the irony that students “cannot read the Bill of Rights – however they may soft-pedal it in an oration – without getting some stir of the liberal thought that produced it, and without wondering about our present tendency to disregard it.”⁹⁹ While criticizing conservatives for deifying the Constitution, liberal writers depicted themselves as the ones who were most deeply committed to protecting it, “not so much from its enemies who have little power to harm it,” as Sidney Howard wrote, “as from its worshippers who are in a fair way to suffocate it.”¹⁰⁰ Politicians found that championing the Constitution was a game that both parties could play. Thus, in a 1928 campaign address to the Arkansas American Legion, Al Smith’s Democratic running mate Joseph T. Robinson denounced Protestant attacks on Smith’s Catholicism, and made a ringing appeal for “the true constitutional theory” of “complete separation of church and state.”¹⁰¹

Indeed, reformers of all kinds embraced the Constitution. The African-American educator Carter G. Woodson complained bitterly that black students in the South were not allowed textbooks that included its text, lest they learn about their constitutional rights.¹⁰² Pacifists advocating for a constitutional amendment to outlaw war claimed the document for their cause.¹⁰³ Even advocates for world government embraced it. “Let us open our eyes to the fact that one day we shall have an inevitable international government,” observed Los Angeles pastor H. C. Culbertson in his 1924 Constitution Day sermon, “and the only possible success for such a government is along the lines laid down in our own Constitution of the United States.”¹⁰⁴

With the election of Franklin D. Roosevelt, constitutional conservatives found themselves increasingly isolated. The sweeping reforms of the New Deal’s first hundred days left many deeply discouraged. Writing in June of 1933, Beck was in despair, “profoundly pessimistic,” as he confided to a correspondent. “All that I have battled for in the last fifty years in the matter of government seems to me

98. Charles E. Merriam, *The Written Constitution and the Unwritten Attitude* (New York: Richard C. Smith, Inc., 1931), 30.

99. Willis T. Newton, “Defending the Citadel of Freedom,” *The New Republic* 38 (May 14, 1924): 308–10, at 310.

100. Howard, “Our Professional Patriots,” 173 (see note 81 above).

101. “Bigotry Age Gone, Robinson Asserts, Urging Tolerance,” *Washington Post*, July 5, 1928.

102. “Southern States Eliminate U.S. Constitution From School Textbooks, Says Dr. Woodson,” (Baltimore) *Afro-American*, May 9, 1931.

103. “Urge Ban on War in Constitution,” *New York Times*, April 13, 1930.

104. “Constitution Declared Basis for World Union,” *Los Angeles Times*, September 22, 1924.

hopelessly lost.”¹⁰⁵ Some gave up, retreating from politics or even moving over to the liberal side. Thus when Randolph Leigh, having resigned as director of the National Oratorical Contest, announced his candidacy for the U.S. Senate in Virginia in 1936, he ran on a predictable platform of “due reverence for the Constitution,” but went on to state that he intended to avoid focusing on clauses in it which “too often have been used to legalize the exploitation of the many by the governmentally favored few.”¹⁰⁶ By contrast, many more swung hard to the right, with Beck and others taking prominent places in the newly formed American Liberty League, where they decried the New Deal as a “totalitarian socialistic state” and warned that “constitutional liberty, which we once regarded as won, must now again be fought for, if it is to survive.”¹⁰⁷ With the 1937 sesquicentennial of the Constitution coming on the heels of Roosevelt’s aborted “court packing” plan, constitutional conservatives used the occasion to celebrate its defeat, with Senator Arthur Vandenberg declaring in a Constitution Day address that in voting against it, the Senate had “not only saved this constitutional anniversary from becoming a hollow mockery but also it saved the soul of the republic.”¹⁰⁸ Attempting to capitalize on the issue, the Republican National Committee announced that it would sponsor Constitution Day ceremonies the following year in more than five hundred communities across the country.¹⁰⁹ Yet as the celebrations became more partisan, attendance at them declined. Writing in 1938, constitutional scholar Edward S. Corwin would report that the Constitution had become less a shared icon than a serviceable political instrument. “The worship of the Constitution,” he wrote, “is at an end.”¹¹⁰

Conclusion

Constitutional conservatism did not disappear. From the 1930s on, some constitutional conservatives continued to shift to the right, eventually finding homes in organizations like the John Birch Society, W. Cleon Skousen’s National Center for Constitutional Studies, and David Barton’s WallBuilders.¹¹¹ After World War II, others began to move toward the political mainstream, beginning in the mid-1950s

105. Beck to Harry Curran Wilbur, June 17, 1933, Box 8, Beck Papers (see note 20 above).

106. “Randolph Leigh Gives Platform in Senate Race,” *Washington Post*, February 17, 1936.

107. James M. Beck, “*What Is the Constitution Between Friends?*” (Washington, D.C.: American Liberty League, 1935), 3. See Jared A. Goldstein, “The American Liberty League and the Rise of Constitutional Nationalism,” *Temple Law Review* 86 (2014): 287–330.

108. “Court Issue Constitution Day’s Topic,” *The [Baltimore] Sun*, September 18, 1937.

109. “Republicans to Hail Constitution,” *New York Times*, September 12, 1938.

110. Edward S. Corwin, *Court Over Constitution: A Study of Judicial Review as an Instrument of Popular Government* (Princeton, N.J.: Princeton University Press, 1938), 227.

111. On the John Birch Society, see Sara Diamond, *Roads to Dominion: Right-Wing Movements and Political Power in the United States* (New York: The Guilford Press, 1995), 52–58; on Skousen, see Sean Wilentz, “Confounding Fathers: The Tea Party’s Cold War Roots,” *The New Yorker* 86 (October 18, 2010):

with the development of a populist critique of judicial power, and continuing after the late 1970s with the formulation and popularization of the theory of constitutional originalism.¹¹² More recently, a growing group of constitutional conservatives has concentrated on influencing public policy, with advocates like James W. Ceaser calling for the creation of “political constitutionalism,” a results-oriented variation on the theme that seeks to apply conservative constitutional principles to a range of contemporary social problems.¹¹³ Yet despite all attempts to develop and employ it, constitutional conservatism remains poorly understood. As one observer writes, “the challenge lies in understanding what, if anything, it actually means.”¹¹⁴

Among those who have sought to clarify the concept, revisionist historians and political scientists have developed an admirably detailed account of its origins. According to their account, the first constitutional conservatives were a small group of political elites, primarily politicians from the conservative wing of the Republican Party, who beginning in 1912 acted decisively to defend the Constitution against the threat posed to it by Progressive reformers. Throughout the 1920s, they looked back to the framers, countering Progressive depictions of them as self-serving property owners, while portraying them instead as principled champions of natural rights and human equality. Fending off continuing attempts to amend the Constitution, these constitutional conservatives portrayed it as an exemplary embodiment of the republican concept of limited government, and encouraged citizens to preserve and protect it. Admittedly ambivalent about democracy and cautious in the face of progress, they were nonetheless democrats and progressives who sought to restore but also to innovate, since they believed in careful and prudent reform. While their efforts were frustrated, overwhelmed by the Great Depression and the New Deal, they continue to provide an example for contemporary conservatives to follow.

This essay has argued that revisionist scholars have not told the whole story. Although constitutional conservatism began with a small group of Republican Party politicians, it quickly grew into an extensive network of conservative activists and organizations that reached out to followers across the country. In addition to opposing Progressive campaigns to amend the Constitution, these constitutional

32–39; and on Barton, see Erik Eckholm, “Using History to Mold Ideas on the Right,” *New York Times*, May 4, 2011.

112. See Kersch, “Ecumenicalism Through Constitutionalism,” 14–31 (see note 2 above). On originalism, see also Johnathan O’Neill, *Originalism in American Law and Politics: A Constitutional History* (Baltimore, Md.: Johns Hopkins University Press, 2005).

113. See James W. Ceaser, “Restoring the Constitution,” *Claremont Review of Books* 12 (2012): 32–37. See also Ramesh Ponnuru, “Recovering the Wisdom of the Constitution,” in *Room to Grow: Conservative Reforms for Limited Government and a Thriving Middle Class* (Washington, D.C.: YG Network, 2014), 107–12.

114. Lincoln Caplan, “Exploring the Meaning of ‘Constitutional Conservatism,’” *New York Times*, December 1, 2010.

conservatives acted out of other motives as well, including their fears of immigration, domestic radicalism, and progressive political reforms of many kinds. Some of them spoke eloquently of natural rights and human equality, but most said less about rights than responsibilities, and almost all saw equality as a dangerous political notion. Along with preserving and protecting the Constitution, they taught citizens that their primary responsibility was to unquestioningly respect and revere it. While some were reconciled to democracy and progress, many others were deeply anti-democratic and thoroughly suspicious of reform, being committed to restoring the Constitution to their conservative vision of its original eighteenth-century perfection. And while their defeat was in part the product of the Depression and the New Deal, it was also the result of other political realities, including their own political failings.

Thus while these early constitutional conservatives may serve as models for those today, their example is by no means as simple as revisionist scholars have portrayed it. Furthermore, while there is much to be said for the revisionist narrative, a fuller accounting suggests that there is more truth to conventional academic accounts than the revisionists have allowed. By constructing a narrative that paints a more complete picture of constitutional conservatism as it was then, scholars have a better chance to understand it as it is now. And it is important to understand it, because constitutional conservatism promises to continue for some time to come. "It's not just about the next twenty or thirty years," say Ken Blackwell and Ken Klukowski in their *Resurgent: How Constitutional Conservatism Can Save America*. "It's about the next fifty, hundred, even two hundred years...about doing what the Framers did, in fundamentally bringing America back to our founding principles, to renew America's promise for future generations."¹¹⁵

Michael Lienesch is Professor of Political Science at the University of North Carolina at Chapel Hill. He is author of *In the Beginning* (University of North Carolina Press, 2007), *Redeeming America* (University of North Carolina Press, 1993), and *New Order of the Ages* (Princeton University Press, 1988), and co-editor of *Ratifying the Constitution* (University Press of Kansas, 1989). The author may be reached at lienesch@email.unc.edu.

115. Ken Blackwell and Ken Klukowski, *Resurgent: How Constitutional Conservatism Can Save America* (New York: Threshold Editions, 2011), 373.