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Absent from the Convention

Libraries, Law, and Political Philosophy
John Adams and Thomas Jefferson
Monday, June 22 2009

Mary Sarah Bilder, Commentator

David Konig, Gregg Lint, R.B. Bernstein

I would like to thank the organizers for having asked me to comment. My own recent work is on James Madison and I will confess that he comes off as a bit of an intellectual light weight compared to Adams and Jefferson– and because of that, I am always a bit glad that I haven't even attempted to work on these two far more studious fellows. These three authors, however, prove to be up to the challenge of their subjects and I read the papers with enormous pleasure, as I am certain the audience did.

These three fine papers explore the relationship between the political philosophy of Adams and Jefferson and the books that they read and wrote.

The two men of course were similar in terms of the title of the panel: they both had *libraries*, both studied *law* (Adams, James Putnam, a lawyer; Jefferson, with George Wythe), and both were scholars of *political philosophy*. (They both of course were also presidents – but that seems a minor point.)

And, there were differences: they were born eight years apart (Adams, 1735; Jefferson, 1743) – in two different colonies (Massachusetts, Virginia) – and educated in different institutions (Adams, Harvard; Jefferson, William and Mary).

Adams wrote many works, mostly on government –many admittedly difficult to grasp today; Jefferson wrote basically one book (Notes on the State of Virginia) that remains deceptively accessible and, perhaps his more important magnum opus, the manual of parliamentary practice (the MHS owns Jefferson’s manuscript, the Parliamentary Pocket Book).

As Richard points out, they were both painted by Mather Brown (with whom I share a birthday) – I will come back in a moment to these portraits.

Most importantly, I think, both men missed the Constitutional Convention – Adams being abroad in England and Jefferson in Paris (although this fact escapes many Americans) – and I am going to come back to the significance of this absence also in a moment.

But let me begin with the three papers which focus on these men before 1787.

David Konig’s fascinating paper explores Jefferson’s Legal Commonplace. David looks at the way in which Jefferson read common law cases in the late 1760s, not merely for doctrinal rules, but for the way in which the cases showed that common law – more importantly law itself – was inherently political. That it fundamentally focused on the

issue between subject/citizen and king/state. I particularly liked David's use of a seemingly irrelevant case about mail delivery to illustrate the way in which Jefferson read English reporters. Jefferson took from them the whig lesson that government actors did not deserve special protection for wrongs they had wreaked upon subjects. He read law for a political message about how the good whig lawyer would behave. Konig's study reminds us of Burke's 1775 admonition that the study of law rendered the colonists "acute, inquisitive, dexterous, prompt in attack, ready in defence, full of resources." It helps to explain the significant relationship between lawyers and revolutionary political thinkers. And it provides a brief glimpse at the contribution David will make with a new edition of the *Legal Commonplace*.

Gregg Lint's interesting paper focuses on Adams in 1780 when he traveled to England. Lint explores Adams's reading of Thomas Pownall's Memorial to the Sovereigns of Europe, on the Present State of Affairs, between the Old and the New World (1780) and Adams' subsequent rewriting of it as the Translation. Lint persuasively argues that Pownall's work supported and possibly crystallized Adams' belief that economic liberty – as much as political liberty – mattered – and so a commercial treaty was as, perhaps indeed more, crucial than a peace treaty. I particularly liked the way in which the Pownall piece helps to explain Adams anti-French activities in a way other than some perpetual, deep and early dislike of the French. Lint restores to Adams, Adams's own deep understanding of international commercial policy and reminds us of the revolutionary nature and importance of Adam Smith's 1776 work. And the paper reminds us of the unique insight provided by major paper projects and the editors of them to the

relationship among life and texts – and we will hope to hear more about Adams from Gregg.

Richard Bernstein's equally thoughtful piece looks at Adams' D writing (like a mystery or romance serialist: Dissertation on Canon law, Defence of the Constitutions, Discourses on Davila). Bernstein is interested in the ways in which Adams's work was reactive more than initially constitutive. Bernstein explores Adams' reaction to Turgot's 1778 letter criticizing American theories of constitutional government. Here, I particularly like Bernstein's suggestion that Adams starts in the margins of his copy of Turgot's letter and then literally outgrows the very paper – eventually writing three volumes of response. Bernstein's perception of Adams as a legal writer (almost modern day blogger) marshalling evidence out of his library rather than attempting to imagine a new political science seems quite right. He helps to remind us that these libraries were truly working libraries rather than show collections and that in writing, Adams was indeed sharing his library in an effort to advance human knowledge of governance. Richard is working now on an Adams' book and this work suggests it will be a worthy successor to his recent book on the Convention.

I commend all three authors in doing what I think is exceptionally difficult but crucial as historians: restoring to the people of our past their understanding of the world around them and helping to articulate the way in which our initial sense of their similarity of thought to ours converts quickly to a perception of significant difference.

This restoration is crucial here because the three papers are similar in that all three focus on nearly unreadable works from a 21st century perspective.

Jefferson's Legal Commonplace is hundreds of pages. And its entries of notes from various legal sources include many so seemingly irrelevant that they were not even reproduced in the Chinard early documentary edition.

Adams' Defence was admittedly printed, indeed, the Defence went through multiple editions – but written with those strange late eighteenth century assumptions about knowledge (and geography) that makes one wonder who on the subscribers lists actually read them in their entirety. Only after reading about the governmental style of numerous countries and many swiss cantons, do we finally, on page 362 of volume 1, find out about Congress. Only on the final pages of volume 3 do we get the Constitution (an admittedly late addition to Adams' plan!).

The Translation is equally unreadable in that it has no explicit Adams authorship and its relationship to the Pownall piece is not at all apparent. Moreover, the banality of its arguments – which seem at some level to be a second rate version of Thomas Paine or Adam Smith – seem initially mysterious. Not surprisingly, Adams does not seem to have made significant efforts to reclaim the piece.

There is an even deeper similarity here. As David, Greg, and Richard discuss, each of these works is the American end of a conversation with Europe about American

governance: the Commonplace with the British common law texts about legal governance; the Translation with Pownall's work (and Loyalists and British criticism) about economic governance, and the Defence with French, but more broadly European, critiques of American constitutional governance.

These three papers thus remind us that at the very moment in which American history is pulling away from Europe—two Americans remained in an intense, inescapable conversation with Europe.

For Adams and Jefferson, this conversation was both face-to-face and text-to-text. Their libraries tied them to Europe, particularly France and England (and Dublin for its inexpensive editions). The Jefferson library at the Library of Congress brings this European focus home where a visitor somehow unthinkingly expects American titles and instead sees book after book with European titles, authors, and editions.

What should we make of this literary Anglo-European centrism? I'm less interested in typicality/atypicality than in thinking about the consequence of the intensity of Adams and Jeffersons' trans-Atlantic conversation and connection.

In these papers, the European conversation becomes a way of establishing American independence. All 3 see their subjects taking an idea that has its origins in Europe and letting it flower in its strongest mode in America. David finds Jefferson's Whig (proto-democratic) impulse in the Commonplace. Greg finds Adams free-trade commercial

policy in the Translation. Richard finds Adams republicanism-style constitutionalism in the Defense.

Yet, for myself, Adams's and Jefferson's focus on Europe had a dangerous or negative side.

As someone interested in the history of constitutionalism and the Constitution – I think their absence at the Convention has been underappreciated. To 1787, missing conventions had hardly seemed a big deal (indeed, it was in some ways the safer course). Who could have thought that a committee meeting, so dubious that latecomers were pervasive, would turn out to have been literally transformative.

For those who attended Philadelphia, language and concepts changed. Anglo-Europe, important in terms of real politics, began to matter less in terms of politics. Indeed, certain important leaders never went to England or Europe (Madison, Washington, Hamilton).

I don't mean to downplay the significance of Anglo-European politics or diplomacy on early America or the new nation – but what I wonder is whether these papers and Adams's and Jefferson's libraries do not also show that the two men remained caught in some deep almost undefinable way to a pre-1787 vision of the world centered on Anglo-Europe and Anglo-European political philosophy.

While others were sweltering and swatting flies in Philadelphia, Adams and Jefferson were awaiting portraits. So now let me return to the Mather Brown portraits. The Adams portrait with the Notes on the State of Virginia in the background is at the Atheneum. Quite frankly, it isn't Adams at his best. He looks pudgy and florid – even in relatively simple attire (tho note when you see it the ruffled cuffs), he looks like a European. Unlike the more famous John Trumbull portrait, Adams literally appears to be looking down his nose at the viewer. In the 1786 Mather Brown portrait of Jefferson – gifted to the National Portrait Gallery by Charles Francis Adams, a haughty, aristocratic Jefferson sits with a wig and more ruffles than one can believe. Here, Jefferson doesn't even deign to look at the viewer but pensively gazes away as if he can't really be bothered (over a nose that looks suspiciously similar to the one in the Adams portrait). Brown wasn't a particularly successful portrait painter, but I will confess that I always think that he got something fundamental about Jefferson.

All of American history might be different if lesser men had been abroad during the summer of 1787.

Think of the rhetoric of the 1790s. Jefferson accused Adams of monarchicism; Adams would accuse Jefferson of Francophilia. Both screamed about liberty. Liberty and monarchy are pre-constitutional words – they are not Constitutional words. Even as everyone else moved towards a new vocabulary of government centered on the Constitution, Adams and Jefferson talked in the language of Anglo-French political conversations and conventions.

There is a sense I have always thought that for both of them the Constitution was a read document rather than an experienced document – and in some ways their inability to move beyond their own missed experience explains more about the 1790s than anything else

As these papers show, Adams and Jefferson were engaged in intense conversations with Anglo-European thought – but their inability to escape the larger Anglo-French empire – not only in terms of real politics but in terms of political rhetoric -- haunts early national politics and, I think, comes close to almost destroying the new nation.

Thank you.