

*Work in the Age of Revolution*, explores gender, artisanry, and the clothing trades in rural New England.

***Constituting Empire: New York and the Transformation of Constitutionalism in the Atlantic World, 1664–1830.*** By Daniel J. Hulsebosch. (Chapel Hill, NC: University of North Carolina Press, 2005. Pp. 494. Cloth, \$45.00.)

This book is part of an older story written anew. Charles Beard, Carl Becker, and Merrill Jensen would find little to fault. Without mentioning the Progressive historians, Hulsebosch argues that American constitutional and legal history can be understood only within the context of intracolony contests that began early in each colony's history and continued through the mid-nineteenth century. Using New York as a case study, Hulsebosch examines four stages of development: the colonial years to 1760, the Revolutionary generation (1760 to 1786), the Constitutional era (1787 to the 1790s), and the antebellum period (1800 to 1840).

As a foundation, Hulsebosch asserts that the multifaceted British imperial law had tremendous influence on New York law, and that New York, positioned at the center of Britain's American colonial empire, played a critical role in the other colonies in interpreting their constitutions and developing their systems of law.

Three groups vied with one another in shaping eighteenth-century colonial New York law. A powerful core of imperial agents, such as Cadwalader Colden and William Johnson, acknowledged and advocated the dominance of the British constitution and law and that any liberties enjoyed by colonists (even those claimed under the common law) were held by the grace of the crown and could be "repossessed at will" (93). A native-born provincial elite (called by Hulsebosch the "creole elite"), such as Lewis Morris and William Smith, Jr., argued that colonists brought with them and retained all the rights of Englishmen as embodied in the common law, the great documents of state, and the statutory law. Furthermore, as the years passed, the colonies' experience with self government became the "root of their protest" (94). Although the colonies experienced and relished a federal relationship within the British Empire, the creole elite never developed a theory of divided sovereignty. Hulsebosch's last group of frontier settlers and oceangoing sailors lived

on the colony's periphery, often defied local authorities, and espoused the common law and a constitutionalism of migration.

Hulsebosch believes that the contests among these three groups "over the relevance and content of the common law, jurisdiction, and the personnel of the legal system (whether judges are appointed to serve for good behavior or at the will of the governor) divided the inhabitants of New York into slowly cohering political groups . . . more than the tension between the abstractions of 'London' and 'the colonies,' help explain the indirect path in New York that ended in rebellion" (134). While not denying the imperial conflict that led to independence, Hulsebosch agrees with the Progressive historians "that the real battle [of the Revolution] was not transatlantic; it went on within the province" (142).

Hulsebosch then explores the relationships between the states and the Confederation government, among the states themselves, and within each state. Abandoning Parliament's Declaratory Act's (1766) principle of imperial dominance, New York's Constitution of 1777 proclaimed that all authority emanates from the people.

Hulsebosch describes New York's Constitution and makes comparisons with other state constitutions, occasionally with mistakes of varying magnitude. More disappointing is Hulsebosch's failure to mention New York's statutory bill of rights passed in January 1787. Milton Klein and John Phillip Reid have alluded to this act, and I have tried to explain its enactment, but Hulsebosch seems to be unaware of its existence. He also seems unaware of the attempt by the states (particularly New York) to have the common-law judicial rights embodied in state constitutions and bills of rights incorporated into the Confederation government when the states ratified the Impost of 1783. This incorporation was to protect each state's citizens from the oppression of the Confederation's customs service and judiciary that would undoubtedly have been created if the Impost had been adopted. These are central issues to Hulsebosch's overall theme.

Hulsebosch argues that the drafting and adoption of the federal Constitution of 1787 was an attempt to use the "law to forge a commercial union that was supreme within the states and respected across the Atlantic" (205). The Constitution helped create "a common legal identity" among Americans (205) that was based upon the "imperial themes" of the colonial era (209). Antifederalists warned that the Constitution

would create the legal and constitutional world advocated by the colonial imperial agents; Federalists maintained it would establish a national legal system similar to the one advocated by the colonial creole elites. New York's masterful public debate over the Constitution "led to a rethinking of the doctrine of separated powers" (211) and to the creation of a new binary government of "aristocratic administration and middling democracy" as opposed to "the triadic model of classical politics" (212). Without an understanding of this "imperial context," "the modern understanding of the founding is incomplete" (253).

With the adoption of the federal Constitution new political actors emerged. Replacing the colonial imperial agents was "a new group of imperial thinkers" (217), many of whom came from other British provinces—Alexander Hamilton, William Duer, and James Wilson. As many of the old colonial creole elite became the new national elite, the remaining state leaders became provincial advocates for "a new brand of populist localism" (218). Again reminiscent of Progressive historians, Hulsebosch says that the debate over the Constitution was simply to decide "Who would rule and where" (221). While discounting the Federalist theory of popular sovereignty as "a powerful constitutional fiction," Hulsebosch maintains that Federalists wanted to "create neither a government of men nor one of law but rather one of men governed by a common understanding of law . . . [that] would outlast individual men" (229). Popular sovereignty was used later by the courts (particularly by John Marshall) to interpret the Constitution as "fundamental law" (237). The Constitution also provided the means to abandon state individuation of the common law in favor of a centralization of constitutional and commercial law.

In his penultimate chapter Hulsebosch shows how the constitutional changes during the first four decades of the nineteenth century reflected a "resurgent localism and the devolution of power" (260) back to the people in their municipal governments. The old fear of an oppressive imperial or national government was now supplanted by the "new worry of a powerful partisan *state* government" (271).

In his last chapter, Hulsebosch shows how the new American constitutional law, the private law, and the common law were codified and made uniform by legal commentaries (principally by James Kent and Joseph Story), and by treatises, lectures, and code books.

Although Hulsebosch could have benefited from a more thorough

reading of New York history, he has added an interesting and important dimension to the old Progressive historical perspective that explains how a divided people became one.

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***The Papers of Thomas Jefferson: Retirement Series*, volume 1, 4 March to 15 November 1809.** Edited by J. Jefferson Looney. (Princeton, NJ: Princeton University Press, 2004. Pp. xlix, 729. Illustrations, maps. Cloth, \$99.50.).

The publication of the first volume of *The Papers of Thomas Jefferson: Retirement Series* marks the launch of a remarkable, invaluable scholarly enterprise. This project will illuminate a period in Thomas Jefferson's life that, though often studied, has never been plumbed fully, for so many of the relevant primary sources only now are coming into public view. The devoted labors of J. Jefferson Looney and his colleagues easily meet the highest standards of scholarship set by the field of documentary editing; this volume balances with skill and grace the demands of explanatory annotation and accurate transcription with the reader's desire for a clear, accessible, and useful presentation of otherwise inaccessible primary sources. In this review essay, I propose to build on the first installment of the *Retirement Series* to examine an aspect of Thomas Jefferson's retirement that has not just biographical but historical and constitutional consequence.<sup>1</sup>

1. J. Jefferson Looney, ed., *The Papers of Thomas Jefferson: Retirement Series*, volume 1, 4 March to 15 November 1809 (Princeton, NJ: Princeton University Press, 2004). Hereafter cited as *PTJR1*. On the historiographical state of Jefferson's retirement, see the introduction to the challenging new study by Andrew Burstein, *Jefferson's Secrets: Death and Desire at Monticello* (New York, 2005). The leading study of Jefferson's retirement before the appearance of Burstein's volume is Dumas Malone, *The Sage of Monticello* (Boston, MA, 1981), the sixth and concluding volume of his magisterial and admiring *Jefferson and His Time*.