

America's Jeffersonian Experiment: Remaking State Constitutions, 1820-1850, by Laura J. Scalia. DeKalb: Northern Illinois University Press, 1999. xxii, 218 pp. Notes, index. \$36.00 cloth.

REVIEWED BY KERMIT L. HALL, NORTH CAROLINA STATE UNIVERSITY

Nearly half of all Americans, when asked by pollsters, respond that they do not even know that their state has a constitution. Ironically, such ignorance parallels the emergence of the so-called new federalism, with its goal of devolving greater responsibilities on the states. As a result, Laura J. Scalia's fine book on the theory of state constitutions is particularly timely. Scalia joins historians such as Christian Fritz, Donald Lutz, Daniel Elazar, G. Alan Tarr, Robert Williams, and Mark Kruman who, in the past 15 years, have begun to examine the history of state constitution making to explain the diversity of America's political and legal traditions. Not all scholars agree about the importance of these state documents and the conventions that generated them. The tradition of reading the American constitutional order from the vantage point of the federal Constitution and the U.S. Supreme Court has made the state documents of seemingly marginal importance. Yet nothing could be further from the truth, according to Scalia, as a matter of either historical development or contemporary politics.

To make her case, Scalia analyzes constitution making during the period from 1820 to 1850 in seven states—Massachusetts, New York, Virginia, North Carolina, Louisiana, Ohio, and Iowa. In the case of Iowa, its first constitution was framed in 1846. That strongly democratic document prohibited slavery, restricted public banking, declared universal suffrage, and provided for the election of judges. In Iowa and elsewhere these were years of rich discussion about how best to balance a commitment to popular sovereignty with the inalienable private rights of all Americans. The federal Constitution struck this balance in favor of private rights; the states, including Iowa, tilted in favor of popular sovereignty. Through a careful reading of the debates in the state conventions, Scalia argues that the federal Constitution of 1787 did not represent America's definitive solution for negotiating its dual commitment to private rights and popular sovereignty. The states took a course different from and in some ways superior to that of the Union.

This finding provides the basis for the title of the book, *America's Jeffersonian Experiment*. From the beginning of the nation, a tension existed between the views of James Madison and Thomas Jefferson. The former insisted that the best constitutions were based on reasoned discourse rather than self-interested popular politics. The latter, on the other hand, viewed constitutional stability as deadening, even dan-

gerous. The American constitutional experience, Jefferson insisted, required the power of the people to regenerate frequently new and better fundamental laws while remaining attentive to original principles. That meant, Scalia notes, that "laws that did not reflect the peoples' contemporary understanding of the good state would ultimately lack the authority and legitimacy necessary to enforce them" (157).

According to Scalia, the states of the mid-nineteenth century became Jeffersonian laboratories for constitutional experimentation. From them emerged new ways of dealing with a host of issues. For example, the expansion of suffrage made it possible to place greater accountability on the judiciary by having it popularly elected. The emphasis on popular sovereignty also produced often elaborate and far-ranging declarations of rights as well as finely detailed descriptions of what government was supposed to do. For Madisonians, these code-like documents, which sometimes reached to more than a hundred pages, ceased to be constitutions; for Jeffersonians, they reflected the popular adaptation of fundamental laws to changing circumstances.

Scalia understands that the framers of state constitutions were at once ideological and pragmatic. As a group they had a strong commitment to the political liberalism associated with John Locke and Adam Smith, but they were also determined to promote America's white, Anglo-Saxon heritage. In the end, Scalia concludes, most of the convention delegates, while theoretically freed by the people to do as they wished, invariably looked back in time for first principles of good government, principles that constrained the excesses of popular will. The constitutions of the mid-nineteenth century clung to a vision of the good state framed by existing beliefs in the nature of citizenship and traditional schemes of institutional design (a two-house legislature, a separate and distinct judiciary, and a bill of rights, for example) at the same time that they experimented (eliminating religious oaths, extending the suffrage, electing judges, and easing requirements for amendments).

America's Jeffersonian Experiment limns the theoretical bases of a little-appreciated state-based tradition of liberty. Yet Scalia achieves her valuable theoretical insights by leaving the political landscape in which change occurred more described than analyzed. For example, readers will find only the barest explanation of the political, social, and economic circumstances that informed the development of Iowa's constitution of 1846. Only a larger and differently constructed book, of course, could address these matters. However, what Scalia has done, and done exceptionally well, is to remind us of the rich theoretical bequest of mid-nineteenth-century constitution makers to the popularly based traditions of American constitutionalism.

Copyright of Annals of Iowa is the property of State of Iowa, by & through the State Historical Society of Iowa and its content may not be copied or emailed to multiple sites or posted to a listserv without the copyright holder's express written permission. However, users may print, download, or email articles for individual use.