

# Critical Dialogue

**Publius and Political Imagination.** By Jason Frank. Lanham, MD: Rowman & Littlefield, 2014. 198p. \$74.99.  
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— Robert W. T. Martin, *Hamilton College*

This book is, in many ways, a worthy follow-up to Jason Frank's excellent and inventive *Constituent Moments* (2010). The earlier book explored postrevolutionary American political thinking focused on the "question of the people": the moral ambiguities (and logical paradox) of a people declaring itself into being. In it, Frank drew on an array of different kinds of sources (speeches, novels, meeting minutes, proclamations, pamphlets, even an engraved image published in Berlin); here, instead, we focus on the classic tract of early American political theory, *The Federalist*. What is imaginative now is the manner of thinking that Frank draws out of the text: not realism or a new "science of politics," as is so often claimed, but a "political imagination" that creatively adapted the extant political culture in the service of an unprecedented constitutional project.

As a collection of essays, *Publius and Political Imagination* is less unified than *Constituent Moments*, and perhaps less pathbreaking. The title chapter is very strong, adding a new dimension to some of the most well tilled ground in Western political thought. The other chapters are not quite as successful, or digress from the flow of the argument. But if the book itself has some of the weaknesses common to collections of essays, this is a trifling price to pay to follow an inventive mind at work on some fundamental, if underappreciated, aspects of *The Federalist*.

The "wager of this study," Frank explains, is that the mythical status of Publius's writings has actually been an obstacle to appreciating some of the "subdued elements and minor tones" (the imaginative aspects) present in the *Federalist*, but rarely explored or pursued on the questions Frank addresses. For the reader, this bet pays off handsomely. It has been a couple of decades since the historian Lance Banning lamented that scholars had been so taken by Madison's institutional reforms that they had lost sight of much else (*Sacred Fire of Liberty*, 1995, p. 219). This myopia persists, but Frank takes us a long way toward restoring our vision by recovering how the formal features of the proposed constitution were interdependent with the

broader political culture and especially Publius's imaginative formulation of it.

"Political imagination" is "an essential part of the architecture" of Publius's argument, Frank persuasively argues (p. 20). By political imagination he means "a formative politics" (p. 152) centered on the "inescapably aesthetic dimensions of political life" (p. 18). This includes civic education, narratives, and public spectacles such as parades and festivals. Ultimately, it amounts to the "entire way of life of a community" (p. 108). The book uses this broad lens to follow Publius from his invocation of the people's constituent capacity to his strategies for disciplining popular power and political imagination. The result is an insightful analysis of Publius as neither a realist nor a deliberativist but, rather, "a political visionary with an acute understanding of the formative role of imagination in republican politics" (p. 21).

Following the path he cleared in his earlier book, Frank begins with the question of constituent power and the Philadelphia convention's extralegal act of constitution making. Publius wisely avoids the "all-or-nothing formalism" of Carl Schmitt and the stark dichotomy of Michael Hardt and Antonio Negri's norm and exception, instead conceptualizing "constituent power as a *claim* that can only ever achieve a retrospective authorization from the authorizing entity on whose behalf it speaks" (p. 31). Publius thus moved the discourse away from the juridical to the ethical and cultural, justifying the convention's rejection of the Articles of Confederation on the informal grounds that it involved an appeal for popular ratification submitted by "patriotic and respectable" delegation. Publius recognizes that this does not resolve the dilemma, but it does, as Frank observes, avoid a normative void (p. 33).

The second chapter is the core of the book, and although it simply reprints a previously published journal article, it deserves the even broader audience a book can command. Here, Frank demonstrates the losses entailed in the common portrayal of Publius as a "realist." Interpretations that focus on the new political science of *The Federalist* (especially nos. 10 and 51), as well as those that highlight the deliberative "great debate" over the constitution, each in its own way denigrates imagination as an obstacle to a more enlightened and more chastened republicanism. In fact, the constitutional project was embedded in and predicated on an

aesthetics of self-rule that imagined a Providential nation and fostered attachment to the federal government and the Constitution itself. For example, there is a great deal more imagination than realism in Publius's very first substantive letter (no. 2), which waxes poetic about a people (envisioned as) united by religion, ancestry, customs, and language.

Frank extends his critique of prominent "realist" readings of *The Federalist* by arguing that they overlook an aspect of Publius's use of the concept of interests. More than a mere description of human behavior, "interests" are part of a "program of reform," part of the "emerging logics of [Foucauldian] governmentality" (p. 78). Interests, on this view, were not a problem to be solved—mere passions to be counteracted—but rather the solution, since they could be molded, reconciled, and even controlled in a stable, readily governed manner. This approach is certainly innovative and insightful, but Frank tends to lean rather heavily on Hume (and Michel Foucault) here, and less heavily (and less persuasively) on evidence from Publius himself.

The book then turns to Straussian approaches to the Founding, which amounts to something of a tangent, despite a return to the question of constitutional foundations through an illuminating analysis of Leo Strauss's response to Carl Schmitt's existential decisionism. Given the influence of Straussians on the study of the founding era, some attention here is valuable, and it is laudable that Frank eschews the "inventive hagiography" (p. 104) of some recent Straussian accounts of the Founding to highlight the more penetrating analysis of the first generation of Strauss's students, Martin Diamond and Herbert Storing. But the chapter focuses much more on Diamond and Storing than on Publius, and Storing himself famously analyzed the Anti-Federalists. More importantly, Storing demonstrates that many Anti-Federalists read Publius to be conceptualizing "interests" in the now-standard way, and without the "formative imagination" and governmentality posited by Frank.

A final substantive chapter and conclusion round out the book's potent argument. We have seen Publius imagine and thereby empower the (prospective) people to form a new constitutional government, but also—in *that same act*—limit and constrain popular power. Frank forcefully demonstrates that Publius conceptualized the constitution as channeling the vibrant, multifaceted popular politics of the era into occasional election rituals, rituals meant to "refine" popular input, which was to be then further limited by a series of other checks and governmental bodies. *The Federalist* does, in many ways, take us from "We the People" to "We the Electorate," in the author's apt phrase: A robust world of petitions, conventions, court closings, organized tax evasion, and many other participatory practices was being reconceived as centered on infrequent votes confirming some gentleman's position in a distant government.

And Frank is absolutely right to close by exhorting us to try to think through and beyond the vision of popular politics that Publius bequeathed to us. But since his nuanced Publius mostly denies, disavows, or at least attempts to discipline our constituent capacities, these famous 85 essays are perhaps not the best place to start an interrogation of the "unfulfilled promise" of the "potential people that haunt *The Federalist*" (p. 154). Rather, we would do better to look to the Anti-Federalists and their progeny. Unfortunately, few will likely do so, and since Publius has such a grip on our own political imagination regarding the Founding and our future, Frank's work is essential in revealing ways in which a "potential people" does indeed haunt the hallowed pages of *The Federalist*.

All in all, Frank does well in placing *The Federalist* in the wider world of the conflicted social history of the time. That might not be exactly what readers are expecting from a book on "political imagination," but it is an absolutely essential approach to our thinking about *The Federalist* and the Founding more generally. Furthermore, many who read Publius tend to undervalue or altogether miss what Frank reveals: that Publius was also confirming some aspects of citizen power even as he was imagining a constrained citizenship.

For many political scientists, and even some political theorists, this book will provide more than enough historical detail, even as it places Publius in conversation with Rousseau, Hume, Schmitt, Strauss, and Jacques Derrida, among others. Nevertheless, focusing more deeply on the historical era would have strengthened the important arguments here. Considering the Founding as a constituent moment, for example, Frank turns to Rousseau not because of "any discernible influence" on Publius (p. 37) but because Rousseau's "Lawgiver" employs "the 'aesthetic-affective' and imaginary registers of ethico-political life" to deal with the dilemma of how a people creates itself as a people (p. 38). This model is analagous to Publius's problem and even his solution, but—as Frank readily concedes—the Lawgiver is also semidivine and elicits in the people persuasion "without convincing" (p. 40). That kind of support is a good deal less robust than what Publius sought from public ratification, and sounds more like the Anti-Federalist critique that Federalists were trying to foist a constitution on the people while they were still blinded by the "glare" of great names like Washington and Franklin. Closer attention to Publius's actual interlocutors rather than Rousseau would have allowed Frank to explore exactly how Publius—in this case, Madison—thought the affective was embedded in the rational.

Similarly, in the chapter on interests, there is considerable reliance on Hume to support Frank's case about the mutable nature of interests, while the evidence from Publius is comparatively light, or less clear (pp. 87, 92).

There is a tendency, when Publius does not explicitly support a claim, to state without citation that “Publius would agree with Hume” (p. 93). Perhaps. There are many theorists who see a powerful Humean influence on Publius, and Frank cites them in passing (p. 70 n. 20). But this influence is also widely debated, and since the details of his influence are at play here, more attention to the degree and nature of Hume’s influence in 1787–88 would have solidified the argument. Here again, I find Frank’s insights powerful and generally convincing, but cannot help wishing that he had gone further and focused more deeply and directly on Publius and his context.

Certainly, addressing Publius historically can bring its own problems. To read him as he was read in 1787–88 is to read him as one author, as Frank does here. But it is also to see him as having a middling importance and little influence. More importantly, it means reading him as a polemicist, or at least a partisan, if an especially insightful one. As a polemic—with multiple, noncoordinating authors, no less—*The Federalist* is rife with tensions resulting from the partisan need to stress popular claims in the process of defending a document that was itself full of tensions borne of compromise and competing political pressures. Frank is well aware of the rhetorical character of *The Federalist* (p. 19), and if he does not fully tease out which tensions result from which source—Publius’s mind(s), his specific context, or the nature of all foundings—Frank reveals Publius’s rejection of the “theoretical straitjacket” inherent in the strict opposition between norm and exception.

Real historical moments, unlike theoretical abstractions, are much more fluid. Just as individuals often do not know themselves until they deliberate with others (and actively listen to the narratives of others), so too a “people” is always reimagining and reforming itself. Thus, as Publius explains (no. 40), the Philadelphia convention always had to imagine what the people of three months later would be likely to endorse. The constitution, as Madison would later say and Frank wisely reminds us, was a “dead letter” unless and until the (imagined) people chose to breathe life into it (p. 29). And since the document itself included an amendment process, it intrinsically envisions a continuing reformation. Thus, the founding is less paradoxical because it was never simply a constituent *moment* but always already anticipated as an ongoing constituting *process*. But even this kind of process will have its outsized, formative moments; the Philadelphia convention was precisely such a moment, and *The Federalist* its enduring defense. Accordingly, we are very fortunate to have such an astute mind revealing the creative force inherent in imagining a democratic American people.

**Response to Robert W. T. Martin’s review of *Publius and Political Imagination***

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— Jason Frank

Robert Martin and I both turn to the political conflicts of early America in order to critically engage with debates in contemporary democratic theory, but we do so in quite different ways. Our different approaches are quietly indicated, I think, in our reviews of each other’s recent books. I want to thank Martin for his thoughtful and fair engagement with my work. In the spirit of “critical dialogue” I will amplify our differences as a way of briefly suggesting alternative routes to historically situated democratic theory.

Martin’s primary criticism of *Publius* regards “context.” While he accurately outlines the book’s argument, and generously compliments my revisionist approach to *The Federalist*, he claims that the book does not engage enough with “Publius’s actual interlocutors” (presumably Anti-Federalist critics of the Constitution), and engages too much with contextually unrelated political theorists, whether they be Michel Foucault and Carl Schmitt or David Hume and Jean-Jacques Rousseau. The book examines the Anti-Federalists more extensively than Martin’s review suggests, but his criticism raises an important methodological question that should be directly addressed. I will do so by responding to one of his particular concerns.

In Chapter 3 (“Governing Interest”), I reexamine the role of interest in Publius’s republicanism, a central concern of the scholarship since the 1913 publication of Charles Beard’s *An Economic Interpretation of the Constitution of the United States*. Martin claims that my argument in this chapter, while “innovative and insightful,” relies too heavily on Hume and Foucault and not enough on evidence from *The Federalist* itself. He thinks that the chapter would be improved had I engaged more extensively with debates over Hume’s influence on Publius. This claim indicates a misunderstanding of my argument about interest, I think, and also of my use of Hume and Foucault to support it. It treats as a problem what is actually a methodological difference.

*The Federalist*, I argue, rejects the classical republican association of interest with political corruption and decline and instead converts it into a powerful tool of governance, not only within the institutional structure of the state, or the anticipated behavior of officeholders, but also through shaping, over time, of the political motivations and behavior of the people themselves. Publius takes an “enlarged view” and argues that when assessed probabilistically in terms of tendencies and aggregate effects, a politics centered on interest can create long-term stabilities in governance tragically absent from the tumultuous history of past republics. This indicates a shift in the logic of republican governance, where the previously antagonistic relationship between freedom and power is united in interest, and where governance is no longer imagined in direct opposition to freedom (as it was in the Whig political discourse of the American Revolution), but

rather realized through the (interested) free conduct of citizens themselves (again, in aggregate and over time).

I argue, therefore, that Publius offers a canonical example of the “new economy of government reason” that Foucault identified in the period. I turn to Hume because he models this shift in government reason, and to Foucault because it is his historical framework that I am extending to the early American context. It is true that I find claims concerning Hume’s influence on *The Federalist* convincing, but Hume’s direct influence is not essential to my argument since my focus is on the underlying structure of governmental reason that these writers, as I read them, all share. Such structures are not always explicitly articulated as propositional content, but must be excavated from the relationships among different parts of arguments, or even from necessary presuppositions left unarticulated.

Martin seems to approach his sources as documents rather than texts (following Dominick LaCapra’s well-known distinction), reading them only for their propositional content and explicit claims. He limits himself to what these documents say, rather than investigating how they work or what they do. When Martin urges readers to turn to the Anti-Federalists rather than Publius, for example, it is because he finds a dissenting democratic egalitarianism openly expressed in their writings against the Constitution. I, too, am interested, of course, in what these early American texts say, but close engagement with them should also consider their rhetorical and literary dimensions and the conceptual architecture not always manifest in express statements.

This raises larger hermeneutic questions than can be adequately addressed here, but these issues of reading and textuality are directly related to our different approaches to historically situated democratic theory. Martin’s documentary positivism recovers past political perspectives in order to reveal what he finds missing from contemporary theoretical debates (say, a view of “dissentient democracy”); my dialogic historicism recovers past political dilemmas, not to resolve them but to better understand their persistence in the present, sometimes to learn from past encounters with them, and sometimes to help disentrail ourselves of their paralyzing grip on the contemporary political imagination.

**Government by Dissent: Protest, Resistance, and Radical Democratic Thought in the Early American Republic.** By Robert W. T. Martin. New York: New York University Press, 2013. 273p. \$49.00.  
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— Jason Frank, *Cornell University*

Late eighteenth-century Americans drew upon a remarkably diverse set of contentious repertoires to express their

dissent from public authority. These included the circulation of opposition newspapers and political pamphlets, the petitioning of governors and acts of jury nullification, and the collective resistance of mobbing and armed regulation. While these repertoires were widely accepted as legitimate, and were essential to the popular mobilizations culminating in the Revolution of 1776, they came under increasing scrutiny from elites during the postrevolutionary years. By the time of the Philadelphia Convention in 1787, and in the wake of Shays’s Rebellion, many elites were arguing that some of these repertoires, especially those focused on the enactment and enforcement of the law by the people acting “out of doors”—the phrase eighteenth-century Americans used to designate people acting collectively outside of formal political institutions—were wholly illegitimate in the newly republican context of representative political institutions based in popular consent. Benjamin Rush clearly expressed this elite position when he argued that the idea that “the sovereign and all other power is seated *in* the people” should be replaced by the more accurate idea that “all power is derived *from* the people.” “They possess it,” Rush explained, “only on the days of their elections. After this, it is the property of their rulers, nor can they exercise or resume it, unless it is abused.” (Address to the People of the United States).

Disputes over the boundaries of legitimate political action, and the appropriate means of expressing popular dissent, were not definitively resolved by the ratification of the United States Constitution; they remained central points of conflict during the first decade of the Early Republic and continue to animate democratic politics up to the present day. Indeed, one could argue that accepting the legitimacy of ongoing political contention around these issues is a defining aspect of democratic thought, properly understood, not to mention “radical democratic thought.” Historical investigation can help clarify the theoretical dilemmas underlying these conflicts, while also helping to explain their persistence in contemporary politics. This is one of the tasks of a historically situated democratic theory.

Robert Martin offers a good example of this kind of scholarship in *Government by Dissent*. Dissatisfied with contemporary democratic theory’s common preoccupation—some might say obsession—with abstract normative theories of legitimacy and right, Martin sets out to redirect readers’ attention to the often-overlooked importance of popular dissent to democratic politics. He does so by recovering early American understandings of the productive and praiseworthy aspects of political dissent, and tentatively exploring how these understandings might contribute to contemporary debates in democratic theory. Examining a wide range of historical sources, and engaging with the work of contemporary historians and democratic theorists, Martin develops a positive argument on behalf of “dissentient democracy”: democratic thought that values ongoing popular dissent as an essential element

of politics, not a means but as an end in itself. While religious dissenters might actively dissent, he explains, their thought cannot usually be described as dissentient because they do not affirm dissent in principle and often struggle to bring about a political world where dissent would be unnecessary or illegitimate. The author sees dissent as an ongoing and necessary part of any democratic politics.

Martin's concept of dissentient democracy, and of dissent more broadly, is somewhat vaguely articulated in this study, and perhaps overly capacious. It seems at times to obscure tensions that might have been more directly confronted, especially tensions between radical democratic thought and liberal constitutionalism (about which, more later). For example, sometimes his dissentient view seems to endorse an extra- or quasi-legal politics of collective resistance or democratic self-creation—it courts boundary questions of “separation” and “exit,” and even probes the legitimate use of force—while at other times, and more often, dissentient democracy merely affirms more uncontroversial liberal commitments to freedom of the press or the legitimacy of a loyal opposition. One of the strengths of Martin's study of early American dissent is his effort to distinguish the popular dissentient view he endorses, centered in a superordinate commitment to popular sovereignty and ongoing contestation of institutions that claim to govern in the people's name, from the more common focus on the legitimacy of individual acts of civil disobedience, with its typical appeal to individual rights or conscience. This contrast between collective dissent and resistance and individual disobedience might have been developed further in the study—both historically and conceptually—to more directly address the tensions that animate it, and also to more precisely articulate the author's own theoretical commitments. The brief surveys of contemporary democratic theory he offers in the book's introduction and conclusion do not clarify these issues; indeed, they risk muddying them further as they work to absorb potentially conflicting theoretical perspectives within the vast breadth of the dissentient view for which he argues.

Martin's account of dissentient democratic thought is developed in each of the book's eight chapters, which begin with debates over the legitimacy of popular regulation in the 1780s and 1790s and end with the largely forgotten work of Thomas Cooper, a friend of the prominent British radical Joseph Priestley, whom Martin celebrates as a key figure in the development of a “dissentient democratic theory” (even though in his later years, as he notes, Cooper became a proponent of censorship and an outspoken apologist for states' rights and southern slavery). In between, Martin offers interesting revisionist readings of familiar Founding figures, and insightful interpretations of important political episodes of the Early Republic.

In one of the book's best chapters, for example, Martin argues that James Madison is a much more “democratically

mindful” theorist of public opinion than is usually believed, even in contemporary “popular constitutionalist” interpretations of his thought (p. 126). Similarly, in his chapter on the ratification debates, the Anti-Federalists are presented not as backward looking “conservatives” (Herbert Storing) or “men of little faith” (Celia Kenyon) but, because of their emphasis on the fallibility of political knowledge and the importance of ongoing dissent and revision in politics, as the unrecognized conceptual innovators. “Whereas Federalists hewed to the fear that political verities would be sullied by wrestling with the ‘chimney sweep’ of dissenting voices,” Martin writes, “Anti-Federalists . . . saw instead a more democratic result, burnished and productive” (p. 74).

The most important contribution of Martin's study to contemporary scholarship in American political thought, however, may be his recovery of the political thought of several relatively obscure figures from the period, not only such known radicals as William Manning and Tunis Wortman but also the many anonymous and pseudonymous writers who made a case in the 1790s for an increasingly egalitarian and agonistic democratic politics: “Tom the Tinker,” “A Farmer,” “Numa,” and many others. Martin places great emphasis on the argumentative innovations of these obscure figures, and details how they worked to incrementally overcome the considerable cultural obstacles of the dominant “antidissent tradition” of political thought. This tradition, whether manifest in the covenant theology of Puritanism or the virtue-centered politics of elite republicanism, affirmed the unquestioned good of consensus and political harmony and denigrated the unquestioned harm of dissent as a symptom of corruption, faction, and social disorder.

Occasionally, Martin's historical claims concerning the conceptual innovations of his chosen figures could be better established, or perhaps qualified. In part, this is because he offers no sustained account of the intellectual history behind the dissenting views he most admires. Had he situated the dissenting arguments of these late eighteenth-century radicals against the background of a more popular and populist republicanism, for example, the tradition best associated with Machiavelli—with its celebration of collective vigilance, jealousy of power, nondomination, and the productivity of political conflicts—some of his central figures' arguments might have ended up seeming less unprecedented than he sometimes seems to claim.

Within the historical parameters that bound the study, however, roughly 1776 to 1800, there are two separate narratives that give shape to Martin's overall argument; one is dominant and the other minor. The dominant narrative is primarily progressive. It traces the incremental emergence of the expansively dissentient conception of democracy that Martin affirms and, especially, the deepening of the theoretical arguments invoked to justify this dissentient view: from the Anti-Federalist innovations in practical dissent, to the more theoretically articulate accounts

of Madison and members of the Democratic-Republican societies in the 1790s, and on to the most fully articulated “dissentient democratic theory” of Wortman, Manning, and Cooper, which alongside a common commitment to popular sovereignty affirms the “fallibility of all and the need for everyone to think for himself” (p. 64). The minor narrative is more about losses than about gains, and it parallels the transformation I discussed in my opening paragraph. It is elaborated in the second chapter’s account of the dissenting language of legitimate popular “regulation” and how it is eventually replaced by the language of illegitimate “rebellion” in the elite response to the Massachusetts Regulation/Shays’s Rebellion, the Pennsylvania Regulation of 1794/Whiskey Rebellion, and the Pennsylvania Regulation of 1799/Fries’s Rebellion. “In one generation,” Martin writes, “the ruling majority of a country founded by justifying popular disorder as a legitimate expression of popular will had accepted the notion that political change must go through established channels spread over a vast country, with election cycles up to six years long and an unelected Supreme Court as the final arbiter of what the people had said [in their Constitution]” (p. 52).

While these two narratives interweave at points, Martin never clarifies precisely how they are related to each other, and this too seems to speak to the tensions already mentioned, because the dominant narrative is much more compatible with liberal constitutional politics, representative government, and established political parties than is the minor narrative, which is much more extrainstitutional and radically democratic. Is the *decline* of the legitimacy of collective resistance by the “people out-of-doors” somehow related to the emerging “culture of democratic dissent and disorder” that Martin affirms (p. 18)? He rightly notes that mobbing and regulation were importantly delegitimized by “the emergence of new representative, republican state governments” (p. 26) and that the peaceful transfer of presidential power between Federalists and Jeffersonian Republicans during the election of 1800 was a particularly important step in this regard. But he also emphasizes that elections represented a narrowing of the dissentient view he endorses, an institutional enclosure of the more expansive collective politics he otherwise celebrates.

Martin makes a somewhat hesitant effort to address the relationship between these two narratives, I think, in the contrast he draws between the “popular disorder” of forceful collective regulations (Shays’s Rebellion) versus the “democratic disorder” that does not rely on the threat or use of force even when calling for collective disobedience to illegitimate laws (“Fries’s Rebellion”). However, here too this distinction is only briefly stated and undeveloped; the reader is left to wonder, again, what “radical democratic” form of politics the dissentient view ultimately sanctions.

It may be that the tensions that animate *Government by Dissent* are too quickly passed over in part because of

Martin’s dogged pursuit of a larger goal. The telos of the study, and of the development in dissentient political thought that it traces, is succinctly captured, I think, in a term the author uses several times in the book: “proto-Millian.” The dissentient democratic theory he develops seems to point to John Stuart Mill as a kind of apotheosis, albeit with important egalitarian qualifications and commitments to popular politics beyond Mill’s own: Mill, Martin writes, is a proponent of “dissentient society,” not “dissentient democracy” (p. 5). Still, Martin seems intent on demonstrating how familiar Millian arguments—that “truth, knowledge, and human improvement generally are advanced by dissent, even when the dissenting view is false”—were articulated (first?) in the surprising context of late eighteenth-century America. While Mill made such “arguments famous,” Martin claims, early Americans had developed them half a century earlier as they sought new theoretical grounds to justify their political culture of democratic disorder and dissent. Beginning with the chapter on Anti-Federalism, Martin seems to evaluate the pro-dissenting arguments of all of his chosen figures, using Mill’s familiar argument in *On Liberty* as criteria.

As is always the case with such retrospective framing, there is the risk of historical distortion here, but there is also the risk of neglecting to fully engage other important controversies from the period relevant to the questions of dissent this study has done so much to illuminate. One important area of contention that is relatively overlooked because of the central focus on the developing theoretical justifications for the dissentient view, and the focus on the legitimacy of dissenting opinions, concerns which political means may be legitimately pursued in expressing dissent. It is not that Martin neglects this question entirely—it is an important part of the book’s minor narrative, and largely confined to the second chapter—but it is sidetracked to the study’s dominant goal. Giving equal weight to the contentious debates around the legitimate means of popular politics may have moved Martin to delve more deeply into some of the provocative issues he raises about radical political action that occurs “at the margins of democratic activity” (p. 12), especially those repertoires of the people acting collectively “out of doors,” and to question whether or not “radical democratic thought” can be as easily accommodated to constitutional liberalism as his study suggests.

### **Response to Jason Frank’s review of *Government by Dissent: Protest, Resistance, and Radical Democratic Thought in the Early American Republic***

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— Robert W. T. Martin

Although America is a nation that was born through riotous acts of popular refusal, its once robust conception

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of democratic politics has largely been reduced to enervated electoral procedures. On this point, among much else, Jason Frank and I agree. One of the helpful insights provided by his review is to highlight that alongside the progressive evolution of increasing (if often grudging) acceptance of political dissent has been a second narrative of loss, that of a narrowed range of oppositional practices accepted as democratically legitimate. This was indeed a “minor” narrative in my book, largely because it was a minor narrative during the Founding: Only the subsequent history up to our own time has made it enduring and dominant. One purpose of the book was to recover this early moment of multifaceted political engagement precisely to substantiate the contrast.

Frank is also helpful in pointing to where the argument could and should have gone further. For example, I might have clarified more fully that dissentient democracy is less about individual conscience than shared self-government, and how individual disobedience can sometimes hinder rather than advance collective resistance. In fact, the few references to the much more individualistic Mill were largely an effort to make this tension clear.

Readers of our two reviews will, however, see that Frank and I disagree about some other important matters. He wishes that I had developed certain aspects of the argument further, and my unwillingness points up methodological as well as substantive differences. We are both more historically oriented than most political theorists, but we differ in how far we are willing to go in connecting historical arguments to contemporary

theorists or even to more distant historical sources. For example, I criticize Frank for taking up Rousseau when Frank maintains that Rousseau had no discernible influence on Publius, whereas he faults me for failing to lay out a broader intellectual history that was unfamiliar to my historical sources.

We can, of course, put concerns about historical fidelity aside by theorizing on our own, but in this particular case, it is not clear that we can do so profitably. Frank would have me specify more fully which oppositional practices are sanctioned by dissentient democracy. But as I explain in the book (pp. 12–14), the line between popular disorder and democratic disorder, between endorsing force and eschewing it, depends on the circumstances. Force is at the margins of legitimate dissent, but political anger can be democratically productive in certain situations. At this point, event overtakes theory, hence my exacting attention to illustrative if forgotten historical examples that can still speak to us.

Frank is certainly right that there are irreducible tensions between popular sovereignty and constitutional liberalism. The larger point was and is that constitutional liberalism cannot quite accommodate a genuine democracy—certainly not a robust conception of democracy that is theoretically compelling and, as it happens, historically recoverable. This does not mean that constitutionalism is not worth pursuing, but it does mean that we must remind ourselves of what can be lost in translating popular sovereignty into constitutional form, and reform our constitution and our political culture accordingly.