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nach 1945

Herausgegeben von
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Is there a Straussian Constitutionalism?

Während in jüngerer Zeit die Kontroversen um Leo Strauss sich vornehmlich mit der neokonservativen Außenpolitik seiner Schüler beschäftigt haben, wendet sich dieser Aufsatz seinem Einfluss auf das konservative Verständnis der liberalen Verfassungstheorie zu, im Besonderen der amerikanischen. Dies geschieht zunächst durch eine Analyse von Strauss' Versuch, einen theoretischen Horizont jenseits des Liberalismus dadurch zu gewinnen, dass er die Aristotelische Konzeption der *Politeia* (regime) rekonstruiert. Im zweiten Schritt beschäftigt sich die Untersuchung mit dem Versuch, den die bedeutendsten Schüler von Strauss, nämlich Martin Diamond und Herbert Storing, unternommen haben, um die Strauss'sche Konzeption auf die Deutung der amerikanischen Verfassung und die Gründung der Vereinigten Staaten anzuwenden.

Diese kritische Einstellung zur amerikanischen Verfassungstheorie wurde vom rechten Flügel der Strauss-Schüler aufgegeben, der auf der politischen Sonderstellung der Vereinigten Staaten bestand, also eine kritisch-skeptische Einstellung zur amerikanischen Verfassung ablehnte. Dieser politisch aktive Flügel der Straussianer kehrte mithin zu dem alten Mythos zurück, demzufolge Amerika sich außerhalb jeder geschichtlich-traditionellen Verwicklung verwirklicht, nunmehr gedacht als die Geschichte der westlichen Metaphysik. Zuvor kritisch verstanden als das beste Beispiel einer durchaus modernen Verfassungstheorie, erscheinen Amerika und die Amerikaner nunmehr als Bürger des besten Aristotelischen Staates.

Any constitution [*politeia*] which is truly so-called [...] must devote itself to the end of encouraging goodness. Otherwise, a political association sinks into a mere alliance [...] and law becomes a mere covenant or a guarantor of men's rights against another instead of a rule of life that will make the members of the polis good and just.

Aristotle: *Politics*

Recent investigations into the influence of Leo Strauss and his students on contemporary American conservatism have typically focused on the impact Strauss' thought has had on neoconservative foreign policy. Shadia Drury, Anne Norton, and Nicholas Xenos have attempted to show that the core ideas driving the unilateralism of the Bush administration resonate with the thinking of Strauss and his followers: the rejection of political realism, disdain for international institutions like the UN, the embrace of a fundamentalist moralism as the basis for an aggressively unilateralist foreign policy, and the duplicity in persuading the

American public for war.¹ The discovery of a now infamous letter that Strauss wrote to Karl Löwith in 1933, declaring his fidelity to „principles of the right“, that is to „fascist, authoritarian and imperial principles“, instead of „crawling to the cross of liberalism“ and to „the ludicrous [...] appeal to *droits imprescriptibles de l'homme*“ has sensationalized these discussions, and provoked a cottage industry of accusation and recrimination in the blogosphere that continues unabated even with neoconservatives out of power in Washington's foreign policy establishment.²

Strauss' admirers have come to his defense, most notably in several book-length studies written by prominent Straussian scholars such as Thomas Pangle, Steven Smith, and Michael and Catherine Zuckert.³ They persuasively disassociate Strauss's scholarly work from the political positions adopted by the likes of William Kristol, Abram Shulsky, and Paul Wolfowitz. Less persuasively, they struggle to downplay Strauss' radical antimodernism, his proximity to the thinking of Nietzsche, Heidegger, and Schmitt, and argue for what William Galston has recently called Strauss' „qualified embrace of liberal constitutional democracy“⁴.

I engage this last claim but pose a slightly a different set of questions. While recent controversies around Strauss' purported influence on American politics have understandably focused on American foreign policy, there has been relatively little work examining the quite remarkable influence of Strauss's political thought on the understanding of liberal constitutionalism in general and of American constitutionalism in particular (at least little work that is not written by Straussians).⁵ There has been a good deal of discussion about the Straussian influence on regime change without a corresponding consideration of what is precisely Strauss' understanding of regime – a central concept to any account of Straussian constitutionalism – and how that understanding has been brought to bear on American constitutional history.

1 Shadia B. Drury: *Leo Strauss and the American Right*, Basingstoke 1997; Anne Norton: *Leo Strauss and the Politics of American Empire*, New Haven CT 2004; Nicholas Xenos: *Cloaked in Virtue: Unveiling Leo Strauss and the Rhetoric of American Foreign Policy*, New York 2008.

2 Leo Strauss: Letter to Karl Löwith. In: *Constellations* 16 (2009), no. 1, p. 82 ff.

3 Thomas L. Pangle: *Leo Strauss: An Introduction to His Thought and Intellectual Legacy*, Baltimore 2006; Steven B. Smith: *Reading Leo Strauss: Politics, Philosophy, and Judaism*, Chicago 2006; Catherine and Michael Zuckert (Ed.): *The Truth About Leo Strauss: Political Philosophy and American Democracy*, Chicago 2006.

4 William A. Galston: *Leo Strauss's Qualified Embrace of Liberal Democracy*. In St. B. Smith (Ed.): *The Cambridge Companion to Leo Strauss*, Cambridge 2009, pp. 193–214.

5 See the essays collected in Kenneth L. Deutsch, John A. Murley (Ed.): *Leo Strauss, the Straussians and the American Regime*, Lanham 1999.

Gordon Wood wrote in the *New York Review of Books* that in the explosion of scholarship on the United States Constitution occasioned by the 1987 bicentennial, Straussians more than any other single group were attempting to „set the agenda for public debate over the Constitution“. „They have sought to define the terms“, Wood wrote, „to organize the conferences, and to dominate the discussions“.⁶ This influence has continued in subsequent years. Most recently, Straussian scholarship on American constitutionalism has again helped to shape and give intellectual heft to the public discourse making „constitutional conservatism“ the rallying cry of a resurgent right wing in American politics. Glenn Beck and Tea Party activists make the interpretation of American constitutional history the central narrative of their political orientation, and prominent signatories of the Mount Vernon Statement – an influential document of unifying conservative principles – declare the fundamental truth of these principles by paraphrasing Strauss's opening lines from *Natural Right and History*.⁷

What goes missing in much of this popular appropriation of broadly Straussian approaches to American constitutionalism are the divisions that have separated students of Strauss: „the Crisis of the Strauss Divided“. The bicentennial and the newfound access of Straussian scholars to the money and power of the Reagan administration as well as conservative think tanks corresponded with a dramatic and politically advantageous shift in the meaning of American constitutionalism. It extends from an earlier generation of Straussians – most influentially Martin Diamond and Herbert Storing – who closely followed Strauss in his critical wariness of liberal constitutionalism, to a group of scholars influenced most importantly by Harry Jaffa, who celebrate, bizarrely for readers outside the fold, American constitutionalism as itself a product of the political wisdom of ancient political philosophy.⁸ These more ideological figures are usually referred to as West Coast Straussians, and they include, aside from Jaffa himself, Thomas West, Charles Kesler, and a number of lesser-known activist-scholars affiliated with the Claremont Institute and other conservative think tanks. In their work – once piously focused on the writings of Lincoln and the Founders, but now preoccupied with the apostasy of American Progressivism and the evil personified in Wood-

6 Gordon S. Wood: *The Fundamentalists and the Constitution*. In: *New York Review of Books* 1988, February 18, pp. 33–40, here p. 33.

7 „The self-evident truths of 1776 have been supplanted by the notion that no such truths exist.“ <<http://www.themountvernonstatement.com/>>; last: 17.11.2011.

8 Catherine and Michael Zuckert provide a helpful survey of these debates in their chapter *The Emergence of the Straussian Study of America*. In: Zuckert (see above, note 3), pp. 217–227.

row Wilson – we see what Mark Lilla has described as „the slow adaptation of Straussian doctrine to comport with neoconservative Republicanism“⁹. Instead of the somewhat misleading geographic categorization, I will refer to this more politically prominent group as „American exceptionalist Straussians“, because for these scholars the American republic is neither what Joseph Cropsey called „the arena in which modernity is working itself out“, nor what Martin Diamond declared „the paradigm of modernity“. Instead, it is the glorious exception to Strauss' grand narrative of decline, wherein classical natural right is abandoned for the low-sighted and hedonistic political philosophy of modern liberalism, which slides inexorably through the three waves of modernity into historicism, relativism, and nihilism.¹⁰ American exceptionalist Straussians place new philosophical garb on a very old American story, that America is outside the depredations of history and tradition, now figured as the history of Western Metaphysics itself. This politically convenient convergence of metanarratives provides a quasiphilosophical update to the old exceptionalist myth. In the place of ‚Nature's Nation‘ we now have Aristotelian America. Once the primary example of a wholly modern constitutionalism, America and Americans are now flattered as citizens of Aristotle's best regime.

This essay unfolds in two parts. In the first, I offer an outline of what I take to be the core of Strauss' constitutional thinking – and an important basis for his qualified rejection of the sufficiency of liberal constitutionalism – focused around his reappropriation of the Aristotelian concept of the *politeia* (translated as „regime“ by Strauss and his students). The 1932 encounter between Strauss and Carl Schmitt provides the relevant background for understanding the constitutional stakes of Strauss' theory of the *politeia*, which is most forcefully and influentially articulated in *Natural Right and History*. I will focus on what I see as the theoretically revealing relationship between Strauss' concept of *politeia*, and Carl Schmitt's influential theory of constituent power. A more thoroughgoing investigation into the relationship between these two concepts than I can provide here will, I suspect, reveal important lines of proximity and distance in the political theories of these two great critics of liberal constitutionalism. The relationship between these concepts illuminates their mutual attention to the paradoxes and blind spots – in

⁹ Mark Lilla: *The Closing of the Straussian Mind*. In: NYRB 200, p. 4.

¹⁰ Joseph Cropsey: *The United States as Regime and the Sources of the American Way of Life*. In: *Political Philosophy and the Issues of Politics*, Chicago 1977, pp. 1–15, here p. 5; Martin Diamond: *On the Study of Politics in a Liberal Education*. In: W. A. Schambra (Ed.): *As Far as Republican Principles will Admit: Essays*, Washington, D.C. 1992, pp. 276–284, here p. 280.

short, the illiberalism – that haunts liberal constitutionalism. Like Schmitt, Strauss aimed to show that liberal pluralism, openness, and tolerance masked its own disavowed forms of fundamentalism and dogmatism. „Liberal relativism“, he writes, „has roots in the natural right tradition of tolerance or in the notion that everyone has a natural right to the pursuit of happiness as he understands happiness, but in itself it is a seminary of intolerance“.¹¹ While Strauss and Schmitt converge on this point, Strauss' conception of *politeia* points in very different directions than Schmitt's existential decisionism.

In the second section, I examine how Strauss' concept of *politeia* was brought to bear on the experience of early American constitutionalism in the work of some of his most prominent students. I will focus my comments on the work of two Straussian scholars whose research has arguably been most influential on interpretations of the American Founding – Martin Diamond and Herbert Storing. I believe that their work brings the stakes of a Straussian approach to American constitutionalism most clearly into focus, and also I admire their work and think it offers an important and critical examination of the thought of founding thinkers like Hamilton, Madison, and Jay, without engaging in the inventive hagiography of more recent studies.

I. *Politeia and Liberal Constitutionalism*

„Wisdom“, Strauss once wrote, „requires unhesitating loyalty to a decent constitution, and even to the cause of constitutionalism“.¹² Strauss' defenders cite this passage as evidence of his commitment, albeit somewhat qualified, to the cause of liberal constitutionalism in general and to American constitutionalism in particular. They see it as evidence of his embrace of political moderation. There are, needless to say, numerous passages in Strauss' work that challenge this view, particularly where Strauss seemingly embraces nonconsensual forms of political rule based in the „counsels of the wise“¹³. Rather than focusing on Strauss' invocations of what David Estland has recently described as an „epistocracy of the educated“, I will take a very broad view of Strauss' understanding of constitutionalism, focusing on his reconstruction of ancient constitutionalism as a premodern alternative to the formal constitutionalism or

¹¹ Leo Strauss: *Natural Right and History*, Chicago 1953, p. 6.

¹² Leo Strauss: *Liberal Education and Responsibility*. In: *Liberalism Ancient and Modern*, New York 1968, pp. 9–25, here p. 24.

¹³ Stephen Holmes catalogues these passages in the chapter he devotes to Strauss in: *The Anatomy of Antiliberalism*, Cambridge 1993.

proceduralism characteristic of the liberal *Rechtsstaat*, which serves to illuminate, as it did for Schmitt, the controversial fundamental commitments that go hidden or disavowed by liberal constitutionalism's self-proclaimed neutrality in the face of competing ends.¹⁴

Strauss' recovery of ancient constitutionalism and its theoretically productive opposition to the assumptions underwriting liberalism can, by his own account, be traced to his important dialogue with the work of Carl Schmitt, and in particular with Strauss' deservedly-famous 1932 review of *The Concept of the Political*.¹⁵ Heinrich Meier has written a rigorous account of the theoretical issues that framed this debate – in particular what Strauss called the „theologico-political predicament“¹⁶. I will outline how Strauss' framing of Schmitt's book shows it to remain within the horizons of the liberal constitutionalism it aims to transcend, in effect exposing it as guilty of a constitutional formalism while opening up a theoretical space for his own subsequent return to ancient constitutionalism as articulated most influentially in *Natural Right and History*. It is a book that, in Lilla's words, „prepared generations of conservative intellectuals in America to see „nihilism lurking in the interstices of modern life, threatening to turn America into Weimar“¹⁷.

Strauss's core argument against Schmitt's *Concept of the Political* is that Schmitt's „critique of liberalism occurs in the horizon of liberalism“; and that Schmitt's „unliberal tendency is nonetheless restrained by the still unvanquished „systematics of liberal thought“¹⁸. The purpose of Strauss' review is to provide a more encompassing view of these „systematics“ than Schmitt and thereby create a true „horizon beyond liberalism“, a more radical critique of liberal constitutionalism's founding assumptions than those offered by Schmitt himself.¹⁹ In order to attain this more encompassing view, Strauss provides what to some readers has seemed like an odd or idiosyncratic approach to Schmitt's famous book that hinges on an analysis of „culture“ in its opposition to „nature“. It is re-

14 See David M. Estlund: *Democratic Authority: A Philosophical Framework*, Princeton 2008, pp. 206–222; see also George Kateb: *The Questionable Influence of Arendt* (and Strauss). In: P. Graf Kielmansegg, H. Mewes, E. Glaser-Schmidt (Ed.): *Hannah Arendt and Leo Strauss: German Emigrés and American Political Thought after WWII*, New York 1995, p. 29–44.

15 Strauss makes this claim in his remarkable preface to the English translation of Spinoza's *Critique of Religion*. All references to Strauss's *Notes on the Concept of the Political* are taken from the translation included in Carl Schmitt: *The Concept of the Political*, George Schwab (Ed.), Chicago 2007, pp. 83–107.

16 Heinrich Meier: *Carl Schmitt and Leo Strauss: The Hidden Dialogue*, Chicago 1995.

17 Lilla (see above, note 9), p. 2.

18 Strauss (see above, note 15), p. 85.

19 *Ibidem*, p. 107.

vealing that Strauss' approach did not appear odd or idiosyncratic to Schmitt, who wrote to a colleague shortly after the appearance of the review that Strauss „saw right through me and x-rayed me as nobody else had“.²⁰ In order to grasp the core of Strauss' own critique of liberal constitutionalism then, it is important to engage what he means when he writes in his review of *The Concept of the Political* that the „final awareness of liberalism is the philosophy of culture“²¹.

Strauss argues that by affirming a political ontology – the irreducibility of the polemical opposition between friend and enemy – Schmitt denies the foundational order of a teleological nature and natural right just as clearly as the liberalism he critiques. Schmitt's work becomes symptomatic of what Strauss will later characterize as the Nietzschean third wave of modernity.²² It is modernity's affirmation of human self-sufficiency and autonomy taken to its fullest nihilistic extreme. In this early review, Strauss reframes Schmitt's famous critique of liberalism's evasion of the political as first and foremost a critique of culture. Liberalism divides the genus that is specific to the political – „culture“ or the „totality of human thought and action“ – into various independent domains – the moral, the aesthetic, the economic, etc. So, according to Strauss, Schmitt's understanding of the political implies a fundamental critique of „at least the prevailing concept of culture“, which is a critique first and foremost of the assumption that these spheres are relatively autonomous, or of the depoliticizing liberal strategy moving these spheres to the private realm beyond public controversy. Here, Strauss draws out more fully what is implied by Schmitt's affirmation in *The Concept of the Political* of a „political homogeneity“ that overrides and takes existential precedence over these subordinate spheres of human activity. According to Strauss, Schmitt understands that the „prevailing concept of culture“ affirms or entails the vision of a state in which social conflict is impartially regulated through the medium of man-made law. But here is where Strauss believes Schmitt stops short of drawing out the full consequences of his critique of the „prevailing concept of culture“. Strauss aims to expose more radically the fundamental presuppositions of this view.

In Strauss' review, „culture“ stands in for a project of human autonomy and self-sufficiency that he comes to identify with modernity. For Strauss, the abandonment of nature for culture already contains the seeds of nihilism and marks modernity's fateful departure from ancient political philosophy and classical natural right. Liberalism's break from

20 Cited in Meier (see above, note 16), p. xvii.

21 Strauss (see above, note 15), p. 86.

22 Leo Strauss: *The Three Waves of Modernity*. In: L. St.: *An Introduction to Political Philosophy: Ten Essays*, ed. by Hilail Gildin, Detroit 1989, pp. 81–98.

natural right theories based in a transcendent objective standards or law, a hierarchy of ends that human activity aims to fulfill teleologically, and posits value and meaning as instead wholly human creations – creations of „culture“. Liberalism is equated with the abandonment of man by God and nature, who no longer give guidance on how to live. „If Martin Heidegger indicted modernity for its *Seinsvergessenheit* ‚forgetfulness of Being‘“, as Richard H. King has recently written, „then Strauss can be said to indict it for an analogous *Naturvergessenheit* ‚forgetfulness of Nature‘“.²³

On Strauss' account, Schmitt's *Concept of the Political*, reveals this truth but remains trapped within its terms. Like the liberalism he critiques, Schmitt forgets that culture always presupposes that something is cultivated: „culture is always the culture of nature“²⁴. For Schmitt, nature is still the „sovereign creation of the spirit“, which fundamentally reinscribes Schmitt within the horizon that he had hoped to escape. In affirming the irreducibility of the political, Schmitt's decisionism duplicates the „value neutrality“ that he criticizes and prevents him from asking the fundamental questions that motivate politics on Strauss' account. The *seriousness* of the question of what *is* right is what legitimates the political and defines its space of contention. If Schmitt seems to affirm the irreducibility of the political over the moral, Strauss wants to show that „the position of the political must be tracked back to the position of the moral.“²⁵ The political for Schmitt focuses on the irreducibility of the threat or the existential fight, not on what is being fought *for*. In this focus, Schmitt presumes a position of neutrality among combatants. This is a neutrality of a different sort than that associated with liberalism's „age of neutralizations and depoliticizations“, one that doesn't seek to avoid decision but to „affirm an eagerness of decisions regardless of content“.²⁶ „He who affirms the political as such“, Strauss insightfully writes,

respects all who want to fight; he is just as tolerant as the liberals, but with the opposite intention: whereas the liberal tolerates all honest convictions so long as they merely acknowledge the legal order as sacrosanct, he who affirms the political as such respects and tolerates all serious convictions, all decisions oriented to the real possibility of war.

Schmitt merely affirms a liberalism with „the opposite polarity“. However, in doing so Schmitt clears the ground for a reassertion of „a new or-

23 Richard H. King: Rights and Slavery, Race and Racism: Leo Strauss, and the American Dilemma. In: *Modern Intellectual History* 5 (2008), no. 1, pp. 55–82, here p. 61.

24 Strauss (see above, note 15), p. 104.

25 *Ibidem*, p. 105.

26 *Ibidem*; see Carl Schmitt: The Age of Neutralizations and Depoliticizations. In: *Telos* 96 (1993), Summer, pp. 130–142, p. 130.

der of human things“²⁷ that takes its orientation from a teleological nature rather than the autonomous self-assertion associated with culture, and this is of course the path that Strauss himself takes in his subsequent work.

For Strauss, „liberalism stands or falls by the distinction between state and society, or by the recognition of a private sphere, protected by the law, with the understanding above all that religion belongs to the private sphere“.²⁸ The form of constitutionalism that Strauss develops to reveal the hidden dogmatism underwriting liberalism's proclaimed procedural fairness and tolerance rejects the neutrality of the liberal art of separation, through a contrasting recovery of the profoundly formative constitutions of the ancient world. Strauss' theologico-political critique of liberal constitutionalism that a social and private sphere can be wholly set off from the ends of the state, while suggested in his critique of Schmitt, is more fully developed in his engagement with the ancient Greek idea of the *politeia* in *Natural Right and History*. At the risk of simplification, Schmitt's critique of liberalism in *The Concept of the Political* focused on liberal constitutionalism's inability to account and provide the conceptual resources for the encounter with the extralegal decision that is the constitution's very condition of possibility and impossibility. Strauss elaborates more directly on the meaning of „political homogeneity“ argued in Schmitt's book on the moral ordering of the polity, or on modern liberalism's refusal of a formative politics and its claim to establish a regimeless regime. Here it is important to note that Strauss' understanding of liberalism's depoliticizing strategy not only involves the privatization of conflicting goods, as emphasized by so many of liberalism's critics on both the left and right, but also the faith in technological and procedural advances to neutrally adjudicate between conflicting goods. This will become an important aspect of some of the Straussian understandings of American constitutionalism discussed below.

The recovery of ancient constitutionalism suggested at the end of Strauss' review of Schmitt is developed further in the chapter on „Classical Natural Right“ in *Natural Right and History*. Strauss does not advocate a wholesale recovery of ancient constitutionalism as a means to „supply us with recipes for today's use“²⁹; his „deepest intent“, as one admirer puts it, „was not to revive classical natural right as a positive

27 Strauss (see above, note 15), p. 105.

28 Leo Strauss: Preface to Spinoza's Critique of Religion. In: L. St.: Liberalism Ancient and Modern, New York 1968, pp. 224–259, here p. 230.

29 Leo Strauss: *The City and Man*, Chicago 1978, p. 11.

doctrine of public law³⁰. But Strauss's reconstruction of the ancient Greek idea of the *politeia* did develop a more critical perspective on modern liberal constitutionalism and its purported shortcomings than radical critics like Schmitt. Strauss writes that *politeia* is often translated as „constitution“ and in modern times it is typically meant as a merely „legal phenomenon, something like the fundamental law of the land, and not something like the constitution of the body or soul“³¹. The *politeia* refers to more than the form of government in its narrowly legal sense, but to a community's entire way of life, its habits, customs, and moral beliefs. Following this primary distinction, some Straussians distinguish between the „parchment regime“ and the „living regime“ embodied in experience and practical behavior, and they often celebrate Tocqueville's *Democracy in America*, a book which has comparatively little to say about American constitutional jurisprudence, as the classical study of the American *politeia* or regime.³² Crucial to this conception of *politeia* is the role of political education. „The single most important source of the preservation of any regime“, Strauss writes, „is the education of its citizens with a view to the ends of the regime“³³. Here and elsewhere Strauss is following Aristotle, as indicated in the passage from the *Politics* with which I began: „any constitution [*politeia*] which is truly so-called [...] must devote itself to the end of encouraging goodness“³⁴. This formative dimension – the interrelationship of statecraft and soulcraft – is a widely recognized component of Straussian political thought. There are, however, other aspects of Strauss' reconstruction of the *politeia* that are less frequently noted, and that promise to open up new insights into what is distinctive about the Straussian approach to constitutionalism.

I agree with Robert Howse that Strauss' discussion in *Classical Natural Right* elaborates on his critique of Schmitt in the *Notes on the Concept of the Political*. Howse emphasizes what he broadly considers Strauss's „hidden exchange“ with Schmitt's decisionism, but I want to focus more narrowly on Strauss's elaboration of the Aristotelian concept of *politeia* as a response to Schmitt's theory of constituent power (*die verfassungsgebende Gewalt*), which is related to his decisionism, but also has a more specific

30 Robert Howse: From Legitimacy to Dictatorship – and Back Again: Leo Strauss's Critique of the Anti-Liberalism of Carl Schmitt. In: D. Dyzenhaus (Ed.): *Law as Politics: Carl Schmitt's Critique of Liberalism*, Durham 1998, pp. 56–91, here p. 83.

31 Strauss (see above, note 11), p. 136.

32 See Cropsey (see above, note 10).

33 Strauss (see above, note 11), p. 140.

34 Aristotle: *The Politics*, Cambridge 1988, p. 119.

function in his constitutional theory.³⁵ In *Constitutional Theory* Schmitt defines constituent power as „the political will whose power or authority is capable of adopting the concrete global decision on the mode and form of political existence“. Schmitt likens constituent power to an unstructured „Urgrund“, or „formless formative capacity“³⁶. It is an „absolute beginning“ that springs out of „normative nothingness and from concrete disorder“. Where Schmitt conceives of constituent power as an unconstrained act of formative will – thereby still operating within the „systematic of liberal thought“ as elaborated in „Notes“ – Strauss conceives of *politeia* as teleologically motivated by a particular and true vision of the highest and good: culture on the one hand, nature on the other. Just as Schmitt argued that constituent power was essential to the understanding of any constitutional order, but that liberal *Rechtsstaat* disavowed, Strauss argued that to discover the constitution's full meaning as *politeia* one had to be clear about its overarching moral goals, its way of life, the characters and forms of life that the constitution brings about, and those it prevents from emerging.

In passages that resonate with those on constituent power in Schmitt's *Constitutional Theory* Strauss calls the *politeia* „the supreme political phenomenon, the core of a society's self definition“. „The *politeia* is more fundamental than any law“; it is the source of all laws“. „The *politeia* is [...] the factual distribution of power within the community [rather] than what constitutional law stipulates in regard to political power.“³⁷ Schmitt's constituent power and Strauss' *politeia* are differently-inflected attempts at the theoretical recovery of „the political“ that is threatened for both by modern liberalism's overriding tendency „to neutralization and depoliticization“, and its attempt to overcome the intransigent conflicts over competing ends that structure political life through an appeal to better technological means: democratic procedures, parliamentary forms, electoral mechanisms, etc. From the perspective of modern liberalism, „what you need is not so much formation of character and moral appeal as the right kind of institutions, institutions with teeth in them“³⁸. Liberal constitutionalism's emphasis on the instrumentalities of political technology and institutional design – not on this or that institution, but on the adjudicatory power of institutionalism *as such* –

35 Howse (see above, note 30). On Schmitt's account of constituent power, see Renato Cristi: Carl Schmitt on Sovereignty and Constituent Power. In: D. Dyzenhaus (Ed.): *Law as Politics: Carl Schmitt's Critique of Liberalism*, Durham 1998, pp. 179–195.

36 Carl Schmitt: *Constitutional Theory*, Jeffrey Seitzer (trans.), Durham 2008, p. 125.

37 Strauss (see above, note 11), p. 105.

38 Leo Strauss: *What is Political Philosophy? And Other Studies*, Chicago 1988, p. 43.

is an important factor of early Straussian scholarship on the defining aspects of the American regime.

II. *Political Technology and the American Regime*

Strauss wrote very little on American constitutionalism, and his most famous remarks – the opening lines of *Natural Right and History* – are not very encouraging. There he suggests that modern Americans have replaced their original commitment to the self-evident truths of the rights to „life, liberty, and the pursuit of happiness“ with the historicist belief that „all men are endowed by the evolutionary process or by mysterious fate with many kinds of urges or aspirations“. ³⁹ According to Strauss, early Americans openly embraced the teachings of Locke, but surreptitiously followed the teaching of Hobbes. They built their regime on the „low but solid ground“ of the modern right of self-preservation, abandoning the ancient preoccupation with the good life for the modern preservation of mere life. „It is not an exaggeration“, as Steven Smith writes, „to say that Strauss’s judgment on Locke is his judgment on America“. ⁴⁰ And while Strauss seems to affirm the *Declaration’s* Lockean commitment to modern natural right in this passage, the overall argument of his influential book claimed that the seeds of historicism, relativism, and nihilism were already lurking within these originary commitments and that America’s founding documents affirmed the principles of their own undoing.

For Strauss, the low ends of the American regime were the deep and hidden cause of the dangerous crisis of confidence defining post-War liberalism, a crisis that left America – like Weimar – „uncertain of its purpose“ ⁴¹ and exposed to threats from the extreme left and the extreme right, unable to affirm an unqualified commitment to the truth of its core principles. Strauss, of course, was not alone in arguing against relativists and unprincipled liberals during the 1950s. Although Strauss critiqued the resurgence of natural law orthodoxy and dogmatism in post-War legal theory – popularized by Walter Lippmann’s *The Public Philosophy* (1955) – his work can be read as part of a wave of post-War „thinking that questioned the adequacy of positive law and legal realism (in America) in the face of the totalitarian menace“. ⁴² However, in contrast to much of this literature, Strauss innovatively carried this critique beyond

³⁹ Strauss (see above, note 11), p. 1.

⁴⁰ Smith (see above, note 3), p. 169.

⁴¹ Strauss (see above, note 29), p. 3.

⁴² King (see above, note 23), p. 60.

the purview of jurisprudence to the preoccupations of American social science, and to the preoccupations of political science in particular.

While American social scientists increasingly proclaimed their value neutrality and sought to explain the dynamics of American political life by appealing to extrapolitical variables such as economics, psychology, or sociology, Strauss urged his students to study the defining political commitments of the American regime as a precondition for fully understanding its political behavior. „The distinctive human types nurtured in each regime manifest the ethos of the regime“, as Martin Diamond would later write. „Each political regime is [...] in the business of handicrafting distinctive human characters. Indeed, each political order is literally constituted by the kind of human character it aims at and tends to form.“ ⁴³ At a time when the behavioral revolution was well underway in American political science departments and prominent social scientists were declaring the death of political philosophy, Strauss affirmed the autonomy of the political realm and audaciously claimed that political philosophy should be understood as the variable of variables, that the serious study of political life should preoccupy itself first and foremost with the normative commitments underwriting a polity’s political institutions and animating the lives of its citizens. Positivist political science was (and remains) unable to engage with the substantive principles that are its own conditions of possibility, because the political „facts“ they empirically studied – behaviors, opinions, institutions, etc. – are not natural facts in the world but facts formed by prior theoretical commitments to a particular vision of justice, legitimacy, and authority, that is, by the stated ends of political life. Because all political communities must be understood as a regime, as a comprehensive organization of collective life oriented toward a particular vision of the common good, supposedly value neutral political science unknowingly echoed the tenants of modern liberalism in claiming it could avoid relying upon or presuming such fundamental commitments. It was an important goal of Strauss’ critical engagements with post-War American social science to make those disavowed fundamental commitments legible, a project taken up and elaborated by those of his students who turned their attention to sustained study of the American regime.

This study’s *sui generis* focus on the political thought of the American Founding results from their conviction that the fundamental orientations of the regime were most clearly articulated there. According to Diamond, „the political thought of the Founders remains the finest Ameri-

⁴³ Martin Diamond: *Ethics and Politics: The American Way*. In: W. A. Schambra (Ed.): *As Far as Republican Principles will Admit: Essays*, Washington, D.C. 1992, pp. 337–368, here p. 340.

can thought on political matters.⁴⁴ In Storing's words, it „sets the horizon“, because the Founders „laid down our most basic rules [...] and established the primary terms of our moral and civic discourse“.⁴⁵ According to Strauss and his students, the political thought of the Founders affords a comprehensive understanding of the *arête* of the American regime. This is a foundational presupposition of Straussian scholarship on the American regime: not the consequence of empirical investigations. But the framework in which these investigations occur. The relatively uncontroversial status of this broadly originalist perspective attests to the widespread dissemination – and political utility – of what was originally taken to be a very idiosyncratic approach to the study of American political life. It invests a select group of texts with a remarkable authority and explanatory power, which leads Sheldon Wolin to describe this kind of scholarship as a „misplaced biblicism“⁴⁶.

In one important sense, however, Wolin's biblical metaphor is misleading. While most recent Straussian scholarship on the American Founding is permeated with sanctimonious affirmations of the truth, wisdom, and unsurpassed excellence of America's founding principles, this was not necessarily true of all of the most prominent first generation Straussian scholars of the American regime. This first generation examined the thought – or, as they usually put it, the intentions – of the Founders to identify their „constitutive opinions“, to reconstruct the fundamental commitments of the American regime so as to better understand and *evaluate* these commitments, not to uncritically affirm them. Straussian scholarship on early American political thought has undoubtedly contributed to the conservative jurisprudence of original intent in ways that have not yet been fully appreciated and understood – indeed, it was Gary McDowell, a Straussian in Reagan's Justice Department, who wrote Attorney General Edwin Meese's influential speeches in the 1980's calling for a return to „a jurisprudence of original intention“⁴⁷. However, for the first generation of Straussian scholars the return to original intent was not the end of the investigation, or the final ground of interpretive authority, as it has become for conservative ju-

44 Martin Diamond: *Democracy and the Federalist: A Reconsideration of the Framers' Intent*. In: W. A. Schambra (Ed.): *As Far as Republican Principles will Admit: Essays*, Washington, D.C. 1992, pp. 17–36, here p. 18.

45 Herbert J. Storing: *What the Anti-Federalists Were For*, Chicago 1981, see also Thomas L. Pangle: *The Spirit of Modern Republicanism: the Moral Vision of the American Founders and the Philosophy of Locke*, Chicago 1988.

46 Sheldon S. Wolin: *The Presence of the Past: Essays on the State and the Constitution*, Baltimore 1989, p. 3.

47 See John Brigham: *Original Intent and Other Cult Classics*. In: *The Good Society* 11 (2002), no. 2, pp. 13–17.

rists. Strauss taught that it is better not to understand America as Americans have understood themselves – a view hardly shared by the likes of Robert Bork and Clarence Thomas. Following Strauss, early Straussian scholarship on the American Founding did not return to original intent as a way of suturing a horizon of normative evaluation, so much as a way of illuminating fundamental orientations to political life excluded by that horizon. In attempting to open up a space of critical reflection and evaluation on the fundamental commitments of American constitutionalism – albeit „decent“ and „respectful“ criticism – early Straussian scholarship on the American regime was as critical of the prevailing discourses on pluralism, consensus liberalism, and the proclaimed „end of ideology“, as were critics on the left like those associated with the Berkeley School of political theory.⁴⁸ The goal of their return to original intention was in line with Strauss' effort in his critique of Schmitt to reconstruct a „horizon beyond liberalism“, and thereby to achieve what Diamond called an „educated ascent“ from the fundamental commitments of the American regime.⁴⁹ „If there is no standard higher than the ideal of our society“, Strauss once wrote, „we are utterly unable to take a critical distance from that ideal“.⁵⁰

In the remainder of the essay, I will briefly survey the work of two of the most prominent Straussian students of American constitutionalism, Martin Diamond and Herbert Storing. Their interpretations of early American political thought converge as do the particular defining points of the regime on which they focus. Much recent Straussian scholarship on the American Founding is preoccupied with the meaning of the *Declaration's* Lockean affirmation of rights and paints a more inspirational portrait of them than Strauss' Hobbesian account. This is true of Thomas Pangle's emphasis on the importance of natural law doctrine, Michael Zuckert's stress on implied duties and the obligations of rights, as well as Harry Jaffa's bolder claim (also taken up by many of his students) that the American invocation of right is not modern at all but instead a glorious restatement of a classical, teleological natural right.⁵¹ In

48 A full excavation of these connections has not yet been done. A good place to begin, however, would be a comparison of Diamond's APSR essay, *Democracy and the Federalist*, discussed below, and Norman Jacobson's remarkably similar arguments in a 1963 essay from the same journal, *Political Science and Political Education*. Benjamin Barber outlines some of these themes in Benjamin Barber: *The Politics of Political Science: „Value-free“. Theory and the Wolin-Strauss Dust-Up of 1963*. In: *American Political Science Review* 100 (2005), no. 4, pp. 539–545.

49 Diamond (see above, note 10), p. 278.

50 Strauss (see above, note 11), p. 3.

51 Zuckert: *Launching Liberalism* (see above, note 45); Harry Jaffa: *A New Birth of Freedom: Abraham Lincoln and the Coming of the Civil War*, Lanham 2000.

sharp contrast to these current preoccupations with rights, Diamond and Storing emphasized the popular locus of authority in the American regime and the innovative institutional mechanisms devised by the framers to respond to the dilemmas of democratic governance. In contrast to an earlier generation of Progressive historians who emphasized the anti-democratic elements of the United States Constitution, the base economic motivations of the Founders, and the merely manipulative or rhetorical dimensions of early American political thought, Diamond and Storing take popular government to be a fundamental principle – but also fundamental problem – of the American regime, and rational reflection as the principle commitment of the Founders and their political thought. While Straussian scholarship on American political thought rejects the historicist premises of ideology analysis, and avoids the pursuit of meta-ethical investigations into the philosophical foundations of natural right, Diamond and Storing approach the American „new science of politics“ as a problem of political technology, of institutional innovations in popular governance.

Martin Diamond was probably the most influential of Strauss' students to study early American constitutionalism. Senator Daniel Patrick Moynihan claimed that „Martin Diamond almost singlehandedly established the relevance of the thought and doings of the Founding Fathers for his generation“, and Michael Zuckert has recently written that „probably none of Strauss' students has had such a widespread influence as Diamond did“. ⁵² The authoritative status of Diamond's interpretation of American constitutionalism for Straussians themselves is evidenced by his authorship of the chapter on *The Federalist Papers* in the famous Strauss/Cropsey anthology, the *History of Political Philosophy*.⁵³ The main outlines of Diamond's interpretation are succinctly articulated in that chapter on *The Federalist Papers*, because they provided „the consistent, comprehensive, and true account of the Constitution and of the regime it was calculated to engender“. ⁵⁴

The key to Diamond's interpretation of *The Federalist Papers* and American constitutionalism is a famous line from the conclusion of *Federalist*. „In the extent and proper structure of the Union“, Publius writes, „we behold a Republican remedy for the diseases most incident

52 See Michael Zuckert: *Refinding the Founding: Martin Diamond, Leo Strauss, and the American Regime*. In: Deutsch, Murley (see above, note 5), pp. 235–252, here p. 235.

53 Martin Diamond: *The Federalist*. In L. Strauss, J. Cropsey (Ed.): *History of Political Philosophy*, Chicago 1987, pp. 631–651.

54 *Ibidem*, p. 632.

to Republican government“.⁵⁵ This search for a „Republican remedy for the diseases most incident to Republican government“ is what Publius called „the great desideratum of government: „to preserve the spirit and the form of popular government“, while also securing the public good and private rights against the dangers of faction and the tyranny of the majority. Diamond argued that the fundamental characteristics of the American regime are fixed in its commitment to „republican“ government, coupled with the Constitution's remedy to the diseases that spring from that commitment (the „tempestuous waves of sedition and party rage“, which had kept all past republics „continually agitated“, and „in a state of perpetual vibration“, between the extremes of tyranny and anarchy“). This remedy, Diamond emphasized, did not focus on shaping the ends of political life but on improving the mechanism and means („the extent and proper structure of the Union“). While Diamond acknowledged that *The Federalist* „does not discuss systematically [...] the question of ends and purposes of government“, he follows Strauss in arguing that the end of the American regime was ultimately a restatement of the liberal preservation of rights negatively defined.⁵⁶ For Diamond, as for Strauss, the innovations of the Founders did not occur in the terrain of normative political philosophy, but in governmental technique. It was the Constitution's institutional organization – the extended republic, the federated system of political representation and authority, the separation of powers, and the checks and balances between the different branches of government – that measures the Founders' advances in the new science of politics. American constitutionalism exemplified – indeed it is paradigmatic of – the liberal faith in the ability of technological means to overcome and reconcile the conflicts that structure and define political life, most importantly those conflicts animated by competing conceptions of the good life. Like Strauss before him, and Storing after, Diamond did not have much faith in such technological solutions to intractable political dilemmas.

Diamond elaborated this argument most influentially in a 1959 article of the *American Political Science Review* entitled *Democracy and The Federalist: A Reconsideration of the Framers' Intent*. The „inconveniences“ and „sickness“ of popular government is presented as a familiar conflict between the commitment to formal democratic procedures and the corruption of particular democratic outcomes. Diamond engaged this conflict in terms of the dilemmas posed for democratic government by majority tyranny and focused on Madison's confrontation with this problem in *Federalist*.

55 All references to *The Federalist* are from Jacob E. Cooke's definitive edition, Jacob E. Cooke (Ed.): *The Federalist*, Middletown 1961, p. 65.

56 Diamond (see above, note 53), p. 632.

Diamond, rightly I think, takes this essay to be emblematic of a general shift in strategy in dealing with popular government's intrinsic forms of degeneration and corruption. There James Madison proposes two „methods“ for dealing with the „disease“ of faction in popular government, „the one by removing its causes; the other by controlling its effects“. To do the former is to either destroy the liberty of citizens which is the source of popular government, to impose a particular end on the citizenry, to „give every citizen the same opinions, the same passions, and the same interests“.⁵⁷ This would be a premodern rather than modern „remedy“. The American Constitution, as explained and justified by *The Federalist*, pursues the modern strategy of „controlling effects“ rather than „removing causes“; it is an exemplary instance of the art of indirect governance.

This strategy is a source of both admiration and critique for Diamond. It is a source of admiration because it takes man as he „is“ rather than how he „ought“ to be. It recognizes man as a dangerous animal and derives from this recognition a clear-sighted analysis of the dangers of „popular inclination“ and more direct expressions of popular will. However, it is a source of critique because institutional safeguards are neutral with regard to questions of end and are ultimately incapable of fully remedying those diseases. In developing this critique, Diamond invokes the very conceptions of *politeia* on which Strauss elaborates in *Natural Right and History*. While ancient forms of constitutional government had „ranked highly as objects of government, the nurturing of a particular religion, education, military courage, civic spiritedness, moderation, individual excellence“, he writes, „on all of these the *Federalist* is either silent, or has in mind only pallid versions of the original, or even seems to speak with contempt“.⁵⁸ The United States Constitution does not make it the business of government to „cultivate virtue or improve souls“, but instead regulates the behavior of the citizenry through „shrewd institutional arrangement“. „Not to instruct or transcend these passions and interests, but rather to channel and use them.“ It becomes the hallmark of American constitutionalism.⁵⁹ It does not dictate particular results, but organizes institutions in such a way as to make beneficial results probable in „aptitude and tendency“. The mechanisms of electoral representation, for example, don't focus primarily on criteria as to who will be elected, but rather extend the sphere of electoral districts so that „men who possess the most attractive merit, and the most diffusive and estab-

57 The Federalist no. 10, p. 58.

58 Diamond (see above, note 43), p. 345.

59 Ibidem, p. 355.

lished characters“ will tend probabilistically to be elected.⁶⁰ Similarly, the legislative procedure is organized in such a way that the law will not reflect the popular whims of the moment, but the more refined and enlarged views of an objective or unattached public interest. And the federal division of authority alongside the intricately balanced organization of the separate branches of government will not only enable the government to control the people, but incline it to „check itself“ through a policy of „supplying by opposite and rival interests, the defect of better motives“.⁶¹

Because American constitutionalism removes „character formation from its previously prominent place on the agenda of politics“, it exemplifies for Diamond a broader liberal strategy of depoliticization. „Madison was following the general tendency of modern political thought“, he writes, to „solve the problems of politics by reducing the scope of politics“.⁶² Diamond argued that this strategy established a remarkably successful system in maintaining social stability and security – Diamond even claims that Madison offered what he called a „before-hand response to Karl Marx“ – a serious compliment coming from a former Trotskyist. But he also catalogues the hidden costs, or what he calls the „collateral consequences“, of this attempt to formulate a technological solution to intransigent political problems, which pose delicate rhetorical problems for his own work (later echoed in the work of Storing). Therefore, he asks, how can one defend the Founding and the United States Constitution against Progressive critics who viewed them as expressions of class interests and fundamentally antidemocratic while also developing a more thoroughgoing critique than the Progressives of the fundamentals upon which the constitution rests? Diamond navigates this tension by affirming a dramatic distinction between the virtues and the rationality required of the Founders, and the selfish pursuit of interests and self-gratification required or elicited by the constitutional system they instituted. „There is a profound distinction“, he writes, „between the qualities necessary for the founders and those necessary for the men who come after“.⁶³ In establishing a constitutional regime on the „low but solid ground“ of self-preservation and self-interest, the Founders wisely provided security and stability to their republican experiment, but they did not recognize that over time their technological solutions could only be palliative, and in fact could ultimately work to magnify or enhance the very dangers they were guarding against.

60 The Federalist no. 10, p. 63.

61 The Federalist no. 51, P. 349.

62 Diamond (see above, note 43), p. 353.

63 Ibidem (see above, note 44), p. 35.

In order to defuse the dangerous factional force of opinion, passion, and class interest, Madison's policy deliberately risks magnifying and multiplying in American life the selfish, the interested, the narrow, the vulgar, and the crassly economic. That is the substratum on which the American political system was intended to rest and where it rests still.⁶⁴

For Diamond, the „educated ascent“ enabled by careful study of the American Founding reveals that the dangers of popular government were too narrowly conceived by the Founders, and therefore their technical remedies mitigated these dangers without resolving them. They presumed a virtue in the citizenry, for example, that their institutional mechanisms neither required nor elicited. So Diamond asks, „Does not the intensity and kind of our modern problems seem to require of us a greater degree of reflection and public spiritedness than the founders thought sufficient for the men who came after them?“⁶⁵ His answers to this question are somewhat gestural, but the central implication is that contemporary Americans require not only a better appreciation of the ends of the regime and the technologies of governance that it relies upon, but also a simultaneous awareness of their basic limitations.

Herbert Storing's research into early American political thought took up similar questions. While Diamond is best known for his pioneering studies of the Federalist explanation of the principles of American constitutionalism, Storing is distinguished by his research into the political thought of their Antifederalist opponents. Storing edited a seven-volume collection of Antifederalist writing – *The Complete Antifederalist* – that was the authoritative scholarly edition of Antifederalist writing until the publication of the University of Wisconsin's exhaustive and still-appearing *Documentary History of the Ratification of the United States Constitution*.⁶⁶ Storing's book-length introductory essay to *The Complete Anti-Federalist* – published separately as *What the Antifederalists Were For* – remains the best theoretical treatment of Antifederalist thought. Rejecting the familiar argument that Antifederalists were simply „men of little faith“ or „partisans without principle“, Storing attempts to reconstruct what is „fundamental“ to their thinking, to „discover a set of principles that is a good deal clearer and more coherent, and also more relevant to an understanding of the American founding and the American polity than is usually

64 Ibidem (see above, note 43), p. 355.

65 Ibidem (see above, note 44), p. 36.

66 Herbert J. Storing (Ed.): *The Complete Anti-Federalist*, 7 vols., Chicago 1981; Merrill Jensen, John P. Kaminski, Gaspare J. Saladino, Richard Leffler, Charles H. Schoenleber (Ed.): *The Documentary Story of the Ratification of the Constitution and the Bill of Rights, 1787–1791*, 23 vols., Madison 1976–2009.

been supposed“.⁶⁷ In their fundamental commitments, Storing sees much more continuity than discontinuity between Federalists and Antifederalists. If they were divided in their polemics over constitutional ratification „they were, at a deeper level“, Storing writes, „united with one another. Their disagreements were not based on different premises about the nature of man or the ends of political life. They were not the deep cleavages of contending regimes.“⁶⁸ For Storing, Federalists and Antifederalists were united in their commitment to a basic set of liberal principles: that „the purpose of government is the regulation and thereby the protection of individual rights, and that the best instrument for this purpose is some form of limited, republican government“.⁶⁹ However, the Antifederalists were inconsistent in their attachment to these principles, and Storing argues that they lost the debate over the Constitution in large part because „they had the weaker argument“. He identifies „a dilemma or a tension“ in Antifederalist thought that adds up to a „critical weakness“.⁷⁰

This weakness can be summed up in terms of what Storing considers their inconsistent attachment to competing ends. „Antifederalists were committed to the union and the states“, Storing writes, „to both the great American republic and the small self-governing community; to commerce and to civic virtue; to both the private gain and the public good“.⁷¹ While, his reading of the Federalists follows Diamond's in its main outlines (albeit emphasizing more than Diamond the Federalist faith in the ability of efficient public administration to secure the reasoned and self-interested attachments of the citizenry), Storing does not believe that these tensions or contradictions were resolved by the Constitution's innovations in political technology, but merely mitigated or attenuated by them. In this, he argues the Antifederalists, even with their „weaker argument“, have nonetheless something important to teach contemporary Americans. The tensions Storing identifies in Antifederalist thought are not only „critical weaknesses“, but also indicate „the strength of their thought and even its glory“: they illuminate tensions underwriting the fundamental commitments of the American regime itself.⁷² I don't have time to detail Storing's elaborate (and in many ways convincing) argument here, but I will emphasize those aspects of the argument that bring it most clearly in line with Diamond's own and that

67 Storing (see above, note 45), p. 6.

68 Ibidem.

69 Ibidem, p. 5.

70 Ibidem, p. 71.

71 Ibidem, p. 6.

72 Ibidem.

suggests the „horizon beyond liberalism“ approach to constitutionalism invoked by Strauss. For Storing, the Antifederalists, whatever their inconsistencies, saw clearly that the Federalist focus on improving the technical instruments of political life was ultimately insufficient to sustaining the political life of the republic.

Antifederalists tended to see the crisis of the 1780s as a result of the corruption of the citizenry, the loss of revolutionary virtues, and the proliferation of „vicious manners“. Federalists, on the other hand, attributed the crisis – and its primary symptom, Shay’s Rebellion – to the „excesses of democracy“ and the weak and decentralized forms of government instituted in the wake of the Revolution.⁷³ Following from these very different diagnoses of the crisis of the 1780s, Antifederalists did not share the Federalist faith in the ability of institutional reorganization to adequately confront or „remedy“ the „diseases“ inherent in popular government. While Storing claims that Antifederalist thought was riddled with tensions and contradictions, he also argues that it better grasped the inescapability of formative politics, and the importance of attentiveness to this dimension when framing a constitution. They were less consistent liberals than the Federalists, Storing argued, but their inconsistency actually revealed a weakness in the fundamentals of liberalism itself. A pre-modern conception of the *politeia* inhabited – albeit quite unconsciously – the Antifederalist reliance on well-established arguments about the viability of small republics, arguments that offered the largest rhetorical obstacle to the Federalist vision of a viable extended republic enabled by the technological innovations of a new science of politics.

The most important – and from Storing’s perspective, convincing – of the Antifederalist’s objections to the new Constitution was its disavowal of formative politics and their reliance on the classical republican idea that „only a small republic can form the kind of citizens who will maintain republican government“,⁷⁴ Antifederalists viewed the „whole organization of the polity as having an educative function“, Storing writes, and they „emphasized repeatedly that the character of a people is affected by government and laws, but that this relation had been dangerously ignored in the framing of the proposed constitution“. ⁷⁵ „Government operates on the spirit of the people“, as the Antifederalist Melancton Smith put the point, as much „as the spirit of the people operates upon it“. For Antifederalists this meant that the government could not be neutral as to ends, it could not be a mere „regulator of conduct“, but had to be a

73 See, most notably, Gordon S. Wood: *The Creation of the American Republic, 1776–1787*, Chapel Hill 1969.

74 Storing (see above, note 45), p. 16.

75 *Ibidem*, p. 21.

„molder of character“ and actively working to frame government and law in such a way that, again quoting Melancton Smith, it „will tend to cherish and cultivate a love of liberty among our citizens“. ⁷⁶

Storing’s elaboration of this Antifederalist critique opens a space for critical judgment. In a closing argument that echoes Diamond’s own, Storing worries about the ultimate consequences of the Federalists’ disavowal of formative politics and their heavy reliance on the political technologies developed by the new science of politics. Storing argues, in effect, that serious attention to the inconsistent liberalism of the Antifederalists educates readers about the weaknesses lurking in the more consistent liberalism of the Federalists. Like Diamond, Storing ends by examining the „collateral consequences“ and „unforeseen dangers“ lurking in the Founders’ technological solutions to the dangers inherent to popular self-government. „The liberal regime, the regime dedicated to liberty and thus the regime that self-consciously turns away from the comprehensive public moral formation of classical theory“, as Zuckert writes, „nonetheless does engage in moral formation of its own in its own way“. ⁷⁷ However, this moral formation lacks the morally inspiring excellence required to prevent the corruption of citizens, which in turn contribute to the dangers Strauss invoked in the opening pages of *Natural Right and History*. *The Federalist* presumes the responsibility if not the virtue of its citizens, but does not elicit these qualities from the political institutions established under the Constitution. These qualities, Storing writes, „cannot be prudently taken for granted.“ „The Federalist solution“, he concludes, „not only failed to provide for the moral qualities that are necessary to the maintenance of republican government; it tended to undermine them“. ⁷⁸ „Will not the constitutional regime“, Storing asks, „with its emphasis on private, self-seeking, commercial activities release and foster a certain type of human being who will be likely to destroy that very regime?“ ⁷⁹

This is a question asked about American constitutionalism by critics on the left as well as the right, but Storing’s response comes firmly from the socially conservative right in interpreting the Antifederalist insistence on virtue in a narrowly moral and Christian frame rather than emphasizing the equally pronounced, and more clearly political and democratic, Antifederalist insistence on virtue as virtue: that is, as public spiritedness,

76 *Ibidem*, p. 19.

77 Zuckert (see above, note 52), p. 248.

78 Storing (see above, note 45), p. 73.

79 *Ibidem*, p. 73.

vigilance, and the jealousy of power.⁸⁰ However, Storing shares a familiar critique of liberalism from the left. It was the left, after all, that has traditionally turned to the Antifederalists for political inspiration. „The Antifederalists saw“, Storing writes, „the insufficiency of a community of mere interest. They saw that the American regime had to be a moral community if it was to be anything, and they saw that the seat of that community must be in the hearts of the people.“⁸¹ The critique here is not just of the Founders' shortsightedness, but of the potentially fatal immorality of the political community their Constitution engendered. It is a good exemplification of the unresolved tensions, exclusions, and contradictions that underwrite any regime according to Strauss's account. Strauss dismissed the idea that „it is possible to create a society free of contradictions“, even, or perhaps especially, one purportedly neutral as to ends, and premised on open, fair, and formal procedures of conflict adjudication.

Diamond and Storing offer, in the words of Thomas West, an extremely „disheartening view of American politics“, one hardly capable of mobilizing a public to a „renewed appreciation of our fundamental institutions and a rededication to their perpetuation“,⁸² West, along with many other contemporary Straussian scholars of American constitutionalism, is dissatisfied with Diamond's and Storing's (and Strauss's) qualified appreciation of the Constitution's „moderation“ and „decency“. They have sought to invest it instead with an unquestionable authority worth fighting and dying for. Diamond's and Storing's work aimed to bring the difficulties and costs of the American commitment to liberal constitutionalism into a more clear view in order to achieve an „educated ascent“, and to return to founding principles to stimulate the ongoing political navigation of the tensions inherent within them. This more recent work takes up the return to founding principles to discover their truth, so as to better provide American constitutionalism with the unquestioned and unquestionable courage of its convictions.

In closing, let me note that the shift in Straussian interpretations of American constitutionalism correlates with a much broader historical shift in conservative political discourse in the United States on the meaning of American constitutionalism. Isaac Kramnick and R. Laurence

80 For an influential discussion of the complex meanings of early American invocations of political virtue, see James T. Kloppenburg: *The Virtues of Liberalism: Christianity, Republicanism, and Ethics in Early American Political Discourse*. In: *Journal of American History* 74 (1987), no. 1, pp. 9–33.

81 Storing (see above, note 45), p. 76.

82 Thomas G. West: *Leo Strauss and the American Founding*. In: *Review of Politics* 53 (1991), no. 1, pp. 157–172.

Moore have described this shift as „a staggering historical flip flop“ in socially conservative political attitudes towards American constitutionalism.⁸³ For most of American history, religious and social conservatives decried the liberalism of American constitutionalism – particularly its separation of church and state – and mobilized historical efforts, mostly failed, to change it. Now they deny this liberalism altogether – what they formerly lamented as its „godless foundation“ – and embrace „constitutional conservatism“ as a way of rooting out liberalism from American political institutions and cultural life. This is very much the agenda of the „thin poetry“ and „fanatical obscurantism“ of today's American exceptionalist Straussians.⁸⁴ Correlation, of course, is not causation, but this particular correlation suggests potentially fruitful avenues of further study.

83 Isaac Kramnick, R. Laurence Moore: *The Godless Constitution: A Moral Defense of the Secular State*, New York 2005, p. 148.

84 See Thomas L. Pangle: *Patriotism American Style*. In: *National Review* 29 (1985), November, pp. 30–34.