

lens allows us to recognize the often gradual, but sometimes sudden, developments in politics, the economy, and society that break down old coalitions and build new ones. It also provides a much more nuanced approach to understanding the Supreme Court and its role in either consolidating or challenging the emergence of a new order. Yes, members of the Court are human with political perspectives that shape their approach to the law, and at any given time, depending on the opportunities for appointment, they can be generally reflective of the political majority or quite out of touch with it. But from the perspective of political development and institutionalism, from which the regime/political-order literature originates, judges are also constrained by rules and institutional concerns that make their decisions less predictable than judicial behaviorists would have us believe. Tushnet seems to acknowledge this implicitly by the frequency with which he says things might, may, or could happen. But in the end, his analysis and predictions are driven much more by the assumption that judges are political animals than by any belief that they are constrained.

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Michael S. Kochin and Michael Taylor: *An Independent Empire: Diplomacy and War in the Making of the United States*. (Ann Arbor: University of Michigan Press, 2020. Pp. x, 309.)

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The term “empire” is not fashionable among American academics. Being synonymous with colonialism, it has come to represent, as the popular journalist Robert D. Kaplan has proposed, a symbol for racism writ large, the legacy of Western imperialism. Yet as Kaplan observes, in the wake of the emerging great power struggles of today, the concept of empire still lurks in the background, offering us perhaps the best analytical framework to understand modern geopolitics.

It also offers us the best analytical tool for understanding the development of the first fifty years of American foreign policy and national security. So Michael Kochin and Michael Taylor propose in their compelling and provocative book *An Independent Empire: Diplomacy and War in the Making of the United States*. Covering a host of episodes and key, frequently obscure, personalities from the American Revolutionary period through the country’s early constitutional development, the authors declare that the transition

from the thirteen colonies that during the 1760s were “mere pawns in the imperial games of the Old World” to one of the world’s great powers “is the most remarkable story in modern political history” (5). They make a persuasive case for that contention.

What makes the American story such a remarkable one is the confluence not only of political and military factors but of geographical ones as well. In an address to Parliament in 1775, King George III had declared that the rebellious Americans were intent on becoming “an independent empire.” That remark would prove prophetic, although the empire would only come about through a process of continual geographic expansion following the Declaration of Independence and ratification of the Constitution. Tom Paine, whom the authors describe as “the leading propagandist of the American Revolution,” was also the consummate advocate of America’s destiny to have a “continental empire” (22–23). But to achieve that continental empire would mean expanding America far beyond the borders of 1788. Some of this expansion would occur through diplomatic negotiations. But much of it would occur through force and military conquest. America’s becoming an independent empire would involve not only the acquisition of territories like Louisiana and the Floridas (East and West) but also the subjugation of groups from Native Americans to European settlers. All of this would stretch the republican principles on which the United States was founded to their breaking point. “The American empire,” the authors maintain, “was informed by the Roman concept of *imperium*, which meant command over both land and people” (98). But if this was the case, in what sense was the United States any different from, say, the British Empire from which it rebelled? Or the French and Spanish Empires of the time?

This is where things get interesting. Kochin and Taylor explain that there was more than enough violence and political hypocrisy to go around on all sides in early American political development. The Native Americans allied with the British. They won some significant early battles against US forces but were decisively defeated in 1794 at the Battle of Fallen Timbers and again in 1813 at Moraviantown. The authors contend that however much President Washington and his secretary of war, Henry Knox, “might have aspired to do right by the Native Americans, the needs and aspirations of the American republic required the domination of the Indians and the acquisition of their lands” (98).

Yet despite this evident imperious behavior, the authors suggest, there was a difference between the American empire and the imperial empires of the Europeans. But they only go so far as to *suggest* that was the case. They never quite make the case. “The Spanish were the trueborn heirs of the Roman *arcana imperia*, masters of the arts of rule and repression,” who held their empire in place with “a complex, racialized, but remarkably stable caste system” (184). A few pages later the authors discuss the Holy Alliance of Europe. Formed in 1815 it was based on “the primacy of religion and monarchical rule by divine right” (201). Again, there is an account of how Americans such as Henry Clay were opposed to the religious absolutism and

political illegitimacy of the alliance; the alliance was antithetical to those republican principles upon which American empire was founded. The defense of those principles in the Western Hemisphere following the proclamation of the Monroe Doctrine in 1823 would yet again form the basis of opposition to any designs by the Holy Alliance on interfering with the newly independent states of Latin America. And the United States could take a firm position here because by 1826 it had emerged as the most powerful empire in North America, “a serious geopolitical rival to the empires of the Old World.” This was recognized not only in the United States but in Europe as well: “In the German states, the United States was regarded as not only the exemplary federal union but the exemplary empire, its westward expansion the perfect model of imperial conquest” (245). But can “imperial conquest” be a “perfect model” for any regime based on republican principles? This is never quite explained by Kochin and Taylor. Nor is there a ringing endorsement of American republicanism in the authors’ further conclusion that by the 1820s the United States was “readily perceived as the imperious and imperial guardian of the Western Hemisphere” (247).

Perceptions of course are not reality and the reality might have been different from the perceptions. But, again, the authors do not go there. Perhaps they could not because in their mind the realities of American history would not permit it. But this raises an important question about the problem of empire and political necessity. In his *Discourses on Livy*, Machiavelli maintains that given the choice between a small republic, like Sparta or Venice, and a large republic, like that of the Romans, one should prefer the larger republic because men are forever in motion and small republics, ordered to remain small, are ruined as soon as they have to expand. The Roman Republic by contrast was built precisely to accommodate such expansion. And such expansion was a necessity if only to survive. *The Federalist* and its defense of the extended American republic tells us much the same thing.

Being as familiar with the Romans as Kochin and Taylor evidently are, they document exceptionally well the national security threats the United States faced throughout its early political development. The political novelty that was America was surrounded on all sides by imperial empires and other threats. As the authors demonstrate, the Constitution was embraced over the feckless Articles of Confederation precisely because it provided the federal government powers over war, peace, commerce, and diplomacy that gave the United States unparalleled means to empire. And that empire, the authors make clear, was a necessity. The question is, in meeting that necessity, could things have unfolded much differently than they did and the United States still survive?

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