

# Critical Dialogue

## **The Founders and the Idea of a National University: Constituting the American Mind.** By George Thomas. New

York: Cambridge University Press, 2015. 241p. \$95.00.

doi:10.1017/S1537592716001511

— Elvin T. Lim, *National University of Singapore*

George Thomas has written a fine book about an idea that never came to be—the proposal for a national university—but one that is important because it indicates, by his telling, the Framers' capacious understanding of what it takes to build and sustain a vibrant liberal constitutional order beyond the mere laying down of constitutional text. Central to his argument is a bold, negative thesis, that “the Constitution, set in motion centuries ago, does not simply run itself” (p. 233). “Constitutional principles,” he argues, “may become articles of faith to unite (and truly create) the polity” (p. 154). The words in parentheses are instructive because they indicate Thomas's view that words, contrary to Hannah Arendt, in and by themselves do not have performative power. Rather, they only kick-start an ongoing consolidation of a polity's identity that cannot occur without civic education and cultivation.

The intellectual and practical puzzle for Thomas is this (p. 228): “[H]ow do we shape (and enlighten) the public mind in a manner that sustains the political order?” Following Jan-Werner Müller, Thomas proposes the cultivation of “constitutional patriotism” (pp. 195, 210) by way of political education, operationalized as mandatory courses in universities and colleges on the essential principles and institutions of the American constitutional order (pp. 230–32). And so this is also a book about the necessity of nurturing the “foundational” (p. 151) principles that sustain any constitutional order, and in particular, in the case of the U.S. Constitution, that of religious liberty, a principle Thomas posits as a possible “first freedom” (p. 149). Since he advocates constitutional partisanship, or a bias in favor of the Constitution, he also takes on, as a foil, liberal defenses of “neutrality” (pp. 194, 221), and laments of the curricula of the top 10 universities and liberal arts colleges that “there is little sense at these institutions that cultivating certain ideas and habits is central to sustaining the American constitutional order” (p. 220). He worries that “[a]lthough many of these institutions may be committed to democracy, to civic

engagement of some sort, or to global citizenship and justice, their curricula are not aimed at constituting the mind and political culture in a manner that will help carry forward the American experiment” (p. 221). He rejects neutrality in favor of an “assimilationist” constitutionalism, which positions American political principles lexically prior to, but not to the exclusion of, “other forms of thinking (including religious beliefs)” (p. 149).

While Thomas is unapologetic that to tend to the Constitution is to be an advocate of its ideas, he recognizes the potential tension between liberal education and civic education, or at least civic education with a bias in favor of the American constitutional order. To this objection he offers “a more capacious understanding of liberalism” turning on “a powerful difference between compulsion and cultivation” (p. 197). While the state should never compel citizens to accept any particular conception of the good, he envisions the state educating citizens on “a bundle of liberal principles on which the vitality of liberal politics depends” (p. 198). Thomas acknowledges that all civil religions are vulnerable to sectarian capture, which is why, he argues, taking the lead from James Wilson, that the curriculum of a national university “should also include material than is critical of” the American constitutional order (p. 157). He advocates “political education of a rational Enlightenment variety” (p. 233).

*The Founders and the Idea of a National University* will contribute richly to debates on constitutional studies because it adopts a clear stand on the importance of ideas above and beyond institutions and the need to attend to them. Most of us can agree to Thomas's call to cultivate a people's commitment to a core set of principles critical for a constitution's survival and maintenance; but the devil could appear in the details. He calls the principles that need to be taught and cultivated “‘first order’ political principles; civic dispositions and traits of character” (p. 50), though he might underestimate how even “first order” principles, or “liberal virtues” (p. 203), may be essentially contested. To some, the Founders' idea of a national university may well be partisan in the conventional sense, over and above the “patriotic” sense that Thomas conceives it. To believe in national education is to deny the intrinsic, self-generated virtues of a people living together in civic harmony in their existing communities.

And the idea that the political elite would have to be trained to share a set of principles they could then disseminate to those below them (pp. 140, 156) would of course chafe against some Anti-Federalist, and later, Jeffersonian-Republican, and nineteenth-century Democratic ears.

Key to Thomas's argument on the importance of nurturing foundational values is consensus on these foundations: that "critics of the national university . . . were not necessarily at odds with the political creed" and/or political end of "national unity" or the "public good" (pp. 61, 70). But words like "unity" and "good" tend to have contested meanings in a nation committed to *E Pluribus Unum*. In at least one major strand of American political thought evident during the ratification debates, the civic is *not* the national, and the two are polar opposites of each other. Those who objected to the national university, as Thomas notes, quoting Congressman John Nicholas, espoused the Anti-Federalist belief that "the further children are from home . . . the more their morals would be injured" (p. 67). As he further notes, the establishment of a national university would have been considered an "internal improvement," which is why in proposing the national university in his 1806 annual message to Congress, Jefferson also proposed a constitutional amendment to that would "clearly give Congress the power to establish such an institution" (p. 44). The University of Virginia accomplished "in a single state much of what the national university was supposed to do for the nation" (p. 123) because this comported with the Anti-Federalist conviction that education was a matter best left to the states. There may well not have been a "shared constitutional mind-set" (p. 79) until the Civil War, and maybe even after.

Even today, there remains, arguably, a recognizable strand of Anti-Federalism among those who support home schooling as the best means of imparting moral and religious instruction to children, and in the opposition to Common Core and No Child Left Behind. Indeed, a sizable portion of the nation, operating under the banner of the Democratic Party in the long nineteenth century, deliberately adopted a procedural understanding of the constitutional order and quashed any attempts to invoke matters of principle to preserve intraparty unity (Douglas W. Jaenicke, "The Jacksonian Integration of Parties into the Constitutional System," *Political Science Quarterly*, 1986). Nineteenth-century Democrats resisted the idea that the Constitution created a single substantive core of creedal commitments. If there is no foundational core, then there is nothing to cultivate (except, perhaps, patriotism simpliciter).

This seemingly nihilistic outcome may not, however, be all bad; for there are dramatic implications to Thomas's story linking constitutional design and predicated it on a properly cultivated constitutional mind: At the crudest level, it is that the text of, and the institutions created in, the Constitution in and by themselves are not

enough. "Madison," he says, "viewed the constitution as an imperfect document in much need of support" (p. 154). Thomas argues that "[t]he national university was offered as a supplement to the institutional design of the Constitution. . . . [It] was meant to address problems that were not only exacerbated by constitutional design but may represent a partial failure of that design" (p. 191). In doing so, Thomas takes the side of ideas first, then institutions, in the perennial chicken-and-egg debate between the two (p. 226). He conceives of "the American constitutional order as broader than the text of the Constitution" (p. 224), and he is probably right that "[t]he project of maintaining civic life is ongoing" (p. 209).

This is a bold stand, and certainly a plausible one. Yet it is worth noting that the Constitution has survived and thrived in spite of the failure to establish a national university. And so, perhaps its scaffolding was all that was required, and this may be something we ought to celebrate. Bruce Ackerman (*We the People: Foundations*, 1991) reminds us of the potential cost of (rights) foundationalism, such as is exemplified by the German Basic Law: To affirm and entrench foundations, even creedal commitments, is to hold back and put limits on what is democratically possible. The more we tend to a set of foundational principles, the less, arguably, can a living generation amend a constitution.

Whichever direction we highlight, this book will encourage scholars to rethink the dynamic relationship between foundationalism and development, which is an important accomplishment. Thomas's argument will have implications beyond the academy as well. If it is true that every constitution comes attached with its own specific "worldview" with its own set of principles and values" (p. 154), then exporting constitutionalism and, in particular, American constitutionalism to the rest of the world becomes a doubly challenging enterprise. If a text and a set of institutions are not in and by themselves enough, then constitutional engineers will do well to create institutions that will complement existing cultural norms and traditional principles, because the success and longevity of any constitution will, according to Thomas, turn on the nurturance of its soul.

**Response to Elvin T. Lim's review of *The Founders and the Idea of a National University: Constituting the American Mind***

doi:10.1017/S1537592716001523

— George Thomas

Elvin Lim's thoughtful and discerning review gives me a chance to clarify and elaborate a central theme of my book: the relationship between politics and religion. I focus largely on this issue because it speaks to the central issues Lim raises: the relationship between ideas and

institutions, “founding” and “development,” and a substantive understanding of American constitutionalism against a procedural understanding. Before turning to these issues, let me offer a small qualification. I am surprised that Lim begins with my advocating “constitutional patriotism” and mandatory courses at elite educational institutions. Situated toward the end of the book, my analysis of these issues is tentative and speculative. “Constitutional patriotism,” particularly as it has been developed in Germany, offers a way of thinking about civic identity that rejects ethnic and ascriptive versions of “peoplehood.” Similarly, it may be that there is a convergence between liberal virtues and liberal education. Yet it is worthwhile to ask if the civic traits we desire in our leaders and citizens are fostered without self-consciously tending to civic knowledge—particularly given the increasingly careerist nature of higher education.

The national university was a means of forging a civic culture to complement political institutions. A central element of this was framing ideas about the proper ordering of politics and theology, and the creation of the public and private, which required removing theology from the center of educational institutions to accord with the secular constitutional order being built. So I agree with Lim’s assessment that my argument suggests that “constitutional engineers” must attend to the particulars of place. And yet I am skeptical of prioritizing ideas or institutions in the same way that I am skeptical of thinking in terms of “foundationalists” or “developmentalists.” Here I find comparative constitutionalism and comparative work on political culture (e.g. Ran Hirschl, Robert Putnam, and Sheri Berman) particularly helpful in illuminating the interplay between ideas and institutions in political development.

Even so, I do understand America as committed to substantive principles, such as the separation between politics and religion, which (hopefully) limit constitutional change. Contrary to Bruce Ackerman, the return of religious establishments and the favoring of particular sects would be at odds with American constitutionalism. However, we should not confuse substantive commitments with institutional stasis. An ends oriented constitutionalism may well require institutional reform, as I argue was necessary with regard to the separation of the (sectarian) college from the (secular) state. We may need to alter our political institutions—even consider the sort of sweeping changes called for by Sandy Levinson (*Framed: America’s 51 Constitutions and the Crisis of Governance*, 2012) and other critics of so-called “vetocracy”—to achieve constitutional ends.

Yet achieving constitutional ends also requires citizens to share constitutional understandings—such as liberal tolerance—and carry them forward in their mental habits. Yes, as Lim notes, we contest these ideas. But as William Galston argues, we do so “within a framework of civic unity,” and it

is this framework that allows “a plurality of religions . . . to coexist” (*Liberal Pluralism: The Implications of Value Pluralism for Political Theory and Practice*, 2002, p. 25). We take this accommodation for granted but as religious intolerance to same-sex marriage in the civic space remind us, maintaining this understanding is an ongoing project that depends on the mindset of public leaders and citizens. We cannot presume that political institutions set in motion two centuries ago will simply sustain themselves.

**The Lovers’ Quarrel: The Two Foundings and American Political Development.** By Elvin T. Lim. New York: Oxford University Press, 2014. 288p. \$47.95.  
doi:10.1017/S1537592716001535

— George Thomas, *Claremont McKenna College*

It is a curiosity of American politics that more than two centuries into “the American experiment,” we so often invoke the founding. President Barack Obama frequently invokes “We the People” in his speeches and links current issues to the long-standing project of creating a “more perfect Union.” Just as surely, in the name of “We the People” the Tea Party movement persistently criticizes President Obama for undermining the nature of America’s union. In *The Lovers’ Quarrel*, Elvin Lim explains why this is so, arguing that America has had two foundings, not one. Unique among modern democracies, America’s two foundings lend a peculiar character to American politics. As Lim argues, America’s first founding occurred with the Declaration of Independence in 1776 and its second founding with the Constitution of 1787. These two foundings speak to profoundly different understandings of “We the People.” Indeed, they point to two different conceptions of the American political order, and the resulting antagonism drives American political development.

*The Lovers’ Quarrel* is an ambitious and provocative book with a clever title. It offers a sweeping reframing of American political history that brings to mind such works as Samuel Huntington’s *American Politics: The Promise of Disharmony* (1981) and Walter Dean Burnham’s *Critical Elections and the Mainsprings of American Politics* (1970). It is refreshing to encounter a work on American politics that, drawing on ideas and institutions, offers an overarching theory to account for its most resilient features. In doing so, Lim highlights what is uniquely *American* about American political development and American political thought (the phenomena, not the subfields) and draws together scholarship within American political development (APD) and American political thought (APT) that too often sits apart.

The idea that the Constitution was a departure from the Revolution of 1776 has long historical resonance. But Lim is not interested in the “purity” of the Revolution; he is interested in how these two different foundings—where “We the People spoke twice”—give legitimate voice to

different understandings of Union, Liberty, Truth, and Republicanism. Americans have continually fought over the same thing—federalism as it speaks to how Americans are constituted—because “we have never conclusively settled the question of just who we are” (p. 27). The first founding, best captured by the Anti-Federalists, conceived a Union of states committed to “negative” liberty, where rights were jealously guarded against power. It also embraced an idealistic conception of Truth—consider the Declaration’s pronouncement of “We hold these truths” and its appeal to God (or at least to Nature)—and a republicanism that trusted in the people while being skeptical of elites. In contrast, the Constitution, best represented by Federalists, embraced a national Union of the people and was committed to a “positive” view of liberty that recognized the need for governmental power to solve collective problems. The Federalists were more pragmatic in their understanding of truth, trusting in reason and the new science of politics. Distrustful of democracy, they cultivated a national republicanism based on Burkean representation and institutions that could channel and educate the demos.

These conceptual clashes are familiar. Certainly, the Anti-Federalist elements in Thomas Jefferson’s, Andrew Jackson’s, and Ronald Reagan’s presidencies, as well as the preoccupations and rhetoric of the Tea Party, have been noted. So, too, have Abraham Lincoln’s and Franklin Roosevelt’s articulation and reshaping of Federalist ideas and institutions. Yet Lim’s framework sheds new light on the persistence and form of this conflict, where actors attempt to prioritize one of the two foundings (p. 4). Take an example that threads its way through several chapters: The Anti-Federalist preference for “the presidency as a place of moral statesmanship, as a *vindex injuriarum*—an avenger of public wrongs” (p. 54). Scholars too often read the Anti-Federalists as fearful of all power. Yet Jefferson’s and Jackson’s vision of the president as a “defender of the public faith” empowered by the people traced its origins to Anti-Federalists (p. 77). The Progressives’ plebiscitary presidency drew on this Anti-Federalist inheritance—and not only when it came to the presidency. Defending states’ rights, Woodrow Wilson quipped about Teddy Roosevelt’s nationalism that “ours is a program of liberty and theirs is a program of regulation” (p. 111). The maturation of the Anti-Federalist/Federalist dialectic is a mix that would please neither: plebiscitary democracy combined with a formidable state and tending toward presidential government (p. 204).

Yet Lim’s analysis, gripping as narrative, cannot bear the weight he places on it. It is far from clear that the “two foundings” stand so starkly in contrast to each other. The Declaration’s insistence on individual rights “against government” is not inexorably in opposition to the “Constitution [which] enumerates the powers of government” (p. 5). Nor must we see the Bill of Rights as an Anti-Federalist effort to cabin the Federalist Constitution (p. 8).

James Madison, in fact, rejected the most sweeping changes proposed by Anti-Federalists, viewing the Bill of Rights as a way to secure the (Federalist) Constitution. Lim attempts to fit these complex conceptions into one of his two foundings, giving us binaries: rights against power, states against nation, democracy against aristocracy. These recurrent tensions in American politics—and the resulting disharmony—are sewn into the fabric of the American regime. But it is doubtful that this is because we have had two foundings. Indeed, rather than each “text” representing a founding, the tensions highlighted by Lim inhere in each text and each founding moment.

Madison was not confused in wedding the Bill of Rights to the Constitution. In *Federalist 40*, he even justified the Constitution by way of the logic and principles set out in the Declaration. Similarly, Lincoln drew on the Declaration to better secure and preserve national Union under the Constitution, where both rights and national power were essential. And Obama, who has quoted Lincoln more than any other recent president, similarly invokes the Declaration. To be sure, acts of interpretation can be acts of transformation. Politics often takes place by way of language, framing and reshaping our understandings in ways that can be the source of political development. It is no coincidence, as Lim points out, that our list of “great” presidents includes those who oversaw “durable shifts in federal authority” along these lines (p. 201).

Lim’s analysis of figures like Lincoln and Obama is attentive to creative synthesis and provides insight into their interpretive acts (pp. 94–99, 190–95); yet these more subtle readings belie his more sweeping claims, which compel him to place these actors within the contours of one of his two foundings. Still, it is not clear what we gain by placing such figures squarely within Lim’s two-foundings thesis, rather than attending to how their thinking attempted to overcome this disharmony in order to meet the needs of their generation.

Today, same-sex marriage could get a ringing endorsement from the Declaration’s insistence on equality, but so, too, could conservative critics’ attempt to point to its arguments about Nature. Defenders of same-sex marriage could also turn to the Constitution’s guarantee of liberty and equality against the states, while critics can argue that the Tenth Amendment leaves definitions of marriage to the states. Rather than two singular foundings, we see that ideas set in motion by the founding generation become part of the political struggles over bringing the American polity to life as it is constructed over time. Yet this makes it difficult to speak of a moment of founding in contrast to subsequent development. Lim reveals that we cannot escape the burdens of wrestling with these questions ourselves: In Lincoln’s words, “the dogmas of the quite past are inadequate to the stormy present. . . . [W]e must think anew, and act anew” (p. 103).

Lim is also too apt to place scholars as “developmentalists” or “foundationalists” (pp. 14–16)—usually APD



and APT scholars, respectively—with the former focusing on institutional change and the latter focusing on essential ideas. This categorical mind-set cuts against Lim's commendable effort to bring these subfields into dialogue. This habit can also lead to stilted readings. So Jeffrey Tulis and I are considered "developmentalists" who are also—indeed, first and foremost for Lim—"foundationalists" because we think ideas are essential for apprehending institutional change (p. 15). Why this makes one a foundationalist more than a developmentalist is not clear. Perhaps it is because I think some constitutional developments are essential—the Fourteenth Amendment, for example, where I would agree with Lim that its importance was in wedding the protection of rights and equality to national power (p. 83). If so, it is not clear why Stephen Skowronek, the quintessential developmentalist for Lim, is not a foundationalist on occasion—for example, in his recent and cogent critique of the unitary executive, tellingly entitled "The Conservative Insurgency and Presidential Power" (*Harvard Law Review*, 2009). (I should note, however, that Lim's persuasive critique of my earlier work led me to alter my thinking).

Even if Lim's overarching theory of two foundings fails to persuade, he offers a compelling portrait of federalism as the central struggle in American political development. *The Lovers' Quarrel* illuminates our understanding of the past while also clarifying contemporary issues by connecting them to a potent historical trajectory.

### Response to George Thomas's review of *The Lovers' Quarrel: The Two Foundings and American Political Development*

doi:10.1017/S1537592716001547

— Elvin T. Lim

Professor Thomas claims that the Two Foundings do not stand as starkly opposed to each other as I have argued. He accepts that "these conceptual clashes are familiar," but denies that they occur because of the Two Foundings and suggests instead that they already existed in each of the original texts. He also denies my distinction between scholars who highlight stable and relatively immutable foundational ideas from those who study development. Let me briefly say, on the latter objection, that my purpose was not to create a false divide, but to explain change and continuity in American politics *simultaneously*, and to reconnect scholars in APT and APD in a common intellectual project (pp. 214–215). The Lovers' Quarrel between two competing conceptions of federalism has, after all, created dramatic change in American politics ("durable shifts in federal authority") *while* offering an enduring framework for contestation and reconfiguration. If it is a defining feature of the American experiment that so much change has happened alongside so much

continuity; then perhaps it is because one cannot happen without the other.

On to the first, and more important objection: I actually do agree with Thomas that the Constitution itself is *already* bifurcated text. The question is why did it turn out so? I have proposed it is because the Second Founding was in effect a peace treaty between those who wanted a more decentralized federalism (and merely an updated version of the Articles of Confederation), and the Federalists (the Second Founders), who envisaged wholesale reconstitution into "a more perfect union." The most visible incarnation of the compromise between the Second Founders with the First (beyond bicameralism) was the addition of the Bill of Rights to the original Constitution (which operated sans the Bill from 1789–1791), on the insistence of the defenders of the First Founding, the Anti-Federalists.

But just because the Second Founders managed to synthesize the principles of '76 with the more nationalist agenda of the reformers in '89 does not mean that the "founders" were all equal part Hamiltonian and Jeffersonian, or that it makes sense to think of them as a monolithic group. I agree with Thomas that the great leaders of the republic have worked very hard to reconcile these opposing currents. But the reason why these opposing currents needed (and continue to need) synthesis in the first place is because proponents of each of these currents, prioritizing one start date over the other, can both claim to be defending the original American creed. The powers versus rights tension I have highlighted, for example, wasn't spun out of thin air. It is literally there in the first three Articles, and in the first ten Amendments: the two bookends of a bifurcated Constitution. And insofar as there was raucous debate over the prioritization of one over the other (Hamilton famously denied the need for a Bill in Federalist 84), we should stop speaking of the "founders" and the "founding" as monolithic. It makes little sense to speak of "original meaning" because in the beginning there were two.

Thomas uses Madison to bridge the gap between the Federalists and Anti-Federalists; but in so doing he must concede that the case would have been much harder to make had he started with Hamilton, the leader of the Federalist Party. There is a reason why Madison has come out as the more celebrated and cited "founder." He is the modal founder to which more scholars refer only because he is the median founder—a Federalist before he became a Jeffersonian Republican. That he bridged the Two Foundings is something both Thomas and I agree; that there was serious bridging that needed to be done because of two sharply opposing legitimating templates is where we disagree.

It is the job of politicians and great leaders to synthesize and to square the circle of foundational but irreconcilable political principles such as states' rights versus federal supremacy, but it is, arguably, the job of political scientists to call out these creative syntheses because this is precisely how politics is *done* and it is our job to explain it.