are themselves recognition of such a norm because they presume that most Americans view the Court's interpretation of the Constitution as supreme over all others. Why else attempt to harness it?

The second problem is that, even if the shift in strategies is a marker of what Engel claims it to be, the difference between undermining and harnessing strategies is in the eyes of the beholder. In his eyes, the historical trend line appears to color his vision of individual cases. For example, the Samuel Chase impeachment must be undermining, not harnessing, because it is in the early nineteenth century. Similarly, the congressional court curbing in school-integration cases must be harnessing, not undermining, because it is in the late twentieth century.

To discuss these two key cases in somewhat more detail, Engel argues that Jefferson strongly believed in an unified, one-party government, which is his fairly innovative interpretation of Jefferson's famous inaugural statement that "we are all Republicans; we are all Federalists" (p. 101). Jefferson thus wanted to undermine the authority of a Federalist-dominated judiciary by purging it of its most partisan members, not only Chase but also John Pickering and perhaps even John Marshall (pp. 104–5). According to Engel, Chase's near conviction in the Senate resulted in the emergence of the "second-best" solution of judicial neutrality (pp. 128–30), sending a signal to the judiciary to remain above politics and not engage in blatantly partisan rulings, as Chase allegedly had (pp. 120–22). But perhaps Jefferson's original intention was to harness, not undermine, judicial authority in precisely this way. Or perhaps Jefferson even intended a more positive result, to make the judiciary more pliant to his policy agenda. Engel does not meet either of these possible counterarguments. To insist that Jefferson did not believe the Federalists were a legitimate opposition party is simply not sufficient for uncovering what his motives might have been in particular cases.

The second case is even more problematic. Engel argues that President Richard Nixon wanted to harness, not undermine, a Democratic-leaning judiciary by only appearing to deny it a politically unpopular policy tool in school-integration cases. As he interprets this policy episode, the initial court-curbing legislation in 1972 did not actually limit the judiciary's ability to order school-busing plans because, at the Senate's insistence, it contained ambiguous language allowing exceptions "as the Constitution requires" and was also redundant in the sense that the Supreme Court was already moving in the direction of limiting its own use of the busing remedy (pp. 317–18). Yet given the *Swan* v. *Charlotte Mecklenberg Board of Education* (1971) decision, it seems a stretch to argue that the Court was moving to limit itself in school-integration cases (pp. 315–16). Not surprisingly, Nixon's signing statement called the anti-busing language in the 1972 legislation "inadequate, misleading and entirely unsatisfactory" (p. 319). The *Keyes* v. *School District No. 1* (1973) decision not only showed the "inadequacies" of the initial legislation but also belied any trend toward the Court limiting itself (p. 318, n. 7). The House thus passed a much tougher anti-busing bill in 1974. This time the Senate was, however, even more successful in softening the bill in conference committee, including retaining the "except as the Constitution requires" language (pp. 320–21).

To cap off this policy episode, Engel reads the *Milliken* v. *Bradley* (1974) decision, which was announced only six days before the House approved the conference bill, as continuing a trend of the Court limiting itself (p. 321). Yet given the apparent absence of any such trend, the decision may equally be read as an embattled Court reacting to a series of congressional and presidential attempts to undermine its authority. Indeed, it could be argued that Nixon and the House Republicans intended to undermine judicial authority more through anti-busing legislation in 1974 than Jefferson and the House Democratic-Republicans did through the Chase impeachment in 1805, which, after all, was ultimately unsuccessful. Nixon may have accepted the legitimacy of an opposition party more than Jefferson did, but it is not clear that he accepted the legitimacy of a recalcitrant judiciary more than Jefferson did.

Obviously, much more could be said on each side of this "debate," but I found Engel's handing of these two cases unpersuasive. Other parts of the book, such as his treatment of judicial and decision recall (pp. 240–48) and presidential signing statements (pp. 348–54), were more persuasive. By the end of *American Politicians Confront the Court,* he certainly had persuaded me of his closing argument, that antijudicial politics will remain a recurrent feature of the American regime, not because the judiciary faces any countermajoritarian difficulty but because it makes good politics (p. 382).

The Political Philosophy of Alexander Hamilton. By Michael P. Federici. Baltimore: Johns Hopkins University Press, 2012. 304p. $50.00 cloth, $24.95 paper.

Theodore Roosevelt and the American Political Tradition. By Jean M. Yarbrough. Lawrence: University Press of Kansas, 2012. 400p. $39.95.
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— Eldon J. Eisenach, *University of Tulsa*

When political parties structured our political thought, Alexander Hamilton and Thomas Jefferson symbolized the poles of our theoretical and constitutional possibilities. "Hamiltonian" represented psychological, political, and economic realism anchored in the executive and judicial powers of the Constitution. The short title of a book on Hamilton is *The Effective Republic* (Harvey Flaumenhaft, 1992). "Jeffersonian" represented both strict readings of federal constitutional powers represented by the

Bill of Rights and a democratic civic republicanism whose natural home was the state governments. The short title of a book on Jefferson is *The Elusive Republic* (Drew McCoy, 1980). Merrill Peterson's classic history, *The Jefferson Image in the American Mind* (1960), can also be read as its opposite, a study of the Hamilton image. American political time itself was marked by Hamiltonian and Jeffersonian epochs. Even as the Civil War, Progressivism, and the New Deal quite confounded these neat divisions, we persist in calling upon their contending legacies. As the two books reviewed here make clear, the difficulty in attempts to enlist either figure in today's hyper-partisan political environment is, symbolically and literally, constitutional. When in deep doubt regarding the American prospect, we seem fated to return to our founding.

Michael Federici's analysis of Hamilton's constitutional, political, and economic writings has two main elements: situating his thought within the larger traditions of political philosophy and canvassing the vast and contending literatures on Hamilton during his life and ever after. The latter literatures were facilitated because few of his contemporaries (especially Jefferson) were as willing as Hamilton to go public with their views—and few were as eloquently candid and pugnacious in clarifying hard public choices, so much so that he was branded an un-American agent of monarchy and aristocracy. The former element calls upon a host of political philosophers and statesmen in whom Federici sees kindred spirits in Hamilton's political thought and practices: Cicero, Machiavelli, Hobbes, Montesquieu, Hume, and Smith are prominent, but it was the English Whig Edmund Burke who stands foremost. Burke was a fiscal and constitutional reformer and an implacable enemy of French revolutionary ideology, and he hated slavery.

Animating Hamilton's choice of philosophical antecedents and his political reasoning is what Federici terms a realist philosophical anthropology grounded in classical and Christian traditions. Bounded rationality and the dangers of populist political passions were of particular importance in Hamilton's constitutional theory, especially his insistence upon a separation of powers that both encourages and contains talents and ambition. His disparaging view of state constitutions and governments is not far removed from his fear and loathing of the various post-revolutionary "rebellions" in America: Hamilton was a major player in suppressing two of them. The Virginia and Kentucky Resolutions (Madison and Jefferson) justifying state nullification of federal law were for Hamilton a bitter taste of the fruits of bad philosophy. The anarchy and terror of the French Revolution were experiential proofs of the ultimate result. As a student of Eric Voegelin, Federici is especially sensitive to Hamilton's warnings of the dangers of messianic idealism.

The main fault line in Hamilton's thought identified by Federici consists of his failure to see sources of civic virtue and political restraint in the more egalitarian and participatory settings of local government and civic association. This weakness in Hamilton's thought, however, should not be read as endorsement of a constitutional theory that sanctions a "living constitution" to justify the modern expansion of federal power. Hamilton, Federici argues, cannot be enlisted to sanction either Progressivism or the New Deal.

During the half century of Jeffersonian and Jacksonian party dominance, Hamilton's star fell; after the Civil War it rose again, reaching its apogee in the Progressive era. Peterson summarizes the result: "The cult had its romancer in Gertrude Atherton [author of a historical novel glorifying Hamilton], its philosopher in Herbert Croly, its exemplary statesman in Theodore Roosevelt" (*The Jefferson Image,* p. 333). Jean Yarbrough would beg to differ.

Roosevelt's intellectual formation took place in the middle and late nineteenth century, just as two snakes of foreign origin appeared in the American Garden. From England, Darwinian biological theory had been fashioned into an evolutionary theory of human moral and social progress, stressing national/racial agents and the inheritance and transmission of culturally acquired characteristics. From Germany, Hegelian philosophy became the foundation of "historicism" that soon pervaded the entire range of the human sciences, philosophy, and theology. Fortunately, until the early twentieth century, these two malignancies were not able to penetrate the philosophical and institutional walls of what Yarbrough terms the "Framers' Constitution." Unfortunately, it was Roosevelt and the Progressive movement that instigated and legitimated the breach.

According to Yarbrough, the education of Roosevelt (Chapter 1), establishes the logic and dynamic of the triad of evolution, historicism, and natural-rights constitutionalism. In discussions of evolutionary biology and social Darwinism (pp. 12–19), of Hegel (pp. 19–24, 44–47), and of John W. Burgess (pp. 38–49), young Teddy barely makes an appearance except as a somewhat unfocussed student at Harvard and Columbia. Roosevelt's histories and biographies give early evidence of an intellectual framework potentially hostile to constitutional values. Chapter 2 explores these writings, concluding that they "quietly repudiated the political principles for which they stood. Race-talk replaces rights . . . while conquest and expansion [replaces] . . . the spread of liberty" (p. 83).

Turning in the third chapter to Roosevelt's early political career as a city and state reformer, we can see that the ideas in his writings are not immediately evident: Hamilton, *The Federalist Papers,* John Marshall, Joseph Story—and especially Abraham Lincoln—were the talismans in Roosevelt's call for men of education and privilege to enter the fray and purify the practices of party-electoral politics. In "American Ideals," Roosevelt called upon the rich to reject "mere money-getting" and social climbing to become

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"statesmen, patriots, warriors, and poets" in service to American greatness. Battles against corruption at home will create the kinds of citizens who will extend American greatness abroad. But even as "Roosevelt remained faithful to the idea of limited government, he often justified his position using arguments from evolutionary biology" (p. 120).

As Roosevelt won office in Albany and Washington, party-electoral politics became secondary to the possibilities of executive and administrative/regulative power in the cause of reform. His biography *Cromwell* and his history of the Spanish-American War, recounted in Chapter 4, anticipate his famous "stewardship" theory of the presidency and are a "turning point" (p. 188) away from a constitutional understanding of executive power explored in Chapter 5. His proposals for enhanced railroad regulation were the first step in calling for a national regulatory and redistributive regime through the Bureau of Corporations. His attack in *Lochner* suggested later endorsement of proposals for the recall of judicial decisions restricting state welfare legislation. For Yarbrough, these initiatives disqualified him from claiming the constitutional mantles of Hamilton and Lincoln.

Chapter 6, Roosevelt as "Progressive Crusader," completes the dynamic of triangulation introduced at the start. Yarbrough summarizes two lectures by Roosevelt after his presidency, at the University of Berlin and at Oxford. In uncanny symmetry with her thesis, Roosevelt in Germany praises the bureaucratic Hegelian welfare state and rejects "sentimental attachment to the rights of man," which often privilege "a high material development in the things of the body" without heed to "things of the soul" (pp. 200–1). In his English address, "Biological Analogies in History," Roosevelt bewailed "self-indulgence and love of ease" and the "diminution of the birth-rate" as ominous signs that the Anglo-Saxon race was shirking "a high and stern sense of duty" (p. 203) required for the imperialist march of civilization. Needless to add, "after 1910, he became more and more the progressive crusader, rallying political activists and Social Gospelers in support of programs that pointed toward some kind of democratic socialism . . . Following Croly's lead, he now believed that government . . . must actively take the side of its friends, redistributing wealth in the name of social justice" (p. 258).

While both books support a form of constitutional "originalism," they seem to propose even more vigorously a philosophical originalism. For all its compromises and amendments, the Constitution is portrayed as constructed on a timeless foundation of natural rights philosophy. In Yarbrough's case, this philosophy ironically represents an implicit endorsement of Jefferson (and Antifederalism), for the Bill of Rights, like the Declaration of Independence, is much more clearly a "philosophical" product than the Constitution. Like Jefferson advising young men not to go abroad for their education lest they be corrupted, originalism as philosophy would seem to require that our political culture insulate itself from cosmopolitan religious, intellectual, literary, and scientific culture: a sort of civically heroic anti-intellectualism. No wonder Progressive intellectuals saw Jefferson as the main source of reactionary political values.

The ideas that animated young Roosevelt were much deeper in American culture than those found in the Harvard and Columbia curriculum. Before the Civil War, American university churchmen streamed into Germany, paving the way for the social scientists that followed. Lyman Abbott, with whom Roosevelt became so closely associated, edited *Outlook,* an ecumenically liberal Protestant and evangelical publication. Abbott was the author of *The Evolution of Christianity* (1892), *Christianity and Social Problems* (1896), and *The Theology of an Evolutionist* (1897). Throughout the nineteenth century, northern Protestantism dominated public schools, higher education, the leading intellectual journals, and the new mass circulation magazines—constituting the demographic and ideological core of the Whig and Republican Parties. Constitutional apostasy on Yarbrough's terms was germinating in American political culture long before the Progressives: see Daniel Walker Howe, *The Political Culture of the American Whigs* (1979) and David Greenstone, *The Lincoln Persuasion* (1993).

Lastly, while Hamilton treated the states with some disdain, their exercise of plenary sovereignty through police powers (William J. Novak, *The People's Welfare,* 1996) provided extensive constitutional legitimacy for nation-building extensions by Whigs and Republicans. Most state regulative policies passed constitutional muster even after the Fourteenth Amendment. And, ironically, that amendment has now been turned against the Bill of Rights to warrant vast expansions of federal power into almost all areas of American life—often in the name of a philosophy of timeless and universal rights. Lincoln's call for the Constitution to give life to the "golden apple" of the Declaration (and Bill of Rights) put the nation and its government on a world-historic mission easily recognized by English Darwinians and German Hegelians.

In his First Inaugural Address, Lincoln said that the Union—American nationality—"is much older than the Constitution." In his Second Inaugural Address, he placed the American union in Hebraic biblical time, calling the ravages of the Civil War God's judgment on a sinful people. These narrative ligaments of American nationality surround and infuse the Constitution from every direction, bending its timeless philosophical propositions in quite unforeseeable ways. While many Americans were quite bewildered by this address, thinking it evasive in its refusal to chart postwar policy or simply taking refuge in piety, Europeans were quick to praise it, one journal comparing Lincoln to Oliver Cromwell. Of one thing we can be sure, Alexander Hamilton and Theodore Roosevelt

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knew exactly what Lincoln was saying about the American nation.

Fighting Foreclosure: The *Blaisdell* Case, the Contract Clause, and the Great Depression. By John A. Fliter and Derek S. Hoff. Lawrence, KS: University Press of Kansas, 2012. 224p. $34.95 cloth. $19.95 paper.
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— J. Kevin Corder, *Western Michigan University*

Fighting Foreclosure revisits a 1933 Supreme Court decision that opened the door for state governments to provide relief to debtors during periods of recession or financial crisis. The work addresses a serious and contemporary question: Under what extraordinary circumstances can a government alter the terms of an existing and wholly private contract—a mortgage—to serve a broader public interest? The question introduces a range of legal issues that the Court confronted as the Depression unfolded in the 1930s: What constitutes an emergency? How are basic rights of creditors preserved? Is state intervention temporary? Is there a public interest to be served?

John Fliter and Derek Hoff offer a thorough treatment of the history and impact of *Home Building and Loan Association v. Blaisdell,* a case that was widely seen—at the time—as a landmark repudiation of the Contract Clause and an almost radical expansion of state power. The contemporary status of *Blaisdell,* rarely mentioned as a landmark today, is ironic on two counts. First, a later 1937 case, *West Coast Hotel Co v. Parish,* is typically identified as the turning point in judicial scrutiny of Depression-era state and federal legislation. Second, the policy options that *Blaisdell* permits—such as suspending foreclosures by extending the redemption period—are no longer palatable or even tempting for state governments. Fliter and Hoff offer some insights into both of these puzzles: how *Blaisdell* was largely overlooked after "the switch in time that saved nine" four years later and why elected officials did not choose *Blaisdell*-inspired remedies during the 2008–10 foreclosure crisis.

The authors offer a brief, clear account of the emergence of the Contract Clause as a critical piece of the Constitution. Debtor relief laws popular during the Confederation Period specifically motivated the framers to adopt vigorous language to protect private contracts from state intervention. Early Court decisions strengthened the Clause and, over a series of economic crises in the 19th century, the Court struck down a variety of attempts by states to intervene on behalf of debtors. Fliter and Hoff conclude that "every remedy" proposed in Minnesota in 1933 had "at one point been held unconstitutional by state or federal courts" (p. 36).

The Minnesota Mortgage Moratorium Act represented an important victory for the Farm Holiday Movement. Fliter and Hoff devote a chapter to the organization and principal actors in the movement, a widespread network of farmers who disrupted foreclosure sales, organized farm strikes, and pressured state officials to act to assist farmers and other struggling borrowers. The discussion of agrarian radicalism highlights one feature of the political environment of the 1930s that is clearly different from our contemporary experience: the real threat of political violence. The prospect of disruptive resistance—like the anarchist bombings, labor unrest, and farm strikes experienced in the first two decades of the 20th century—motivated state action during the Depression. The public emergency at the heart of the *Blaisdell* was not simply economic, but the fear that a wave of foreclosures could inspire mayhem or even revolution—in the words of one Blaisdell attorney—a "menacing danger of widespread rioting" (p. 127).

The central claim of the book is that *Blaisdell*—along with *Nebbia,* a 1933 decision that upheld New York State regulation of the dairy market—should both have the status of landmark cases—as "stepping stones" for the later cases that clearly ratified New Deal policies. This claim is not only rooted in the particular features of the case—that the state can impair fulfillment of contracts in an economic emergency—but also in the broader implications of the decision. *Blaisdell* advanced legal realism, the idea that judges and law should be influenced by changing economic, social, and political conditions. The majority opinion, adopting language proposed by Justice Benjamin Cardozo, endorsed this objective, proposing a new and "rational compromise between individual rights and public welfare" (p. 136). After *Blaisdell,* the Contract Clause was no longer the first line of defense for interests opposed to state intervention but largely relegated to a "Constitutional graveyard" (p. 169).

The final chapter of the book directly addresses the anemic, half-hearted state and federal responses to the 2008 mortgage crisis—responses that emphasized aid to lenders and macroeconomic stimulus, rather than aid to borrowers. While a few states considered mortgage moratoriums of the type that proliferated after *Blaisdell,* nothing like the Minnesota Mortgage Moratorium Act emerged after the 2008 crisis. In fact, Minnesota Republican Governor Tim Pawlenty vetoed, to the relief of the financial services community, a bill that would have provided some aid for subprime borrowers.

The case is paradoxical. *Blaisdell* was a landmark, watershed case in 1933, but the discretion that the decision gave states to meet a foreclosure crisis is largely unused today. Certainly, the circumstances of foreclosure do mean something different today—in the 1930s, mortgaged property was not just a home but a livelihood—a loan might be taken against a family farm or a boardinghouse: There was little in the form of a safety net for victims of foreclosure. Nevertheless the sheer scale of the crisis today and the financial and human toll of foreclosures in