

REVIEW: CALVIN H. JOHNSON, *RIGHTEOUS ANGER AT THE WICKED STATES: THE MEANING OF THE FOUNDERS' CONSTITUTION* (NEW YORK, CAMBRIDGE UNIVERSITY PRESS, 2005)

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After nearly two centuries of scholarship, it is perhaps impossible to forward a new idea about the motivations behind the founding of the U.S. Constitution, but University of Texas law professor Calvin H. Johnson has brought a new emotion to the debate: “righteous anger.” Johnson’s general thesis is that the Constitution was a reaction to the inadequate funding of the national defense by the Continental Congress. The founders, embodied by James Madison and Alexander Hamilton, blamed this on the self-interested parsimony of the states, and they designed the Constitution with a primary purpose of creating a fully funded nation-state able to directly tax its citizens. This idea is not entirely new, first argued by Roger H. Brown in *Redeeming the Republic Federalists, Taxation, and the Origins of the Constitution*, but Johnson focuses on the moralist nature behind the founders’ determination to recast the American experiment, making a powerfully argued case for renewed attention to the taxation power in Constitutional studies.

Johnson’s argument for his thesis is the subject of Part One, which takes up the bulk of *Righteous Anger*. He begins with a critique of the Continental Congress and its inability to fund the new nation. He discusses the method by which the Congress would “requisition” funds from the states. After the Revolutionary War, the states stopped sending money to Philadelphia; the 1786 requisition asked for \$3.8 million but the states sent only \$633. The financial crunch—the U.S. owed \$1.7 million to foreign borrowers—led Congress to pass impost bills mandating funds in 1781 and 1783. However, since acts of the Continental Congress could be vetoed by a single state, the impost bills were nullified.

The crisis led many Americans to fear for the survival of the independent states. Johnson notes that James Madison, Alexander Hamilton and George Washington all expressed anxiety that this would lead to war as England, or other European powers, would exploit the weakness of the new state. These critics were also angry that the failure of the states to fund the nation meant that Continental Army

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soldiers and veterans were left unpaid. Washington was particularly concerned, fearing anarchy and noting at one point that the “General Government is now suspended by a Thread.” (p.24). In many minds, the current situation dredged up bitter memories of the states’ niggardly funding of Washington’s troops during the late war.

Johnson sees James Madison as both a guide to the politics of the era and as the most important of the founding fathers. The Virginian, he argues, was the motivating force in pushing for a new government with the power to lay taxes, laying out his views in two privately circulated memoranda: the *Notes on Contemporaneous and Ancient Confederacies* (1786) and *Vices of the Political Organization of the United States* (1787). In the documents, Madison critiques the current confederate system of government, arguing implicitly for a more centralized form of government. Among Madison’s ideas, which he expounded further in *Federalist No. 10*, was that a larger “expanded government” was less likely to be captured by any faction. Johnson discusses one of the sources of Madison’s fear of faction: his political struggles in Virginia with Governor Patrick Henry, in particular Madison’s battles with Henry over debt relief and over Henry’s closing of Virginia courts to legal claims by British citizens—in direct violation of the Treaty of Paris.

Johnson examines Madison’s key role in the Constitutional Congress, while tallying his “partial losses.” In general, Madison succeeded in creating a centralized government that derived its power from the people, not the states, and that had a permanent power to tax for its own defense. The Constitution failed, however, to give the federal government control over the entire sphere of government, leaving significant powers to the states. Symbolic of Madison’s partial success is the failure of his proposed federal veto over state laws.

Johnson’s discussion of the ratification struggle focuses on the disparate views of the foes of the 1787 Constitution who are traditionally known as the Anti-Federalists. What drew these men together, he argues, was opposition over whether the federal government should have the power to impose direct or internal taxes. In many ways, the Anti-Federalists were drawing on a general aversion to taxation; populists like Patrick Henry played to these emotions. The Anti-Federalists raised other issues—Bill of Rights, democracy, slavery—but Johnson sees them as side-shows to the main act.

In the brief Part Two of *Righteous Anger*, Johnson critiques alternate theories concerning the motives of the founders of the Constitution. In short order, he dismisses theories that make the prime force ei-

ther the need to regulate commerce, to curb subversive forces as were seen in Shays Rebellion, to manage conflicts between states, or to assure that creditors could recover their debts. Johnson sees these factors as “peripheral” to the central issue of providing the new American state with the ability to tax for the common defense.

The even briefer Third Part of the book discusses Madison’s turn from his federalist views in the midst of profound discontent over Alexander Hamilton’s role in the government of George Washington and John Adams, and its legacy in Constitutional jurisprudence. Johnson sees the late turnabout as irrelevant to discussion of the motives of the founders because the “ink had dried and the original meaning had become fixed.” (p. 161). Nonetheless, Madison’s flip and the adoption of the Eleventh Amendment serve as Johnson’s coda to the founding period.

Although *Righteous Anger at the Wicked States* is framed as a traditional history, it is clear that Johnson’s intended audience is not professional historians; instead, his target is the legal community and his goal is to refocus the debate over founder’s intent away from the view favored by the intellectual descendents of the Anti-Federalists. As the proponents of the “New Federalism” on the Supreme Court continue to read an “original” Constitution they imagine was written to limit the federal power, it is valuable to look again at some of the founders who were mad as hell about the states’ abdication of their duty to protect the commonweal and were not going to take it anymore. Johnson argues that the result of this “righteous anger” was the founders’ Constitution.