*Thomas Jefferson and Executive Power , and:
Constitutionalism, Conflict, Consent: Jefferson on the
Impeachment Power (review)*

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REVIEWS

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Thomas Jefferson and Executive Power. By Jeremy D. Bailey. (Cambridge, UK: Cambridge University Press, 2007. Pp. xvi, 280. Cloth, \$87.99.)

Jeremy D. Bailey, "Constitutionalism, Conflict, and Consent: Jefferson on the Impeachment Power," *Review of Politics* 70 (June 2008), 572–94.

Reviewed by R. B. Bernstein

Works of history become valuable when they persuade us to abandon former ways of seeing a given historical problem in favor of a new, illuminating perspective. By this test, Jeremy D. Bailey, who teaches political science at the University of Houston, has written a truly valuable book. *Thomas Jefferson and Executive Power* persuades us to discard the stale, misleading dichotomy between strong and weak presidents for the far more enlightening approach of grasping how a particular president understood his office as a constitutional institution and sought to meet the challenges that that institution posed for him.

For too long, historians have privileged strong presidents and damned the weak ones; in the process, they have shown magnificent lack of attention to what "strong" or "weak" might mean in historical context or whether there might be an array of models for a "strong" presidency. Using this test and invoking the magisterial authority of Henry Adams to back it up, historians have hailed Thomas Jefferson's successes as president while stigmatizing his vision of the presidency as limited and weak by comparison with the strong presidency advocated by his great adversary, Alexander Hamilton. Under the old view, Jefferson succeeded as president because he was a skilled politician and used his personal gifts

for consensus and persuasion, though ultimately giving in to the need to wield his presidency in Hamiltonian terms.

Bailey rejects this interpretation, seeking instead to determine what Jefferson understood the American presidency to be and how best to make it work. Taking seriously Jefferson's insistence that he sought to govern by reference to the views of the American people, Bailey shows that Jefferson devised an approach to the presidency conceptually distinct from the Hamiltonian vision as an office of executive command. Jefferson rooted the presidency's strength in the president's ability to connect with and give voice to the will of the people, a presidency not only consonant with but governed by public opinion. Thus, Jefferson succeeded as president when he governed in line with the public opinion that he could discern and articulate, and he failed as president when, as with his embargo policy in his second term, he increasingly found himself veering away from what public opinion was trying to tell him.

As Bailey shows, Jefferson's ideas about executive power go back to his earliest involvement in constitution-making in 1776 and thus had been developing and evolving in his mind for nearly a quarter-century before he took the presidential oath in March 1801. Jefferson, as Bailey demonstrates, took his democratic ideals seriously and sought to meld them with his understanding of executive power so that he could devise a way for a chief executive to be both vigorous and legitimate, with public opinion of his words and deeds as the touchstone of legitimacy. Further, Jefferson insisted that a constitutional chief executive had to be both a vehicle for needed constitutional change, by mobilizing and mustering public opinion in its support, and a respecter of the Constitution. Previous scholars have defined these two views as forming a paradox in Jefferson's thought, whereas Bailey seeks to reconcile them and show how, in Jefferson's thinking, they were both consistent and complementary.

Jefferson's method for resolving the paradox was to offer the people what he called "declarations of principle," in which he both sought to voice public opinion and to educate it. (It is no accident that this method of constitutional governance was peculiarly suited to Jefferson's literary gifts, which formed one of the foundation stones of his success as a politician throughout his career.) Guided by such declarations of principle, Jefferson argued, a president could step outside the Constitution but only with the knowledge and consent of the people for whose benefit the Constitution was framed and adopted. These declarations of principle

begin with a president's inaugural address, and Bailey convincingly demonstrates that Jefferson's 1801 inaugural address was not only a classic of its genre but an actual transformation of what an inaugural address was supposed to be—not merely an expression of presidential deference to popular sovereignty and a president's commitment to the constitutional system, but the articulation of an agenda for constitutional governance that would both enlighten and guide the public's ongoing observation of and judgment of the president's performance of his constitutional duties.

Thus, for example, Bailey shows how Jefferson's approach to the Louisiana Purchase takes on new constitutional significance for him and for posterity. At first deeming the proposed treaty advantageous and unconstitutional, and thus requiring a constitutional amendment to authorize it, Jefferson struggled to devise an appropriate text for such an amendment only to abandon the effort, arguing that that solution would take so long that it might jeopardize the treaty itself. Jefferson argued instead that accepting and ratifying the treaty—while explaining its great benefits to the people and the need for stepping around the Constitution's perceived lack of authority for the treaty—would enable the people to ratify the undertaking with their votes, as a trustee's beneficiary would accept an *ultra vires* act by a trustee that ultimately would redound to the benefit of that beneficiary.

So, too, the Twelfth Amendment, which Bailey calls “the Aaron Burr Amendment,” undergirds Jefferson's vision of the presidency by making a president's election more truly national than it had been under the original Constitution of 1787, which allowed for regional blocs to attempt to sway the election of a president by seeking to bargain and horse-trade in the event of an electoral tie. Though the adoption of this amendment took away one check that the states arguably had on the choice of a president under the original Constitution, and thus might seem to cut against the state-sovereignty view of the Union that Jefferson held so strongly, Bailey demonstrates that Jefferson's ultimate goal was his reinforcement of the democratic presidency he had done so much to create and to embody.

A pendant to this fine book is Bailey's 2008 article for *The Review of Politics* on Jefferson's understanding of the impeachment power, which seeks to explain Jefferson's role in the impeachment of Justice Samuel Chase by reference to his general departmental view of constitutional interpretation. Jefferson, Bailey argued, wanted a role for the chief execu-

tive in judicial impeachments seemingly akin to the British model under which the Crown could remove a judge on receiving an address or petition from Parliament. Though it emerged from the research project that produced *Thomas Jefferson and Executive Power*, Bailey seems to have deemed this study not to fit within his book's borders and decided instead to publish it as a separate article. His reasoning as an author makes good sense, but I urge readers to obtain a copy of this excellent article so that they may read it alongside his equally valuable book.

Both the book and the article exemplify Bailey's historically sensitive and rigorous examination of a major constitutional thinker as he strives to preserve the integrity of his ideas while at the same time grappling with the real demands of political office. Writing with a clarity and vigor rare in academia, Bailey has given us work that is essential reading for anyone concerned with Thomas Jefferson as political or constitutional theorist, as working politician, or as president, and also for anyone concerned with the relationship between past and present in the often-vexed field of constitutional interpretation. Bailey's achievement is as great as that of David N. Mayer's fine monograph *The Constitutional Thought of Thomas Jefferson* (Charlottesville, VA, 2004), to which Bailey generously acknowledges his indebtedness.

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Halle Pietism, Colonial North America, and the Young United States.

Edited by Hans-Jürgen Grabbe. (Stuttgart, Germany: Franz Steiner Verlag, 2008. Pp. 321. Cloth, \$88.12.)

Reviewed by Marie Basile McDaniel

The collected articles in *Halle Pietism, Colonial North America, and the Young United States* detail the multifarious legacy of Halle's brand of pietism in North America, and to a lesser extent in England and India, from the late seventeenth to early nineteenth centuries. The theology, adherents, institutions, and networks of Halle's pietism profoundly affected the German-speaking peoples and their adaptation to the New