The Constitutional Republicanism of John Taylor of Caroline

BY JOSEPH R. STROMBERG

“Great power often corrupts virtue; it invariably renders vice more malignant... In proportion as the powers of government increase, both its own character and that of the people becomes worse.”
—John Taylor of Caroline, 1814

John Taylor of Caroline has a secure place in the history of American political thought. Charles Beard’s historical writing did much to revive Taylor’s reputation in the early twentieth century. Eugene T. Mudge saw Taylor as a “prophet” of sectional struggle, while English historian M. J. C. Vile saw him as “in some ways the most impressive political theorist that America has produced.” New Left historian William Appleman Williams thought Taylor “made the best case against empire as a way of life.” Other historians are dismissive. Louis Hartz chided Taylor for failing to become the American Disraeli, and Richard Hofstadter called him “a provincial windbag.” For Hofstadter, Taylor’s Jeffersonian ideas were “negative” and “laissez faire,” ending as mere conservatism in the hands of “men like William Graham Sumner.” Manning Dauer saw Taylor as—paradoxically—the father of both Southern Agrarians and “states’ rights industrialists.”

Despite the attention given Taylor over the years, he remains (in my view) somewhat neglected, relative to his actual merits.

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Raised in the home of his uncle Edmund Pendleton, John Taylor (1753–1824) attended The College of William and Mary, studied law, served as a major in the Continental Army, and became a successful lawyer and planter, owning several plantations and 150 slaves. He preferred his rural life, but entered politics to defend republican values, serving in the Virginia legislature (1779–81, 1783–85, 1796–1800) and filling out unexpired terms in the U.S. Senate (1793–794, 1803, 1822–24). Taylor was clearly no archaic-radical republican like Jean-Jacques Rousseau. He did not find freedom in political participation as such, but he would step forward in a crisis, as his sponsorship of the Virginia Resolutions, damning the Alien and Sedition Acts, shows.

Taylor began as an “Anti-federalist.” Once the Constitution won ratification, he meant to hold the victors to the assurances they gave while promoting it. Generally, Taylor’s books (1814, 1818, 1822, 1823) arose from immediate political questions; they included attacks on federal economic policies and reasoned polemics against the centralizing decisions of John Marshall’s Supreme Court. A book by Taylor levels much learning and colorful language against pressing issues, in the manner of Jeremiah.

There are some awkward moments in Taylor’s literary style, as Adams, Jefferson, and John Randolph all

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noted, but there are also interesting compression and apt expression. Taylor was a secular preacher. Like William Faulkner, he is sometimes better understood when read aloud. He is also a stepfather of semantics and semiotics, as his running critique of “artificial phraseology,” or counterfeit language, shows. He was not an especially successful politician. Taylor served the public better as a critic.

Here I must at least mention the Forty-Years War between historians of the Republican School and the Liberal-Lockean School over early American ideology. For J. G. A. Pocock, classical republican themes—court versus country, the mixed constitution, balanced social orders, “virtuous” agrarian landowners—dominated revolutionary thinking. The Lockeans have Americans abandoning those in favor of abstract individualism and natural rights. But the two political “languages” co-existed throughout the Revolutionary era. What matters is their exact “mix.” Taylor, for one, employs republican language within a liberal framework.

Beginnings of Centralization

Not long after independence, centralizing Federalists replaced the Articles of Confederation with a constitution (1788) aimed at creating a mercantilist political economy. Their opponents coalesced as “Republicans,” broadly continuing the Anti-federalist cause. Federalist-Republican debates over the National Bank, excises, public debt, standing army, and tariffs echoed English debates after 1688.

Perhaps the worst tragedy that can befall an ideology is to have a political party professing allegiance to it come to power. (Think of “conservatism” today.) So it partly was after 1800, with Jeffersonian republicanism in power. Taylor defended Jefferson’s measures into 1804, but gradually drifted into the “Quid” opposition movement within Republican ranks. He railed against the administration’s half-Federalist policies. Along with John Randolph of Roanoke and a few other Republicans, he opposed the War of 1812—his own party’s war—as a “metaphysical war.” He rightly feared its potential for state-building.

For Taylor, the laws of nature suggested political equality instead of the fixed social orders found in John Adams’ archaic republicanism. Popular sovereignty “flows out of each man’s right to govern himself.” Similarly, Taylor traces the right of free speech directly to the right of self-government, which presupposes open discussion.

On solidly liberal ground, Taylor sees human nature as “compounded of good and evil qualities.” Men should frame governments “with a view to the preservation of the good and the control of the evil.” Self-interest was the only real constant in human affairs, and bad structural incentives might make governments “vicious.” Suitable structures would “secure the fidelity of nations to themselves,” even if the people were individually “vicious.” Here Taylor broke decisively with archaic-republican “virtue,” mixed constitutions, and social balance. Americans had chosen to divide rather than “balance” power, and in so many ways—vertically (federally) and horizontally (departmentally)—as to prevent serious abuse.

Protecting men’s lives, liberty, and rightful property was the purpose of government.

The goal of “political law” (the Constitution) was control over all representatives and agents. Taylor hails election, divisions of power, and an armed people (militia) as among the means to republican liberty. “Oaths of agents,” he observes, “are prescribed to enforce, not to destroy, the duties of agency.” Taylor’s overall conception thus far surpasses any tame notions of “checks and balances” or “separation of powers.”

Taylor frowned on notions of absolute sovereignty. Where he does use the word, he is normally referring to self-government, which results from men’s living together in a community. He does not explain community as arising by conventional social contract; indeed, he tends to reject his contemporaries’ half-digested Lockeanism, thereby postponing any final surrender of natural rights. (Here he comes close to Thomas Paine.)

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subjected to structural, procedural, and substantive restraints on its power. This contract was between the peoples of the several states, not between the members of a single, aggregate American people as individuals. The constitutional agreement “derives its force, not from the consent of a majority of the states, but from the separate consent of each” (italics supplied).

Taylor denied the common assertion that the people, “having thought and spoken once, had lost the right of thinking and speaking forever.” If so, “its first will, must be its last will”—something Taylor found absurd. If, for example, the states should call a convention and approve a constitutional amendment previously blocked in the Senate, “any one state may refuse to concur in [it], because each state will resume its original right to refuse or consent, as being independent of each other in negotiating the terms of a new union” (italics supplied). Implicit here is renegotiation of the agreement—and even secession in an extreme case. Any other conclusion conflicted with outstanding historical facts, as Taylor saw them.

Taylor observes that no governments—federal or state—could, in their status as subordinate agents, dissolve the union on their own. (The constituent peoples could.) And Taylor was so far from being a positive “disunionist” that, in describing the geographical advantages of the United States, he attributed Americans’ safety to their maintaining a union of some kind. But he was not an unconditional unionist.

Taylor always tried to bracket sovereignty. He supposed the states to possess full concurrent jurisdiction with the federal government, except where one or the other clearly had an exclusive delegation of power. He denied that the Supreme Court’s reasoning necessarily bound the state courts; decisions applied at most between the parties to a case. Taylor thought an occasional inconsistency of outcome preferable to letting the Supreme Court remodel all of American law. To concede final interpretive power to the Court would transfer sovereignty to the general government, as the Court imported consolidation into the Constitution. Finally, the Court would assert “an immoveable power of construction” over the Constitution, over the other branches, and over the people.

Republicanism and Nationalism

Taylor’s states-rights republicanism necessarily collided with the intermittently nationalist views of James Madison. Taylor was trying to unravel the knots Madison tied while confusing different audiences and, finally, himself. Taylor questioned Madison’s claim in Federalist 10 that a republic must be geographically extensive—and even expand farther—to prevent “factious” instability. Taylor viewed expansion as unwise, where it might undermine liberty through war, armies, debt, and taxes. And he had little awe of the Federalist Papers: “The English writers . . . contain whatever is to be found in the Federalist; but all their theories sunk, as soon as they were promulgated; in a vortex of corruption. . . .”

Republican adoptions of Federalist policies were many and galling. Even worse, Federalists remained entrenched as federal judges and appointments by Republican presidents had not changed this. Taylor’s Construction Construed and Constitutions Vindicated (1820) targeted John Marshall’s decision in McCulloch v. Maryland (1819) with its mighty assertions of federal power. “The unknown powers of sovereignty and supremacy may be relished,” Taylor writes, “because they tickle the mind with hopes and fears.” Further, “the term ‘sovereignty,’ was sacrilegiously stolen from the attributes of God, and impiously assumed by Kings.” Later, “aristocracies and republicks . . . claimed the spoil.”

Sovereignty being “neither fiduciary nor capable of limitation,” Taylor wished to neutralize the concept. Americans had tried “to eradicate it by establishing governments invested with specified and limited powers,” so that “ungranted rights remain also with the grantors . . . the people.” (Alas, the principle that rights...
or powers “not granted” are not granted failed to impress either Marshall or Harvard Law School.)

Marshall’s decision turned allegedly “necessary and proper” means into actual unenumerated powers. Taylor recalled the 1760s, when Parliament asserted “it would be absurd to allow powers, and with-hold any means necessary or proper.” The colonies found it “more absurd to limit powers, and yet concede unlimited means for their execution.” The principle made the Constitution’s list of powers superfluous. Following Marshall, “[E]nds may be made to beget means” and “means . . . made to beget ends, until the co-habitation shall rear a progeny of unconstitutional bastards, which were not begotten by the people.” Roads being “necessary in war,” Congress could “legislate locally concerning roads.” Congressional power over horses—and everything else—would soon follow.

Taylor believed that Americans had never knowingly adopted that European conception of absolute, unitary sovereignty, which licensed Marshall’s centralizing deductions. Americans supposed their governments to be their agents, not their rulers. Lately, however, American legislatures—state and federal—were aspiring to be “British parliaments,” and if the trend held, one must conclude that in American government, “no experiment at all has been made.”

Marshall made much of the supremacy, superiority, and so on of Congress in its proper sphere of action. Taylor answers, “If the sovereignty of the spheres means any sovereignty at all, it supersedes the sovereignty of the people.” The problem was not spheres, but sovereignty in them. Powers might exist, certainly, but granted by principals to agents. No one had “inherent” powers.

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**Sphere-Sovereignty Dogma**

Taylor preferred the “occasional collisions” arising from concurrent jurisdictions. Instead of creating various institutions, each supreme in a sphere, our system featured “co-ordinate political departments . . . as checks upon each other, only invested with defined and limited powers, and subjected to the . . . controll of the people.” The Court’s sphere-sovereignty dogma overthrew this distribution of powers, because a “power able to abolish collisions, is also able to abolish checks, and there can be no checks without collisions.” In America we “have preferred checks and collisions, to a dictatorship of one department.” Congress and the states might pass laws, each one constitutional, which “impede each other . . . For this clashing the constitution makes no provision.” (Taylor’s view thus differs greatly from the highly artificial “separation of powers” espoused by “conservative” unitary-executive theorists working for the Bush administration.)

Having asserted Congress’s right to “remove all obstacles to its action,” the Court pretended to “hook every implied [power], to some delegated power” as a means. (Even today, a massive regulatory state subsists under the Commerce Clause, while global military enterprises masquerade as simple “defense.”) Taylor did not buy the argument.

Deductions from the international lawyers’ sovereignty-construct intruded into war and peace. Our system, Taylor writes, provided the necessary “powers of making war and peace . . . not as emanations from . . . sovereignty . . . but as delegated powers conferred by the social sovereignty, or natural right of self-government.” Otherwise, “the federal government, as having no sovereignty,” could not have declared war. That international law and lawyers “contemplate the powers of declaring war and making peace, as residing”—inherently—“in an executive department” meant nothing to us; the American system divided the powers and “does not intrust the president with either.”

So the question was “whether these laws of nations or our constitutions have delegated powers to our political departments.” If the former, the game was up, Marshall could go on deducing, and power would not—and could not—be limited. Interestingly, Taylor’s line of attack on these questions supplied materials for...
refuting United States v. Curtiss-Wright (1936) 114 years before the Supreme Court issued those latter-day deductions about “inherent” executive powers over foreign affairs and war.

Even with all these new, constructively discovered means and powers about, Americans remained complacent, safe in the knowledge that their officials were elective and responsible. For Taylor, representation and elections did not, by themselves, provide security against abuses of power. If elected officials managed to escape their bounds, then we would once again see that “no experiment . . . has been made.” As a mere slogan, “popular sovereignty” meant nothing to Taylor, and he foresaw the probable failure of republicanism if Americans adopted European sovereignty as its legal basis. Indeed, “a sovereign power over labour or property is less oppressive in the hands of an absolute monarch, than in those of a representative legislature” and “the error of trusting republican governments with this tyrannical power, has probably caused their premature deaths, because they are most likely to push it to excess.”

A government outfitted with “the complete panoply of fleets, armies, banks, funding systems, pensions, bounties, corporations, exclusive privileges; and in short, possessing the absolute power to distribute property,” was effectively “unrestrained” and tyrannical—and therefore not a republic in Taylor’s meaning. (Taylor has much to say about power distributing property, but I intend to treat that topic in another place.)

As party leader, aggregator, aider and abettor of factions, would-be war hero, and more, the president of the United States, whoever he might be, spearheaded the political evolution deplored by Taylor. As Taylor writes, the American executive was so constructed as “to excite evil moral qualities . . . propelling us toward force and fraud.” His exclusive control of military patronage, and its extension during war, inclined the president to initiate war. And now we understand Taylor’s commitment to a genuine, revitalized militia system; he wanted it for practical, political—even liberal—reasons, and not out of an attachment to Greek, Roman, or Renaissance Italian republicanism.

Taylor can find no “reason why war, peace, appointments to office, or the dispensation of publick money, should have been counted in the catalogue of the [executive], except for the efficacy of these powers in one man for begetting tyranny.” (He has elsewhere denied real textual, constitutional authority for exclusive presidential power over war and peace.)

More Power to the President

The treaty and appointment powers add to the president’s political weaponry; and to his already excessive military power “is subjoined a mass of civil power,” as well as patronage. Election “procures a confidence which has no foundation.”

The treaty power has long been prized and feared as a source of new, unknowable federal powers. As late as the mid-1950s, the Old Right movement sought to define and curtail that power through the Bricker Amendment. It took all the Eisenhower administration’s leverage to defeat the proposal in Congress. Under the Constitution, properly understood, Taylor finds no magic in the words making treaties part of the supreme law of the land. “On the contrary,” he notes, “the laws were to be made in pursuance of the constitution, and the treaties, under the authority of the United States.” And now he springs his trap: “The United States have no authority, except that which is given by the constitution” (italics supplied).

It followed that treaties could not alter or overthrow the Constitution. He gives an example: “Suppose the treaty-making power should stipulate with England to declare war against France; would that deprive congress of the right of preserving peace, with which it is invested by the constitution?” Presumably not, unless we must once more endure theories of inherency and sovereignty under international juridical deductivism.

James Madison, “father of the Constitution,” thought an extensive and expanding union would “dilute faction” and preserve liberty under an American mercantilism. Tying liberty to territorial expansion, Madison imposed an imperial logic on the Constitution he helped create. Taylor, spying the state-building possibilities of that program, came to oppose it. “A protector is unexceptionally a master,” he noted. Almost two centuries later, under another “Republican” regime betraying principles it never had, we may wonder who was the better prophet over all—Madison or Taylor?