

Reading the Early Republic. By ROBERT A. FERGUSON. Cambridge, Mass.: Harvard University Press, 2004. 374 pages. \$46.50 (cloth).

Reviewed by Eric Slauter, *University of Chicago*

Robert A. Ferguson introduces his new book as a brief against modern legal textualism and originalism. During the past decade, textualism and originalism have come to look like ideologically flexible (if not neutral) methods of interpretation, and so a critique of legal textualism or originalism is not necessarily, or at least not exclusively, an attack on conservative jurisprudence. But to Ferguson, a professor of law, literature, and criticism, legal textualists and originalists lack basic sensitivity to a text's formal features, do not appreciate the ways audiences found meaning, and tend to petrify the dynamic language of the early Republic. Though many of the chapters here have been previously published and spoke to different occasions and scholarly audiences, taken together they constitute a timely primer from one of the most acute readers of the literature of public documents working today. A major contribution to literary and intellectual history, *Reading the Early Republic* also serves as a brilliant and formidable rebuttal to those policy makers, judges, and lawyers who are currently raiding the early Republic in the hope of settling current debates by recovering the original meanings of founding texts.

Ferguson's early Republic is a period marked by manic depression, mystery, uncertainty, despair, precariousness, and volatility; by shifts in the locus of authority and meaning from religion to law; and by "quantum changes in thought . . . in a very short period of time" (123). In short this is hardly the time or place to locate stability or stasis, in or out of language. For Ferguson the defining commitment of the period is to the dynamic power of language to shape society. It was the peculiar and exciting task of writers to try to hold this fragile society together by producing a "tonal assurance on the page" (152) that would mask the instabilities of everyday life. That modern readers locate self-confidence and stability in early republican texts is a measure of their authors' success, not an index of extratextual or social assurance.

Readers in legal circles will surely learn much from Ferguson's rigorous readings, yet the book should appeal to a wide readership in American cultural, intellectual, and literary history. Indeed, a Fergusonian reading of the book—one sensitive to the ways in which writers craft their remarks for specific audiences—would point out that only two of the ten essays were previously directed specifically toward readers in legal studies and that six first addressed readers in history and literature. It is wonderful to have these essays all together, for the resulting book not only demonstrates his ability to speak meaningfully and specifically to diverse audiences but also serves as an important document for understanding the place of literary methodologies in the study of history and law during the last decade.

The essays take up a wide range of topics and an equally diverse group of texts. One of Ferguson's central claims during the past twenty-five years has been that the meaning of legal and political texts is informed by cultural and literary texts, and he employs not only the political tracts and state papers, transcripts of trials, and judicial opinions that are comfortable ground for legal scholars but also novels, personal narratives, and diaries. The essays address tensions and transitions between religion and law, the origins of national identity in treasonable acts, the aesthetics of ratifying the Constitution, the roles of classicism and nostalgia in the early Republic, the place of narrative in legal proceedings, the relation of thought to the built environment in Thomas Jefferson's Monticello, the privatization of charity, and the relation between catastrophic events and the writing of history. Ranging from the Revolution to the 1840s, the book coheres around a nexus of prominent themes.

One running theme concerns contests between law and religion in American culture. Nearly every chapter deals with religion in some way: in the discussion of the overlap of faith and reason in a chapter on the earliness of the early Republic; in the attention to Bible culture in a chapter on Thomas Paine; in the treatment of treason as crime and as sin in the case of Benedict Arnold; in the analysis of the aesthetics of visual union in both revivalism and John Jay's contributions to *The Federalist*. In one of the most stimulating chapters, Ferguson describes "the interactive complexity of American law and religion over the idea of liberty" (81), showing how a dialectical collision between legal and religious definitions of liberty gave way to a larger transfer of power from religious to legal authorities.

Another topic that connects the essays concerns tensions between presentism and nostalgia in the analysis of the period and in the period itself. One of Ferguson's strategies is to historicize the era's own presentist and nostalgic inclinations: the presentist readings of historical example in Paine's *Common Sense* (1776) or the efficacious adoptions of neoclassicism during these years generally, and in Jefferson's Monticello in particular. As he puts it in a chapter on "Finding Rome in America," though he may be speaking of modern interpreters, "ideological needs led [early republicans] to lift both words and interpretation out of context in a search for functional equivalents" (194). His reflections on nostalgia in that chapter and in a concluding chapter on James Fenimore Cooper's *The Last of the Mohicans* reveal the deep tensions between a desire to begin the world anew and a desire to return to a lost past.

By far the most important theme connecting these essays is the conviction that literary analysis can be of central use for lawyers and historians. Ferguson comes closest to articulating the relationship he sees between the disciplines of literature, law, and history in an essay on the *Girard* will case. "In methodological terms," he writes, interpretation of a trial requires negotiation between "the trial as historical event and as legal decision" and "an interdisciplinary rapprochement between history (event), law (court decision), and literature (texts joining event to decision)" (250); he pursues that point with chapters on the records of the military tribunal assembled for the trial of Major John André in 1780 and the court of oyer and terminer for the case of Gabriel Prosser in 1800. In this account literature bridges the gap between history and law, but it would not be too much of a stretch to say that the trial, a setting in which agents advocate positions they do not necessarily hold, serves as a paradigmatic way for Ferguson to conceive of all forms of writing.

Readers who understand rhetoric as merely the epiphenomenal gilding on some prior existing reality—that is, who believe that something called "rhetoric" is neatly divisible from something else called "reality"—will learn an enormous amount from Ferguson's close and careful readings. Yet readers who readily accept the notion that rhetoric helps constitute reality and that thought and expression are indistinguishable will also benefit from Ferguson's attention to the significance of context. In discussing Paine's *Common Sense*, Ferguson notes that historians often paraphrase rather than analyze language, whereas "literary critics tend to ignore the implications and immediacy of a lost genre like the political pamphlet" (311 n. 1). Locating himself somewhere between these disciplinary poles, Ferguson offers a reading sensitive to context and attentive to political writing as writing.

Ferguson manages to avoid either conflating or artificially distinguishing between different kinds of texts. In his first book, *Law and Letters in American Culture*, Ferguson traced the nexus between imaginative writers and lawyers from the Revolution to the Civil War. The close attention Ferguson pays in *Reading the Early Republic* to politicians as writers may be jarring to some historians, who may find descriptions of John Jay as a "master stylist" (154) and Paine as a "creative writer" (if an "unoriginal thinker") (93) to be anachronistic, or unnecessarily aestheticized. Ferguson's point in *Reading the Early Republic* is not that a figure like Jay is best thought of as a writer, or that the political

actors of the Revolution ever considered themselves primarily as authors, but that attention to these political texts as literature allows readers to “understand how these texts actually work.”¹

Reading the Early Republic demonstrates why the history of political writing and rhetoric constitutes an important and distinct discipline from the history of political thought. Historians of political thought routinely fail to appreciate the literary character of political writing. They ask questions about originality, theory, and tradition. Though interested in novelty and influences and filiations, Ferguson’s chief question of why this or that text succeeded is often more difficult to answer. For instance how did Paine’s pamphlet “galvanize an enormous audience so quickly and so permanently” (89) and “why did the Arnold conspiracy capture and continue to hold the imagination of its own and later times” (122)?

Questions like these are hard to answer and admit of multiple explanations, some of which must be social, cultural, and economic. But Ferguson maintains that a text’s success can at least partially be understood through a close study of the text itself. This is one among many claims likely to be differently controversial within different disciplines. Literary and legal scholars often share a common understanding that the United States is “a nation built on words” (290), a sentiment that historians would be unlikely to endorse. Unlike most legal scholars, Ferguson seeks to recover not the meanings of words so much as the “foundational excitement over words” by attending to a text’s “actual workings . . . its formal arrangement, and . . . the audiences that found it meaningful” (285). As with almost anyone who focuses so closely on the texts themselves, Ferguson has the hardest time revealing how the texts he reads would have been understood by contemporary readers. One could surely ask if readers in the early Republic understood the texts the way Ferguson does, a question of relevance to originalists and even some textualists, yet answering in the negative would hardly invalidate Ferguson. It would be a mistake to equate, except in the loosest sense, an account of the contemporary meanings a reader assigned a text with an analysis of why a text succeeded in the rhetorical marketplace.

Ever sensitive to the specificity of texts, to their occasions, authors, and audiences, Ferguson sometimes offers generalizations about “the imagination of the early republic” (16) or about “the legal mind in America” (67). Some of these generalizations are no doubt warranted—it would be hard to imagine meaningful intellectual history like Ferguson’s without them—but they stand in tension with his larger sense of the dynamic and fragmented instability of the period. And given the audience addressed in the introduction to *Reading the Early Republic*, such generalizations also play into the hands of those legal textualists who actively seek to produce a sense of period mood from a much smaller array of sources. In the long run training modern scholars to read around the texts of the early Republic, and to account as much for what is not to be found there as for what is there, may be the most vivifying solution for a deadening textualism. In his earlier work, Ferguson maintained that silence was just as crucial as expression in achieving consensus in the literature of public documents produced during and after the American Revolution.² As historians and critics continue to debate the relative authority of speech and writing in the period, his attention to the power of silence remains an important point to remember. Listening for the silences of the early Republic may also be the best way to combat the flattening tendencies of the legal scholarship Ferguson takes as his target.

¹ Robert A. Ferguson, *Law and Letters in American Culture* (Cambridge, Mass., 1984); Ferguson, “‘We Hold These Truths’: Strategies of Control in the Literature of the Founders,” in *Reconstructing American Literary History*, ed. Sacvan Bercovitch (Cambridge, Mass., 1986), 1.

² Robert A. Ferguson, *The American Enlightenment, 1750–1820* (Cambridge, Mass., 1997).