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Book Review: Peripheries and Center: Constitutional Development in the Extended Polities of the British Empire and the United States 1607-1788. by Jack P. Greene.

James Hutson

less rigid and abstract." Haar believes this "will call for review by administrative agencies specializing in land transactions and private property, by state and regional boards supervising local zoning efforts with an eye toward reinjecting considerations of the more general welfare, or by agencies directed toward reducing the cacophony of present procedures."

Professor Haar's plea for more rigorous review of zoning decisions is surely sound, and, if understood, will shatter the myth that zoning is a legislative, rather than an adjudicative, action. That single readjustment would itself bring a level of accountability and regularity to land use decisions that has long been absent. Beyond this, Haar's is obviously a clarion call for new, creative forms of regulation, a demonstration of faith in the power and appropriateness of government to design our physical environments, and in so doing, to structure our lives. On this score, Professor Haar and I worship in different churches. Yet one thing is certain, the intellectual contributions made by this single volume are significant, even if—at zoning's party—a good time was not had by all.

PERIPHERIES AND CENTER: CONSTITUTIONAL DEVELOPMENT IN THE EXTENDED POLITIES OF THE BRITISH EMPIRE AND THE UNITED STATES 1607-1788. By Jack P. Greene.[1] Athens, Ga.: The University Press of Georgia. 1986. Pp. x, 274. Cloth, $30.00.

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Despite the trendy title and subtitle, this is an old-fashioned volume, addressing the old-fashioned question of the constitutional dispute between Great Britain and her American colonies, which, not yielding to peaceful settlement, resulted in the appeal to arms in 1776. Professor Jack Greene's approach, as he himself is the first to admit, has much in common with the old, "imperial" school of American history, dating back to the beginning of this century and represented by the writings of such venerable scholars as Charles Andrews and Charles McIlwain. These writers contended that American historians and legal scholars were too parochial in their perspective, focusing as they did on the relationships between Great Britain and the thirteen colonies that formed the United States in

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1776. To understand the constitutional developments in the First British Empire, they argued, it was necessary to survey all of Britain's overseas colonies, especially those important ones in the West Indies like Jamaica and Barbados, and to consider Ireland as well. Professor Greene follows in these footsteps and documents an issue in constitutional history as readily with a citation from the Leeward Islands as from Massachusetts. His is one of the few volumes by a modern American writer where the impact of the American Revolution on the "constitutions" of the colonies that remained loyal is discussed.

Greene's book focuses on the pre-independence period; seven of the nine chapters deal with events before 1776. The two final chapters cover the Confederation and Constitutional periods, but contain few new insights, being essentially summaries of recent literature, especially the works of Jack Rakove and Peter Onuf and an affirmation of Andrew McLaughlin's old thesis that the Constitution of 1787 was essentially a copy of the "federal" constitution which had evolved in the British Empire before 1776, with the central government being invested with control over war, trade, and other "external" matters, and the state governments retaining control over "internal" concerns.

Greene defines the issue in dispute between Great Britain and her colonies as the distribution of authority between the metropolis and the separate governments that gradually arose in the overseas territories. He makes no claim to originality in viewing the root of the problem as the growth of the new theory of parliamentary sovereignty which was the major constitutional result of the Glorious Revolution of 1689. The notion that the King-in-Parliament was sovereign in the sense of having absolute power throughout the Empire was obviously inconsistent with the American view that Parliament could not do certain things in the colonies, the foremost of which was to tax the inhabitants without their consent. Many historians have stressed that the American position, based on a belief in sacrosanct fundamental law, as formulated by Lord Coke in Bonham's Case (1610), and articulated by colonial lawyers such as James Otis in his *Rights of the British Colonies Asserted and Proved* (1764), was outmoded and even reactionary and that, therefore, the British had the better legal arguments.

Professor Greene, in a manner reminiscent of the controversy sixty years ago between Professors Schuyler and McIlwain, enters this dispute as a partisan of the colonists and claims that the American understanding of the nature of the Constitution was at least as correct as the British one. Here he relies on what he calls the "new

legal history literature," specifically, the writings of John Phillip Reid, Barbara Black, and Thomas C. Grey, who, according to Greene, have established that custom in eighteenth century British constitutional thinking was good law and that, therefore, the customary arrangements in the American colonies, including legislative independence of the British Parliament, was as "correct" an understanding of the constitution as the "modern" doctrine of parliamentary sovereignty. To assume that theories such as sovereignty are correct because they are articulated by the center is, in Greene's view, a common historical fallacy.

In my opinion Greene (and Reid before him) overemphasizes the importance of custom, obscuring an important dimension in the legal climate of revolutionary America. In making the British constitution and custom the sources of American rights, Reid and Greene ignore natural law, to which Reid is intemperately hostile. The First Continental Congress (1774) and a host of revolutionary writers, including James Madison, considered natural law a principal source of American rights. To neglect natural law is to distort the constitutional and political history of their period.

Despite this shortcoming, the book is an excellent historigraphical essay on the recent literature on the conflicting interpretations of the constitution of the First British Empire and the consequences of these different views. As such, it is an extremely valuable synthesis that can be recommended to anyone who wishes to read a compact, judicious, comprehensive survey of the last twenty years' scholarship on a complex subject which has attracted a vigorous amount of scholarship, even in an era in which social history holds sway.

CONSTITUTIONAL CULTURES: THE MENTALITY AND CONSEQUENCES OF JUDICIAL REVIEW. By Robert F. Nagel.[1] Berkeley: University of California Press. 1989. Pp. xii, 232. Cloth, $29.95.

Maurice J. Holland[2]

> Of one thing I am perfectly clear: that it is not by deciding the suit, but by compromising the difference, that peace can be restored or kept. They who would put an end to such quarrels by declaring roundly in favor of the whole demands of either

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