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THE CONSTITUTION AND THE CANON

MICHAEL T. GILMORE*

Robert Ferguson's splendid essay performs the service not only of reminding us that the Founding Fathers were men of letters, but also of enumerating the aesthetic and authorial suppositions the Founders shared with other eighteenth-century writers as they perfected their mastery of a new art form, aptly designated the "genre of public documents."¹ As I interpret it, Ferguson's argument reveals the Founders to be both prophetic and backward-looking in their deployment of literary craft: backward in their allegiance to an aristocratic, corporate ideal of authorship, and prophetic in the cunning with which they turned the inherent ambiguity of written language into an instrument of consensual policy. It is the second aspect in particular of their achievement—what Ferguson describes as its "writerly" dimension²—that I wish to dwell on in developing some of the connections between the Constitution as a literary text and the emergence in post-Revolutionary America of an indigenous literary tradition.

More precisely, I am interested in the relationship between the founding of the polity and the contemporaneous creation of the American novel. Literary scholars like to point out that the two events occur at virtually the same historical moment: 1787 witnessed the Constitutional Convention and 1789 marked the publication of William Hill Brown's *The Power of Sympathy*, a tale of seduction and incest commonly regarded as the first American novel.³ What is intriguing about this coincidence, however, is not the similarity between the two documents but the contrast between them. *The Power of Sympathy* is an overheated, chaotic, and scandalous piece of writing that appeals to the reader's prurience and urges him or her—more likely, her—to feel. It includes a

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1. Ferguson, "We Do Ordain and Establish": *The Constitution as Literary Text*, 29 WM. & MARY L. REV. 3 (1987).

2. *Id.* at 16.

3. W.H. BROWN, *THE POWER OF SYMPATHY* (W. Kable ed. 1969) (1st ed. 1789).

thinly veiled account of an affair between Perez Morton, a prominent member of the Boston elite, and his sister-in-law, and contains passionate invocations of sensibility as a force binding people together and working to promote humanitarianism and equality, not to mention physical coupling.

The Constitution, it need hardly be said, tells a very different story. The final text could be described as an illustration of writing in the naive, pre-Derridean sense of the term: writing understood as the opposite of speech and characterized by the ambiguity and inaccessibility that speech supposedly avoids. We pass from the indulgence of feeling in Brown's novel to concision and control, to a work that seems dry and unemotional to the point of being suppressive. Indeed, in comparison to the Articles of Confederation or the state constitutions, one is struck not only by the federal Constitution's "coolness" of tone but also by the elisions of context, the disappearance of social life and political culture. Women, for example, are never mentioned, and though the existence of slavery is acknowledged, the word "slave" itself is never used.⁴ It is difficult to know just where the voice addressing us is coming from. The ordaining, distant monotone may suggest the scriptures, but the words on the page claim to be our own, a creation of "We the People."⁵ As Ferguson notes, the same words place themselves beyond our revision; they permit amendment but affirm their inviolability.⁶

Although the Constitution has little in common with Brown's sentimental narrative, there is another category of early American fiction with which it does enjoy affinities—affinities that begin with perdurability. The Constitution is a living text, one of the few pre-romantic American writings familiar in some degree to every citizen; *The Power of Sympathy* clearly is not. The single early American novelist of whom the average college student may have heard is Charles Brockden Brown, not William Hill Brown. Brockden Brown wrote his four major novels between 1798 and 1800, and the

4. U.S. CONST. art. I, § 2, cl. 3 states that "[r]epresentatives and direct Taxes shall be apportioned among the several States which may be included in this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, . . . three fifths of all other Persons."

5. U.S. CONST. preamble.

6. Ferguson, *supra* note 1, at 10.

best known of them, *Wieland; or, The Transformation*,⁷ is usually the only eighteenth-century work of fiction to find its way, even in excerpts, into the standard anthologies of American literature. Until very recently, Brockden Brown was almost unanimously viewed as inaugurating the American canon in prose fiction—the forerunner of Cooper, Poe, Hawthorne, and Melville. The later canonical writers—all white males who wanted the novel to be both respectable and profitable—tended to think of him this way.⁸ Brown, for his part, hoped to cultivate a better class of readers for fiction than was customary in the eighteenth century, when the novel, as a parvenu among the arts, was frowned upon in polite circles.⁹ He calls himself a “story-telling moralist” who aims not merely to amuse “the idle and thoughtless”—code words for the addicts of sensational love stories—but to engage “those who study and reflect.”¹⁰ *Wieland* achieves its status as the cornerstone of the American canon by criticizing the courtship conventions of sentimental fiction and upgrading the seduction tale into a Gothic thriller and novel of ideas.

I am suggesting that the meaningful comparison is between the Constitution and the canon, which self-consciously defines itself at its moment of origin as a repudiation of the feminized and subversive sentimental novel. One could make the argument that the Constitution functions in the political realm much as the canon does in the literary: both serve to constrain or suppress energies that threaten to overturn the rightful order of things. Nor is this simply a matter of striving to keep out women and blacks. Just as the Constitution checks the universalistic, antihierarchical implications of the Declaration of Independence, so the canon rests on an idea of ranking or hierarchy and opposes the democratizing, even levelling tendencies of sentimental fiction. In both cases, conserva-

7. C.B. BROWN, *WIELAND; OR, THE TRANSFORMATION: AN AMERICAN TALE*, reprinted in *THE NOVELS AND RELATED WORKS OF CHARLES BROCKDEN BROWN* (Bicentennial ed. 1977) (1st ed. 1798).

8. See, for example, J. COOPER, *THE SPY: A TALE OF THE NEUTRAL GROUND* (1971) (1st ed. 1821), in which Cooper refers to Brown as the “one pen of any celebrity” among his American predecessors. *Id.* at 31.

9. On the novel as a disreputable genre, see C. DAVIDSON, *REVOLUTION AND THE WORD: THE RISE OF THE NOVEL IN AMERICA* (1986).

10. C.B. BROWN, *Advertisement for “Sky Walk,”* in *THE RHAPSODIST AND OTHER UNCOLLECTED WRITINGS* 135-36 (H. Warfel ed. 1943).

tive reactions override predecessor texts which appear to authorize disruptive forces in the culture.

More than this, the Constitution and the canon align themselves with and help to advance a far-reaching shift in American society as a whole, a movement away from oral modes and attitudes toward the constellation of values associated with print and writing. Of course, many other factors contribute to this reorientation, most notably the growth of a capitalist market in which impersonal procedures of trade requiring literacy skills, such as bookkeeping and bills of credit, gradually supplant the verbal, face-to-face dealings of an agrarian economy. The Constitution accomplishes the movement toward writing stylistically and, so to speak, thematically as well. James Madison pointed out in *The Federalist No. 10* that the demagogue operates most dangerously at the local, "in person" level, and the federal compact seeks to circumvent this threat by vesting ultimate power in the national government.¹¹ Against the classical republican ideal of active civic participation and the close accountability of leaders—of immediacy, one might say—the Constitution attenuates the connection between rulers and the ruled and, through its complex system of federalism, sets authority at a distance from the citizen. In effect, the Constitution reproduces in the polity the essential feature of writing as opposed to speech, the nonpresence of the author.

The canon, at least as it emerges in Brockden Brown, shows a high degree of awareness about its involvement in the historical shift from orality to print. Brown's fiction furnishes a stylistic and thematic counterpart to the Constitution. Among other things, *Wieland* is a book about utterances and the difficulty of determining where they come from. The Wielands have a history of hearing voices and construing them as messages from God, and they are plunged into misunderstandings and finally tragedy when a mysterious ventriloquist named Carwin materializes to activate the family weakness. Brown's interest in ventriloquism suggests a coded preoccupation with the nature of writing. Though Carwin counterfeits voices, his gift endows him with the special power of the writer: as Clara Wieland puts it, "He is able to speak where he is

11. THE FEDERALIST No. 10, at 22-23 (J. Madison) (R. Fairfield 3d ed. 1981).

not."¹² Carwin's motives are far from benign, but he would prove harmless if the other characters didn't cling to a simplified, speech-based notion of communication. They are misled by the ventriloquist's impersonations because they assume that an individual must be wherever his or her voice is.

Brown's style in all his novels reinforces the point that writing and speech are distinct forms of utterance. His books seem almost to caricature the idea of a "writerly" text in which proximity yields to mediation. Many scholars have noticed his tendency to embed narratives in two, three, or even more additional narratives, so that stories are told at an ever greater distance from the original speaker. These seemingly infinite regressions make it a daunting challenge to identify the source of the words we are reading. Brown's fondness for the passive voice further contributes to one's sense of being disconnected from the subject. A random page from Clara's narrative in *Wieland* turns up this extreme but not uncharacteristic example: "That conscious beings, dissimilar from human, but moral and voluntary agents as we are, somewhere exist, can scarcely be denied. That their aid may be employed to benign or malignant purposes, cannot be disproved."¹³ Brown's prose in such passages is saturated with the ideology of an ascendant print culture. Rather than aspiring to achieve the authenticity of spoken language, as do the romantics, he produces writing that proclaims its status as writing and pointedly differentiates itself from speech.

Brown's last major work of fiction, *Arthur Mervyn*,¹⁴ seems the most obsessed of all his books with its own identity as a printed text. The novel, which contains frequent and explicit discussions of writing, has a history of reception remarkably similar to the Constitution's. I mean by this that it has been the subject of endless controversy almost from the moment of its publication, with most of the debate centering on the putative disinterestedness of the eponymous hero. Critics agree that the nation's future is somehow implicated in the character of Arthur Mervyn, a young man from

12. C.B. BROWN, *supra* note 7, at 218.

13. *Id.* at 181.

14. C.B. BROWN, *ARTHUR MERVYN; OR MEMOIRS OF THE YEAR 1793*, reprinted in *3 THE NOVELS AND RELATED WORKS OF CHARLES BROCKDEN BROWN* (1980) (1st ed. 1799-1800).

the provinces who makes his fortune in Philadelphia, but they have been unable to decide whether the hero should be seen as well-meaning or deceitful and opportunistic, an American Adam or a con man.¹⁵ What is certain is that the reader trying to decide this question has a substantial advantage over the characters themselves, who know Mervyn personally and are swayed by his magnetism. As one of the characters observes, "Had I heard Mervyn's story from another, or read it in a book, I might, perhaps, have found it possible to suspect the truth; but, as long as the impression, made by his tones, gestures and looks, remained in my memory, this suspicion was impossible."¹⁶

The reader of a narrative can appraise it more objectively than a listener; suspicion—or, to state it more neutrally, considered evaluation and judgment—is among the obligations and the benefits of print culture. On this matter, the Constitution and the canon strongly concur. Reflective citizens and reflective readers are essential to a free polity, and are the best possible safeguard against would-be demagogues and the disreputable authors of sentimental fiction.¹⁷

15. For illustrative readings, see W.B. LEWIS, *THE AMERICAN ADAM: INNOCENCE, TRAGEDY, AND TRADITION IN THE NINETEENTH CENTURY* 92-97 (1955) (on Mervyn as a "guileless youth"); M.D. BELL, *THE DEVELOPMENT OF AMERICAN ROMANCE: THE SACRIFICE OF RELATION* 55-59 (1980) (on Mervyn's "persistent self-interestedness").

16. C.B. BROWN, *supra* note 14, at 229.

17. See Ferguson, *supra* note 1. See also Jordan, *On Rereading Wieland*; "The Folly of Precipitate Conclusions," 16 *EARLY AM. LITERATURE* 154 (1981); Warner, *Franklin and the Letters of the Republic*, 16 *REPRESENTATIONS*, Fall 1986, at 110; Doctorow, *A Citizen Reads the Constitution*, *THE NATION*, Feb. 21, 1987, at 208.