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978-0-521-88536-2 - The Classical Foundations of the American Constitution: Prevailing Wisdom

David J. Bederman

Excerpt

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## ONE

THE FRAMERS' CLASSICAL EDUCATION  
AND WORLD VIEW

CLASSICAL ANTIQUITY MOLDED THE LEGAL EXPECTATIONS OF THE Framers of the American Constitution, and guided their legal judgment in the actual structuring of the checks and balances of that national charter. As with any proposition of intellectual history, this one requires a proof in several stages. The first step is a demonstration of the classical propensities of the Framing generation. This chapter accomplishes that by assessing the way in which the Framers and their contemporaries acquired a classical education. But it is not enough to understand how the Framing generation learned Latin and Greek, studied classical texts, used classical references in their social discourse, and assumed classical modes of argument in their political debates. Rather, one must also consider the values that classical education imparted to American leaders involved with the Constitution's drafting in 1787 and subsequent ratification.

For starters, I need to be clear about what I mean when I refer to the "Framing generation." Wishing to be as broadly inclusive as is sensible, that group must include not only the individuals who were present in Philadelphia as delegates to the Constitutional Convention in the summer of 1787, but also those involved, formally or informally, in the subsequent ratification debates that occurred in the states in the months following. Even more significantly, the Framing generation needs to be extended back in time to include prominent thinkers and leaders of the colonial period, as well as the patriots who launched and fought the American Revolution (1775–1783), and who held the country together during the Articles of Confederation period (1778–1788). Given the nature of civil society in the American colonies and states of this period, the Framing generation must include all participants in the political life of the times, not just elected representatives and politicians. Pamphleteers, ministers, and social leaders have as much claim to inclusion in the Framing generation as those who signed their

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names to the draft Constitution or who subsequently lent their assent to its ratification.

Nevertheless, one cannot be too apologetic about the elite nature of the social and intellectual history that is to be charted here. Although the general population of the American colonies (and then states) were among the best educated and literate in the world at that time,<sup>1</sup> that certainly did not mean that all participated in political councils on an equal footing. The voices that will be heard throughout this book are uniformly those of white, propertied men. And although a searching review of the sociology of the leadership caste of the Framing generation is beyond the scope of this book,<sup>2</sup> one cannot forget the unique conditions that gave rise to such a large and able cadre of individuals who assumed positions of authority during the time of the consideration and ratification of the Constitution. Although they may not have completely or faithfully reflected the People to whom the Constitution was addressed,<sup>3</sup> they nonetheless perceived of themselves as pursuing the People's business and as the instrument of the commonwealth.

Another note of explanation needs to be made about the classical tradition that is the subject of this book's analysis. Although the nature and extent of the classicism that the Framing generation appreciated will be gradually revealed here, it has to be realized at the outset that a classical tradition was strictly bounded by a set of conventions. For example, classicism was understood to be limited to Latin and Greek sources. Although the early American experience with the classical tradition was an intellectual continuation of Renaissance learning, it did not necessarily share the broader interests of contemporary European thinkers.<sup>4</sup> Except among a handful of divines or theologians, interest in Biblical philology, including the study of Hebrew and other ancient near Eastern languages, was rare. There was an accepted notion of a classical canon of works, and little effort was made to expand or refine that core of works, either through critical cross-reading of texts or by archaeological and inscriptional inquiry (which was just beginning to emerge as a method of classicism in Europe by the end of the eighteenth century). The Framing generation thus tended to accept classical texts at face value.

Another significant limitation on the classical tradition embraced by Americans at the time of the Revolution and the framing of the Constitution was its emphasis on history in political discourse. While, for example, Greek drama and Roman poetry exercised a substantial influence on artistic forms in Europe from the late Middle Ages on, we see less evidence of that in the roughhewn cultural life of the colonies and new republic. The one exception was the use of classical architectural devices, and this was

closely connected with the political aspirations of the new country and its leadership, as Charles and Mary Beard noted:

Through the architecture of the republican age, the political note rang with startling intonations. In casting off monarchy and established church, the patriot Fathers, like their emulative contemporaries, the leaders of the French republic, returned in their dreams, their oratory, and their architecture to the glories of republican Greece and Rome – to the simple columns, roofs, porticoes, and straight lines of early Mediterranean structures. Nothing seemed more appropriate. The ornate elaboration of renaissance Gothic appeared out of place in a country that was republican in politics, practical in its interests, and tinged, at least, with democracy.<sup>5</sup>

So, one of the significant themes of the early American engagement with a classical tradition was its political instrumentalism. Classicism was less a private intellectual pursuit than a public affirmation of a set of social values. How classical learning was transmitted to the Framing generation, and the values it inculcated, will be considered in the remainder of this chapter.

#### A. MODES OF CLASSICAL EDUCATION AND EXPRESSION

The classical training of the Framing generation has been the subject of exceptionally able recent scholarship.<sup>6</sup> My task here is to generally review the ways and means of classical education in the American colonies and new republic of the latter half of the eighteenth century, while particularly emphasizing the role of the classics in legal education and legal practice for attorneys. Additionally, it is important to understand the leading sources for the Framing generation's knowledge of classical history and its consequent political lessons. Finally, it is worth examining the specific educational experiences and intellectual engagements of particular members of the Framing generation with classical antiquity. The purpose of this exposition is not strictly to offer proof of the undoubted influence of classicism on the mindset of the Framing generation – what Carl Richard calls the “classical conditioning of the Founders”<sup>7</sup> – but also to begin the process of understanding those aspects of classical antiquity that were later to find themselves incorporated into the very fabric of the structural Constitution itself.

**1. Classicism and the Early American Educational System.** Following English models, the core of colonial primary educational systems was the study of Latin and Greek languages and literatures, as well as classical

antiquities, even to the exclusion of English language studies.<sup>8</sup> Colonial American grammar schools, particularly those associated with the handful of universities, prescribed a vigorously classical education. For example, the trustees of the College of William and Mary dictated for its grammar school that “as for the Rudiments and Grammars, the Classick Authors of each Tongue, let them teach the same Books which by Law or Custom are used in the Schools of England.”<sup>9</sup> This extended throughout the colonies, for only the poorest of areas did not maintain a grammar school.<sup>10</sup> There were some exceptions to this iron rule of a classical curriculum for grammar schools, and the only apparent innovations at some institutions was the introduction of instruction on commercial subjects for boys intending to enter business.<sup>11</sup> The ideal of a well-rounded education – a Greek concept of *paideia*<sup>12</sup> – was notably absent in early America.

So for nearly the course of a young man’s<sup>13</sup> primary education at grammar school, which began at age 8 and continued for up to 7 years,<sup>14</sup> schoolmasters “required young scholars to display their knowledge of Latin and Greek [and] they exercised their charges in the classics – and little else.”<sup>15</sup> And as Noah Webster observed, “The minds of youth are perpetually led to the history of Greece and Rome or to Great Britain; boys are constantly repeating the declamations of Demosthenes and Cicero or debates upon some political question in the British Parliament.”<sup>16</sup> Instruction in the classics was nearly a full-time occupation for young students, lasting almost the entirety of school days. And, indeed, the modes of classical instruction at this primary level of education hardly changed during the colonial and early republic periods.<sup>17</sup>

Students were required to memorize Latin grammatical rules, and then to translate basic Latin texts into English both through sight-reading and then by formal written expositions. To complete the process, these translations were then rendered back in the original Latin, although usually in a different tense.<sup>18</sup> As a student progressed, so, of course, did the difficulty of the Latin texts. Within a few years, Attic Greek was introduced to the student. Although there was substantial pedagogic criticism of the colonial educational system’s preoccupation with memorization, translation exercises, and rote learning,<sup>19</sup> the effect was to produce young men who could not only read Latin and Greek, but who could also (to a surprising degree) speak it in an almost conversational way. This helps to explain the way in which Latin (and, to a lesser degree, Greek) phrases were used in published political commentary or in deliberative debates, often without translation. Given the nature of these conversations, it was naturally assumed (although erroneously in some instances) that all of the participants

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[More information](#)

had the same fluency in classical languages, as acquired from primary education.

This is not to say, however, that the quality of classical instruction in grammar schools was high in the American colonies and in the early republic. By all contemporary accounts, it was not.<sup>20</sup> Part of the problem was the lack of training of schoolmasters and difficulties in retention. For all but the most elite schools, teachers were recruited from the ranks of recent college graduates. These individuals were often serving as teachers in a provisional capacity, waiting only to take their master's degree in divinity to begin a career in the ministry, or to begin reading law in an attorney's office.<sup>21</sup> And that described the schoolmasters who had ambition; many teachers bordered on the incompetent. It was later observed of some classical instructors in North Carolina: "if they have diplomas in their hands, [they] must be confessed to have more Latin in their hands than in their heads."<sup>22</sup>

And if all of that were not enough to discourage most young students of the classics, there was the nearly universal association of Greek and Latin with corporal punishment meted out by zealous, and on occasion, sadistic, schoolmasters.<sup>23</sup> Failure to properly respond to a locution in class, a single mis-step in the declension of a Latin word, or a faulty translation of a passage, could bring on a swift flogging at the hands of an instructor. Such was the widespread nature of this phenomenon that it became its own literary trope, what with writers like Richard Steele, Samuel Johnson, and Henry Fielding lamenting the abuses they suffered at the hands of their schoolmasters.<sup>24</sup> Edward Gibbon succinctly said that "by the common methods of discipline, at the expense of many tears and some blood, I purchased the knowledge of Latin syntax."<sup>25</sup>

Carl Richard is, nonetheless, right to observe that "[i]t is quite remarkable that the association of Greek and Latin with physical punishment so rarely left a lasting distaste for the classics."<sup>26</sup> Josiah Quincy (1744–1775), a leading figure at the time of the Revolution, managed to overcome the brutalization he suffered at the hands of his schoolmaster for his failure to master Latin grammar at age six. "But when I began upon Nepos, Caesar, and Virgil, my repugnance of the classics ceased," Quincy later reminisced; and the beatings were likewise curtailed.<sup>27</sup> There were clear exceptions to the rule of the rod. Ezekiel Cheever (1614–1708) was eulogized by Cotton Mather as the leading schoolmaster of seventeenth-century New England. He not only taught "Latin without tears," he also quite literally wrote the book on the subject. His primer on Latin grammar stayed in print until 1838.<sup>28</sup>

Individual members of the Framing generation often had outstanding classical instruction. The Reverend James Maury taught Thomas Jefferson

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[More information](#)

(who was well-prepared for admission to The College of William and Mary by 1760), and was known to have said that “an Acquaintance with the Languages anciently spoken in Greece and Italy, is necessary, absolutely necessary, for those who wish to make any reputable Figure in Divinity, Medicine or Law.”<sup>29</sup> Donald Robertson’s boarding school near Dunkirk, Virginia, had as pupils George Rogers Clark, John Tyler (father of the later president), and James Madison. Robertson, somewhat exceptionally for the period, also instructed students in the French language. Nathan Tisdale’s boarding school in Lebanon, Connecticut, was among the largest in the colonies and new republic, drawing nearly eighty pupils a year. Samuel Moody’s Dummer Academy was also rated as providing a superior education, and he contributed more than a quarter of Harvard’s entering class each year. Tisdale and Moody were also known for their aversion to corporal punishment, so the alumni of their schools tended not only to highly regard their classical education but also to genuinely revere their teachers.<sup>30</sup>

Much of the rigor of early American primary education in the classics was attributable to the entrance requirements of the indigenous universities of the period. Of course, a relatively small percentage of grammar school boys went on to college. Even at the time of the Declaration of Independence, only about one American in a thousand had attended college, and in the period from 1745–1763 the total number of graduates produced was little more than three thousand.<sup>31</sup> One of the reasons for these minuscule numbers – aside from the expense of college education and the opportunity costs of foregoing an early apprenticeship into the many trades – was the entry requirements.

All nine colleges in the colonies (as of 1776) – Harvard, William and Mary, Yale, New Jersey (Princeton), Philadelphia (University of Pennsylvania), King’s (Columbia), Rhode Island (Brown), Queen’s (Rutgers), and Dartmouth – had strikingly similar entry requirements, virtually unchanged since the early 1600s. Harvard’s entry rules from 1655 demanded reading proficiency of “ordinary” Latin texts, including Cicero and Virgil, from the leading teaching volumes, and dictated that an applicant “Can readily make and speak or write true Latin prose and has skill in making verse, and is competently grounded in the Greek language, so as to be able to construe and grammatically to resolve ordinary Greek.”<sup>32</sup> Yale’s regulations from 1745 and Columbia’s ordinances from 1755 both required extemporaneous reading ability of selected works from Cicero, Virgil’s *Aeneid*, and the Greek Testament, as well as a working knowledge of arithmetic.<sup>33</sup> When Thomas Jefferson was planning the curriculum of the University of Virginia in the 1820s, he “scrupulously insisted . . . that no youth can be admitted . . . unless he can read with facility Virgil, Horace, Xenophon, and Homer: unless

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he is able to convert a page of English at sight into Latin: unless he can demonstrate any proposition at sight in the first six books of Euclid, and show an acquaintance with cubic and quadratic equations.”<sup>34</sup> Those among the Framers that attended college were certainly not exempted from these requirements. When John Adams matriculated at Harvard in the 1750s, John Jay at King’s College in 1760, and Alexander Hamilton at King’s in 1774, they were closely examined in their Latin and Greek.<sup>35</sup>

Nor is there any real doubt that the leaders of the Framing generation were, to a large degree, college-educated. Of the fifty-six members of the Continental Congress that deliberated the Declaration of Independence, twenty-seven had college backgrounds (including eight with Harvard degrees). At the Constitutional Convention in Philadelphia in 1787, twenty-three of thirty-nine signers had baccalaureates (nine of them from one school, the College of New Jersey (now Princeton)).<sup>36</sup> Other representatives at these political conclaves, without possessing an American college degree, may have had equivalent educational experience overseas or with home schooling or self-study.

It is no surprise, then, that one of the most significant intellectual figures in the early republic was the Rev. John Witherspoon (1723–1794), president of the College of New Jersey from 1768 to 1794. A Scotsman, with a degree from Edinburgh in 1739 (with a heavy emphasis not only on classics but moral philosophy), he was enthusiastically recruited to lead the Presbyterian college by Benjamin Rush. He quickly made America his home and began to exercise extraordinary, if not charismatic, influence. Aside from his own brilliant political career (signer of the Declaration, member of the New Jersey provincial legislature and the Continental Congress), it has been estimated that his graduates included ten cabinet officers, twenty-one senators, thirty-nine congressmen, twelve governors, thirty judges (including three on the U.S. Supreme Court), and fifty members of state legislatures. Even after accounting for substantial duplications in officeholding, this is an astonishing figure, especially considering that it includes the likes of James Madison and Aaron Burr.<sup>37</sup> Witherspoon was praised by even those who had no affiliation with his college. John Adams said that he had “*wutt* [wit] and sense and taste.”<sup>38</sup>

And, make no mistake, Witherspoon was adamant that classicism was the core of higher education: “The remains of the ancients are the standard of taste,” he noted at his first commencement address. Moreover, “A man is not, even at this time, called or considered a scholar unless he is acquainted in some degree with the ancient languages, particularly the Greek and the Latin,” study which is necessary “to fit young men for serving their



country in public stations.”<sup>39</sup> Witherspoon rigorously prescribed Princeton’s curriculum upon his arrival: “First year: Latin, Greek, classical antiquities, and rhetoric; second year: one ancient language, geography, philosophy, mathematics; third year: language, mathematics, natural and moral philosophy; final year: higher classics, mathematics, natural and moral philosophy, history, literary criticism, and French, if desired.”<sup>40</sup> And if all of this was not enough to put a classical imprint on his graduates, then there was Witherspoon’s senior lectures, in which he managed to combine classical history and moral philosophy and relate it to the burning political issues of the day. He discoursed on the proper modes of oratory. He opined on whether the institutions of Greek city-states had relevance to the government of large provinces, an issue that would later prove crucial in considering the Constitution. He speculated “Some states are formed to subsist by sobriety and parsimony, as the Lacadaemonians [Spartans] . . . Public spirit in others, as in Greece, ancient Rome, and Britain.”<sup>41</sup> “What [Witherspoon] desired was the *spoudaiotes* (earnestness) of the classical thinkers, studied and then applied to contemporary life.”<sup>42</sup>

The curricula at other American colonial colleges adhered largely to classical models.<sup>43</sup> Although King’s College made a half-hearted attempt in the 1750s to broaden the course of instruction to include “the Arts of . . . surveying and navigation, of Geography and History, of Husbandry, Commerce and Government, and in the knowledge of all Nature . . .” it is by no means clear that this represented a trend in American education of the time.<sup>44</sup> It is true that the College of Philadelphia did establish a medical school in the early 1700s (the first in the colonies), and that faculty and students at Yale and Harvard pursued laboratory work in the pure sciences and engineering, but these are undoubtedly the modern liberal exception to the classical rule. Yet relief from the unremitting emphasis on classical reading could be found in the library collections of colonial colleges. Theological works accounted for nearly half of the library holdings (undoubtedly because of the religious affiliations of these institutions and their role in training ministers), with the remainder of subjects sprinkled between history, *belle lettres*, science, and philosophy.<sup>45</sup> Public booksellers had apparently even less cause to stock classical subjects.<sup>46</sup>

Perhaps even more strikingly, the nature of extracurricular activities at American colleges did more to reinforce the classical education that students were receiving at the feet of their instructors. Regularly scheduled and impromptu debates in Latin were a constant feature of student life.<sup>47</sup> Student literary societies flourished at the colonial colleges. At Yale were established the Linonian Society and the Brothers in Unity. At Princeton,



the Cliosophic Society was founded in 1765 (by Aaron Burr), and four years later the American Whig Society was established by James Madison (they exist to this day as the nation's oldest college political, literary and debating society). During the eighteenth century and most of the nineteenth century, they were the major focus of student life at Princeton outside of the classroom, fulfilling the students' social needs as well as providing educational opportunities that were not part of the college curriculum. The societies provided fora for public speaking and creative writing, as well as access to extensive libraries for their members. The rivalry between the societies was very intense, and it was forbidden for members of one society to join the other society or even to enter the other's building. Members of Whig and Clio were given pseudonyms upon initiation, and most selected classical personages as their monikers.<sup>48</sup>

To the extent that the American college experience was an immersion in classicism, few seemed to complain. As Robert Middlekauff explained, "men in colonial New England rarely questioned the value of this curriculum. . . . Whether or not they knew Latin and Greek, most New Englanders respected the intellectual excellence the classics upheld. . . . Even the poorest country parson could testify that a college degree raised a man's status, and all recognized that the path to the professions lay through a liberal education."<sup>49</sup> Classically trained college men received societal approbation as well as access to all the learned professions: medicine, ministry, and law. Dr. Robert Saunders at a commencement address at William and Mary informed students that "you have separated yourselves from the throng who grope in the night of ignorance, scarcely conscious of the possession of intellect," and that as graduates they were "entitled to that homage which the awakened intellect universally commands."<sup>50</sup>

**2. Classicism in Legal Education and Law Practice.** Before proceeding to consider the leading classical sources for the Framing generation, it is worth noting some aspects of graduate education in the American colonies and new republic, particularly as related to legal education and law practice. Baccalaureate degrees did not end the formal education of a handful of students in America. Those desiring to go on to positions in the ministry (in almost all American denominations) were required to attain a master's degree. After waiting a refectory period of three years, a candidate could present to his college faculty a set of *quaestiones* on an appropriate subject, the precursor of what would today be regarded as the master's thesis. *Quaestiones* were a feature of graduate studies at Oxford University, and the very name implied a species of discourse derived from Roman rhetorical forms of

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[More information](#)

Cicero and Quintilian.<sup>51</sup> In early colonial times, *quaestio* tended to be tests of technical, logical reasoning, and the topics selected were often aridly religious or philosophical.

As time went on, however, the subjects chosen were overtly political. For example, Samuel Adams's (1722–1803) thesis oration, delivered in Latin in 1743, considered, “Whether it be Lawful to Resist the Supreme Magistrate, if the Commonwealth Cannot be Otherwise Preserved?” It is no surprise that Adams took the affirmative in that address.<sup>52</sup> John Adams's 1758 Harvard thesis addressed whether civil government originates from the consent of the governed.<sup>53</sup> After the Stamp Act Crisis of 1765, many theses attempted to apply the precepts of Aristotle, Cicero, and Polybius to issues of the impending imperial crisis and Revolution. A Brown graduate of 1769 opposed taxation without representation, and another from the same college in 1773 questioned whether “the American colonists have the same rights as inhabitants of Great Britain?”<sup>54</sup> As reflected in graduate education, classicism was often seen as a vehicle for polemicism and robust political debate. Whether it was in spoken oratory, contentious disquisitions, or in formal and stylized *quaestio* or theses, the same styles of argument that would be used by students would later be employed as officials, delegates, or pamphleteers.

Legal education proceeded under slightly different premises, but was no less influenced by classicism. The paradigm of training for the bar in colonial America and the new republic was a college education followed by a few years work in a law office as a clerk under the close tutelage of a practicing attorney.<sup>55</sup> The general rule followed throughout the country was that a man could only be called to the bar after five years of apprenticeship, but that a one or two-year allowance would be made for college graduates.<sup>56</sup> Generally speaking, the majority of attorneys admitted to practice in the early republic had college degrees. For statistics kept in Massachusetts and Maine from 1760 to 1840, 71 percent or 1859 of 2618 trained lawyers had baccalaureate degrees.<sup>57</sup> That meant that the majority of practicing lawyers in America had already confronted and embraced the classical tradition in their formal studies.

During this period, an ideal legal education was regarded as consisting of three parts: practical training, theoretical knowledge, and a general education contributing to accurate reasoning, effective expression, and moral improvement.<sup>58</sup> Practical training was obviously accomplished in the day-to-day drudgery that the master lawyer managed to devise for his clerk. Copying pleadings was a common teaching tool, as was the drawing of standard writs and instruments (including wills and contracts).<sup>59</sup> Theoretical knowledge of the law was often derived by reading reported decisions of courts in England and colonial tribunals. But this case law was often