
THE FAILURE OF THE FOUNDERS:
Jefferson, Marshall, and the Rise of Presidential Democracy.

By Bruce Ackerman. Harvard Univ. Press. 384 pp. \$29.95

Thomas Jefferson played a leading role in two of the great moments in the founding of the United States. First, he wrote the Declaration of Independence in 1776, with help from John Adams, Benjamin Franklin, Robert Livingston, and Roger Sherman. Second, as the winner of the presidential election of 1800, he presided over the nation's first transfer of power from one party to another, from John Adams's Federalists to Jefferson's own Republicans. But in a third great moment—the framing of the Constitution in 1787—Jefferson has generally been deemed a nonplayer, far offstage as ambassador to France.

In the hands of Bruce Ackerman, however, Jefferson becomes the lead author of the American constitution—not the 1787 one, but its far superior successor of 1800. Ackerman, a professor of law and political science at Yale University, defines constitution making broadly, to include epochal moments when “We the People” exert our collective will to craft a “higher law” to govern the country—an idea he introduced at length in two earlier books, *We the People: Foundations* (1991) and *We the People: Transformations* (1998). When “We the People” declare a new tenet of higher law, there's no need for recourse to the cumbersome amendment process specified in the Constitution; instead, the Supreme Court recognizes the popular mandate of a victorious president and, through judicial rulings, stitches it into “the fabric of our higher law.” Though the phrases of the Constitution may be unchanged, they take on new meanings.

According to Ackerman, by electing Jefferson, the people implicitly enacted a new constitution in 1800—one giving precedence to “presidents claiming a popular mandate on the basis of their party's nationwide victory,” in contrast with the Constitution of 1787, which “gives center stage to congressional notables.” Ackerman makes no secret of his preference, repeatedly referring to the Constitution of 1787 and its framers as “stupid” and “silly” (for failing to anticipate operational problems with the

Constitution as well as political and social developments), and to the participants in the creation of the Jeffersonian constitution as “statesmen.” Which is not to say that there are no villains in the saga. John Marshall, chief justice of the Supreme Court throughout Jefferson's presidency and for many years afterward, is cast as a power-hungry, blundering lackey during John Adams's final weeks in office, and thereafter as a devious and intransigent yet ultimately unsuccessful leader of the Federalist Party's efforts to undermine the Jeffersonian constitution.

Reading history by Ackerman is like reading politics by Hunter S. Thompson. There's undeniable genius—fresh insights into events, personalities, and trends. There's swing-from-the-heels outrageousness that ranges from entertaining to obnoxious. And there are moments when the strands of theory aren't strong enough to support the story line—for instance, Ackerman hasn't yet settled on one set of convincing criteria for recognizing these epochal constitutional moments, an unavoidable obligation for his next book. The result is an engaging collection of discoveries, anecdotes, imaginings, and diatribes that's well worth reading, even though the parts don't quite coalesce into an entirely persuasive whole—at least pending his next volume.

—ROSS E. DAVIES

HEROES:
Saviors, Traitors, and Supermen—A History of Hero-Worship.

By Lucy Hughes-Hallett. Knopf. 496 pp. \$30

With his streaming hair and virile good looks, clad in his signature attire—a splendid red shirt topped by a poncho—Giuseppe Garibaldi swept into 19th-century Italy like a hero from a medieval romance. His timing, as befits a hero, was perfect. As uprisings flared from Milan to Sicily, Italians were waiting for a redeemer. Garibaldi was their man.

Except he wasn't: After skirmishing with the Austrians near Lake Como for a few weeks, most of his troops defected and he gave up. But no matter, writes Lucy Hughes-Hallett: “The man who dared to defy the might of an empire with his little band of poorly equipped men had proved himself worthy of the great role allotted