
*Cultural Restitution and
the American Political Order:
A Book Review Symposium*

*Culture as the Proper Basis of Law
and Politics: Response to Reviewers*

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My thanks to the editors of *Humanitas* for providing this opportunity to respond to the reviews by Joseph Devaney and Barry Shain of *Coming Home*. In the case of Devaney's insightful (not to say kind) review, the difficulty is that, there being so much agreement, saying something useful requires a bit of quibbling. Something else is required regarding Shain's review, to which I will turn below.

Devaney throws new and interesting light on the book Ted McAllister and I wrote by focusing on issues of constitutional law and interpretation. He is right and helpful to do so. Originalism in the sense of fidelity to the law of the land, including as set forth in the written Constitution,

was an essential component of self-government in our constitutional republic. The lures of security and Progressive ideology led Americans to forget their duty of fidelity and lose both the character and the constitution of a free, self-governing people.

To the quibbling: Constitutional law is not the focus of *Coming Home*. Law, especially for originalists (at least those originalists who may be equated with conservatives on account of their concern with fidelity to pre-existing institutions, beliefs, and practices) is a product of culture. *Coming Home's* focus is on that culture itself—on the people's unwritten constitution, which is to say the pre-existing, customary relations and traditions of social, economic, and political interaction that make up a civil social order. Devaney's

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review, especially in its last paragraph, might lead readers to believe that McAllister and I argue that the written Constitution gives rise to the unwritten constitution when, in fact, the opposite is our view. In a healthy society, the rules of law, including those rules-for-making-rules we call “constitutions,” grow from and conform to the unwritten constitution. Progressives did not so much undermine the written Constitution as ignore it so that they could institute policies that corrupted our unwritten constitution, helping make us, as a people, increasingly unfit for our constitutional republic.

The difficulty in responding to Shain’s review arises from the need to maintain a proper perspective in the face of inflammatory language, *ad hominem* attacks, and a refusal to engage the book under review on its own terms. Shain makes clear his view that *Coming Home* is not worthy of serious attention. And it is true that ours is not a typical scholarly book and should not be interpreted in that manner. Ted McAllister and I wrote a short book intended to engage educated, lay readers concerned with the state of their society. Is the resulting book appropriate for review in a journal like *Humanitas*? I think so because, while we make no claim to have written so important a book as, say, C. S. Lewis’ *Mere Christianity* or one of Michael Oakeshott’s volumes, we sought to write within that long, valuable tradition. Such writers let their arguments stand on their own, trusting interested readers to know how to find relevant

sources if needed.

But Shain goes beyond dismissal of the book itself to its authors. He implies that the reviewed authors lack personal courage and honesty—or that they sold their principles in pursuit of establishment recognition—which, even if true, is neither enlightening nor helpful. He also seems strangely concerned with the academic credentials of the authors. To clarify: Ted McAllister held a Ph.D. in History—the only one involved in this symposium to do so—but, like Shain, was interested in the intersections between politics and history. Shain’s central motivation for his critique appears to rest on the reviewed authors’ failure to write the kind of book Shain wanted to read. He wants, apparently, to review a book interpreting the origins of the American Revolution, the character and value of the Constitution, and the nature of the best regime in the light of his specific reading of British imperial history and his particular brand of communalistic libertarianism. He presents a “factual history” that is merely a pro-British, positivist reading of imperial rights. He ignores, for example, Americans’ *reason* for seeking closer ties with the King, namely, to counter Parliamentary actions tightening control over colonists, to the detriment of their accustomed local freedoms and rights of self-government. Were these rights clearly specified in British law? No, but then, as Edmund Burke observed at the time, no people will be argued into slavery, especially by the self-serving claims of “sovereignty.”

Shain's condemnations are important principally as part of a general mischaracterization of *Coming Home's* description of American culture and politics. The most damning sin charged seems to be our failure to banish John Locke from discourse on these topics. In the case of our book, the charge is odd. Locke's name appears four times, always in placing Locke's social contract theory in the context of Calvinist practice, natural law, and what we explicitly state was a non-Lockean founding.¹ He then accuses McAllister and I of seeking to foist a Straussian reading of American history onto our readers. Yet neither of us is in any sense or degree "Straussian," a fact amply demonstrated in our own writings and in the treatment we and our works have received over the decades from that quarter. Moreover, recognizing the existence of natural rights—including that to property—does not make one a Lockean, but simply an adherent of one of the many iterations of natural law, most of which are neither individualistic nor Catholic imports into our predominantly Protestant nation.

On the Constitution, Shain castigates our "sacred history" on the way to condemning that document and form of government. Balancing any decent society's need to be rooted in local associations with the requirements of stability and self-defense in a dangerous world is a perennial issue. It is neither elimi-

¹ Ted V. McAllister and Bruce P. Frohnen, *Coming Home: Reclaiming America's Conservative Soul* (New York: Encounter Books, 2019), 15.

nated nor elided by ignoring the Anti-Federalist/Federalist debates as well as the compromise-grounded consensus regarding federalism and enumerated powers achieved during the constitutional era.

Shain's underlying preoccupation and agenda come to full fruition in his charge that we are peddling "localism light." He fixates on issues of integration during a time when Progressives are working equally hard to *separate* Americans according to race. The point is, or should be, that Progressives seek to control every aspect of American life. McAllister and I nowhere accept this power-seeking as a good thing, in whatever guise it appears. Shain's intermixing of quotations from (and criticisms of) our book with that of Reinsch and Lawler, whatever the merits of those criticisms may or may not be in regard to the latter, gives the false impression that McAllister and I embrace our current, overbearing, antidiscrimination regime. We do not and have said so in print.²

None of these corrections would seem terribly relevant to Shain, however, given his determination that only one form of government is acceptable. That form is the kind of libertarian utopia laid out by Chandran Kukathas, in his *The Liberal Archipelago*. That "liberal" notion may make for an interesting thought experiment, but Shain's use of it as a yardstick by which to measure

² See Bruce P. Frohnen and Ted V. McAllister, *Character in the American Experience: An Unruly People* (Lanham: Lexington Books, 2022), chapter 19 for a specific condemnation of this corrupt, centralizing apparatus.

actual societies and institutions is merely idiosyncratic. That the fanciful vision of a world in which people adopt a structure sufficient to guarantee radical local autonomy *along with* a workable, consensually implemented policy regarding the right to exit should be the apex of conservative orthodoxy is far-fetched. It is also utterly inappropriate as the basis for critiques of works rooted in historical experience.

Shain also fails in the duty of simple due diligence in his review. Two examples suffice: 1. He accuses us of terming Progressivism an alien ideology. We explicitly refer to it as “truly American;”³ 2. He writes of KKK activities and other post-Civil War anti-Catholic violence as if they prove we massively understate the troubles associated with Catholic education funding. The compromise to which we refer was settled many decades earlier than he implies—before the rise of the KKK. He also ignores our clear statement that the compromise we actually do mention established a principle of separationism that severely undermined decent discussion of the role of religion in public life.

More generally, Shain repeatedly conflates the two volumes under review in what appears to be a foregone negative conclusion regarding both. In addition to accusing McAllister and me of agreeing with the other authors on the goods of centralization, he lumps the books together as paeans to Orestes Brownson. Whether this (or any of the rest

of Shain’s criticism) is fair to the Reinsch and Lawler volume, it is not my place to say. As for our book, we cite Brownson exactly once, for his excellent summary of the idea of an unwritten constitution—an idea central to traditional conservatism, with its emphasis on the role of tradition and habit in rendering written constitutions effective and valuable.

Finally, Shain brings to bear a glaringly inadequate comprehension of myth in his analysis and is neglectful of our use of the political philosopher Eric Voegelin and his well-known account of symbols and their role in shaping a people’s imagination. Certainly, any teacher of American political thought who holds himself out as a conservative must be familiar with that Voegelinian work, Willmoore Kendall and George W. Carey’s *The Basic Symbols of the American Political Tradition*. I mention this because Shain’s harsh, personal criticisms appear rooted in his failure to understand the role of myth and story in culture and politics. When McAllister and I refer to the need to recover our shared understanding of the story of who we are as Americans, we are not engaging in the work of elementary school teachers or politicians. We are not following that proponent of lies, Friedrich Nietzsche. We are following Voegelin and, of course, Alasdair MacIntyre. Both understood that peoples forge and maintain their way of life by understanding themselves as part of a story, a shared meaning that may be captured in a set of central myths producing sym-

³McAllister and Frohnen, *Coming Home*, 26.

bols of what they are and what they see as their common purpose. In the American context, as Kendall and Carey point out, this is the symbol of a self-governing people deliberating under God. The myth from which this symbol grew was that of the Separatist colonists fleeing England/Egypt for a kind of promised land. Was this literally true, in the sense of a positive, historical fact? Perhaps not. But to be so incessantly literalist as to insist that it is essentially a childish lie to see oneself and one's people in this light is to strip the spiritual dimension out of the concept of truth and indeed life itself. Moreover, the symbol of America as a self-governing people is rooted in very literal events and documents, beginning with the Mayflower Compact and including several other crucial documents from New England, Virginia, and representative assemblies of the colonies.

The central problem with Shain's review is his unyielding attachment to a particular and highly contestable vision of history in which British constitutional structures, including the British imperial structure during the eighteenth century, are idealized and used as a kind of yardstick against which to find constitutionalism fatally flawed. But Burke, among many, many others, had a very different reading of this system from Shain's,⁴ as did the colonists. Meanwhile, Shain rejects American

practicalities, including attempts to work out a compromise with the British Empire in keeping with their traditions of self-government. Repeatedly condemning our "localism light," he rejects the American Constitution because it does not provide the kind of centralized power directed at maintaining a localism he values as diverse simply for diversity's sake. However, the legitimacy of peoples and communities is grounded, not in the satisfaction of a priori standards of diversity, but in the need to accommodate circumstances presented to peoples by historical and indeed local reality. Moreover, the constitutional machinery Shain condemns was intended and for many decades succeeded in defending real local freedom that maintained the associations of a free, self-governing people—a far better record than the party government he praises at one point, let alone the libertarian utopia he champions as the "real" localism. Is localism impossible today on account of the changes Shain says we should have spent our time analyzing? Time will tell—probably rather soon—whether the natural demands of human communities and human nature itself produce the kind of resistance our current rulers will not tolerate. There may then be a breakup of what is left of our republic—one I profoundly hope will be peaceful. One thing is clear, we will never live in the kind of "exit-is-all" utopia Shain demands.

⁴ See for example Bruce P. Frohnen and Charles Reid, Jr. *Diversity in Western Constitutionalism: Chartered Rights, Federated Structures, and Natural Law Reasoning in Burke's Theory of Empire*, 29 *McGeorge Law Review* 27 (1997).