

REVIEW ESSAY

Something Else: History, Legal Imagination, and the American Revolution

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MARTTI KOSKENNIEMI, *To the Uttermost Parts of the Earth: Legal Imagination and International Power, 1300–1780* (Cambridge: Cambridge University Press, 2021)

DANNELLE GUTARRA CORDERO, *She Is Weeping: An Intellectual History of Racialized Slavery and Emotions in the Atlantic World* (Cambridge: Cambridge University Press, 2022)

JAMES Q. WHITMAN, *From Masters of Slaves to Lords of Lands: The Transformation of Ownership in the Western World* (Cambridge: Cambridge University Press, 2025)

Abstract

This article reviews Martti Koskenniemi's *To the Uttermost Parts of the Earth: Legal Imagination and International Power, 1300–1780*, Dannelle Gutarra Cordero's *She Is Weeping: An Intellectual History of Racialized Slavery and Emotions in the Atlantic World*, and James Q. Whitman's *From Masters of Slaves to Lords of Lands: The Transformation of Ownership in the Western World*. These authors raise fundamental questions about what was going on and what was or is at stake in the legal theorizing, argumentation, and adjudication that characterized the immediate prehistory of the nascent US constitutional order.

The imperial crisis in North America that proceeded from the end of the Seven Years War began with a series of legal and constitutional disputes, and of course, it inaugurated still more. Arguments made during the imperial crisis, the war for independence, and the eventual founding about the prospective place of these events in human history borrowed heavily from the eighteenth-century intellectual culture of enlightenment and philosophical history. If the works under review here are any indication, there has been a return of philosophical history, of the desire to link accounts of what happened to their connections with a broader sweep of the course of human events, for lack of a better phrase, and to ask questions about their meaning, relevance, and utility as models for thought and action. The three books under consideration here are

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not about the American Revolution at all, but each of the authors raises fundamental questions about what was going on and what was or is at stake in the legal theorizing, argumentation, and adjudication that characterized the immediate prehistory of the nascent US constitutional order. Admittedly, this is not a comprehensive review of the three books, but an appreciative highlighting of their potential to stir up how you might think about writing the legal history of the American Revolution.

Legal Imagination and the Intellectual History of Law

A specter of sorts haunts the historiography of early American law and constitutionalism, and that is the relationship between legal and intellectual history. How useful are the humanist methods of the historiography of legal and political thought to the study of how custom, precedent, textual interpretation, and questions of intention have worked in law? Marti Koskonniemi's *To the Uttermost Ends of the Earth* grows out of these sorts of questions and debates, and in large part due to the immense erudition on display (with the index, the book is over 1100 pages long), it makes a singular contribution to a whole host of different strands of scholarly debate. Especially useful for early Americanists will no doubt be the discussion of the imperial crisis and American founding as a small but important piece in the history of international law, especially in the articulation of doctrines of free overseas commerce.¹ Beyond that, the history recounted in the volume reconstructs the intellectual universe of legal learning in the early modern Atlantic world. More fundamentally, the use and defense of the term *legal imagination* in the book should garner special attention. Like "The Angel Standing in the Sun," the J.M.W. Turner painting on the cover of the book, legal imagination as a subject of historical inquiry can blur normal lines of research and perception and illuminate the interconnectivity of what are normally treated as distinctive spheres of thought and experience.

Direct discussion of the legal history of the American Revolution in the book is limited, to be sure. The colonial American resistance and eventual revolt show up for the most part at the tail end of an English history of worrying about the legal status of overseas plantations in a broader project of imperial governance and, second, as a significant early step in the debt crisis of the French state that would precipitate the French and Haitian Revolutions.² The French Revolution, as Hannah Arendt famously reflected, has always been thought of as the superior model for historical typology and political action and, as such, an event worth noting in philosophical history in a way that the American Revolution is not.³ Be that as it may, early Americanists can benefit a great deal from the sweep of Koskonniemi's narrative. For one, the book

¹ Martti Koskonniemi, *To the Uttermost Parts of the Earth: Legal Imagination and International Power, 1300–1780* (Cambridge: Cambridge University Press, 2021), 751–64.

² *Ibid.*, 534–56.

³ Hannah Arendt, *On Revolution* (New York: Penguin Books, 1990), 24.

highlights the challenge that what might anachronistically but productively be called political economy posed to jurisprudence, both within and between states, long before market society overran the civic and commonwealth principles of republican political life, as the traditional story goes, in the post-Jeffersonian United States. From before the onset of Atlantic imperialism in the late Middle Ages and early Renaissance, ports and colonies were economic outposts that eventually pulled jurists and lawyers into contesting and legitimating debates across Europe. For all the vaunted authority attributed to Sir Edward Coke in late colonial arguments about the possession of the common law rights of Englishmen, Coke himself and just about all his interlocutors were clear-eyed about the brute fact that colonies were companies for a reason. Likewise, with good reason, historians have tended to see the image of African chattel slavery as a kind of feudal holdover, rather than a critical piece of the emergence of a capitalist world dominated by the commercial powers of the North Atlantic, as a romantic image crafted by its defenders and principal beneficiaries, but Koskenniemi shows that the slavery-as-feudalism trope had a much longer life in jurisprudence than previously appreciated. Re-periodizing what is usually taken to be the legal history of the American Revolution as at least in part the aftershock of late medieval England's confrontation with overseas people and the corresponding problem of who gets to own what in an empire could be productively humbling for early Americanists and encouraging and ennobling at the same time.

At least two other features of Koskenniemi's narrative are worthy of note here: for one, his focus and insistence on the importance of theology to the history of law. Questions of community and belonging were inseparable from communion and ecclesiastical polity, just as questions of personhood and conscience were inseparable from a doctrine of the soul and debates about its relative freedom to direct its own journey were from a reformed understanding of the individual believer. Throw in questions of how the emergence of book and print culture augmented and intensified this history, and it should not be too much of a stretch of the historical imagination to conclude that historians of the American Revolution and Founding have by and large steered away from any consideration of something like political theology to our detriment.⁴ Early Americanists should consider political theology, like legal imagination, a useful and important category of historical analysis, as foreign as it might seem for strict contextualists and strict constructionists alike. Second, especially in the English and broader Anglophone context, the substantive importance of jurisdictional conflict can open new avenues of understanding the legal history of the American Revolution, both in terms of its origins and its aftermath. The seventeenth-century English legal and constitutional world to which colonial leaders repaired in their rhetoric was rife with fundamental, open, and potentially existential conflict between different courts and jurisdictions, and Coke's intense disputations with advocates for the independence of the Lord Chancellor alongside courts of chancery and admiralty were a large part of what drove his own legal reasoning, especially in *Calvin's Case*.⁵ Recovering and

⁴ Koskenniemi, *To the Uttermost Parts of the Earth*, 239–64, 287–94.

⁵ *Ibid.*, 579–92.

tracing the transformation and persistence of jurisdictional conflict could illuminate a much more nuanced, complex, and politically fraught world of law and constitutionalism in and around the American Revolution and founding.

The most enticing idea on offer in the book, though, may well be in its title, and that is the idea of legal imagination.⁶ Legal imagination might be more familiar to legal scholars as a product of law and literature studies, as James Boyd White used the term to denote how depictions of law and legal procedure in the wider culture of a period needed to be considered when engaging in legal interpretation.⁷ However professionalized legal culture might be, it is probably never as sealed off from literary and intellectual culture as is sometimes imagined, and both a scholar and a judge are stepping into that inseparability when they sit down to interpret a text, legal or otherwise. More specifically, for Koskenniemi, legal imagination denotes the availability of concepts to a jurist, lawyer, or some other legal actor for making a legal argument. With what, in short, can a legal argument be made in any given context, and how? As the book demonstrates, the answers to those questions are just about anything and just about any way. All the same, even the most utilitarian or nakedly realist practitioners of law and interpretation must grapple with the history of politics and philosophy when throwing around ideas like natural law, natural rights, ancient custom, time immemorial, textual meaning, and the like. Legal imagination as a useful category of historical analysis and as part of a more layered understanding of the history of ideology and intellectual culture will not solve or end debates between history and jurisprudence. But frankly, it just might make them more interesting and more reflective of the depth and breadth of intellectual history in which both historians and lawyers, along with their literary and political theory and philosophy of law friends, have been working.

The Mastery of the Law

What Koskenniemi sets out to do is explain the emergence of a powerful framework that, in coming to differentiate sovereignty and possession, arrived at a foundational assumption that separated public right from private rights. This is a history that gets explored and complicated at great argumentative and historiographical depth by James Q. Whitman in *From Masters of Slaves to Lords of Lands*. For Koskenniemi, part of the point is to explain a move away from models of personal rule organized, for example, around the cult of the emperor in imperial Rome, and toward something more like the late medieval and early modern separation of the king's two bodies into the abstraction of the state's sovereignty and the mortal embodiment of the individual ruler in which sovereignty would temporarily reside.⁸ For Whitman, there is a more fundamental transition, from mastery of other bodies to possession of lands

⁶ *Ibid.*, 1–8.

⁷ See James Boyd White, *The Legal Imagination* (New York: Little, Brown, and Co., 1973).

⁸ See Ernst Kantorowicz, *The King's Two Bodies: A Study in Medieval Political Theology* (Princeton: Princeton University Press, 1957).

as the imagined fundamental aspect of dominion. And, for Whitman, this transition takes place over more than a millennium, between the projection of Roman imperial authority in late antiquity and the Northern victory in the American Civil War. Rightly pointing out that slavery, albeit in multiple forms, persisted as a lucrative political and economic practice throughout the medieval world, making classic arguments about transitions to and out of something called feudalism largely obsolete, Whitman suggests that there was never a point at which the yin and yang of Koskenniemi's account of sovereignty (public) and possession (private) were neatly separable, and indeed, that something of the psychology of mastery and dominion over the bodies of others persists into the projection of sovereignty and executive power to this day. From this perspective, the theater of discretion to which much of political life seems to have descended starts to make a lot more sense as a product of history, deep history, and that in and of itself is no small feat for a work of legal history.

Relying on Koskenniemi as source, model, and foil throughout the book, Whitman's conversation and subtle differences with the earlier work are probably the best routes into his argument and its utility for early Americanists. For one, Whitman too considers his fundamental unit of analysis to be the legal imagination, which he borrows from Koskenniemi explicitly, but Whitman's definition and use of the term are different. For Koskenniemi, legal imagination denotes something of the play of words and concepts in which the humanist jurist works. For Whitman, the term denotes something far less nimble and something more like a psychological structure or process, a "mental picture" that shapes historical experience and self-understanding, more base than superstructure, something much more like an evolutionary trajectory taking place over time and within which small shifts in emphasis and argument are almost ephemeral, more superstructure than base.⁹ At the origins of something like a Western legal imagination lies the master, the holder of dominion, and it is a dominion tied, from its earliest stages, Whitman argues, to the mastery of other living things, human and nonhuman like. This difference between the two scholars matters and is suggestive: Koskenniemi is not just writing about legal humanists. He is one, and he traces shifts in argumentation across texts and the history of reading like a humanist intellectual historian writing about humanist jurists in the early modern world out of which and about which these disciplines grew and concern themselves. Whitman's argument by contrast comes very close to a kind of state of nature and stadial development narrative structure of the kind that replaced Renaissance humanism with Enlightenment conjectural history, and just as it is useful to read Koskenniemi for a window into late medieval and early modern legal and intellectual culture, it might be even more useful for early Americanists to read Whitman, who has adapted something of the philosophical history of the Scottish Enlightenment from the intellectual life of the eighteenth-century British Atlantic world.

⁹ James Q. Whitman, *From Masters of Slaves to Lords of Lands: The Transformation of Ownership in the Western World* (Cambridge: Cambridge University Press, 2025), 6.

Whitman's Enlightenment sensibility is evident in how esthetics shapes the discussion of slavery. He makes frequent reference to a persistently slow and never quite complete progressive narrative of a "modern" and "enlightened" perspective of a "universal morality," which shapes the modern historian's contemplation of slavery, a reality that is nothing short of "appalling" and indeed would strike anyone alive today as "repugnant, disgusting, and barbarous."¹⁰ While historians are urged to be sympathetic toward past societies with different senses of right and wrong, this is almost impossible in the case of slavery because of how "repellent" the idea of its legitimacy is to the modern mind. This discourse of moral sentiment will be familiar to any reader of Adam Smith, and the evocation of it here (one must imagine) is intentional, and it makes the book a provocative intervention not only in legal history but in social theory and academic practice more broadly. For one, it is worth pausing to reflect on the power of esthetics for legal and political judgment and to think carefully and critically about how we react to scenes, images, and accounts of suffering and injustice. Accounts of the origins of abolitionist sentiment could further benefit from that kind of perspective, especially from Whitman's situating of such questions within a much longer and deeper legal history than many of us are accustomed to.

More specifically, Whitman's shift of attention to the long life of Roman law makes at least two other historiographical interventions that historians of the American Revolution will want to think carefully about. For one, against the tendency to see Atlantic African chattel slavery as absolutely distinct from other forms of unfreedom, the implications of Whitman's narrative are that even the slavery of the antebellum United States shares in a history of the power of the law to render life as owned, possessed, and as existing purely at the discretion of a master, a history that has been overcome only very recently and which, like a predator in the primeval forest by Whitman's account, is still lurking in the legal and psychological building blocks of human history. Second, Whitman's narrative should prompt early Americanists to reconsider the historiography of political thought and the long life of Roman ideas about law, virtue, citizenship, and the historicity of republics by centering slavery and servitude as the central and determinant contexts for that legal and intellectual history. Doing so would allow historians to reconsider the specter of the classical polis in the history and historiography of political thought, to be sure, although it bears noting that Rome, Romans, and ideas about them were more complex and interesting than the mental picture provided by Greek philosophical depictions of the ideal city-state allows. As an aside, even if we focus on such mental pictures and not on social reality and experience, as Whitman repeatedly urges, it matters to remember that ancient Romans understood Rome itself less as a *polis* than as something more like a cosmopolis.¹¹ The equivalent of taking the two as interchangeable today would

¹⁰ *Ibid.*, 193, 333.

¹¹ See Catharine Edwards and Greg Woolf, eds., *Rome the Cosmopolis* (Cambridge: Cambridge University Press, 2006); Nicholas Purcell, "The Non-Polis and the Game of Mirrors," *Classical Philology*, 112 (2017): 332–49.

be to find the idyllic and romanticized memory of a colonial New England town meeting a useful framework for thinking about how Los Angeles thinks about itself. You'd be missing something. You'd be missing how the teeming immensity of the ancient Mediterranean, the early modern Atlantic, or the central American and Pacific Rim worlds teaches us that even in the darkest hours, there is something else at work in human and natural history than the master's will to power. There must be. One reads carefully and almost between the lines in Whitman's narrative for any sense that resistance and revolt or even just the idea of it were part of the driving force of historical change or what is taken to be political reality in any given period. Whitman contrasts the brutality of the ancient Mediterranean world and the omnipresent threat of capture and enslavement for most people alive in it with the "tranquil serenity" of white manhood in the antebellum South, but that Jeffersonian projection was just that, a projection, and a desperately and fearfully performed one to boot.¹²

Many early American legal historians might bristle at some of these methodological and historiographical interventions, and still others might wonder about their direct relevance to the field. It would be surprising if many historians, especially those who might have Jefferson's dallying in race and natural history on their minds, follow Whitman into arguments from recent ethological research on tendencies toward domination and predation in animals and early humans as an explanation for slavery, ancient or modern. Fewer still may be fully convinced by the implication of the argument that it was only with the ascendancy of modernity, or capitalism (a concept, like race, that is largely absent from Whitman's narrative), that the brute facts of the state of nature started to take a back seat to the supposedly universal morality of human rights. But I hope early Americanists get over those and some other potential sticking points and take the intellectual ambition and erudition Whitman puts out here as a useful and inspiring provocation to the depths of what we might mean by legal history. The very idea of legal history comes in for some critical revisiting, and that is all for the good. If Whitman is right, the domineering facets of history and of contemporary politics are less some kind of shocking reversal or some foreign intrusion into the proper course of history than evidence of a deep and disturbing persistence of other things in our minds and histories than moral progress and universally agreed-upon protections for equal rights. That historical processes caught between nature and history, progress and regression, and domination and revolt might be described as dialectical and thus more dynamic rather than progressively evolutionary or determinative is something that Whitman's repeatedly stated antipathy to Marxism doesn't let him consider, which is too bad, but it isn't Marx per se that we might have wished to see more of here. It's Freud. Whitman makes only the smallest of gestures to the founder of psychoanalysis, which is quite a choice for one of the truly great scholars of modern German legal and intellectual history alive today, and is more so given the parallels in the assumptions and implications of the respective arguments. Whitman points us to Jefferson's contemplation of the boisterous passions that come with mastery, but one

¹² Whitman, *From Masters of Slaves to Lords of Lands*, 171.

wonders what the history unfolded in the book would look like with the passions and pathologies and not just the logics of domination at the fore.

Race, Power, and Emotion

By Whitman's account, a transition to measuring possession and sovereignty by landed property and not the subjection of other bodies that began in Roman and Byzantine late antiquity was only fully realized with the outcome of the nineteenth-century abolition of slavery. A similar temporal scale shapes the narrative in Dannelle Gutarra Cordero's *She is Weeping: An Intellectual History of Racialized Slavery and Emotions in the Atlantic World*. Cordero builds on at least two long and distinguished bodies of scholarly literature: the intellectual history of race and slavery, and Black studies scholarship on the ontological force of racial difference in the making of the modern world. The first, perhaps associated most directly in the present with the work of historian David Brion Davis, sees African chattel slavery in the early modern Atlantic world and antebellum United States as dependent on Aristotle's idea of natural slavery and his division of observable humanity between those fit for free life in a city and those who are not.¹³ It warrants noting here that by contrast, one of Whitman's more welcome and necessary interventions is to point out that few if any defenses of slavery and conquest in the ancient or early modern world had any clear, sustained connection to readings of Aristotle and that such historical accounts tend to have a major blind spot with regard to the law and jurisprudence, especially the philosophical and political legacy of specifically Roman law and jurisprudence. Still, by Cordero's fresh and provocative uptake of that traditional intellectual history, the philosophical construction of difference is caked into the origins of an at once Mediterranean and Atlantic history. Second, Cordero taps into work like that of the cultural theorist Achille Mbembe, for whom the role of Black Atlantic enslavement is so central to modern history that it remains a persistent, determinant feature of the contemporary scene.¹⁴ Black life remains circumscribed and pathologized; what we often take to be freedom and equality in political life tends to be constructed in contrast to this project of subjection that is both ancient and modern all at once. Again, in contrast to Whitman, the Northern victory in the American Civil War, by Cordero's account, is hardly the momentous fulfillment of a long-awaited moral revolution but rather should be seen as a subtle shift that allowed the ongoing investment in keeping Black life captive to survive the industrial revolution. Finally, Cordero builds on the growing field of the history of emotions, associated with historian Barbara Rosenwein, and in early American studies more specifically with the work of Nicole Eustace and Sarah Knott. In marked similarity to Whitman, whereas the historiographical tendency has been to emphasize contingency and the historicity of emotions,

¹³ Dannelle Gutarra Cordero, *She Is Weeping: An Intellectual History of Racialized Slavery and Emotions in the Atlantic World* (Cambridge: Cambridge University Press, 2022), 6–24.

¹⁴ *Ibid.*, 201.

Cordero sees a long and persistent story of what she calls the emotional economy of a politics built on racial subjugation.

The blending of these historiographical and theoretical strains is what makes Cordero's book such an original achievement. A poetic invocation of the threatened forced separation of a Black family interpolates the text throughout and stands in for the archival silence that greets most scholars' earnest quests to get at more of the receiving end of histories of racialization and enslavement. The continuity Cordero traces is less one of social experience than of rhetoric, as the book races an emotional defense of slavery across the history of European and Atlantic intellectual history. From the earliest stages of that history, the emotional life possible for the enslaved gets configured as at once too much and too little, given over to the unreasoning passions on the one hand, and rendered as emotionally illegible and thereby inexpressive or effectively mute by the dehumanizing projections of enslavement on the other. Thomas Jefferson's switching back and forth between these two in the *Notes on the State of Virginia* is a perfect example of the duality Cordero traces, but the book does not stop here.¹⁵ It is this duality of the philosophical, theological, and scientific identification of race with the projection of a veil separating Black life from the open and transparent exchange of sentiment that purportedly characterizes healthy commercial society that continues to shape the present, Cordero suggests, and it is impossible to understand the racial logics of the modern criminal justice and carceral systems without seeing that duality still at work in the world. Even in moments of fleeting abolition, like Lord Mansfield's decision in the Somerset case of 1772, the condition of slavery is found to be foreign to the laws of England on account of how "odious" it is to the spirit of a free constitution.¹⁶ Legal historians of the late eighteenth-century British Atlantic world should take Cordero up on the challenge of spending more time with what kind of work that kind of discourse is doing in the Age of Revolutions.

Like Koskenniemi and Whitman, Cordero sees Christian theology as playing an important role in the development of slavery and the intellectual history of discussing it. However, whereas Koskenniemi is concerned with medieval theology and the philosophical and political ramifications of the Protestant Reformation for European states, Whitman and Cordero see the critical period for theology's role much earlier, in the rise of Christianity itself. The argument here is as bold and provocative as Whitman's is about legal history, and Cordero suggests that Christianity's attention to the inherent and equal worth of every human being does not so much pave the way for abolition or emancipation but rather banalizes slavery, making it an allegory of the human condition as such, even an ideal of faith. Indeed, all three of the major monotheistic religions come to conceive of God as in some sense a master and his people in some sense as God's servants or even slaves. A twofold process follows in Cordero's account, both steps of which follow from the need to rethink justifications for slavery: first, the passions to which all human beings are subject get reframed as emotions in the late medieval and early Renaissance world, as contextual and so

¹⁵ *Ibid.*, 113–4.

¹⁶ *Ibid.*, 118.

observably variable and reflective of solid distinctions between different societies. Second, scientific racism emerges as a kind of intellectual codification of these differences in the face of the need for new justifications for slavery. Theories of natural slavery are recovered in the early modern Atlantic world and get tied to the epistemological certainties of eighteenth- and nineteenth-century thought. The result is an emotional economy of enslavement that shapes the conditions of possibility for thinking and talking about race and slavery at all, not unlike the mental picture of law and slavery that Whitman traces.¹⁷ Even Olaudah Equiano and the leaders of the Haitian Revolution must negotiate and are limited by British and French discursive structures where tender feelings and gendered sentiments are the available means of talking law, politics, history, and identity. It is one of the more provocative and unsettling implications of Cordero's argument that critical theorizing about race continues to have to wrestle with the constraints of this perduring aspect of an intellectual history in which we are all in some sense living, thinking, and feeling.

Even more than Whitman, then, Cordero seems largely unimpressed by what many others have taken to be momentous shifts in the history of law and politics. Like Koskenniemi's, Cordero's narrative traces a persistent retrenchment of the legal and political imagination over the course of modern history, but unlike Koskenniemi and more like Whitman, Cordero tends to see this as part of a much longer and more durable reality. For Cordero, even abolition is not a fundamental break in this history. Reflections on the Black Atlantic that find more contingency in this history, such as that of Paul Gilroy, Sylvia Wynter, or more recently, Christina Sharpe and Tiffany Lethabo King, don't make the bibliography (or the footnotes so far as I could tell), and that seems like a missed opportunity, even if only to start some arguments or find broader lines of agreement across boundaries of intellectual orientation. Perhaps obviously, Cordero makes race and racial ideology a much more central feature of her narrative than the other two authors presented here. One notable consequence of that is that the law takes a back seat as a shaping force of the narrative. Law becomes relevant, for Cordero, in the early modern Atlantic world and reaches its peak relevance perhaps in the age of the French and Haitian Revolutions, when the hegemony of ideas about the rule of law and rights of man works to constrain political possibility within the emotional economy of white supremacy. The law, in this telling, takes the place of God as the master to which we are all subject, albeit in radically different ways, and even then, the law in Cordero's treatment of it is an instrument of emotional economy and not the shaping force of social reality that it is, in different ways, for Koskenniemi and Whitman.¹⁸

In the final analysis, each of these three authors offers distinctive pathways of inquiry, all three of which could be powerfully suggestive for the work of rethinking the legal history of the American Revolution. The history of international law and political thought, the long legal history of distinctive but

¹⁷ *Ibid.*, 171.

¹⁸ *Ibid.*, 148, 171–3.

continuously related forms of subjugation, and the racial government and circumscriptions of identity and emotions: each of these strands can and should be of further interest to early Americanists. What stands out the most from the three books, taken together, is their suggestion that writing the history of the Atlantic world is a part of the ongoing intellectual history of thinking about that world, which is also to suggest that we are implicated in the history we purport to narrate and indeed are part of it. The present is implicated in the past, and vice versa. David Waldstreicher has likened the task of early American historiography to a jazz band, an ongoing performance of the tension between tradition and innovation.¹⁹ That always makes me think of my own favorite jazz album, and I'll take the liberty of invoking it here. If you have begun to suspect that the familiar spats between historians and originalists about who is more professionally qualified to interpret US constitutional text are insufficient for grasping the depth of history on the table and the stakes of thinking about that history in the present, then you may also find that what these three books offer is *Somethin' Else*.

¹⁹ David Waldstreicher, "The Revolutions of Revolution Historiography: Cold War Contradance, Neo-Imperial Walz, or Jazz Standard?," *Reviews in American History*, 42 (2014): 23–35.

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