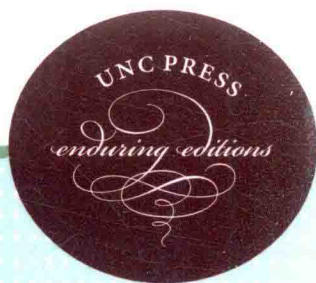


THE UNION AS IT IS

CONSTITUTIONAL UNIONISM AND

SECTIONAL COMPROMISE, 1787-1861

PETER B. KNUPFER



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AND SECTIONAL COMPROMISE,

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The Union As It Is

The Middle Course

I gave the people as much privilege as they have a right to:

I neither degrade them from rank nor give them free hand;

and for those who already held the power and were envied for money,

I worked it out that they also should have no cause for complaint.

I stood there holding my sturdy shield over both the parties;

I would not let either side win a victory that was wrong.

— SOLON

Preface

Madisonian principles mean . . . peace, harmony, union, amiableness, justice, and conciliation and the *conservative* principle; it means dignity, honor, order—it means the Constitution.

—*Daily Madisonian*, January 11, 1838

Predictably, the bicentennial of the Constitution and the Bill of Rights has produced a flood of new works about the origins and development of American constitutionalism. Perhaps the most innovative and penetrating work has been directed toward uncovering and analyzing the connection between political culture and the Constitution. Michael Kammen's path-breaking book, *A Machine That Would Go of Itself* (Knopf, 1986), comes immediately to mind as representative of this genre, for it makes an ambitious attempt to escape the traditional legalistic and juridical method of understanding the Constitution in order to discern how the Constitution was taught to and interpreted by the common citizen. Kammen's conclusions are pretty depressing. For in the end, the Constitution's chaotic career, troubled by civil war, intellectual ferment, staid conservatism, and general public indifference, leaves Kammen lamenting the low civic IQ of both ordinary citizens and national leaders.¹

Of course, complaints about the poverty of constitutional education in the United States have been a staple of public discourse since the instrument was framed in 1787. Yet if Kammen's conclusion is valid, then the Republic long ago should have collapsed from a terminal case of civic ignorance. I began this book with this apparent contradiction in mind, hoping at once to answer Merle Curti's call back in 1963 for a study of the role played by moderates in ideological conflicts and also to find any connection between civic attitudes and constitutional development.²

I cannot say that I have entirely succeeded, but what I have found does offer some interesting avenues for further research. I chose to examine the changing meanings of compromise in American constitutionalism, mainly

by using the gathering sectional quarrel as my subtext and the essential themes of “constitutional unionism” as my yardstick. I think that ordinary citizens—certainly those citizens with more than a casual interest in their political future—did have a stronger grasp of the Constitution’s meaning, significance, and content than Kammen allows. The instrument permeated public discourse; its very language—legalistic, sterile, dry—came alive in the vigorous, chaotic debates over the nature of the Union, over taxation and the distribution of public resources, and of course over slavery’s moral and political status in a republic. Textbooks reprinted the Constitution, editors quoted it endlessly, bleary-eyed pupils practiced their handwriting with it. And any confrontation with the Constitution automatically confronted Americans with its compromises.

Political moderates played a vital role in these controversies, but remarkably they have not as a group received the attention that reformers, reactionaries, ideologues, and idealists have received. One reason is that it’s too hard to categorize and classify them—one might argue that the very definition of a moderate implies a defiance of rigid categories. But I have attempted to make the definition by placing moderates within a unique constitutional unionist tradition that rested on basic, if superficial, tenets of the Madisonian constitutional heritage. Moderates generally acted on a set of assumptions about the nature of civic life; they believed that there must be limits to political controversy and that civility, rational discourse, and attachment to procedure were among the most important determinants of those limits. Readers will detect here vestiges of classical political ideas going back to Aristotle.

Of course compromise, especially the sectional variety, was very important to political moderates. They operated within a compromise tradition that contained special ethical and historical meanings for the three generations living in the period between the Constitutional Convention and the Civil War. To them, compromise was not a doctrine, a philosophy, or even a first principle in republican politics. Properly conceived and honorably executed, compromise was the expected outcome of republican political action: the reconciliation of principles and interests.

As a part of the language of public discourse and of the “popular constitutionalism” of the early Republic, compromise reflected the belief that the Constitution was a compact that imposed mutual sacrifices on the

parties to it. This conception of the relationship between compromise and the Constitution was especially clear during the dangerous sectional conflicts that punctuated the young nation's early political history. Within this context, it was apparent that the concept of compromise rested on a cluster of assumptions, rather than formal theories, about the duties of citizens and the process of governing. Apparently, the Constitution could be viewed not only as a legal framework but also as a symbol of political moderation. Compromise could reconcile Americans to this imperfect Constitution and shield the constitutional union from rupture.

Two other purposes lie behind this book. Currently there is no study of the intellectual or cultural continuities in the rhetoric of sectional compromise, despite the prominence of important antebellum compromises and of the critical political and constitutional issues they raised. The advocates of sectional compromise, like the sectional militants they faced, offered a battery of distinctive historical, ethical, and practical arguments for finding a middle way through divisive confrontations. I have tried to resurrect and dissect those arguments and the conservative constitutionalism they expressed.

It should be clear from the start, then, that what follows is not an examination of the opposition to compromise or of the antislavery or proslavery ideologies that challenged the compromise tradition. Certainly it is arguable that the views of anticompromisers must be addressed in a work about popular perceptions of compromise. Although I give these positions some treatment, I think they have been thoroughly examined in a number of excellent works. The underpinnings of the compromise argument have also been studied, but not with the objective of connecting constitutional political culture to the idea of compromise. Nor is this study designed to turn compromise into an explanatory principle of political action: to argue that the existence of a distinctive meaning for compromise somehow required all who discussed its assumptions about politics to compromise in any and all conflicts would do violence to the record and deny that moderates could choose among alternative methods of resolving conflict.

Although historians have fully examined the contract theory and classical republican thought that undergird the Constitution, only recently have they begun to map the Constitution's place in the civic culture of the past.

In particular, historians of political thought and political scientists in search of their own historical roots have been treating the informal political commentary of stump speeches, editorial opinion, and private correspondence as texts that reveal the contours of popular political ideas. And others are noting the importance of simple as well as complex political customs and rituals, embedded in the civic culture and eventually challenged by the economic and social changes that swept the early Republic before the Civil War.

Historical discussions of compromise tell us much about contemporary political "science"—especially about what Americans expected would be the course and consequences of certain special categories of political conflict. We can learn much about conventional attitudes toward important institutions designed to mediate conflict, especially political parties and deliberative assemblies. My examination of the constitutional lineage of compromise has uncovered conceptions—about majority rule, the strengths and limitations of party action, statesmanship, and the evolution of constitutional customs—that hint at a variant of common constitutional thought somewhat different from the now dominant modes of analyzing political ideology in the early Republic.

In particular, constitutionalism can be seen as a more specific, operative form of republicanism, a form more readily comprehensible to the public and to historians of political ideas. It gave real shape to the diffuse, ambiguous assumptions that have come to make up the modern conception of republicanism. I hope this study will reinforce our growing interest in constitutionalism as a way of life. And I hope that it will in some ways be a brief respite from the rarefied abstractions of "republicanism" and "liberalism" that historians are fond of applying to antebellum political discourse. Useful as these categories may be, nonetheless I think that most statesmen (and especially those advocating sectional compromise) would be reticent to use them in the ideological mode so fashionable among modern historians.

My second purpose has been to place the idea of compromise within the post-1815 debate over the nature of the Union. The postwar generation, having secured the Republic against foreign dangers to the republican system, engaged in a rich and fascinating debate about the distinctive union created in this Republic. It is easy to deprecate the narrow legalism

of this important public conversation about the Union and to ignore its relevance to the second generation of statesmen who were genuinely concerned about the nation's survival. Compromise was essential to the maintenance of the "Union as it is" and was a useful and critical component of the Madisonian constitutionalism on which advocates of sectional compromise often relied.

IN THE LONG PROCESS of research and writing, I incurred many debts that I am very happy to acknowledge. This book began as a dissertation at the University of Wisconsin-Madison; the Departments of History and Political Science provided a stimulating and productive atmosphere in which to work on it. Dr. John P. Kaminski of the Center for the Study of the Constitution carefully critiqued the first chapter and saved me from several fatal errors; he has been a strong friend and amiable critic. Professor Robert Booth Fowler presided over the germ of this study, a paper on compromise, which he urged me to expand. Harold T. Mahan, currently at work on a biography of the popular historian Benson J. Lossing, generously shared his extensive bibliography of nineteenth-century civics and history books.

Professor John Milton Cooper, Jr., enriched every stage of this project with his cheerful advice, steady friendship, and willingness to share his observations about the nature of American statesmanship. Professor Allan G. Bogue spared time from a crowded schedule to give the manuscript a thorough reading; I have greatly profited from his wisdom and support. Professor Richard H. Sewell guided my work with a patient, firm hand. His unrelenting criticism refused to let a single foolish thought escape unnoticed. Any surviving mistakes are mine, not his.

Robert Seager II, the former editor of *The Papers of Henry Clay*, and his assistants Anna Perry and Mackelene Smith kindly opened their offices and files to me during my visit to the Clay project at the University of Kentucky in 1985. Professor Seager was particularly helpful and generous with his time. His many comments and criticisms forced me to clarify my ideas and hone my intuitions about Clay and compromise.

At Arizona State University, Professor Philip R. Vandermeer gave me much support, criticism, and friendly counsel, for which I am very grateful. Professors Robert Trennert, Peter Iverson, and Paul Hubbard and the

ASU History Department provided comfortable working space and a friendly, encouraging atmosphere in which to complete the first draft of this book while I was juggling a heavy teaching load.

Portions of this book have been presented or published elsewhere. Parts of chapters 4, 5, and 6 were discussed in "Henry Clay's Constitutional Unionism," *Register of the Kentucky Historical Society* 89 (Winter 1990-91). Parts of chapter 1 were discussed in "The Rhetoric of Conciliation: American Civic Culture and the Federalist Defense of Compromise," *Journal of the Early Republic* 11, no. 3 (Fall 1991). I am grateful for the permission to reprint what I wrote in these articles. Some of the ideas in chapters 2 and 4 were presented in "Clay and the Constitution in 1850: The Compromise Ethic at Work," a paper given at the 81st Annual Meeting of the Organization of American Historians in Reno, Nevada, March 25, 1988. I thank Jean H. Baker and Daniel W. Howe for their perceptive and incisive comments on that paper. Professor Howe in particular has been a source of inspiration and support. I also expanded on the materials and ideas in chapter 2 for "Civic Education and the Problem of Parties, 1820-1860," a paper I presented at the annual meeting of the Society of Historians of the Early American Republic in Toronto, August 3, 1990. I am grateful to Professor Bernard Friedman for his helpful criticisms.

Several very special people deserve mention too. Peter J. Lysy has guided me in countless ways, especially by sharing his contagious thrill in the hunt for clues through darkened stacks and dusty tomes. Hans Van Dyk read and criticized two chapters and would not permit a lunch to end without words of encouragement and enlightenment. My wife, Nancy, has made compromises too numerous to mention. I look forward to making good on my debt to her. Rebecca Lee Knupfer and Kelly Marie Knupfer arrived in this world mercifully late enough to be spared the agony of living with a harried graduate student. Their joyful indifference to my work has refreshed me through the struggle with revisions. Sis and Paul Knupfer raised me to respect the past; both were delighted when I launched my own voyage of discovery into history. Paul did not live to see his son make this first of many landfalls along the way, but his spirit guided the journey and with knowing, silent smiles has shared my delight at the treasures I have found.

The Union As It Is

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Introduction

A compromise is not a question of law or abstract justice, but something adapted to the prejudices and feelings of men.

—"X," *Baltimore Sun*, May 21, 1850

"I call the work of compromise emphatically American," James Shields declared to the United States Senate in April 1850, for unlike people in other countries that settle conflicts by force, "the people of this country are trained and educated to settle all their difficulties, public and private, by just and honorable compromise." The intensity of sectional conflict by 1850 invited many doubts about the thoroughness of that training and education in the "great Republican and American work of compromise," but apparently Shields saw no difficulty in tying compromise to the special history and character of the American people, a connection that his audience well understood.¹

Surely Senator Shields's comment suggests that the term *compromise* engaged his intellect on a number of levels, evoking deeper intuitions about the rhythms of American political life. For him, compromise had an American and republican context that shaped its contemporary meaning, if not its abstract definition. And it is important to uncover this connection between compromise and political culture—to determine how Americans used compromise to construe experience, especially political experience—because compromise is at the heart of the American polity.²

Whether one defines that polity as an aggregate of conflicting socioeconomic interests that the varying majorities and minorities recombine into a common interest or as a political order seeking to cultivate individual self-restraint and consensus on behalf of a disembodied common good above the polity, compromise is vital to its survival. Both definitions of the polity assume human fallibility and government by consent, the essential prerequisites of conflict and political compromise. And because compromise is not only a dynamic process of mutual concession but also a form of

association that stamps its outcome with distinctive qualities, historical formulations of its use, abuse, and context can tell us something about how Americans analyzed and understood the sources of conflict within the polity and how they went about sifting alternatives when facing a major crisis.

The long, deep, and ultimately violent controversy about Americanism and republicanism in the period between the Constitutional Convention and the Civil War offers plenty of evidence with which to explore contemporary meanings of the relationship between compromise and political culture. During this time, the nation's "public moralists"—its statesmen, editors, politicians, ministers, educators, literati, and other shapers and philosophers of national civic attitudes—earnestly discussed the most basic assumptions of politics and culture in a search for what they called the "American character."³

The period's explosive economic growth and extreme social dislocations fostered intense apprehensions about the future of the new experiment in liberty and about how to preserve republican institutions and to reconcile the tensions between minority rights and majority rule. As this dialogue about Americanism and republicanism raised the ageless tension between continuity and change, it revealed that compromise had indeed become one of what John Stuart Mill called "the obvious and universal facts which every one sees and no one is astonished at, [and which] it seldom occurs to any one to place upon record."⁴

The search for an American character capable of encompassing the nation's cultural and social extremes also revealed how cultural and institutional circumstances influenced the contemporary meaning of compromise. Political systems that combine a basic consensus on what values are closed to compromise with established structures for mediating conflict will not only encourage the practice of compromise but also make the justification of such political activity both a personal and a political imperative. These conditions can elevate compromise above its function as a strategy to a higher plane of abstraction, where it becomes a symbol of political legitimacy endowed with an emotional and intellectual significance, a symbol whose meaning vibrates with the changing tenor of political life.

The United States between 1787 and 1860 fit these conditions. The

novelty of its political system, the structure of its constitutional order, and the tensions generated by the development of new political styles, institutions, and issues naturally magnified the importance of compromise's peculiar emphasis on reconciling extremes. When political compromisers had to justify their actions, they articulated its republican and American qualities by binding the abstract ethical and procedural features of compromise in general to popular perceptions of American political ethics that still glowed from the heat of constitutional arguments raging since 1787.⁵

By trying to explain important compromises, public moralists frequently ended up trying to explain America. This study, then, focuses less on how Americans made major compromises—especially of the sectional variety—and more on how they justified and explained their compromises. Specifically, it traces the relationship between the concept of compromise—as a strategy and as a symbol—and what may be termed *constitutional unionism*: a belief system encompassing the theory, ethics, operation, and structure of a constitutional system as it was perceived by those who framed and implemented it. Constitutional unionism assumed that the Union was neither automatically self-perpetuating nor completely supreme over the states. The Union was limited by the Constitution; its legitimacy and therefore its perpetuity rested on consensus—the “mutual affections” of its citizens who, short of outright revolution, could gather constitutional majorities (presumably a number equivalent to three-fourths of the states) to end the Union at any time. Therefore, constitutional unionists did not accept the legitimacy of secession or nullification; they could accept the idea of federal supremacy within the sphere marked out by the Constitution and established by congressional, administrative, and judicial precedent over long stretches of time. The ambivalent and apparently contradictory character of constitutional unionist thought was an understandable outgrowth of the pragmatic outlook common to denizens of the political center. And it could have predictable consequences, for when faced with sectional crises that exposed the inherent conflicts between states and nation, freeman and slaveholder—conflicts that were incorporated into the compromises of the Constitution—constitutional unionists preferred old formulas to new institutions or ideas for advising a troubled country.

But neither were constitutional unionists entirely paralyzed or static in

their understanding of the operative side of American politics. Their assumptions were dynamic—that the Union at some future date would surely become self-perpetuating and therefore capable of managing severe sectional and ideological crises. This was not mere wishful thinking; it rested on simple propositions about how constitutionalism and pluralism slowly strengthen the process of resolving conflict and thereby enhance the legitimacy of the regime.

It should be clear that constitutional unionists did not compose a single party (until, significantly, the old Madisonians adopted the label in the presidential election of 1860). They could be active partisans, strongly antiparty, or a bit of both. As moderates along the political spectrum, they believed that America's unique circumstances had shaped a special kind of republic, unlike any other. In sum, constitutional unionism was the heir of James Madison's conception of the Constitution as partly federal, partly national. It marked the center of American politics through the 1850s.

What, then, was "republican" and "American" about compromise, and how could Americans be trained and educated in it? How did Americans fit compromise into the context of their constitutional order? And did the term *compromise* help them to explain how that system worked and the extent to which it fulfilled its purposes? Did compromise's particular combination of mutuality and concessions signify more than the everyday settlement of conflicts? Did Americans link grand political compromise to prevailing notions of American uniqueness? Addressing these questions naturally requires a foray into the civic culture, because in antebellum America that was where Americanism and republicanism converged.

Before we can tackle these issues, we must define the concept of compromise. The moral ambiguities of any historic compromise too often tempt the historian to issue weighty judgments about its "genuineness" without exploring the contemporary understanding of the concept, the modern prejudices about compromise's moral dilemmas, or the simple generic definition of the term itself.

COMPROMISE HAS A LONG PEDIGREE marked by its own occasional and significant concessions to human fallibility. Moralists have debated its virtues, historians have contemplated its role in the rise or fall of civilizations, and politicians have praised its blessings and damned its