If rugged independence, bordering on iconoclasm, is the hallmark of scholarship at the University of Chicago Law School, then William Winslow Crosskey fits the mold. It is hard to imagine any other way in which Professor Crosskey might be thought typical.

Unfortunately, Crosskey's star is brightest for those who were his students at the Law School in the forties and fifties. In recent years his name has been most closely associated with the Crosskey Lectures rather than with his personal scholarship. Those outlanders, even scholars, who remember Politics and the Constitution tend to think of that great work as having been demolished by its critics. Few books, after all, have been attacked at such length and with such


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unanimity and passion. The sad truth is that Crosskey has been honored mainly by neglect; that is likely to change with the recent publication of the third volume of his masterwork. Crosskey left behind, at the time of his death in 1968, a substantially complete draft of what is, chronologically, the first volume of the series. The new volume, volume 3, The Political Background of the Federal Convention, covers the political history of the 1780s prior to the Constitutional Convention of 1787. An as yet unpublished volume will cover the proceedings of the Convention itself. Both posthumous volumes are therefore essential fragments of the historical argument for the Crosskey thesis that the Framers of the Constitution intended to create a unitary national government dominated by the legislative branch. Although the argument cannot be evaluated fully until Crosskey's analysis of the Convention is set before us, the structure of the supporting evidence is considerably clarified by the bold contours of the newly published volume.

Volume 3 has been completed and prepared for publication by Crosskey's former student William Jeffrey, Jr., a professor (and formerly librarian) at the University of Cincinnati Law School. Since the manuscript for the volume was left in near-final form, Jeffrey has only added an introductory chapter, summing up the argument of the first two volumes, and completed the first narrative chapter, building on fragments left by Crosskey. The rest of the manuscript has been edited so skillfully that it is doubtful that readers will notice the intervention of an editorial hand. However, while Jeffrey has restrained himself admirably in the text, he has done so unwisely in the footnotes. The annotation has been left as Crosskey would have left it in 1953, thus entirely ignoring the rich scholarship on the history of the constitution that has appeared in the past 25 years. I suppose there may be an archaeological justification for such abstinence, but it seems a disservice to readers. And, speaking of disservices, the University of Chicago Press was certainly ill advised when, in reissuing the complete three-volume set, it permitted the binder to list "Crosskey and Jeffrey" as its authors.

The argument of volume 3 is straightforward and easy to follow. Crosskey contends that the 1787 Constitution was the product of a nationalistic movement that arose out of a reaction to the insufficiency of state and confederate government during the era of the Articles of Confederation. "Reaction," however, is probably the wrong term, for Crosskey understands the proponents of the Constitution to be men who had a positive and purposive program, rather than one that simply attempted to ameliorate the economic and political chaos of the Confederacy. Crosskey spends the better part of a chapter debunking the notion that Shays' Rebellion (1786) in Massachusetts frightened Washington and other nationalists into supporting the movement for a constitutional convention. He laments the "failure to understand how strong and general the nationalist sentiment was among all the New England states in 1785; and how strong, in deed, such sentiment had been among those states (with occasional temporary vagaries on the part of particular states), from the very formation of the continental union in 1774" (p. 334). The constitutional movement was strong, consistent, and continuous in the 1780s.

His account, here as elsewhere in Politics and the Constitution, is based upon an exhaustive examination of contemporary correspondence, pamphlets, and newspapers. It is also, characteristically, based upon one "secondary" work, Minot's History of the Insurrections in Massachusetts, originally published in 1788. Minot is the classic contemporary account, but current scholars have added immeasurably to our knowledge of Shays' Rebellion, the politics of late-eighteenth-century western New England, and the political economy of the Confederacy. Crosskey's rugged independence and commitment to the sources is admirable, but this passionate ignorance of relevant scholarship tends to iconoclasm.

The brunt of Crosskey's argument is that the movement for a constitutional convention was led by a "handful of men" in the Northern states: Rufus King, Nathan Dane, Henry Knox, John Jay, Alexander Hamilton, and a few others (p. 355). This group had a clear and carefully worked out plan to create a national government endowed with power to regulate the commercial life of the nation. The corollary to this argument is that the notion of the Virginian James Madison as the "Father of the Constitution" is at best a canard and at worst a falsehood deliberately created by Madison himself. Madison is the antithesis of Crosskey's masterpiece.

Crosskey is convinced that the Continental Congress was committed to a "firm national government" (p. 387) as early as February 21, 1787. The reason why historians have been misled into believing otherwise (that Congress preferred "a federal government") is that they have taken at face value Madison's memorandum of the proceedings in Congress of February 21, which gives the impression that the nationalist resolution introduced by New York on that date was unexpected and that its support was "entirely casual and hap‐ hazard" (p. 390). In fact, Crosskey contends, this document, like
Madison’s notes on the Constitutional Convention, was a creation of Madison’s late years, after all other participants in the constitutional process had died and when, therefore, no one could challenge the Madisonian account. Madison’s object was twofold. First, although he was really a nationalist only during the period 1786-91, he wanted to appear consistently nationalist as a historical figure. Second, Madison wanted to fuzz the historical evidence for the nationalist intention of the Framers in order to ease the way for Southern sectionalism after 1820.

In suggesting this as the purpose for which his notes were finally prepared, we do not mean to imply that, in the alterations he made, Madison actually attempted to establish a seeming historicity for the Southern theories of the Constitution as the intended meaning of the document. Such an attempt would have involved entirely too great risks, and Madison did not take them. He sought, instead, merely to confuse and obscure his record of what had gone on; to write, once more, an industriously uninformative document; and whilst sowing here and there suggestions of the Southern views, to make it seem as though the intended nationalist meaning of the Constitution was never so much as thought of, even in the “secret clavel” that produced it. [P. 409]

Crosskey points out that Patrick Henry refused to join the Virginia delegation because he suspected Madison’s motives, and thus the epigraph for volume 3: “I smell a Rat.” So much for James Madison and Anti-Federalism.

I believe that most historians will reject the new Crosskey attack on Madison, just as they rejected the original assaults. The entire matter might have been clarified, however, had Professor Jeffrey taken the trouble to discuss the discoveries of Dr. James H. Hutson of the Library of Congress with respect to the extent of Madison’s rewriting: Robert Yates’s Notes on the Constitutional Convention of 1787: Citizen Genet’s Edition, 35 Q. J. Lib. Cong. 173-82. Unfortunately, the vigor of the insinuations against Madison draws the reader’s attention away from the very considerable evidence Crosskey has amassed for the strength of nationalist intentions among the Northern Federalists. The same might be said for Crosskey’s anti-Southern bias, which obscures the extent of Southern Federalism, not all of which can be attributed to Southern reaction to the Jay-Gardoqui Treaty, as Crosskey would have it.

Crosskey unfortunately attempts to characterize opposition to the Convention and the Constitution as trivial, localized, and self-interested. “Apart from a small, but eventually vociferous, group of petty-minded local politicians, who were impressed only by the fact that they stood to lose in a personal way by the adoption of a national system, there was no real opposition to a generally empowered national government when the Constitution was drawn” (p. 431). This ignores a great deal of evidence for widespread fears of loss of local independence and apprehensions of the potential for tyrannical central government—both of which are convincingly depicted in the magnificent seven-volume edition of The Complete Anti-Federalist, edited by the late Herbert Storing of the University of Chicago’s political science department, and simultaneously issued by the University of Chicago Press. Even during Crosskey’s lifetime, the point had been made forcibly by University of Wisconsin historian Merrill Jensen, in his Articles of Confederation (1940) and The New Nation (1950).

For me, the truly original argument of volume 3, and one well in advance of scholarship when it was written, is Crosskey’s contention that “the slavery issue, with the fears growing out of it, was all-important in the North as well as the South. Without it, and without the consequent fears of the large Northern states, the demands of the minor states would undoubtedly have been brushed aside, if indeed, in the absence of the slavery issue, they would not have been anticipated, and rendered unnecessary, by a complete consolidation” (p. 431). Because of the delay in publication of volume 3, it has fallen to a recent graduate of the Law School, Staughton Lynd, to establish the historical credibility of the significance of the slavery issue to the critical constitutional compromises: Class Conflict, Slavery and the United States Constitution (1967).

The essence of the controversy in 1787 was the debate over “how the national government which all thoughtful men desired, could be set up safely; how it could be set up so as to make it strong and vigorous, and yet, at the same time, assure that men in all parts of the nation would feel that their interests were secure” (p. 431). Most historians will disagree with Crosskey’s excessive nationalism, and most of the Commerce Clause cases that provoked him have long since ceased to excite lawyers, but his bold argument for the historic centrality of American nationalism could not be more pertinent. Politics and the Constitution is, in fact, the most devastating historical response to President Reagan’s inaugural contention that the states are superior to the nation. The irony may well be that Crosskey’s fame will be secured by his posthumous participation in a debate he could not have anticipated.

Volume 3 is an important buttress to Crosskey’s edifice. Politics and the Constitution remains a monument to Crosskey’s industry, obtuseness, originality, brilliance, and idiosyncrasy. The work deserves to be known and used more in the future than it has been in the past, and it serves to remind us of the continuing leadership of the University of Chicago Law School in the field of legal history.