

The Jacksonian Conservatism
of Rufus P. Ranney

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Introduction

WHEN RUFUS P. RANNEY turned old enough to vote, Andrew Jackson, the scourge of corporations, occupied the White House, while Jackson's nemesis, the old Federalist John Marshall, presided over the United States Supreme Court. Ranney extolled Jackson as the greatest man of his time; as a good Jacksonian, Ranney sought to keep business corporations under legislative and judicial control. Today Ranney lies buried in the same cemetery as his former client, the oil tycoon John D. Rockefeller. His statue flanks the north entrance of the Cuyahoga County Courthouse in Cleveland; on the other side of the doorway sits a bronze John Marshall. For as long as he remained active in public life, Ranney adhered to the Jacksonian creed of his youth. That he became Rockefeller's favorite lawyer and Marshall's perpetual companion tells us something about both the nature of both Jacksonian Democracy and the evolution of nineteenth-century American conservatism.

After Ranney died in 1891, a distinguished Cleveland attorney remembered him as "a great advocate, a great lawyer, a great judge and a great man." Ranney had been an important figure in Ohio since 1850. A three-time Democratic candidate for Congress in the 1840s, he came to statewide prominence as an outspoken delegate to Ohio's midcentury constitutional

convention and then as a judge of the state supreme court. He was the Democratic candidate for governor on the eve of the Civil War, engaging in a series of debates with Republican William Dennison that captivated audiences across the Buckeye State. During the war Ranney stirred up controversy among otherwise like-minded Democrats by recruiting troops for the Union cause. After the war he chaired state Democratic conventions, represented his state party at national conventions, and presided over the Democratic counterpart to the reformist Liberal Republican movement. Ranney also became one of Ohio's leading corporate attorneys, representing Standard Oil and possibly creating the first industrial trust. He was a founder of the Ohio State Bar Association and the Case School of Applied Science, serving as first president of the former and first board chairman of the latter. When Ranney died eulogists ranked him "with the great American lawyers and jurists." Historian James Ford Rhodes called Ranney "a profound jurist" whose decisions on state constitutional law, "for sound doctrine, clearness of thought and expression, are probably not surpassed in the court records of any State."¹

The importance of nineteenth-century state judges in the development of American common and constitutional law is undeniable; the dearth of biographies of such significant figures might therefore be justification enough for a book on Ranney.² But Ranney has the additional merit, from a historian's perspective, of having been a Jacksonian Democrat. Scholars have published works on Roger B. Taney and other Jacksonians who served on the United States Supreme Court before the Civil War; but the Court's jurisdiction, limited to federal issues and such diversity cases as happened to come the Court's way, restricted the scope of the justices' jurisprudence. Antebellum state judges, who plowed a much bigger field, remain a rarely studied breed. It is especially hard to think of full-length works on state judges who were Democrats in the Age of Jackson, even when that age is extended into the 1850s. Ranney's participation in the Ohio constitutional convention of 1850–51, where Democrats and Whigs fought over fundamental ideological issues, together with his immediately subsequent service on the Ohio Supreme Court, offer an opportunity to examine constitutional and common law as developed by a Democratic state judge at the end of the Jacksonian era.

Ranney's jurisprudence can be best understood within the context of Jacksonian Democracy. Historians disagree over the nature of that political phenomenon. One scholar, taking note of interpretations based on class

conflict, nostalgia for Jeffersonian republicanism, ethnicity and religion, and so on, concludes that “it is futile to apply such phrases as ‘*the* age of Jackson,’ ‘*the* Jacksonian persuasion,’ or ‘*the* concept of Jacksonian democracy.’” Another student of Jacksonian politics points out that Democrats occupied a spectrum “which encompassed a wide range of social thought and theory ranging from the anti-capitalist protest of the radicals to the entrepreneurial commercialism of the conservatives.” Still, it is fair to say that the chief components of Jacksonian Democracy, whatever the reasons for their being, were majority rule by the “producing classes” of independent farmers and artisans; opposition to “associated wealth,” especially in the form of banking corporations with special privileges; equal rights, at least for white men; states’ rights; limited government; popular participation in government; and territorial expansion for the benefit of native-born and immigrant whites.³

“[T]he first principle of our system,” proclaimed Andrew Jackson, is “that the majority is to govern.” The will of the majority became the guiding principle of the Democratic Party. The great party organizer, Jackson’s vice president and close political ally Martin Van Buren, believed that the party’s purpose was to make “every aspect of government . . . directly responsible to the majority will of the people.” A Democratic newspaper declared itself “ready to be advised and instructed by the party—the people themselves—we will always *obey the voice of the majority*.” “The democratic theory,” intoned the *New York Evening Post*, “is that the people’s voice is the supreme law.”⁴

Majority rule had a concomitant: political equality. By definition, a majority could not be a wealthy, privileged elite. Some historians reject the term “Jacksonian Democracy” because Jacksonian equality did not extend to women, blacks, and Indians. Furthermore, even “white male democracy”—that is, universal white male suffrage—came about naturally and largely before Jackson took office.⁵ But Jackson went beyond suffrage to insist that being of the lower classes did not preclude one from holding public office—“no one man has any more intrinsic right to official station than another,” he avowed—or deprive one of the right to the equal solicitude of government. As military governor of Florida in 1821, Jackson declared that “just laws can make no distinction of privilege between the rich and the poor. . . . In general, the great can protect themselves, but the poor and humble require the arm and shield of the law.” As president he announced that “the humble members of society, the farmers, mechanics, and laborers,” had the same rights under the law as the rich and powerful.

Moreover, Jackson had “great confidence in the virtue of a great majority of the people” and believed that they could be trusted to do the right thing. According to Robert V. Remini, this political and social egalitarianism—the obligation of government to treat all classes the same and to protect the weak from abuse by the rich and powerful—was “the fundamental doctrine of Jacksonian Democracy.”⁶

Jacksonians linked equality to limited government. With political power too apt to be abused for the benefit of the wealthy, Jacksonians generally believed that government should be confined to a few essential tasks and otherwise leave people alone. “We want,” said an Ohio Democratic congressman, “a plain, a simple, a frugal government.” Limited government could be ensured by frequent elections, rotation in office, checks and balances among the three branches of government, the right of the people to instruct their representatives, and strict construction of the powers delegated to the government by the people.⁷

The concept of limited government would make Jacksonian Democracy a constitutional as well as a political movement. Although Jackson feared that too much governmental power at any level could endanger the liberties of the people, he worried primarily about the accretion of power at the federal level. “Consolidation,” warned Jackson, would constrict the states’ ability “to manage their own concerns in their own way” and thereby imperil the “Liberty of the people.”⁸ For Jackson, states’ rights bolstered the principle of majority rule by keeping the federal government out of entanglements with privately owned internal improvement projects and by leaving “the great mass of legislation” to the state governments, which were closer to the people.⁹

The limited-government, states’-rights ideology of the Democratic Party has been called “functionally proslavery” because it promised to prevent a potential antislavery northern majority from using the federal government to confine or abolish slavery.¹⁰ But the idea of limited government had wider application; even within the states, it sometimes collided with the principle of majority rule. Jackson claimed to have learned his political creed “in the old republican school.” In 1829, though, the Old Republican John Randolph scorned “King Numbers” and railed against the “deadly principle” “that a bare majority may oppress, harass, and plunder the minority at pleasure.” Virgil Maxcy, Jackson’s solicitor of the Treasury, observed in 1833 that a majority was no more exempt than individuals from natural human selfishness. “The majority therefore will oppress and throw an undue share of

the burthens of government upon the minority, or promote its own interest at the expense of the minority,” said Maxcy, “unless there be interposed, for the protection of the latter, some check upon this selfish principle.” Bills of rights were classic examples of such checks, shielding individual rights from legislative action, “however large the majority.” Democratic journalist William Leggett, too radical for party regulars, complained in 1837 that despotism had come to mean not only autocratic rule by a single individual but also the tyranny of “the majority of a community, combined under strict party organization, and ruling the minority with dictatorial and imperious sway.”¹¹

The conflict between majority rule and minority rights came to a head in the state constitutional conventions of the mid-nineteenth century. After Ohio and other states, as a result of their heavy involvement in internal improvement schemes, got hammered by the depression of the late 1830s and 1840s, many Democrats sought strict constitutional controls on the taxing and spending powers of state and local governments, even to the point of prohibiting the creation of public debt approved by the electorate. “Sir, I am not afraid to trust the people,” declared one Democrat. “But I will not give my consent that a majority shall tax and virtually rob a minority.” The clash between majority rule and minority rights meant that Jacksonian Democrats would leave an ambiguous legacy for jurists and politicians to consult in the postbellum period and for historians to interpret thereafter.¹²

Ranney, as a constitution-maker and judge, viewed issues involving popular government, equality, and limited government through a Jacksonian lens. He strictly construed the state and federal constitutions to safeguard the sovereignty of the states and the rights of the people. In shaping the common law, he enhanced the power of the jury, made corporations liable for injuries to employees and third parties, and protected society’s underdogs. Scholarly discussions of Jacksonian jurisprudence tend to focus on a handful of United States Supreme Court cases; but Ranney’s opinions, taken as a whole, point to the existence of a broader approach to judicial decision-making that reflected Jacksonian political values.

I do not mean to imply that Ranney or any other judge consciously formulated doctrine or rendered decisions on partisan grounds. Democratic judges sometimes disagreed with each other, and Whig judges often concurred with their Democratic colleagues. When a delegate to Ohio’s constitutional convention insinuated that some judges were tools of “the money power,” Peter Hitchcock, the state’s distinguished chief justice, retorted:

When I took my seat upon the bench, Mr. Chairman, I took an oath . . . that I would administer justice without respect to persons, and do equal justice to poor and rich; that I would faithfully and impartially discharge and perform all the duties incumbent upon me as a judge of the supreme court, to the best of my ability, understanding, and *agreeably to the constitution and law of this State*. . . . [S]hall I sacrifice that oath in order to meet the wishes of a political cabal or a political party?

Joseph Swan, also of the Ohio Supreme Court, would forfeit his judicial career a few years later by casting a key vote against his own political preference.¹³ Still, however conscientious judges might have been about deciding cases on the basis of law rather than politics, the same values underlay their approach to both.

Ranney made his greatest mark where politics and law met: at the constitutional convention and in judicial decisions on Ohio's new constitution. His thinking at this junction reveals the continuing impact of Jacksonian ideology beyond the time when the Age of Jackson supposedly ended and new issues replaced the old ones that had traditionally distinguished Democrats from Whigs. Ranney went into the convention with a reputation as a Radical Democrat, but there was a conservative strain to his thought that became clearer as he steadfastly adhered to Democratic principles through the intensification of the sectional crisis in the 1850s and the eruption of civil war. ("Radical" with a capital *R* generally refers to the dominant wing of the Democratic Party during the Jacksonian period or, later on, to the most antislavery Republicans. When used with a lowercase *r*, "radical" is a more generic adjective.)

To call Ranney a conservative is to raise the perplexing question of the nature of conservatism in nineteenth-century America. Clinton Rossiter called *conservatism* "one of the most confusing words in the glossary of political thought." "The conservative movement," wrote Russell Kirk, "can accommodate a considerable diversity of views on a good many subjects, there being no Test Act or Thirty-Nine Articles of the conservative creed." Perhaps that explains why historians have characterized all the major parties of Ranney's time—Whig, Democratic, and Republican—as conservative.¹⁴

In the sprawling, brawling, decentralized American democracy of the 1830s and 1840s, no political party could hope to succeed by forcing a creed on its adherents, although Martin Van Buren tried to create a disciplined Democratic Party that would unite behind policies adopted, at least theoretically, by the majority of its members. After Van Buren's accession to the

presidency and the shock of the Panic of 1837, Democrats split into Conservative and Radical camps. The Conservatives often cooperated with the Whigs, and some eventually joined the Whig Party. Van Buren, meanwhile, moved the Democratic Party in a Radical direction. Although there were true radicals in America who sought large-scale social or political changes, Van Buren was not by nature one of them. But as party differences sharpened after the Panic and as Democratic leaders insisted upon party loyalty in battles over the administration's economic policies, mainstream democracy came to be characterized by Radical attitudes—extreme hostility toward banks and their paper money, deep suspicion of governmental power that too easily became the tool of corporations and “aristocrats,” a belief that “power is always stealing from the many to the few” (the motto of the *United States Telegraph* and other Democratic newspapers). In the battle for the soul of the Democratic Party, the Van Burenites crushed the Conservatives. Jacksonian Democracy came to be Radical Democracy.

Conservatives (with a small “c”) found their political home among the Whigs. The *American Review*, the Whigs' intellectual organ from 1845 to 1852, gloried in the conservative label. The distinctive conservative principles of the Whig Party, wrote the *Review*, were “its steady and habitual submission to law—its deference for vested rights—and abhorrence of all violent and disorderly attempts to alter or overthrow existing institutions.” Whigs, as true conservatives, were not averse to change, but they insisted upon “the intelligent and seasonable combination of Order and Improvement.” The conservative party, according to the *Review*, “venerates the wisdom of experience and loves the virtue and purity, the customs and associations of the past, and feels its connection with the race, and would not strike boldly out of the track, or forsake the direction or quicken the prudent pace at which the world has arrived at its present position.” In contrast, “Young America,” the exuberant young Democrats who wanted to create a new American culture and fulfill America's “manifest destiny” to spread freedom across the continent, “despises the old-womanish maxims of the Past . . . would set the world upon wholly new feet, and at once reduce an ideal theory . . . to practice, at any cost and in the face of any difficulties. There is a law and order, a slow and sure, a distrustful and cautious party—a conservative, a Whig party; and there is a radical, innovating, hopeful, boastful, improvident and go-ahead party—a Democratic, a Loco-Foco party!”¹⁵

Jacksonian Democrats gladly conceded the conservative designation to the Whigs, calling themselves the party “of movement, of progress, of

reform.” After listing a host of reforms accomplished in the United States and England—the extension of suffrage, moderation of the penal laws, abolition of imprisonment for debt, establishment of asylums for the handicapped, restriction of monopolies, and so on—the *United States Magazine and Democratic Review* declared them all to be “the legitimate fruits” of American Democratic and English liberal principles. Some antebellum northern Democrats were Burkean conservatives who believed in “the importance of community, the sanctity of established institutions, the authority of existing arrangements, and the necessity of public policies that harmonized with local customs.” But while the Democratic Party was broad enough to accommodate admirers of Edmund Burke, Burkean conservatism appealed more to Whigs than to Democrats.¹⁶

It is true that even in Jackson’s day many Democrats revered the wisdom of the past. When Orestes Brownson, in his Radical Democratic phase, called for a society in which every man worked for himself in his own shop or on his own farm, he was looking back to “Jefferson’s vision of a self-sufficient yeomanry” while “articulat[ing] an implicit ideal of Democratic theory and policy.” But Jefferson was not a conservative. Russell Kirk observed that Jefferson’s doctrines “always were more radical than his practice”; but the doctrines were the stuff to which Jacksonian Democrats appealed. No one who derived the equality of men from universal reason, believed in a “wall of separation” between church and state, saw Shays’s Rebellion as a salutary “refreshing” of the “tree of liberty,” and sympathized with the French Revolution could have qualified as a conservative.¹⁷

It similarly seems a stretch to regard the Jacksonians of Ranney’s time as conservative for seeking to “restore” the Jeffersonian radicalism that had flourished in their own lifetimes. Andrew Jackson’s leading biographer, Robert V. Remini, described Jackson as a “conservative, cautious man” with “a conservative philosophy of government.”¹⁸ That is not how Jackson’s contemporaries saw him. Jackson’s National Republican and Whig opponents thought of the president and his followers as revolutionaries. A Boston newspaper equated Jacksonianism with Jacobinism. “Its Alpha is ANARCHY and its Omega is DESPOTISM,” the paper howled. Henry Clay warned about Jackson, “We are in the midst of a revolution, hitherto bloodless, but rapidly tending towards a total change of the pure republican character of the Government.” Seven years later, with Jackson’s chosen successor in the White House, New York Whigs were still crying, “We are in the midst of a revolution! Your Federal Government . . . is undergoing a change fatal to its

republican character.”¹⁹ Even allowing for rhetorical excess, it is clear that Jackson’s enemies attributed his failings to radicalism, not conservatism.

Jackson did not think of himself as a conservative. When a question involving Conservative Democrats arose, he declared his detestation of conservatism in general as well as the political faction. Conservatives, Jackson asserted, think “the people unfit to govern themselves.”²⁰ After Jackson’s death, a writer for the *Democratic Review* defined radicalism as “that which is constantly *modifying, changing, reforming, and improving* the institutions of society,” as opposed to conservatism, which was stuck in the past. The author hailed Jefferson and Jackson as the “champions of Radicalism.”²¹

Ranney admired Andrew Jackson and his principles. Ranney believed in equality among (white) men, popular government, a government without the power to direct either economic or moral life; he attacked corporate privilege, favored hard money, and sympathized with the legal codification movement. Although advocacy of small government today tends to get people tagged as conservatives, in the 1840s it was a hallmark of Radical Democracy. And no one who approved of Jackson’s populism and egalitarianism could have passed as a conservative at that time. The Whigs who knew Ranney in 1850 certainly did not regard him as one. They called him radical, even “destructive.” Recalling Ranney’s role at the constitutional convention, a Republican paper in 1859 said that he “took an active part in favor of the most radical views.”²²

But soon after the convention, mainstream Democrats, including Ranney, began to think of themselves as conservatives. Before then both Whigs and Democrats had often invoked the past, but for different reasons. For Whigs, the past was a teacher, a guide, and a constraint. “Our American liberty,” intoned Daniel Webster, “has an ancestry, a pedigree, a history.” Edward Everett asserted that the Founding Fathers had built the “temple of freedom” on “history and tradition,” digging the foundation “deep down to the eternal rock” so that the temple might be expanded on that foundation in the future. For Democrats, the past was a launching pad for future progress. The *Democratic Review* warned against an undue appeal to “the wisdom of our fathers” and a fear of “untried experiments.” The American Revolution, said the *Review*, was the boldest of experiments, “the germ from which has sprung the revolution of the world.” Despite occasional bumps in the road, Democrats in the 1850s could look back on a steady march of progress against conservatism. The Revolutionary generation had overthrown monarchical government. Jefferson had routed the Federalists,

Jackson and his successors the National Republicans and Whigs. The demise of property qualifications for voting, followed by high voter turnout in boisterous political campaigns, and the change from the appointive to the elective method of choosing major public officers, spoke to the advance of government by “the people.”²³

In the 1850s, though, the “go-ahead party” perceived a new threat, not from conservatives but from radical abolitionists and the new Republican Party. Democrats thought they saw American institutions under assault by a “revolutionary and agrarian” party filled with fanatics and determined to use its numerical majority to discard hard-won political compromises, run roughshod over the Constitution, and create a powerful central government. They complained of the “revolutionary movements” of the “black republicans.” The old Whig Rufus Choate, who supported the Democrat Buchanan for president in 1856, disdained the Republicans’ “revolutionary banner.” The state party convention that nominated Ranney for governor called upon the people of Ohio to rebuke “the wanton, factious, revolutionary designs of the leaders of the self-styled Republican party.” Believing themselves charged by history with preserving American liberty, Democrats adopted the mantle of conservatism and wore it through political upheavals, civil war, and industrialization. Men such as Ranney remained devoted to the Jeffersonian tradition of strict construction of the government’s constitutional powers, to states’ rights, and to a government close to the people. Ranney went from radical to conservative without changing his principles or his party.²⁴

It was Ranney’s conservatism that drove him to participate in a splinter reform movement in the early 1870s, a movement aimed at ending corruption in public offices and reinvigorating the limited government ideals of an earlier age. By 1875 Ranney was back in the party’s good graces, chairing the Democratic state convention, but he never again ran for elective office. Instead he concentrated on his law practice and the development of the legal profession, associating with legal and business elites, representing railroads and Standard Oil, and presiding over the state bar association. How the Radical Jacksonian Democrat came to be one of John D. Rockefeller’s favorite attorneys, and what that turn of events meant for Democratic ideology, are intriguing questions. The answers must be speculative because Ranney stepped back from the limelight and left little record of his political or legal thought in the last fifteen years of his life. But the attitudes of Ranney and some other old Jacksonian jurists in the Gilded Age showed a remarkable

continuity with the positions of their younger, radical selves in favor of limited government, laissez-faire economics, general incorporation laws, and, at least in Ranney's case, judicial review, legal science, and an educated bar.

This book, a study of Ranney's public life, is based on newspaper reports, the published proceedings of the Ohio constitutional convention, the reported opinions of the Ohio Supreme Court, and the records of the Ohio State Bar Association. Finding out about Ranney's personal life or his behind-the-scenes role in law or politics is impossible. No cache of Ranney correspondence appears to have survived. Ranney may not have been a prolific letter-writer, and he apparently did not keep letters he received. When an autograph collector asked him for a letter signed by Ranney's one-time law partner Benjamin F. Wade, Ranney replied that he had seen no reason to keep Wade's letters because they did not relate to business. "Besides," he continued, "I have several times destroyed piles of papers that were no longer of value to any one, to get handily at those which were."²⁵ Searches of the usual sources have turned up almost nothing. Newspapers from Portage, Ashtabula, and Trumbull Counties, where Ranney lived before 1850, have survived incomplete, and those were mostly Whig papers that gave little space to Democrats. Ranney apparently never set down his ideas on politics or law in systematic fashion. He wrote no books, and the indexes to nineteenth-century law journals contain no entries for him as an author, although he was for a few months a department editor of a short-lived legal periodical.²⁶ But even without documentation of Ranney's inner world, a study of Ranney's long and noteworthy public life reveals the durability of the relationship between Jacksonian political and legal thought and the Jacksonian contribution to American conservatism in the second half of the nineteenth century.