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THE BEAUTIFUL AMERICAN ABROAD

Scott D. Gerber*

George Athan Billias, *American Constitutionalism Heard Round the World, 1776-1989: A Global Perspective* (N.Y.U. Press 2009). Pp. 544. \$60.00.

Mary L. Dudziak, *Exporting American Dreams: Thurgood Marshall's African Journey* (Oxford U. Press 2008). Pp. 272. \$29.95.

“Ugly American” is an epithet used by foreigners who view Americans as arrogant, boorish, ethnocentric, and loud. The two books I have been asked to review paint a much better picture of Americans abroad, at least as far as the impact of American constitutionalism on other nations is concerned. Both books are worth reading, although they are markedly different. George Athan Billias's *American Constitutionalism Heard Round the World*¹ is an academic book about the influence of American ideals, ideas, and institutions on different peoples at different times in different lands. His book is a masterpiece of historical scholarship. Mary L. Dudziak's *Exporting American Dreams*² is a trade book about one of the greatest civil rights leaders in American history - Thurgood Marshall - and his attempt to help found a new African nation. Her book is a commendable example of how legal scholars can try to engage a popular audience. Billias's book is twice as long as Dudziak's book and space in this review will be allocated accordingly.

I. *AMERICAN CONSTITUTIONALISM HEARD ROUND THE WORLD, 1776-1989: A GLOBAL PERSPECTIVE*

Eminent historians Gordon S. Wood and Robert Middlekauff both have called George Athan Billias's *American Constitutionalism Heard Round the World* a “monumental study.”³ I agree. In fact, it is impossible to do Billias's book justice in a review. All I can do is urge anyone with an interest in American constitutionalism to devour it and provide a taste as to why.

Billias divides his book into two parts. Part one finds the author employing what

* Professor of Law, Ohio Northern University; Senior Research Scholar in Law and Politics, Social Philosophy and Policy Center. I thank Sandy Levinson for inviting me to write this review, which I completed during a sabbatical leave at Brown University's Political Theory Project. I also thank Margot Gerber, Kevin Hawley, Mike Lewis, Doug Litowitz, Sandra McDonald, and Ron Mollick for comments on drafts.

1. George Athan Billias, *American Constitutionalism Heard Round the World, 1776-1989: A Global Perspective* (N.Y.U. Press 2009).

2. Mary L. Dudziak, *Exporting American Dreams: Thurgood Marshall's African Journey* (Oxford U. Press 2008).

3. Billias, *supra* n. 1, at back cover (quoting Gordon S. Wood and Robert Middlekauff).

he calls a “documentary history methodology” to reconceptualize the notion of American constitutionalism. He rejects as too narrow the longstanding convention of equating constitutionalism with the U.S. Constitution alone and adds to the U.S. Constitution five other seminal American documents: the Declaration of Independence, the first American state constitutions, the Articles of Confederation, the Federalist Papers, and the bills of rights in the American state and federal constitutions. Readers who initially may be skeptical about Billias’s approach – the Federalist Papers influenced foreign governments? the original state constitutions did? – will find the scales falling from their eyes when they reach Part two.

Part two, the bulk of *American Constitutionalism Heard Round the World*, is divided into what Billias calls “seven echoes.” The first echo concerned the influence of American constitutionalism in northwestern Europe and its hinterlands from 1776 to 1800. The second echo involved Latin America and the Caribbean between 1811 and 1900. The third was manifested in the European revolutions of 1848, and was preceded by what Billias terms a “European interlude” from 1800 to 1848. The era of American empire building after the Spanish-American War marked the fourth echo. It, too, was impacted by an interlude: this time in both Europe (1850-1900) and the United States – the latter in the form of our Civil War. The fifth echo spanned the years 1919 to 1945, a period bookended by the two world wars. The sixth echo – what Billias considers the most consequential – took place in the aftermath of World War II, from 1945 to 1974. The seventh and final echo ended with the fall of the Berlin Wall in 1989, as does Billias’s book.

The density of the preceding paragraph illustrates the point I made at the start: it is impossible to summarize a book as broad in scope and as rich in insight as *American Constitutionalism Heard Round the World* without leaving something out. For example, not only does Billias reconceptualize the notion of “American constitutionalism” in his book, he makes us rethink the very meaning of America’s “influence.” He writes:

Any study of constitutional influence must acknowledge at the outset that all constitutions are *autochthonous*; that is, they spring from native soil and are rooted in a country’s indigenous traditions. Influences from other societies and cultures are only grafts on the main root. Constitutions are, to a greater or lesser degree, hybrid documents, since each new constitution is part of a larger process called *syncretism*, by which the traditions of one country incorporate the indigenous traditions of another country, resulting in a new creation to which both countries have contributed. When American constitutionalism moved abroad, it was transformed by this interactive, adaptive process. But as will be shown, indigenous traditions sometimes also resisted syncretism.

At the same time, it is clear that in no society do constitution makers operate in a historical, experiential, and intellectual vacuum, approaching such knotty problems as governance and individual rights *de novo*. Inevitably there are borrowings and rejections, conscious and otherwise. Put another way, even though they may spring from native soil, all constitutions are syncretic and subject to outside influences.⁴

Of course not even the Mona Lisa is perfect and fairness dictates that I mention, albeit briefly, a few flaws in Billias’s work of art. First, this long book is too short. Frequently,

4. *Id.* at 4-5.

I wished that Billias had gone into more detail about a particular country, a particular time, or a particular document. In fact, sometimes the text reads like an outline of the issues Billias planned to address but never did. Second, the book relies almost exclusively on secondary sources. Although it would have been impossible literally for Billias to have conducted original research on every aspect of his vast project, the inability to do so occasionally causes him to miss something important. To mention one example that is particularly relevant to the instant joint book review, Billias says nothing about Thurgood Marshall's influence on Kenya's Independence Constitution of 1963, apparently because Mary L. Dudziak's book on the subject was not in print before Billias's book went to press. Third, Billias's liberal politics sometimes creep into the narrative. Indeed, Billias concludes *American Constitutionalism Heard Round the World* with several asides that read as if they are straight out of the Democratic Party's play-book, such as his labeling "global warming" an "environmental catastrophe[]" and his railing against "the increasing concentration of wealth in the hands of a privileged few."⁵

But these are minor quibbles mandated by the canon of academic objectivity. Billias has written a big book and scholars will be mining it for generations to come. The book recently received the 2010 Book Prize from the New England Historical Association as the best history book by a New England author published in 2009. It richly deserves that award, as well as others that might follow.

II. EXPORTING AMERICAN DREAMS: THURGOOD MARSHALL'S AFRICAN JOURNEY

Mary L. Dudziak is the Judge Edward J. and Ruey L. Guirado Professor of Law, History, and Political Science at the University of Southern California Gould School of Law.⁶ She received her B.A. in sociology from the University of California, Berkeley; her J.D. from Yale Law School; and her M.A., M.Phil., and Ph.D. in American Studies from Yale University. She began her teaching career at the University of Iowa College of Law in 1986 and moved to USC upon receiving tenure at Iowa. She is the webmistress of mdudziak.com,⁷ the founder and moderator of Legal History Blog,⁸ and a contributor to Balkinization.⁹ She was awarded several research grants for *Exporting American Dreams*, including a Guggenheim Fellowship. In short, Dudziak is one of the most prominent legal historians of the day.

Dudziak tries to connect two stories in her book: the triumph of the civil rights movement in the United States and its failure in Kenya.¹⁰ Thurgood Marshall is her link between the two. At home, Marshall was a civil rights icon: lead attorney in *Brown v. Board of Education*,¹¹ first African American appointed to the U.S. Supreme Court, etc. Abroad, he was the author of a 1960 draft bill of rights for Kenya.

5. *Id.* at 369-370.

6. The biographical sketch of Dudziak is drawn from *Mary L. Dudziak: Books and Selected Works, About the Author*, <http://mdudziak.com/aboutus.aspx> (accessed Sept. 10, 2010), the myriad of links embedded therein, and the Acknowledgments to *Exporting American Dreams*. Dudziak, *supra* n. 2, at 235-239.

7. Dudziak, *supra* n. 6, at <http://mdudziak.com/default.aspx>.

8. *Legal History Blog*, <http://legalhistoryblog.blogspot.com/> (accessed Sept. 10, 2010).

9. *Balkinization*, <http://balkin.blogspot.com/> (accessed Sept. 10, 2010).

10. Dudziak is more equivocal about the success or failure of the two movements than I am.

11. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

The undeniable strength of Dudziak's book is her discussion of Marshall's draft declaration of rights for Kenya's Independence Constitution. As someone who has written a book about U.S. Supreme Court Justice Clarence Thomas's jurisprudence, I already knew a lot about Marshall, the man Thomas replaced.¹² But Marshall's Kenyan connection was news to me. It also came as a surprise to at least some who knew Marshall personally. For example, Professor Randall Kennedy of Harvard Law School, a former law clerk to Justice Marshall, writes in a dust-jacket blurb that Dudziak "has written an excellent book about a facet of Thurgood Marshall's career that has never before received substantial attention."¹³ Marshall's efforts at drafting a bill of rights for Kenya likewise came as news to some distinguished scholars of Kenya's history. Professor Makau W. Mutua, the dean of the University at Buffalo Law School, writes in a review for the *Human Rights Quarterly* that "Justice Marshall's deeply influential role in the construction of the bill of rights for Kenya's independence constitution was largely unknown until" Dudziak's book.¹⁴ Clearly, Dudziak has provided a signal service with her discussion of Marshall's proposal — her treatment of his troublingly pragmatic commitment to equal protection law is particularly commendable — and by reprinting the draft, with the permission of Marshall's widow, for the first time. The preamble to Marshall's proposal reads: "All persons are equal before the law and are entitled without any discrimination or distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, to equal protection of the law."¹⁵

As I noted at the outset, Dudziak's book is a trade book, not an academic book. She is targeting a much wider readership than Billias's audience of global historians, academic lawyers, and political scientists. Joseph J. Ellis,¹⁶ Doris Kearns Goodwin,¹⁷ and David McCullough,¹⁸ among others, have made fine careers out of publishing trade history, but they are master storytellers, in addition to being talented historians.

Dudziak is certainly a talented historian, but has she written a successful trade book? I have no idea about how well Dudziak's book has sold, although I strongly suspect that Ellis, Goodwin, and McCullough have nothing to fear as far as competition for royalties is concerned. However, Dudziak has told an interesting tale, primarily by way of alternating the storylines between Thurgood Marshall's civil rights battles at home and those of Tom Mboya, the young Kenyan idealist frequently at odds with Daniel arap Moi, in Kenya. Dudziak joins the storylines in a powerful passage describing then U.S. Court of Appeals Judge Marshall's reaction to the news that Mboya had been

12. See Scott Douglas Gerber, *First Principles: The Jurisprudence of Clarence Thomas* (expanded ed., N.Y.U. Press 2002).

13. Dudziak, *supra* n. 2, at back cover (quoting Randall Kennedy).

14. Makau Mutua, *Book Review*, 31 Hum. Rights Q. 1146, 1146 (2009); see generally Makau Mutua, *Kenya's Quest for Democracy: Taming Leviathan* (L. Rienner Publishers 2008).

15. Dudziak, *supra* n. 2, at 175 (quoting Marshall's draft).

16. See e.g. Joseph J. Ellis, *Founding Brothers: The Revolutionary Generation* (Vintage Bks. 2000) (winner of the Pulitzer Prize).

17. See e.g. Doris Kearns Goodwin, *No Ordinary Time: Franklin and Eleanor Roosevelt: The Home Front in World War II* (Simon & Schuster 1994) (winner of the Pulitzer Prize).

18. See e.g. David McCullough, *John Adams* (Simon & Schuster 2001) (winner of the Pulitzer Prize).

assassinated: “Son of a bitch . . . It was Moi,”¹⁹ she quotes Marshall as saying.

Dudziak’s book, like Billias’s book – like any book – is not without flaws. In Dudziak’s case, she sometimes tries too hard to avoid writing like an academic, which causes her to default to purple prose. For example, she closes her book as follows:

Through it all, Marshall held on firmly to a memory of a time when he had helped frame a constitution that made a colony a nation. This vision was with him to the end, wrapped up in his Kenyan cape, found in his office after his death in 1993, draped over an armchair at the window in the morning sun.²⁰

Moreover, trade book or not – literary license or not – this closing passage also fails to acknowledge that most of Marshall’s draft bill of rights was *not* included in the Kenyan Independence Constitution of 1963.²¹ Apparently, Marshall did not have much influence on Kenya after all.

III. CONCLUSION

I briefly summarized Mary Dudziak’s impressive biography at the beginning of my discussion of her book. I feel compelled to close this joint review by describing the career of George Billias. My reason for doing so is simple: to inspire other scholars, young and old.

Billias is Jacob and Frances Hiatt Professor Emeritus of History at Clark University. He is the son of a poor Greek immigrant, initially attended evening college at Boston University, fought in World War II, received the Bronze Star for gallantry, and eventually earned his undergraduate degree from Bates College thanks to the G.I. Bill.²² He received his Ph.D. in history from Columbia University in 1958. His master’s thesis, an anti-Beardian monograph on land bankers, was so well received that it was published in book form.²³

The academic depression of the early 1950s prevented Billias from securing a college teaching position and he began his career as a civilian historian for the Air Force. His first academic appointment was at the University of Maine. In 1962 he moved to Clark University where he taught and published in the fields of biography, historiography, military history, and legal and constitutional history.²⁴

Billias spent twenty-four years working on *American Constitutionalism Heard Round the World*, the vast majority of which as an emeritus professor. He wrote most of

19. Dudziak, *supra* n. 2, at 154.

20. *Id.* at 172 (footnote omitted).

21. Dudziak admits as much in the appendix where she reproduces the draft. *See id.* at 173.

22. The biographical sketch is drawn from George Athan Billias, *My Intellectual Odyssey*, in *The Republican Synthesis Revisited: Essays in Honor of George Athan Billias* 153-162 (Milton M. Klein, Richard D. Brown & John B. Hench eds., Am. Antiquarian Socy. 1992) [hereinafter Billias, *My Intellectual Odyssey*], and the Acknowledgments to *American Constitutionalism Heard Round the World*. Billias, *supra* n. 1, at vii-x.

23. *See* George Athan Billias, *The Massachusetts Land Bankers of 1740* (U. Me. Press 1959).

24. Billias is probably best known for his biography of Elbridge Gerry and his reader on American historiography. *See* George Athan Billias, *Elbridge Gerry: Founding Father and Republican Statesman* (McGraw-Hill 1976); *Interpretations of American History: Patterns and Perspectives* (Gerald N. Grob & George Athan Billias eds., Free Press 1967). The historiography reader is now in its eighth edition.

the book in longhand on his dining room table in Worcester, Massachusetts and, when it got cold, in a library carrel at the University of Miami School of Law. His wife Margaret, to whom he dedicates the book, typed and helped edit what at one point was a fifteen hundred page manuscript. Despite a glowing assessment by no less a figure than Bernard Bailyn almost certainly the most acclaimed early American historian of the past fifty years Billias had difficulty securing a publisher. Fortunately for scholars everywhere, New York University Press eventually agreed to publish his book.

Billias is ninety-one years old and is currently penning a sequel to *American Constitutionalism Heard Round the World*. (You read that right.) It is appropriate to close this joint review with what Billias wrote almost twenty years ago in a collection of essays honoring his career:

But it is time to bring my intellectual odyssey to a close and to return to home port. Let me conclude by leaving you with this thought - a variation of a familiar saying. Old scholars never die, nor do they fade away. When you mount the library steps, enter the stacks, and look up at the shelves, there they are - like old friends - awaiting you.²⁵

25. Billias, *My Intellectual Odyssey*, *supra* n. 22, at 162.