torically- and culturally-grounded consciousness. Especially when linked to a broad vision of "constitutional pluralism," which could draw upon such diverse sources as the work of Cover and his disciples, some strands in CLS work, the law and literature scholarship, and feminist legal criticism, a sharp interpretive turn away from IT holds considerable promise. Free from the grasp of IT, writers could delve into all of those very human stories about power and knowledge, about the reach of social institutions and groups, and about the popular needs and aspirations that actually bring into play—as works such as John Noonan's *Faces & Masks of the Law* remind us—the specialized rhetoric of constitutional lawyers and judges.

(3) Discussions about "constitutional rhetoric" can be broadened. Why should constitutional historians leave analysis of writers such as Herman Melville and the works of mass culture to those in the law schools and English departments? There is a wide range of supposedly "non-constitutional" sources that can be cross-examined in light of what can be drawn from historical studies. Here, quite obviously, constitutional historians need to go beyond the obvious turn toward "political" histories, long prominent in works about IT, and connect the innovative work in cultural and social history that has been published in recent years to a broader, more pluralistic vision of constitutionalism.

Of course, the twin moves toward an ABCT and a broader view of constitutional history would likely result in the work of historians becoming more marginal than ever to constitutional law traditionalists, but—given the realities of the current relationship between law and history—do constitutional historians really have all that much influence to lose?

The Obligatory Quote From "History":

"Let us not negotiate from fear; but let us not fear to negotiate."

ROBERT NAGEL[15]

I am hesitant to make recommendations about directions for constitutional law scholarship. In the unlikely event that such suggestions were taken seriously, they might constrict the range of approaches attempted in our field. One thing we do not need is more faddishness. Even if not taken seriously, they might convey an erroneous impression that I think my own work is exempt from

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whatever deficiencies prompt my suggestions for change. Despite these risks, I have one general observation to offer. In my opinion, constitutional scholarship is becoming excessively theoretical and in-grown. Of course, abstraction and erudition have their uses, but they also tend to exclude some virtues that have special relevance to our field.

One virtue that is out of fashion partly because of the predominance of the scholastic style is empathy for the individuals who are immediately involved in constitutional decisionmaking. Scholarly criticism seldom takes into account the special perspective of those with actual responsibilities. Often both our criticisms of the use of judicial power and our proposals for its justification assume that judges have infinite time and knowledge. Our standards do not take much account of the judge's powerful sense that, despite the many imperfections in understanding or motivation that are present at the moment of decision, some decision must be made. We all know that making a real decision in a discrete amount of time is far different from reflecting about the decision later, but this recognition seldom affects our criteria or our criticisms. We might profitably think more about the differences between the job of being a judge and the job of being a professor.

Similarly, we engage in much talk about justice, public values, civic virtue, and so on. Our moral discourse, however, is too seldom influenced by empathetic attention to the consequences of decisions. We might try more frequently to take into consideration the immediate circumstances of (for example) the children in schools that are being desegregated or of the guards in prisons that are being restructured. More generally, we often speculate—usually optimistically—about how judicial opinions influence the attitudes and understandings of the general public. But much of this speculation is based on subtle analysis of what judges have written, without much concern for what various publics may have in fact seen or heard or understood.

A second virtue that tends to be excluded by the current emphasis on erudition is expressiveness. *The Federalist* demonstrates, if demonstration is required, that sophisticated theory can be made understandable and even compelling to wide audiences. Although the subject matter of constitutional law is supposedly closely tied to our fundamental political traditions and understandings, much of modern constitutional scholarship somehow cannot be made intelligible to most lawyers, let alone to most members of the literate public. It is one thing for scholars in other fields to impress one another with recondite references and stilted jargon, but this sort of speciali-

zation is especially unfortunate in the field of constitutional law. I believe we should try more often to direct even our most sophisticated thinking at wider audiences.

STANLEY C. BRUBAKER[16]

What needs to be done in constitutional scholarship? I would suggest three things.[17] First, the fixation on the judicial perspective must be loosened. Courts provide only one of several perspectives for viewing the Constitution, and the pretense that it is exclusive distorts both the Constitution and the judicial function. If the judicial perspective is to be taken seriously, one must first take the Constitution seriously and determine what it envisages for the judicial function; this necessarily requires an inquiry into the history and political philosophy from which a distinctive judicial function emerged. That is rarely done. Instead the judicial function is derived from some confection of remedies for what, in the mind of the commentator, ails America. Detached from the political philosophy in which it emerged, the role of the courts, especially the Supreme Court, in the work of constitutional commentators has degenerated from a cautious and prudent Socratic inquirer in the work of Alexander Bickel to a brash Commander in the work of Bruce Ackerman.[18]

Once the judicial function is understood with greater attention to its philosophic background in a separation of powers theory, judges will be recognized as less than omnicompetent for saying what the Constitution means. Doctrines such as political questions, standing, ripeness, etc., have real meaning and limit the range over which courts may speak; and within this range, or at least some portion of it, courts should see the Constitution through the special lens of "deference." But even where these limits are recognized, adherence to the judicial perspective has led to constitutional distortion; from the sound premise that a given subject is not fit for the courts to resolve, the erroneous conclusion is drawn that whatever the political branches do is right. Several authors have broken from this exclusive judicial perspective and have brought fresh insight to constitutional scholarship—notably Murphy, Fleming and Harris (*American Constitutional Interpretation*), Brest and Levinson

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17. In a more moderate tone and at greater length, I address similar concerns in "Our Meta Constitution of Self-Government" (Sept. 1987) (paper presented at the annual meeting of the American Political Science Association).

18. In naming names, I am following the suggestion of a famous editor that scholarship will be enhanced by a reduction in professional courtesy. Farber, *Gresham's Law of Legal Scholarship*, 3 CONST. COMM. 307, 310 (1986).