

BOOK REVIEWS

Constitutional Myths: What We Get Wrong and How to Get it Right by Ray Raphael. New York, The New Press, 2013. 336 pp. \$26.95.

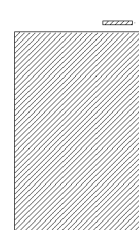
While Americans are obsessed with their Constitution's history, they have a hard time thinking about their Constitution historically. *Constitutional Myths* is less concerned with substantive misunderstandings than with meta-myths involving ahistorical appeals to the Founding. While framed as a debunking, the book packs an affirmative punch, arguing that there is no inconsistency between taking the Founding as a touchstone and a strong activist government commitment to working pragmatically to meet the challenges of its time.

After lamenting that today the Constitution is being used to divide rather than unite, the author sets out to explain what the Founders did in their own eyes and how and why later generations have disregarded that to forge a succession of "phantom constitutions" (p. xiii). Recently, eight myths have served: 1) the Framers opposed a strong federal government; 2) the Framers hated taxes; 3) the Framers were impartial statesmen, above interest-driven politics; 4) the Framers were guided by clear principles of limited government; 5) James Madison sired the Constitution; 6) The Federalist Papers tell us what the Constitution really means; 7) the Founders gave us the Bill of Rights; and 8) we can determine how specific provisions of the Constitution should be applied today by discovering their original intent or meaning. In each chapter, a myth is judiciously assessed in three segments, the first sub-headed "Kernel of Truth," the second, "But...," and the last "The Full Story."

Ray Raphael's emphasis on the Founding as a revolution in favor of government draws on the many arguments by the Founders (disgusted with the centrifugal and rights-violating localism under the Articles of Confederation) calling for a vigorous, "energetic" national government to protect liberty. The author nicely shows the degree to which, in the Founders' eyes, "the relationship between strength and restraint was complementary, not contradictory" (p. 62).

Such a government required adequate and reliable funding, which (in a new departure) they planned to raise by taxing individuals directly. The Federalists, moreover, almost immediately enacted progressive taxes on the theory that those with more money had a greater stake in effective government and were better positioned to advance the common good. The Federalists were also opposed or indifferent to a national Bill of Rights, which would check the power of the national government, and not of the states.

While learned and thoughtful, the Founders were neither demigods nor philosophers but lawyers and politicians, with many of the goals, traits, and tendencies characteristic of those professions. To "render the Federal Constitution adequate to the exigencies of Union" (p. 39), they engaged in



horse-trading, interest-balancing, deal-making, and compromise, disagreeing—sometimes vehemently—about the best means of achieving it. Alexander Hamilton called for a president elected for life. Madison wanted representation in the national legislature to be solely proportional to population, and was adamant that the national government should have the power to veto state laws in all cases. Both believed the Constitution that we got—which, as lawyers, they vigorously defended in *The Federalist*—was profoundly flawed. Still, they thought it a step up from the Articles and about as good as, at that time, they were likely to get; they could push for improvements later.

Raphael undermines the myth of *The Federalist* as the preeminent statement of the Constitution's theory and meaning. He shows that it was first advertised as a set of arguments in favor of the Constitution, then later as a "commentary" on the Constitution, and finally, at the height of the Cold War, for the first time, as "uniquely authoritative." *The Federalist* was less read and influential in its own time than is typically taught. And it was written as much to fudge as to settle matters, to both justify the creation of a national government with extensive powers and to placate the fears of those opposed to those powers by emphasizing limits. Far from explicating the document, it mirrors its competing strains (making it a ripe source, as Supreme Court justices know, for cherry-picked quotations).

Although many of these arguments were first advanced elsewhere, Raphael does a superb job of synthesizing, supplementing, and marshalling them in a sophisticated way for a broad audience. That said, there is a tension between his insistence that the Constitution has an original meaning more in line with the views of contemporary liberals and that it embodied foundational tensions, whose substantive resolution is, irremediably, a product of contemporary politics. Given that core tension, it is unsurprising that *Constitutional Myths* never gets around to explicating the hows and whys of American history's "phantom constitutions": Raphael's broader framework suggests that they are business-as-usual and inevitable. This book is an adept corrective to some of the most-strident imbalances in contemporary debates over the implications of the Founding. But, in spite of itself, it suggests that it may be phantom constitutions all the way down. However we may call out to the Founders' vasty deep, we are fated to make our meaning in the present.

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