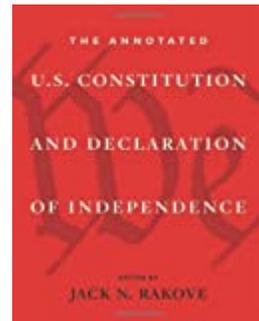




Jack N. Rakove. *The Annotated U.S. Constitution and Declaration of Independence.* Cambridge: Belknap Press of Harvard University Press, 2009. xii + 354 pp. \$24.95 (cloth), ISBN 978-0-674-03606-2.



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Published on H-Law (March, 2012)

Commissioned by Ethan Zadoff (CUNY Graduate Center)

The Annotated U.S. Constitution

The Declaration of Independence and the U.S. Constitution are of course two of the most important documents in the history of the United States. The two documents are linked together, the former serving as the manifesto for the creation of the United States, and the latter as the chief constitutional document of how our government was established. Professor Rakove of Stanford University, a Pulitzer Prize-winning historian, has written a gloss upon the two documents, which he acknowledges is for a general reader and not necessarily one that would be written by a legal scholar (pp. xi-xii).

In his introduction, Rakove presents a history of the two texts. At the outset, he rightly notes that the adoption of the Constitution left the embarrassing issue of slavery to be settled by the Civil War amendments. He begins with the colonial controversy in the decade preceding the Declaration. He gives a short summary of the events leading up to the declaration of separation in June 1776. Rakove accepts that Jefferson was the original author of the Declaration (though John Adams claimed some participation in his later works). The majority

vote by congressional members on June 2, expressly by Adams, was then followed by two days of rewriting. Jefferson opposed the "amutilations" of the document, which Rakove suggests resulted in "a leaner, tighter, less severe, and arguably more eloquent conclusion" (p. 21). He also posits that the phrase "all men are created equal" did not mean an equality of individuals, but a "collective right of revolution and self-government that the Declaration was written to justify" (p. 23). It was later accepted by Lincoln and most individuals that this was the proposition to which the entire nation was "dedicated."

The background to the convening of the Constitutional Convention of 1787 was the failure of the Articles of Confederation to work properly, ten years of state constitutional history, and Shay's Rebellion, which immediately preceded the convention. Rakove discusses James Madison's important role in preparing for the convention and implementing the Virginia Plan during the first week of the meeting. The debate over representation took several months until a five-to-four vote on July 16 led to the adoption of the smaller states plan. Rakove

argues that this in turn resulted in four major developments: rejection of the Virginia Plan proposal for federal veto power over state laws; consideration of other neglected matters; rejection of the Virginia Plan proposal for an enumerated list of specific legislative powers; and greater influence given to smaller states over larger states in popular representation in Congress. A draft of twenty-three articles presented to the Congress in mid-August was then debated through the remaining month of the convention. Regarding the independence of the president from the legislative branch, Rakove comments that this "may be their most durable and vexing legacy, at least when we pay close attention to the structure of the government they created" (p. 47). He doesn't fault the participants in setting up the government, when the delegates really had no experience with this type of governmental structure. Gouverneur Morris is credited with reducing the twenty-three resolutions to seven carefully crafted articles. Rakove briefly reviews the differences between the Federalist and Anti-Federalist writers in the ratifying debate that raged between 1787 and 1788 until nine states' conventions ratified the Constitution. (For a detailed history of the ratification, see Pauline Meier's *Ratification* [2010]). The issue of a bill of rights had been passed over during the original convention, but there was enough demand for one (which Madison promised to shepherd through the first Congress if elected), that ten of twelve amendments were adopted.

In reviewing the Declaration and Constitution/amendments, Rakove pairs each sentence on the right page with footnote references on the left page. In each instance, Rakove presents a short summary of the given section; this might be just a sentence or a couple of paragraphs or several pages (Article II, section 8, and the Fourteenth Amendment), depending on the note. Under the commerce clause, for instance, Rakove offers a short history that begins with John Marshall's opinion in *Gibbons v. Ogden* (1824), and includes *Hammer v. Dagenhart* (1918), Franklin D. Roosevelt's court-packing plan, *Wickard v. Filburn* (1942), and limitations put on congressional power in *United States v. Lopez* (1995).

A few examples will suffice to demonstrate Rakove's knowledge and commentary. Regarding Article II, section 1, which discusses a natural-born citizen's eligibility for the position of president, he writes, "Whimsical law professors take special pleasure in this clause. Might it disqualify a citizen born of caesarean section? How about those born abroad whose parents are American citizens, such as George Romney (a candidate in 1968) or John McCain (Republican nominee in 1988)" (p.180)?

Article IV, section 4, dealing with impeachment of the president, draws the following comment, "The impeachment of Bill Clinton in 1999 for private acts unrelated to his presidential duties was arguably an act of partisan spite that placed the bar for impeachable offenses as low as it could conceivably go, but whether it set a precedent that future Congress would follow remains to be seen" (p. 192).

With respect to the Second Amendment, Rakove recognizes the individual right to own guns: "Though the historical evidence for that view is tenuous, in 2008 the Supreme Court sustained the individual-rights reading in its decision in *District of Columbia v. Heller*, overturning a broad prohibition on the private ownership of handguns in the nation's capital. The Court reached this conclusion by largely ignoring the actual debates that led to the adoption of the amendment" (p. 228). The Eleventh Amendment repealing Prohibition was the only amendment submitted to state ratification. Of the Twenty-second Amendment limiting the presidency to two terms, Rakove notes, "Yet one wonders whether the demands of the modern presidency are more than any individual can reasonably be expected to bear for more than the eight years the Constitution allows" (p. 290).

Finally, Rakove comments on the Twenty-seventh Amendment dealing with congressional salaries. Originally proposed by James Madison in 1789, the amendment was not adopted until 1992 after a renewed push for ratification led by a Texas college student. Rakove calls it "innocuous and inconsequential," but "serious constitutionalists remain horrified by the idea that an amendment can slumber in constitutional limbo for two centuries, then be revived on a collegiate whim. Somewhere, James Madison cannot be wholly pleased, even if this proposal was originally his own" (p. 308).

Throughout the book, illustrations reflect various aspects of the constitutional history of the United States, e.g., pictures of presidents (Jefferson, Madison, Lincoln five days before he died), Supreme Court justices (Marshall), or individuals like Dred Scott or Roscoe Filburn, or events like Shay's Rebellion or the Vietnam War. Supplements include a calendar of events, which provides the major constitutional dates from the colonial period to present, and a bibliography.

Rakove's wide knowledge of Anglo-American legal and constitutional history is reflected throughout his introduction and annotations. This work is recommended for all libraries and readers interested in the Revolutionary era.

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Citation: Joel Fishman. Review of Rakove, Jack N., *The Annotated U.S. Constitution and Declaration of Independence*. H-Law, H-Net Reviews. March, 2012.

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