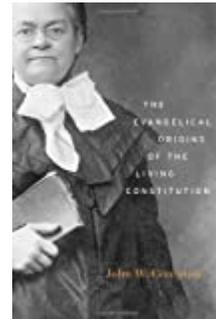




John W. Compton. *The Evangelical Origins of the Living Constitution.* Cambridge: Harvard University Press, 2014. 272 pp. \$47.50 (cloth), ISBN 978-0-674-72679-6.



Reviewed by John Young (University of Alabama)

Published on H-AmRel (June, 2016)

Commissioned by Bobby L. Smiley (Vanderbilt University)

According to many present-day American evangelicals, conservative biblical hermeneutics and conservative judicial philosophies are cut from the same wholesome cloth. Like the Bible, the Constitution can and should be interpreted as originally written (p. 1). This has not always been the case, however. As political scientist John W. Compton contends in *The Evangelical Origins of the Living Constitution*, the roots of the diametrically opposed legal doctrine of the living Constitution—a panacea for supporters of federal expansion, a poison pill for detractors thereof—can be traced not only to liberal jurists in the early twentieth century, but to conservative evangelical reformers in the nineteenth. Of course, these anti-liquor and anti-lottery crusaders never spoke of a living constitution, nor were they particularly aware of the potential ramifications of their efforts. How and why, then, did they manage to open the door for perhaps the most revolutionary development in constitutional interpretation?

The Second Great Awakening encouraged evangelicals to seek individual moral reform and national regeneration. This second goal could only be reached by the prohibition, or at least heavy regulation, of problematic predilections like drinking and gambling. Yet the Constitution offered no apparent means for the government

to do this, as the founders had envisioned a republic where fundamental law would hinder efforts to interfere with settled property rights or restrict the flow of goods in interstate commerce (p. 2). Evangelicals would have to persuade judges to bend the rules ever so slightly for the greater purpose of saving the nation's soul (p. 5). Largely stymied for several decades, evangelicals eventually won several important victories in the post-Civil War period. These cases, which undermined the definitions of seemingly self-evident concepts like property, provided precedent for later jurists who argued that the literal text of the Constitution had to be interpreted through the constantly changing lenses of social and economic mores.

Compton begins with an exploration of the first forty or so years of the republic, finding that antebellum evangelicals' designs for moral reform were largely incompatible with the founders' earlier desire that property rights and economic growth reign supreme. The founding generation, Compton argues, had been strongly influenced by political theorists who argued that cultural norms, especially religion, served as the glue necessary for holding a republic together. Yet the Constitution's architects also believed that the United States was too large and too diverse for one culture to unify, and

so they sought instead to unite their fellow Americans through material prosperity and procedural consensus (p. 20). Though understandable, this decision was ultimately based on a pair of faulty assumptions: first, that future Americans would remain wholly committed to the prioritization of economic development; and second, that the meanings of key constitutional concepts like property, contract, and commerce were essentially static (p. 21).

Had evangelicals remained a small portion of the population, these assumptions might have gone unchallenged, but numerical growth during the Second Great Awakening meant that evangelicals had enough sway to begin to pass local reform measures. Aggrieved liquor retailers and lottery operators turned to the courts for help, and for a while, they found it (p. 51). Compton's sustained evaluation of case law, however, demonstrates how the tide ultimately turned in favor of the reformers. Initially, state courts were reluctant to abridge well-established property rights, even in the name of public morality. By the mid-1850s, though, evangelicals had the ears of newly ascendant Republican state judges, who were more willing than their predecessors to break with tradition. Change at the federal level was slower to follow, yet in the end even the Supreme Court caved under reformers' pressure. The cracks in the foundations of the old constitutional order were quickly becoming apparent to those who bothered to look.

The scholarly consensus holds that the Supreme Court's rulings had little effect on questions of constitutional interpretation. Yet, as Compton demonstrates, even contemporary commentators realized that, for good

or for ill, these rulings mattered because they established a body of law far removed from the Court's comparatively conservative rulings on child labor and unions. Critics believed that the Court's inconsistency reflected a conscious attempt to tilt the scales of justice in favor of corporations. Whether or not such accusations were fair, a federal commerce power that could reach liquor, lotteries, and prostitution, but whose application to the field of industrial regulation was sharply limited could not, and did not, stand (p. 132). Pro-New Deal lawyers were able to successfully point to the Court's own liquor and lottery rulings as precedent for an expansive reading of the federal commerce power and a narrow conception of economic due process (p. 18). Thus was the living Constitution born.

Fair warning: enthusiasts of religious history who pick up this book because of its title, which includes the word "evangelical," or its cover, which prominently features a Bible-toting Carrie Nation, may be a bit surprised by what they find within. Compton focuses mostly (though not exclusively) on judges, court cases, and the constitutional developments *instigated by* evangelicals. Actual evangelicals are role players for much of the action, especially after the first chapter. Nevertheless, Compton's brief work usefully builds upon the revisionist interpretation that the New Deal-era "living Constitution" resulted from a much longer shift in constitutional philosophy. In the end, *The Evangelical Origins of the Living Constitution* offers a persuasive case that Americans of all political stripes—not just supporters of liberal economic policies, but socially conservative evangelicals as well—can support federal expansion when they perceive that doing so is in their best interest.

If there is additional discussion of this review, you may access it through the network, at:

<https://networks.h-net.org/h-amrel>

Citation: John Young. Review of Compton, John W., *The Evangelical Origins of the Living Constitution*. H-AmRel, H-Net Reviews. June, 2016.

URL: <http://www.h-net.org/reviews/showrev.php?id=46123>



This work is licensed under a Creative Commons Attribution-NonCommercial-No Derivative Works 3.0 United States License.