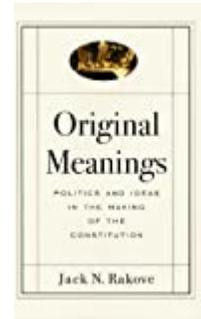




Jack N. Rakove. *Original Meanings: Politics and Ideas in the Making of the Constitution.* New York: Alfred A. Knopf, 1996. xvi + 439 pp. \$17.00 (paper), ISBN 978-0-679-78121-9; \$35.00 (cloth), ISBN 978-0-394-57858-3.



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Constitutionalized Politics

With this book, professor of history Jack N. Rakove of Stanford University further establishes himself as one of the key scholars of the Revolutionary and Constitutional period in United States history. His earlier books, *The Beginnings of National Politics: An Interpretive History of the Continental Congress* (1979), *James Madison and the Creation of the American Republic* (1990), and *Interpreting the Constitution: The Debate over Original Intent* (1990), are prologues to this extended and in-depth analysis of the Federal Convention of May-September 1787, the state ratification controversies, and those controversies' importance for the American sport of constitutional interpretation. Building on the subtle and sophisticated work of Gordon S. Wood, Bernard Bailyn, John Phillip Reid, William E. Nelson, Donald S. Lutz, and other notable analysts of the period, events, and people, Rakove weighs in with a book that both assesses and re-aligns the field. Though not a book for the casual reader (and, in Rakove's defense, he did not intend it to be) and though not the place to start undergraduate students in their discovery of the Federal Convention, James Madison, or ratification, *Original Meanings* provides the most careful, prudent, and scholarly historical analysis of the Consti-

tion and the best interpretative approach to originalism applied to the Constitution to date. Pre-publication reviewers and earlier book reviewers have gushed about the balance and insights of Rakove's work, and rightly so. Even those of us who lean toward originalism and who are suspicious of anything emerging from one of the most politically correct, liberal-dominated institutions in the nation (Stanford) will be supported, surprised, and challenged by this book. Rakove has produced first-rate history from which we all can learn.

On the first page of his preface, Rakove states his two "ambitions" for this book. First, as he explains, he wants it to be "part of a broader effort to explore how Americans created a national polity during the Revolutionary era," and second, he wants to discover "[w]hat authority should [the Constitution's] 'original meaning' (or 'original intention' or 'understanding') enjoy in its ongoing interpretation?" (p. xiii). Both of these ambitions or themes are worthy and fruitful, as Rakove masterfully controls the materials and arguments he presents, yet *Original Meanings* is not really about "how Americans created a national polity during the Revolutionary

era.” Rather, it is an exposition on the centrality of James Madison and his thoughts, plans, ideas, and ideals in the shaping of the American constitutional structure. In fact, for real truth in advertising, this work’s subtitle ought to be altered by adding a word so that it reads, “Madison’s Politics and Ideas in the Making of the Constitution.” I make this suggestion as a friendly amendment. Clarity and precision of language bedeviled the delegates through the course of their deliberations in Philadelphia, and clarity and precision of language bedeviled the defenders of the proposed Constitution during ratification. Such a title change would prepare readers for the depth and seriousness of Rakove’s examination of Madison’s writings and arguments. After completing *Original Meanings*, one better understands why Madison’s star continues to rise in the estimation of Constitutional and Revolutionary historians, and why it should shine even brighter in current interpretations of the goals and values of the constitutional process.

As for his second, more presentist, theme, Rakove tackles the most vexing question of interpretation for constitutionalists—originalism. In his last few pages, which Rakove labels “Coda,” he succinctly re-states his task as “to treat original meaning/interpretation/understanding as a serious historical question” (p. 366). Rakove might have launched a sneering attack and dismissal of originalism in the vein of Leonard Levy’s *Original Intent and the Framers’ Constitution* (1988), or (but less likely since he is a modern academic) he might have launched a strained rhetorical support of originalism in the vein of Walter Burns’s *Taking the Constitution Seriously* (1987). While both Levy and Burns have compelling arguments to make and axes to grind (against each other if they got close enough, one supposes), their goals in constitutional analyses are not Rakove’s. Rakove wants to recover the “original meanings” and controversies, fears, and hopes of the Founders in general, and of Madison in particular, as they crafted the Constitution in convention and defended the Constitution in the state ratifying conventions. By closely and minutely examining what the delegates debated and compromised, Rakove actually tests originalism’s usefulness. In order to accomplish this difficult goal, the historian would have to have total command of the primary and secondary sources (which Rakove does) and would have to be willing to go where the evidence is, and not where the preconceived present theories and arguments tell him (or her) to go. By arguing up from the sources, up through the secondary literature, and to his own conclusions, Rakove has produced a much

welcomed addition to, and interpretation of, American constitutional history.

What is most appealing about Rakove’s book is his evenhandedness. As the text makes clear, once Rakove, a skeptic of originalism to be sure, started down that line of analysis which takes originalism seriously, he found that the theory provided him a conceptual tool that both aided and hindered his task as a historian. Originalism, the interpretive approach, forced a re-evaluation of the primary sources. What those *sources* (not current and trendy liberal theories) suggest to Rakove about the “original meanings” of the drafting and ratification of the Constitution would disappoint strident originalists.

Any of Rakove’s substantive chapters would demonstrate this point, but the chapter on “Federalism” (pp. 161-202) is particularly satisfying. One of the oldest and most troubling questions for Americans has been, as Rakove points out, “[w]hich came first, the Union or the states?” (p. 163). How Americans have struggled with and separated the division of powers and duties among the levels of government is one of the key questions in constitutional history, and no single clear answer has emerged. What Rakove demonstrates is that “the Founders” (I am no more comfortable with that label than they would be, but we are struck with it) were themselves divided on the relative power of the states versus the central government. One group, led by Alexander Hamilton (Madison’s co-partner and his more than occasional foil in Rakove’s account) believed that the states formed the key evil in the polity and that, once the federal government took life after ratification, the states would decrease in importance. Another key group, led by Madison, believed that local attachments to states would last long and die hard, if they died at all. As Rakove explains, “But whereas Hamilton was rash enough to predict that the functions of the states must decline in importance relative to those of the Union, Madison better grasped just how provincial American governance would long remain” (p. 200). How then did the Founders expect to settle the tough questions regarding the relationship between the states and the central government? For Rakove, it was “politics” (in the broadest sense); as he nicely sums it up, “Whether the politics of the American republic would prove more ‘federal’ or ‘national’ ... was a function of neither the language of the Constitution nor any grand principles that the framers implanted in their regime but of the various ways in which Americans weighed the advantages and disadvantages of pursuing their interests within the compound federal structure the Constitution both created and acknowledged”

(p. 201). Historical context and careful attention to the sources (old-fashioned techniques of historical inquiry and not the pre-determined agenda of social history, in other words) reshapes our interpretations and casts new light on the issues, people, and controversies we thought we knew.

That sort of intellectual honesty guides Rakove in his arguments because he well understands that historical neutrality is not possible, especially not in constitutional history. When Rakove's hero, Madison, employs originalism in the First Congress, the approach fails even him. Resort to originalism was itself a political action and not any sort of "neutral" middle ground in the search for understanding and compromise. Madison utilized originalism, as Rakove makes clear, "not by the prior conviction that it was the most appropriate strategy to ascertain the meaning of the Constitution but by considerations of partisan advantage." Madison's use of originalism "merely demonstrated that neutrality could rarely be attained when the Constitution was so highly politicized, or when politics was so highly constitutionalized" (p. 365). It is the politics of the moment, the decisions of relative political advantage, that suggest constitutional

arguments and positions. Madison struggled unsuccessfully against that understanding of American constitutionalism, but the politicized Constitution and the constitutionalized politics he helped to create overwhelmed him and his earlier visions for American constitutionalism. That is a lesson worth knowing and a story (a history) worth telling.

Original Meanings will itself spawn its supporters and detractors. This work will send young scholars to the sources, it will challenge the arguments and understanding of older scholars, and it will, no doubt, be the subject of future history conference sessions (probably entitled, "The Original Meaning of *Original Meanings*"). But just as the on-going political debates and political life of the nation are the Constitution at work, so, too, are the on-going scholarly debates, arguments, and conferences. Constitutional history is a richer, better place because of the appearance of *Original Meanings*, so let the arguments begin.

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