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BOOK REVIEW: REFLECTIONS ON "ORIGINAL MEANINGS. POLITICS AND IDEAS IN THE MAKING OF THE CONSTITUTION" BY JACK N. RAKOVE

I. INTRODUCTION

In deciding what book to do a review of, I considered the theme of our TAH seminar of "de-fabing" the origins of the Constitution. I took particular interest in the readings and discussions concerning the nuances of personality, Enlightenment philosophy, nascent 18th century "American political thought", and the reality that the Constitution represented the culmination of a period of experimentation in political science from 1776 - 1787. Another interesting aspect of the seminar was the mention on several occasions of the follies of "original intent" espoused by jurists and political pundits today, when considering the divergent forces, interests, opinions, and history that went into the final adoption and ratification of the Constitution in 1787. My research led me to select Jack Rakove's Pulitzer Prize winning book *"Original Meanings: Politics and Ideas in the Making of the Constitution"* (Vintage Books, New York 1997), a scholarly treatment of the varied influences that created a document that through time has retained certain central absolutes (i.e., representative government, an "energetic" executive, separation of powers, and the need for a stronger national union than that which was offered under the Articles of Confederation). What I became more deeply aware of in reading this book were the divergent beliefs, opinions, and strategies which led to a consensus based compromise in many key areas of the Constitution (the scope and interplay of representation, the development of a revolutionary concept in republican government of federalism and the achievement of an "independence" from state-legislative tyranny against individual and national security). The book itself was a dense read requiring reflection and at points perseverance in achieving the ultimate end of understanding the main thrusts of the author. I would not recommend it as a book to be assigned to my students as a whole. However it is replete with ample uses for enriching my own knowledge and lessons on not just the Constitutional era, but lessons in political science and philosophy.

II. POINTS OF INTEREST: "ORIGINAL MEANINGS"

(A) DEFINING "ORIGINALISM"

Can, as modern-day original theorists contend, the meaning of the Constitution, as intended by the Framers, as a whole and its individual parts, be ascertained and applied to issues of the modern-day? Exploration of this issue is one of the central themes of *Original Meanings*. In addition to exploring this issue of historical analysis and modern day political debate, Rakove outlines the complicated and fluid interpretations that occurred throughout the evolution of the Constitution, from the Convention, through the battle for ratification, and after during the nascent stages of the post-Constitution nation. Through a deep and balanced analysis of the varied forces that shaped the drafting and debate over the Constitution, Rakove establishes that, even at its inception and throughout the process of ratification, the meaning associated with the Constitution was evolving through the complicated web of political compromise, and the formulation and articulation of a "new" Enlightenment political science. At no fixed time during the drafting or ratification process can there be a correlative "fixed intent" to be absolutely associated with all who had a hand in not only drafting the document itself, but all of the American public that was engaged to a variety of degrees in the ratification debates and state conventions. Rakove's main achievement with this book is to point out that there is no simple "original intent" formula in attempting to apply some absolute meaning to the various parts or the whole of the Constitution, only the possibility of attempting to "ascertain the original meanings [on] a more informed basis ...considering the entire process of its

adoption". Rakove masterfully takes the reader through the multileveled stages of this complex process, giving due weight and analysis of the varied stages of the final "birth" of the document. Whatever 18th century "intent" we attempt to attach to the document cannot, as Rakove's overall analysis points out, be done simply by looking at its face. Nor can we in the present day, if attempting to associate some "intent" on the part of the "founders" be ignorant of the multileveled and truly "national" conversation that occurred during the ratification battle that raged well beyond the Convention. Who's "intent" or "understanding" are we to look to in gleaning what was meant by various parts of the Constitution? The answer according to Rakove is that we cannot simply look to the fragmentary record of the Convention, nor simply at the essays and writings of the Federalists and Anti Federalists. Although these are obvious possible sources in analyzing the meaning at that moment in time, they are not the only ones. Furthermore, one must consider the diverse and varied historical, political and societal forces and changes that were behind the shaping of American political thought at this moment (e.g., the Confederation period, the evolution of American political theory from English pre-colonial and colonial, the shaping of the political philosophy of the most central figure to the Constitution's framing-James Madison, the growth of 18th century American "national" political practices that shaped the manner in which the Constitution was ultimately and laboriously framed in Philadelphia in 1787, and the development of the concept of "ratification" by the people). Ultimately, I was left with the understanding that those who had their hand in the final birthing of the United States Constitution, from the delegates of the Convention, the delegates at the state ratifying conventions, and the average American citizen engaged somehow formally or informally in the process, themselves each had a certain level of diversity in their own understanding of the meaning of the Constitution and collectively in a compromise fashion codified the results of a collective "meditation" on representative government that they hoped would serve as a guide to future generations- to whom they left the responsibility of continuing the process they started- giving due weight to a shared historical experience and experimentation, to adapt our interpretation of the Constitution based on our experiences and understanding of all that has and has not worked and adjust accordingly. There is no absolute meaning we can simply attach to the document and the founders knew this. It would be unsound to simply apply 21st century meaning to the language of the Constitution, or cite from the Federalist Essays and declare it to be interpretation. Valid and thorough analysis of all that went into the birth of the document can give us insight into what may have been the understanding of the founders and the nation itself at that time. As Rakove points out in the Coda of his book:

Having learned so much from the experience of a mere decade of self-government, and having celebrated their own ability to act from "reflection and choice", would [the founders] not find the idea that later generations could improve upon their discoveries incredible? How could those who wrote the Constitution possibly understand its meaning better than those who had the experience of observing and participating in its operation? It is one thing to rail against the evils of politically unaccountable judges enlarging constitutional rights beyond the ideas and purposes of their original adopters; another to explain why morally sustainable claims of equality should be held captive to the extraordinary obstacles of Article V or subject to the partial and incomplete understandings of 1789. (Rakove pp. 367-368)

Rakove's book highlights that "originalism" is something of a fiction - it is possible and in fact necessary to attempt to determine what was meant at the time of the adoption of the Constitution; however this

requires accurate and balanced treatment of the variety of ideas and "beliefs" expressed throughout the complex process, from pre-Convention, to Convention, public debate and state ratification. Rakove enlightens the reader by sparking meditation on this key essential question- what is it that we are trying to determine to be "original"? The intent of the delegates of the Convention? The meaning attached to the Constitution by the majority of delegates at the Convention? The state ratification conventions? The American people? Rakove highlights that modern-day "original-intent" claims miss the mark in that the intent cannot be gleaned simply from reviewing the specific language of the Constitution, the sparse notes of the Convention and the Federalist papers. To attempt to know what Americans in 1787 - 1788 understood the Constitution to mean, we must review understand the national "discussion" that occurred from 1776 - 1788. The design and ultimately discovered weaknesses of the Articles of Confederation tell us something of this story. The states' experimentation with republican governments and constitutions tell us something of this story. The steps leading to the Convention tell us something of this story. The existing records and sources relative to the Convention, post-Convention debates, and state ratifying conventions tell us something of this story. The formative political lives and writings of key figures like Madison, Hamilton, Smith, and others tell us something of this story. Therein lies the essence of Rakove's book. There is no easy, sure-fire, absolute way to determine the "original intent" of this time period within the four corners of the Constitution itself. Nor would the framers and all those who had a hand in its development and ultimate ratification expect this to be the rule. No doubt they would want us to look back for guidance in interpreting the tools with which we continue to shape our Constitution. But they would have undoubtedly have expected that future generations would have adjusted and adapted according to the benefit of experience in observing the workings of the Constitution. We must, in attempting to come to our own understanding and appreciation of the Constitution, recognize the diversity of voices, interests, and forces present at the founding of our Constitution, and appreciate that at its core it hopefully means the same to all of us - the continuously emerging result of the greatest political-science experiment of Western Civilization. As James Madison said during the heat of the Convention debate "[in] framing a system which we wish to last for ages, we should not lose sight of the changes which the ages will produce" (Rakove, pp. 35- 36).

(B) RATIFICATION: THE "TRUE" BATTLEGROUND OF THE CONSTITUTION

Another fascinating inquiry into the true meaning of "original intent" is the treatment Rakove gives to the role that the process of "res publica" and the debates at the state convention level played in shaping the 18th century "understanding" of the Constitution. Since the process of popular ratification outside of the context of state legislatures or Congress was the means through which the Constitution was in fact given "life", we must pay attention to the complex and diverse debate that occurred within the conventions as well as in the "newspapers, coffeehouses, taverns, and other meeting places." (Rakove p. 95-96). "All of these strictures need to be kept in mind before one can speak intelligently about what the Constitution meant to Americans at the moment of its adoption." (Id.)

Throughout this chapter, Rakove considers the deliberations and concerns of the delegates at the Convention over the best possible method for adoption, primarily desiring the most "personal and republican" method of assent by the people, while at the same time trying to avoid the prospects of unanimous consent as would have been necessary under the Articles of Confederation, and to avoid the need to call for endless revision conventions as the states would undoubtedly have divergent and varied

ideas for “amendments”. Rakove traces some of the highlights of key ratification battlegrounds (Massachusetts, New York, Massachusetts, Pennsylvania). An interesting microcosm of debate and strategies used by Federalist and Anti-Federalist forces was Massachusetts. Rakove shows that the division in Massachusetts went along social and class lines. Federalists were “puzzled” as the opponents of ratification cited no specific objections to the Constitution but rather “their opposition seems to arise from an Opinion, that is immovable, that some injury is plotted against them, that the system is the production of the Rich and ambitious.” (Rakove p. 119). Seeking and obtaining the support of Anti-Federalists (e.g., Hancock and Samuel Adams), the Federalists in Massachusetts managed to effect ratification by agreeing to “recommendatory” amendments. (See Rakove pp. 118 – 121; Political compromises and strategy; concept of non-compulsory amendments; up or down ratification). The issue of linking amendments to threats for calling second conventions was raised in New York and Virginia, a fact that perhaps more than motivated Madison to persuaded the First Federal Congress to tackle the issue of amendments (See Rakove p. 127)

Chapter 6 of Rakove’s book “Debating the Constitution” gives a rich summary of the public debate that occurred during the process of ratification. In addition to highlighting key sections of the “debate” as outlined in the Federalist papers and Anti-Federalist writings, there are numerous citations to editorials and essays in newspapers and pamphlets, and speeches and writings from some of the delegates at the Convention. Some interesting reflections of these sources include the following. Rakove points out that one of the ironies of the ratification process was that both sides on the subject “had to appeal to a public opinion in which they placed little confidence- not because they regarded the American people as an unwashed mass of the ignorant and selfish but because they feared that cunning leaders would manipulate even well-meaning citizens.” (Rakove p. 134). “A nagging skepticism about the basis on which citizens formed their opinions underlay the celebration of ‘reflection and choice’”. (Id.) Federalists used the significance of notable individuals to promote their agenda with the masses. “The framers were a ‘band of Patriots and Philosophers’, who would have adorned the history of Greece and Rome, in their most brilliant aeras” were key headlines and storylines appearing in newspapers even before the Convention had ended (Rakove p. 135 citing the Boston American Herald August 8, 1787; Pa. Gazette Aug. 22, 1787). Rakove points out that other writers “linked the collective virtues” of the entire Convention to the “illustrious reputation of its two luminaries”- Washington and Franklin.

“Bear witness...with what solicitude the great council of America, headed by a Franklin and a Washington, the fathers of their country, have deliberated upon the dearest interests of men, and labored to frame a system of laws and constitutions that shall perpetuate the blessings of that independence, which you obtained by your swords. Ratification of the Constitution will enroll the names of WASHINGTONS AND FRANKLINS, of the present age, with the SOLONS AND NUMAS, of antiquity. Illustrious CHIEFTAN! Immortal SAGE!- ye will have the plaudit of the world for having twice saved your Country! (Rakove p. 136 citing the Pennsylvania Packet, an unnamed Boston Writer, and the Pennsylvania Gazette).

The battle for the minds of the people would be waged by Federalist and Anti-Federalist alike using both deeply reflective essays and analysis in addition what we in the modern day could recognize as a “slick” marketing campaign of sound bites and symbolism in an effort to reach the fringes of public opinion. The

use of Washington and Franklin by the Federalists, the two truly nationally recognizable “heroes” of the Revolution by the Federalists surely can be said to have been by this design. Anti-Federalists took the opportunity to rail against the process of the Convention and otherwise spark impulsive fear in the court of public opinion. (Rakove p. 139 citing Martin Luther’s serial history of the Convention in the Maryland Gazette and Gerry’s letter to the General Court published in the Massachusetts Centinel justifying his refusal to sign). Again, ironically, Madison and the Federalists faced having to appeal to the “same public opinion whose excesses they feared to secure the adoption of a Constitution they hoped would calm the populist surges that had roiled American politics since independence.” (Rakove p. 139 – 140). Rakove also analyzes how the disorganized (but potentially effective) Anti-federalist quarrels over the Constitution (e.g., ciphering power from the states, inadequate representation in the national government, fear of abuse of power and the lack of a bill of rights, the fear of a national judiciary) provided the Federalist with a “laundry list” of attack points around which to organize their counter attacks in the mode of explaining, with reflection, how the Constitution would work in these areas for the benefit of the nation (see Rakove 146 – 149). Through this “debate” (which Rakove points out to be the best historical evidence of the 18th century interpretation of understanding. Rakove pp. 149 – 150) we can attempt to glean how the framers and others interpreted the Constitution. But as Madison pointed out “all new laws, though penned with the greatest technical skill, and passed on the fullest and most mature deliberation, are considered as more or less obscure and equivocal, until their meaning be liquidated and ascertained by a series of particular discussions and adjudications”. (Rakove p. 159). It was his intent to “trust future experience to identify remedial defects in an adopted Constitution than to risk the uncertain event of a second convention” (Rakove p. 159).

(C) BREAKTHROUGHS IN POLITICAL SCIENCE: THE CONSTITUTION BREAKS NEW GROUND -FEDERALISM

Rakove’s book is filled with deep historical analysis of all of the political innovations of the Constitution. One that I found interesting was Rakove’s highlighting of the “revolutionary” nature of the Constitutional period through the innovation of republican government under federalism. If we are to point to a central leading singular person as the lightning rod of change in this regard, it has to be Madison. Rakove in a chapter called “The Madisonian Moment” traces the development of Madison’s political philosophy through his experiences with state government and the Congress under the Articles of Confederation. Madison’s experience in Congress formed his federalist/nationalist position in realizing that Congress lacked to authority and resources to carry out any of its limited powers. (Rakove p. 38). His experience with his Virginia legislature further served to deepen his lack of faith in the ability of powerful state legislatures to see beyond their own innately local issues to the detriment of national concerns (Rakove p.40). Madison’s quest in framing the agenda for the Convention in 1787 was to prove that a national government could be formed as a large heterogeneous republic, contrary to classical and contemporary thought (Rakove pp. 46-47), and that this was required not just for the preservation of the Union on a national level but from a state level as well (Id., citing the need to “not merely free the Union from its debilitating dependence on the states but also to seize the occasion of reforming the national government to treat the internal defects of the states”; also citing that the “state legislators nor their constituents could be relied upon to support...the true public good of their own communities, or the rights of minorities and individuals.”). Madison’s nationalist agenda went far beyond the original grant of authority of Congress to the Convention (recommend amendments to the Articles of Confederation) and

instead laid the framework for considering a radical shift in which two governments would “act on the same population” (Rakove p. 51), through law, with the newly empowered federal authority in cases of conflict being the ultimate power. “Rather than amend the Articles by identifying additional duties the Union might discharge and modestly enhancing its authority over the states, he perceived the necessity and advantages of allowing the national government to act directly upon the population through the power of law. Rather than allow this authority to be vested in an anomalous unicameral Congress, he understood that the Union had to be reconstituted as a government in the normal sense of the term, and further, that the recent history of the individual states provided the critical experimental evidence from which a superior model of a republic could be constructed....(in a way that would address and remedy not only) the woes of the Union, but to the underlying vices of the Republic.” (Rakove pp.54-56) In shaping the framework for the Convention, Madison was driving America to redefine republican democracy through the development of federalism.

Rakove in Chapter 7 of his book outlines the challenges faced by the framers in developing the balance between state concerns and a newly constituted more powerful national government. He also points out that Madison’s original view of the national power, although used as a guide, was not the “final answer” of the Convention, as the “model of federalism” developed throughout the course of the Convention was “far more complex than either the Confederation or the program that Madison had introduced”. (Rakove p. 180). The chapter puts the debates on the concept of federalism in context first by explaining two views on the representative authority of the state and national governments. On one side, Luther Martin reflected the states-rights theory that the Union existed because of the states (see Rakove p. 163). Martin’s rationale was that the 13 ‘separate sovereignties’, by breaking from Britain, created the national Union and therefore their inherent powers superseded that of a national Union. James Wilson provided an opposite view on this issue by theorizing that the colonies only became states because of their creation of a Union and therefore certain elements of the state’s previously held colonial sovereignty was absorbed. (Id.) The chapter also articulates an historical and contextual explanation as to how ultimate consensus on the issue of empowering the national government was reached given the prior history of state-empowerment and mistrust of a strong central government. Rakove points out that notwithstanding the disparaging views of the weak national Congress under the Articles, “the state governments were held culpable for the failures of policy, and not only by nationally oriented leaders.....but by resentful citizens as well.” (Rakove p.165). Furthermore, states were facing separatist movements within their own borders (Rakove citing separatist movements in Virginia, North Carolina, and Massachusetts...the future Kentucky, Tennessee, and Maine. Rakove p. 165). Given that the states were becoming viewed as the problem for national insecurity and incapable of “guaranteeing their territorial integrity” on their own, efforts to frame a federalist system of government with the national level supreme perhaps was a notion whose time had come. “Far from sapping the vitality of the states, the formation of a more perfect Union capable of checking separatist movements, guaranteeing boundaries, and adjudicating territorial disputes could work to protect their authority against pressing threats. In this sense, vesting new powers in the Union need not constitute a net loss for the states” (Rakove p. 165).

Rakove’s book traces the evolution through the debates and ratification process of key concepts of federalism. Empowering the national government to act directly on the population rather than through the states as an arbiter, providing for a national framework independent of undue state political influence,

specific enumeration of necessary powers of the national legislature, the development of a direct “coercive” or negative over state acts. The Senate as both an example of the federalism developed through this process is pointed to by Rakove as both protecting “state sovereignty” through the equal vote and national in its focus on national interests. (Rakove p.171). Tracing the development of the enumerated powers of Congress was also an interesting aspect of the chapter on the development of American federalism.

III. POSSIBLE USES IN TEACHING

In terms of uses in the classroom and my teaching, there are many possible avenues through which this reading can enrich my curriculum and my own teaching. Without overstating the obvious, this 439 page (small print) book has further enriched my own content knowledge and sparked new levels of critical thinking about the Constitution and its birthing within me. As stated previously, in my opinion, given the density of the book as a whole, I would not assign it to my sophomore level high school history students as a required read (although I would be THRILLED should they decide to read it and discuss on their own!). There are three specific uses for this book I have in mind for this year.

(A) "MIRROR REPRESENTATION": HOW SHOULD WE BE "REPRESENTED" IN CONGRESS?

Without having developed the actual project or classroom activity, from a conceptual standpoint I am inspired by the chapters in Rakove's book called "The Mirror of Representation" and "Federalism" to develop an activity that explores the founders (and 18th century American public's) debate over the scope of representation within a national legislature and the attendant debate over what should guide a national legislative representative's decision-making process over national policy and lawmaking- local interests, constituent opinion, individual judgment driven by local or national interests, or some complex combination of all of these? I would assign the entire chapters or select parts of them wherein students would be exposed to the early concepts of who had the right to be represented, the debate over whether the collection of representatives should have the requisite "sympathy" of every possible socio-economic class of the area to be represented, the concept of a "negative" on states' legislative acts, and what should be the "guide" of a representative's decision making process. These chapters are rich with political philosophy on this subject ranging from state resolves, writings of founders such as Mason, Franklin, Wilson, and Madison, writings from the Federal Farmer arguing for an expansive representation model to guard against the rise of a legislature representing the aristocracy to the detriment of the middle and other classes of social and economic interests, Federalist concepts of "calm and prudent judgment" by a smaller legislative body more than capable of taking account of all interests without specific life experience or sympathy", consideration of the 18th century problems with local state legislatures (narrowly focused on innately local and incessantly minute interests and concerns), concepts calling for the general expansion of suffrage and representation following the Revolution from the landed interests to all, with the goal of achieving stable, fair, and representative legislation representative of the "national interests" without yielding to passion, public opinion, or purely parochial concerns. Furthermore the central issue of the shift in power structure from a state-dominant system under the Articles of Confederation, and the problems appurtenant thereto would be analyzed by students.

With selections of these readings, students would be asked to design plans for developing a national legislature, considering a prior history of colonial and state dominant legislatures, the limited

powers under the Articles of Confederation and the "roadblocks" faced by the national Congress under this power-structure. Students would need to revisit issues such as representation of the states but also be forced to delve deeper in the analysis of what "interests" are to be represented in a national legislature. What mechanisms would be employed to maintain national "unity" in the development of a shared power structure between national and state governments wherein the power paradigm was to be shifted from a state to nationally dominant model? What powers would be necessary to specifically provide to the new national Congress without intruding to the complete evisceration of the state counterparts? And finally, given the reading specifically of the "Mirror of Representation" chapter, how should a Congressperson "represent" their state? This would be the second phase of the activity. The first would be the development of a "Conventional-style" plan. This phase would require students to analyze the arguments and political philosophies of representation expressed by the 18th century political mind concerning balancing state and national interests. Students would be given a variety of hypothetical legislative issues as representatives in the House or Senate. These would have subtly and blatantly conflicting interests in terms of national and local constituency impact. Students would need to state and justify their representative action and cite to historical authority from these readings to explain if not justify their decisions.

(B) DEVELOPMENT OF THE PRESIDENCY AS OF 1787: FROM ERRAND BOY TO PATRIOT KING

The chapter on the evolution of the executive branch and the presidency in Rakove's book delves not just into the fragmentary record of the Convention for an explanation into the structure and scope of Article II. It delivers a thorough analysis of the history behind the colonial and post-Revolutionary state aversion to a centralized singular executive and the emergence of a more "vigorous" chief executive. In reading this chapter students would be exposed to a variety of concepts concerning the role of the executive branch, separation of powers, and the correlative interplay between the development of other portions of the Constitution and changes relative to the final "version" of the presidency (e.g., the Senate). In order to understand the radical shift from a weak executive in early 18th century America to the version made possible by the Constitution, students would be asked to develop a time-line of the development of the American "presidency" dating back to the history of English monarchs and their relationship with Parliament, colonial governance, state executiveship, through the Convention. Why and how did the Convention shape a more rigorous executive?

(3) THE POLITICS OF CONSTITUTION MAKING

The chapter of Rakove's book on the "Politics of Constitution Making" (most definitely in conjunction with Berkin's "A Brilliant Solution") is ripe with material leading to critical thinking activities for students. The primary learning objective for students to understand is that this was an event-horizon for the delegates. They knew that they stood at a crossroads with divergent exits and that contingency and accommodation ruled the method by which they settled on the document they would attempt to obtain the approval of from the states. This matter of "contingency" and "perspective" would hopefully be developed through a decision-making activity for students. Students would be assigned various roles to consider from each of the divergent perspectives (e.g., small state/large state; slave state/non-slave state; regional and economic diversity) with the understanding that regardless of regional

or economic differences, one ultimate issue was tacitly agreed to: without a more empowered national government, that which was achieved as a result of the Revolution, would dissolved either by way of internal civil war or gradually from external pressures exerted from wealthier and more powerful European nations. Attempting to be as objective and empathetic to their role as possible, what would they have done on the issues of the structure of the Congress and representation? What would they have done in relationship to the issues of slave-holding states and the 3/5ths clause, fugitive slave clause, and federal supremacy? As a second activity, I would be inspired by many of the sources cited by Rakove in his chapter “Debating the Constitution” (i.e., newspaper reports of the convention, Federalist and Anti-Federalist arguments announced in pamphlets and newspapers, selections from the Federal Farmer and the Federalist Essays) and assign them the task of creating a marketing campaign both in favor and opposed to ratification, hopefully deepening their appreciation not only for the arguments for and against ratification, but also in understanding that the ratification of the Constitution was always in doubt and subject to the contingency of history.