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David J. Bodenhamer. *The Revolutionary Constitution.* New York: Oxford University Press, 2012. 281 pp. $29.95 (cloth), ISBN 978-0-19-537833-7.

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Constitutions for the Times: A Synthetic History of American Constitutionalism

David J. Bodenhamer has written a lucid and informative topical history of American constitutional law and constitutionalism in *The Revolutionary Constitution.* Bodenhamer, a professor of history, adjunct professor of informatics, and founder and executive director of the Polis Center at Indiana University-Purdue University Indianapolis, has provided a constitutional history that embraces a very modern understanding of constitutionalism. Arranging the book in ten topical chapters, Bodenhamer addresses each topic in isolation, covering the full American historical period for the respective topic. The result is a series of essays about important themes of American constitutional history, such as the origins of constitutionalism in America, federalism, equality, rights, and–Bodenhamer's overarching intended theme–the history of "power and liberty." But there is another theme, sometimes expressed, often implied: that of pragmatism.

Bodenhamer's is a synthetic work, using the most influential and recent scholarship. His thesis is that American constitutionalism, even that of the colonial period beginning in the seventeenth century, has embodied a willingness to adapt to the needs of the time. In short, Bodenhamer embraces a historical interpretation that supports a "living constitutionalism" approach to constitutional history and interpretation. As he states, constitutional meaning has been made by "people" and "reshaped" over time (pp. 5-6). He contends that the chief contribution of the American colonists of the Revolutionary period to American constitutionalism was a "set of attitudes about individual liberty." Making note of Americans' support for criminal procedural rights and de facto religious liberty (post-Great Awakening), Bodenhamer claims that the colonists' "biggest contribution … was a pragmatic willingness to mold law to social needs and circumstances" (p. 19).

In fact, the book's title is derived from Bodenhamer's argument that, not only the Constitution of 1787, but also American constitutional thought was "the product of a revolutionary age" (p. 23). (Bodenhamer does not build a comparative case that this was a "revolutionary age" by, for example, including an analysis of the French Revolution's very different course. Instead, he sticks with the American scene). He agrees with the post-Beardian scholars that the American Revolution and the Constitution were concerned with more than economic issues, namely political and human rights. Yet, those rights and the powers of the national government were framed as a "pragmatic response" to the political problems of the Critical Period (p. 55).

Bodenhamer rightly and fairly recognizes opposing contemporary views and historians' interpretations throughout the book. However, his praise for what he understands as the virtue of pragmatism is consistent. For example, Bodenhamer describes (and praises) federalism as a "highly malleable" concept that has met the needs of a dynamic society and economy (p. 67). He notes that the "story of federalism is incomplete" without the "counter-narrative of local control" (p. 69). Yet his interpretation implies praise for the dramatic post-New Deal enhancement of federal power as a product of economic and social necessity rather than political choice (pp. 104, 110, 128). He describes the "new federalism"–the assertion that state sovereignty can limit federal power–as reflecting popular divisions over the proper extent of federal power. Yet he dismisses the new federalism arguments by asserting that "few people argue seriously" that states alone can or should shoulder responsibility for "education, crime, economic development, immigration, public health" and other issues. Instead, he contends that the post-New Deal state is really one of "cooperative federalism," wherein states and the national government "work[] in partnership" (p. 88). This claim supports Bodenhamer's argument that American gover-

nance has been a pragmatic response to perceived needs, but it is a view that contradicts (and is perhaps belied by) the history of sharp debates over not only what government should do but which level of government should have authority over matters. Additionally, Bodenhamer makes the surprising claim that the framers would not have been surprised by cooperative federalism, or the modern welfare and regulatory state (pp. 88, 104). Although Alexander Hamilton might have supported some version of the modern post-New Deal state, many of the framers would have been quite astonished at the power and purposes of the modern federal government. "Consolidation" of governing power was a perennial fear of the framers' generation.

In regard to the Supreme Court as an institution, Bodenhamer contends it has been a formidable locus of power since the late nineteenth century. He describes the Court as the "preeminent branch" in the last three decades of the nineteenth century (p. 102). The Court has played a role in formulating national policy through the cases it decided in the post-Civil War industrial period and ever since. Bodenhamer has chosen to discuss nineteenth- and twentieth-century constitutional history as mostly a history of Court doctrine in distinct topical chapters. This approach places the Court at the center of constitutionalism and as the prime interpreter of the Constitution.

Although Bodenhamer frames his discussion under the rubric of "power versus liberty," the thesis seems to be that pragmatic approaches to constitutionalism are superior to doctrinal consistency. Bodenhamer sees abstract ideas as being vindicated or protected over time through their adaptation to the needs of an ever-changing society. In this sense, Bodenhamer echoes the sociological jurisprudential view of constitutionalism. Accordingly, Bodenhamer's review of recent constitutional history reinvigorates the debates about not only what constitutional provisions mean but also how constitutionalism should be construed as a historical phenomenon and approached for future governance.

This book will be useful to undergraduates and graduate students. The topical chapters can be read in isolation and provide an informed and inclusive synthetic understanding of the subjects. There are chapters on federalism, property, representation, and rights, among others. One drawback to this approach is that some issues are considered twice over. For example, some of the same debates on women's rights are covered in both the representation and equality chapters. However, this occasional repetition is not fatal to the book overall. University or even high school students could profit from select chapters of the book. Academic professionals will profit from Bodenhamer's concise review of such broad topics and will find room to debate his interpretations of doctrinal history.

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