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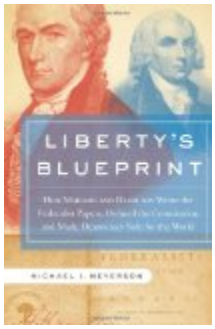
Michael I. Meyerson. *Liberty's Blueprint: How Madison and Hamilton Wrote the Federalist Papers, Defined the Constitution, and Made Democracy Safe for the World.* New York: Basic Books, 2008. xiv + 314 pp. $26.00 (cloth), ISBN 978-0-465-00264-1.



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Published on H-Law (June, 2008)

Does Making History Law Render It More Relevant?

The Founders well understood the relative permanence of constitutions and their role, as primary laws, in shaping both subsequent legal enactments and future Americans' beliefs, values, and behaviors. Thomas Jefferson contrasted the limited protection of religious freedom that his Virginia Statute for Religious Freedom might provide with that which could be secured through a constitution:

And though we well know that this assembly, elected by the people for the ordinary purposes of legislation only, have (sic) no power to restrain the acts of succeeding Assemblies, constituted with powers equal to our own, and that therefore to declare this act irrevocable would be of no effect in law; yet we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present or to narrow its operation, such act will be an infringement of natural right.[1]

Jefferson understood that a social contract alone could safeguard the rights of the people while still providing a legitimate basis for governmental authority. Again in reference to the issue of religious freedom, he wrote:

Let us too give this experiment fair play, and get rid, while we may, of those tyrannical laws. It is true, we are as yet secured against them by the spirit of the times. I doubt whether the people of this country would suffer an execution for heresy, or a three years imprisonment for not comprehending the mysteries of the Trinity. But is the spirit of the people an infallible, a permanent reliance? Is it government? Is this the kind of protection we receive in return for the rights we give up? Besides, the spirit of the times may alter, will alter. Our rulers will become corrupt, our people careless. A single zealot may commence persecutor, and better men be his victims. It can never be too often repeated, that the time for fixing every essential right on a legal basis is while our rulers are honest, and ourselves united.[2]

The Founders' belief that constitutions embodied a form of law superior to the legislature's ability to frame laws has been found to be an archaic understanding even in the late eighteenth century. John Phillip Reid argues that the American idea that Parliament was precluded from enacting certain laws pertaining to the colonies by the principles contained in England's unwritten constitution served as the basis for the colonists' perception that English laws were unjust. Reid contends that by the late 1700s in England, the constitution had come to mean whatever Parliament said it meant.[3] One wonders if the United States Constitution has now reached an analogous status in its relationship to Congress–and if so, for how long that status has prevailed.

Michael Meyerson, a law professor at the University of Baltimore, has issued a new challenge to those who question the continued relevancy of the Founders' beliefs to law in the twenty-first century. Meyerson professes to espouse a modified originalism in constitutional interpretation. In this, his latest work, he looks not to the pri-

mary law itself, but to the Federalist Papers for support of this perspective. In his preface he writes:

The Federalist shows that it may make sense to be a "partial originalist." We can rely, at least presumptively, on the original understanding of those who drafted and ratified the original Constitution for issues of separation of powers and federalism, yet feel freer to use our more evolved understanding for determining the contours of individual rights and equality. History, in other words, can teach when and how to use the lessons of history.[4]

One concern with this reasoning however, is that while the Federalist Papers serve as tremendous primary documents for understanding history and constitute a significant American contribution to both political philosophy and constitutional theory, they are not law. Their relevance to constitutional interpretation depends upon, rather than supports, an originalist perspective.

Meyerson is a legal scholar, but he readily acknowledges that he is "not a professional historian."[5] A professional historian would be unlikely to care much about the current political, social, or legal relevance of his or her course of study. Understanding history as history, and perhaps, secondarily, as a means of appreciating human nature, is all most historians need to find relevance in what we do. As history, Meyerson's latest work offers considerable insight into the intellectual and political history of the constitutional era and provides a timely rebuttal to recent neo-Beardian works concerning the same period.[6] In this context, it is a valuable work that offers historians a great deal despite its presentist orientation.

Meyerson provides a good account of how Hamilton conceived of the project of writing the Federalist Papers and recruited others to share in the work. A majority of readers is likely to find the description of the working relationships between Hamilton and Madison to be of greatest interest. The men apportioned work among themselves based on expertise and time allowances and did seek counsel in drafting their essays. Madison and Hamilton become close friends through this process. Their alliance indicates the broad legal and intellectual appeal of the Constitution even among people with, as Meyerson phrases it, "radically different visions for the new nation [who] held irreconcilable political agendas."[7] The discussion of the drafting of the Federalist is presented following a brief account of the crises that provoked the Constitutional Convention and some of the major debates that arose in Philadelphia. Meyerson's focus is not on the Convention itself, and his summary of events is sufficient to provide context for the history with which he is primarily concerned.

Meyerson's discussion of the impetus for a new Constitution and the nature of the debate over its ratification mirrors that of Gordon Wood in his brilliant essay, "Interests and Disinterestedness in the Making of the Constitution."[8] Meyerson does a wonderful job in his analysis of Federalist #10 in explaining Madison's position that functional interests can override rights in a democracy by creating a tyranny of the majority, and how ironically Madison devised the use of multiple factions to temper the power of a majority within any one faction. The argument that Madison saw the Constitution as a means of checking the use of political power to serve personal interests can also be seen in Meyerson's work as a reason for the split between the drafters of the Federalist Papers after ratification.

Of particular interest in Meyerson's text is the argument for the extent to which the Federalist Papers were reprinted and read. The author convincingly asserts that the ratification process depended upon a popular appreciation of legal and theoretical arguments contained in both the Federalist and Anti-Federalist Papers, and offers a strong rebuttal to those who minimize a popular or democratic voice in the process. This presentation combines with that in chapter 8 concerning the separation of powers to counter some of the very strong recent neo-Beardian arguments presented by Woody Holton and Terry Bouton. In that latter chapter Meyerson provides a good argument for believing that the Founders conceived of the workings of the federalist system, including indirect elections, the separation of powers, and distinctions in state and federal authority, not as attempts to impose an upper-class check on democracy, but rather to prevent all political minorities from the unchecked power of a majority while safeguarding rights from self-interested political actors.

Liberty's Blueprint is an easily accessible text that provides interesting reading for academics while being of tremendous value for classroom use. Better editing should have caught a few grammatical errors, such as the use of plural pronouns with singular noun referents on pages 21 ("their"–"each member") and 27 ("their"–"army"). It is hard to correct students' errors when assigned texts include examples of the same mistakes. Nonetheless, this is good work in history that deserves a solid readership.

Notes

[1]. Thomas Jefferson, "A Bill for Establishing Re-

ligious Freedom," in *The Portable Thomas Jefferson*, ed. Merrill D. Peterson. (New York, N.Y.: Penguin Books, 1975), 251-253.

[2]. Thomas Jefferson, *Notes on Virginia*, "Query XVII," in *Portable Jefferson*, ed. Peterson, 213.

[3]. John Phillip Reid, *Constitutional History of the American Revolution* 4 vols. (Madison, WI: University of Wisconsin Press, 1993).

[4]. Michael I. Meyerson, *Liberty's Blueprint*, xii.

[5]. Ibid., xi.

[6]. See in particular: Terry Bouton, *Taming Democracy* (N.Y.: Oxford University Press, 2007) and Woody Holton, *Unruly Americans and the Origins of the Constitution* (N.Y.: Hill and Wang, 2007).

[7]. Meyerson, *Liberty's Blueprint*, xiv.

[8]. Gordon S. Wood, "Interests and Disinterestedness in the Making of the Constitution", in *Beyond Confederation*, Richard Beeman, Stephen Botein, and Edward C. Carter II, eds. (Chapel Hill, N.C.: University of North Carolina Press, 1987), 69-109.

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Citation: Mark McGarvie. Review of Meyerson, Michael I., *Liberty's Blueprint: How Madison and Hamilton Wrote the Federalist Papers, Defined the Constitution, and Made Democracy Safe for the World.* H-Law, H-Net Reviews. June, 2008.

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