

H-Net Reviews

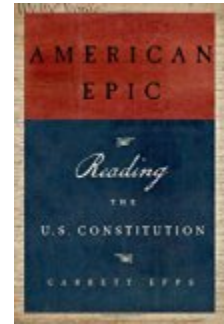
in the Humanities & Social Sciences

Garrett Epps. *American Epic: Reading the U.S. Constitution*. New York: Oxford University Press, 2013. xxv + 274 pages. \$29.95 (cloth), ISBN 978-0-19-997474-0.

Reviewed by Helen Knowles (Skidmore College)

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Commissioned by Craig Scott



“Sometimes a Cigar is Just a Cigar”

In January 2009, writing in *The Atlantic*, Garrett Epps lamented the state of the American governmental system. It was, he concluded, “badly out of balance.” The blame for the mire into which the country had sunk could not simply be laid at the feet of the outgoing president (in the article Epps did not hide his partisan distaste for the eight years of “fine disdain for democratic and legal norms” through which the nation had suffered under George W. Bush). His review of presidential history led Epps to identify another culprit—Article II of the U.S. Constitution. Some reforms were definitely in order, he concluded, including “reconsider[ing] the entire Hamiltonian concept of the ‘unitary executive.’”[1] As the book’s title suggests, in the pages of *American Epic* Epps, professor of law at the University of Baltimore, offers a far more sanguine reading of America’s founding document (including Article II). If one is willing to look past the frequent, and often distracting digressions into literary and biblical references, what one finds in *American Epic* is an excellent explanatory treatment of the Constitution.

Epps takes readers on a balanced, nuanced, and thoroughly informative journey through the complexities of the text. Importantly, he does not attempt to fuel the “national obsession” with finding the “meaning” of its 7,500 words. For, as he astutely observes, “[i]f I were to do that, you would then know something about what I think, but perhaps not much about what the Constitution says” (p. xii).

Unsurprisingly, members of the U.S. Supreme Court are wont to remind us of their interpretive power to discern the “meaning” of the Constitution. Epps is having none of this, and this is one of the greatest strengths of *American Epic*. Rarely does he reference judicial interpretations of the text. The justices may not be shy about reasserting the (perceived) truth of Chief Justice John Marshall’s statement in *Marbury v. Madison* (1803) that “[i]t is, emphatically, the province and duty of the judicial department, to say what the law is” (what Larry Kramer sarcastically describes as “the Supreme Court’s own Declaration of Independence”).[2] As Epps points out, however, yet another book about the Constitution according to the Supreme Court would tell us nothing more than what a specific group of justices agreed upon, in a specific case (pp. x-xi). Additionally, such a book would likely leave out many of the “most curious provisions” of the Constitution—what Jay Wexler calls *The Odd Clauses*. [3] It would probably also fail to engage in analysis of what Sandy Levinson terms the “Constitution of Settlement”; the focus would invariably be upon the far sexier “Constitution of Conversation.”[4]

Epps does not ignore any of the Constitution’s text. No word of that document is left unexamined in *American Epic*. This can be seen in the fact that the lengths of the different chapters (which address each article and amendment in turn (with one chapter devoted to the “National Decalogue” that is the Bill of Rights) quite carefully reflect the relative lengths of their subjects. Unfortunately, the same cannot be said of the chapter titles,

which generally do not reflect the contents of the book's different sections. Practically, this causes an unfortunate disconnect between the chapters and the endnotes. The notes are organized under numerical headings (e.g., "Chapter 6"), but the chapters are not. Of greater concern to this reviewer, however, are the substantive implications of Epps's penchant for epic-sounding (befitting, I suppose, the book's title) chapter titles and subtitles.

After the usefully titled "Preface: How to Read a Constitution," Epps seems unable to avoid chapters with titles such as "Preamble: 'Tell me, Muse, how it all began,'" "Article I: A Tale of Two Cities," "Article II: Under the Bramble Bush" (to the disappointment of this reviewer, Epps refers here to the biblical parable of the bramble rather than Karl N. Llewellyn's 1930 legal classic *The Bramble Bush*), "Article III: Solomon's Sword," and "Article IV: All God's Children." Perhaps Epps ran out of rhetorical steam as the manuscript progressed, because the remaining articles, and most of the Constitution's amendments, are treated in chapters with comparatively tame headers.

One might wonder whether it is reasonable to take Epps to task for these merely titular flourishes. The problem, however, is that any reader who finds them off-putting will be equally discomfited by the actual text of the chapters. Far too frequently we are treated to a reading of the Constitution which involves distracting digressions into the worlds of literature and religion, digressions whose ability to help us decipher the document at hand are oftentimes very hard to discern. The usual suspects—such as Thomas Jefferson and Abraham Lincoln—are present. Epps draws upon an immense cast of supporting characters, however, most of whom make unexpected entrances: he invokes, for example, Walt Whitman, Vladimir Nabokov, Emily Dickinson, William Shakespeare (although, as Bernard Levin famously pointed out, it is difficult not to invoke the Bard of Avon),^[5] the mathematician Kurt Godel, George Orwell, and Ronald Reagan.

Not all of the invocations are problematic; some are on point. Unfortunately, however, many are of questionable relevance. Take, for example, the fortieth president's dramatic appearance in Epps's discussion of the Tenth Amendment, an appearance in the form of a five-word quotation from the 1942 film *Kings Row*. Epps writes: "Ronald Reagan memorably plays Drake McHugh, who wakes from anesthesia to find that a surgeon has cut off both his legs. 'Where's the rest of me?' he screams. A quarter-century later, Reagan used that line as the title

for his autobiography, as if, having once intensely imagined that loss, he had still not gotten over it. The Tenth Amendment for many Americans functions as the site of a phantom limb, the aching point of absence of a country they imagine they once had and have now lost" (p. 144). This anatomical metaphor is maintained throughout Epps's discussion of the Tenth Amendment, which closes with the following: "In text and structure, the Constitution (as we have seen) seems to be mostly concerned with *empowering* the federal government and *limiting* the states, and if the Tenth Amendment is an exception to that overall scheme, it is a half-hearted and ambiguous one. Justice Harlan Fiske Stone once wrote for the Supreme Court that '[t]he amendment states but a truism that all is retained which has not been surrendered.' But if it is a truism, many find it a difficult truism. Surely the limb is still there!" (p. 147) Maybe this metaphor will resonate with some people, but after several readings this reviewer remains thoroughly confused about the point that Epps seeks to make.

"Sometimes," as the supposedly Freudian saying goes, one has to remember that, "a cigar is just a cigar." Ultimately, the goals that Epps seeks to achieve with this book (whose subtitle is, it bears mentioning, *Reading the U.S. Constitution*) might best be achieved by keeping that in mind.

It would not be appropriate, however, to end this review on a negative or critical note, because its digressive aspects aside, *American Epic* is an immensely informative and useful volume. I can sympathize with one of the lamentations that spurred Professor Epps to write this book. When asked to "read the Constitution from start to finish," even the most diligent and enthusiastic undergraduate will—like his law students—probably "quickly skim its 7,500 words" (or at least the parts they find least interesting). They will "then arrive in class, expecting that I will now tell them what it means" (p. x). If, however, they can be convinced to read Epps's book, they will be better equipped to understand the strengths and weaknesses of the arguments that others make when they feel the urge to say that they know "what it means."

Notes

[1]. Garrett Epps, "The Founders' Great Mistake," *The Atlantic* (January-February 2009). Available at <http://www.theatlantic.com/magazine/archive/2009/01/the-founders-great-mistake/307210/>.

[2]. Larry D. Kramer, "The Supreme Court 2000 Term: Foreword—We the Court," *Harvard Law Review* 115 (2001):

5.

[3]. Jay Wexler, *The Odd Clauses: Understanding the Constitution through Ten of Its Most Curious Provisions* (Boston: Beacon Press, 2012).

[4]. Sanford Levinson, *Framed: America's 51 Constitutions and the Crisis of Governance* (New York: Oxford University Press, 2012).

[5]. For one reprinting of Bernard Levin's famous "Quoting Shakespeare" collection of Shakespearean sayings, see Arianna Huffington, "Quoting Shakespeare," *Huffington Post-The Blog* (April 23, 2012). Available at http://www.huffingtonpost.com/arianna-huffington/shakespeare-birthday_b_1444667.html.

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