



Book Review

A Republic, If You Can Keep It¹

A Review of *Plain, Honest Men: The Making of the American Constitution*

By Major Michelle K. Lukomski

It was one thing to declare independence. It was quite another to secure it.²

On July 4th, I lay awake in bed hoping that the blasts of celebratory fireworks would not wake my two-month-old son. Fortunately, despite the enthusiasm and patriotism of my neighbors, he slept soundly. Exactly 237 years prior, George Washington was also trying to rest, though almost certainly less successfully than my son. He was enjoying a much-needed respite from the Constitutional Convention in Philadelphia, dining with friends and enjoying the festivities.³ However, the progress of the Convention, or lack thereof to that point, weighed heavily on his mind. Washington knew the magnitude of the Convention’s undertaking, and though he remained dedicated to the cause, his optimism waned as the heat of summer and the obstinacy of the delegates steadily increased.

Plain, Honest Men: The Making of the American Constitution is an indispensable account of the Constitutional Convention, bringing illuminating detail to what was truly a second revolution. By presenting the Founding Fathers as characters⁴ in an epic saga, and exploring their personal and professional motivations, Richard Beeman creates a narrative that is both factually complete and refreshingly honest. The delegates were brilliant, yet flawed men.⁵ They established what is largely considered one of the greatest legal documents of all time, developing ideas of sovereignty that would underpin our democratic society and inspire governments around the world.⁶ And yet, they deliberately chose to consider an entire race as only three-fifths of a human.

Organized chronologically from the start of the Convention to the end, the author’s incorporation of contemporary writings and the personal histories of the delegates creates a comprehensive and thoughtful picture of the momentous events of the Convention, as well as the era within which they took place. Readers looking for a deep analysis of theories of constitutional interpretation or conclusions about specific controversial clauses will be disappointed; the author chooses instead to focus on the process of creating a legal document that would turn thirteen

provincial states into a unified national government.⁷

The author’s honest assessment of the delegates and thorough account of the Convention allow for legal professionals, historians, and all Americans to consider the Constitution in a new way and set this book apart from other writings on the Convention.⁸ By focusing on the motivations—economic, political, and moral—of the delegates as they navigated their daunting task, the author highlights qualities of leadership and selfless service, but also of immorality. In this way, the author gives the reader permission to simultaneously admire the intelligence and innovation of these plain, honest men and to acknowledge, but not excuse, their shortcomings.

E Pluribus Unum?

When a small group of Americans, including James Madison and Alexander Hamilton among others, resolved not just to amend the Articles of Confederation, but to start over entirely, they were embarking on a kind of “second revolution.”⁹ They were proposing to completely scrap what was effectively a treaty among thirteen sovereign territories and replace it with a truly federal government. Unsurprisingly, those thirteen sovereign territories were less than receptive for fear of losing the sovereignty that they had just fought an entire war to achieve.¹⁰

The nuances of sovereignty affected almost every debate at the Constitutional Convention. Delegates representing their states’ interests wanted to know, “was this a government created by people acting in their capacity as citizens of the individual states, or was it created by people acting in their capacity as citizens of a new entity, a nation called the United States?”¹¹ In balancing the need for a centralized federal government with the preservation of states’ rights, the delegates maintained that “a true constitution was and could only be created by a sovereign act of the people themselves.”¹² They were ultimately acknowledging a “third” sovereignty: the federal government would be a sovereign power, not just a “league” created by a treaty among states”; the states would also be sovereign, maintaining significant political power; and the people would exercise their own version of sovereignty through popular ratification of the Constitution.¹³

But even as the Constitution began to truly take shape in September 1787, after months in the stifling heat of the Philadelphia State House,¹⁴ debate continued regarding the true source of sovereignty in the newly created democratic republic.¹⁵ Much of the balance of sovereignty and

regarding sovereignty, and its inevitable role in the Civil War, is impressive. As impressive is the fact that delegates not only debated these complex ideas in 1787 but also innovated on existing political philosophy and, in many ways, created new paradigms for how we understand sovereignty.²⁰ Sovereignty

viewed through a modern lens. The author's well-researched discussion of the sovereignty and representation debates includes a suggestion that conflict between the North and South was inevitable.²⁷ But the delegates seemed to have no such understanding. While it might seem that the

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political power was the product of extensive compromise and concessions. On one side of the debate were delegates who viewed the states as “districts of people comprising one political society,” while on the other side, delegates “insisted on the states as distinct political societies.”¹⁶ The latter group generally included delegates of Southern states who wanted to ensure they would be able to govern without federal interference, namely on the issue of slavery.¹⁷

William Paterson, a delegate of New Jersey, insisted that both concepts could exist simultaneously. He argued, with a somewhat ominous reference to military might, that “while the states did indeed ‘exist as political societies,’ and therefore deserved to be ‘armed with some power of self-defence’ [sic], it was equally the case that the people of the nation as a whole deserved to be recognized as an entity with power and legitimacy of their own.”¹⁸ Here, Beeman notes the irony that failing to reach complete clarity on the issue of sovereignty, “with the cloud of slavery hovering on the far horizon,” may have “contributed to the [Civil War] by distorting the sectional balance of power . . . and by allowing both sides of the war to portray their political claims to sovereignty as legitimate.”¹⁹

The author's synthesis of complex ideas

underscores much of military law practice, from procedural limitations of criminal law to principles of the law of armed conflict.²¹ This book encourages military lawyers to appreciate where our modern concept of sovereignty began. It also invites readers to see how the conflict of state sovereignty with the newly created federal government was apparent from the outset and suggests that the sovereignty debates were a harbinger of constitutional crisis and secession of Southern states.²²

The Sins of the Fathers

“There are no moral heroes to be found in the story of slavery and the making of the American Constitution.”²³ The controversial “three-fifths clause,” declaring that enslaved persons would count as three-fifths of a free person for purposes of population and representation, was “fundamentally, about states’ individual interests, not the morality of slavery.”²⁴ What it truly amounted to was concern, from both Northerners and Southerners, about power.²⁵ Regardless, there was a marked “absence of a moral component to the delegates’ infighting.”²⁶

The paradox of a group of individuals creating a government where all men are equal while simultaneously allowing slavery to continue is confounding when

nation was at this point already careening towards a constitutional crisis and unprecedented bloodshed, the delegates did not see war on the horizon. Regrettably, the debates at this time were focused on property and power, rather than the morality of slavery.²⁸

The author masterfully addresses the failures of the Founding Fathers, demonstrating an ability to celebrate their brilliance while also not excusing their flaws. “If we should be reluctant to assign blame to particular individuals, we cannot avert our eyes from the magnitude of the evil sanctioned by the Founding Fathers.”²⁹ Indeed, the author challenges the assertion of historian Jack Rakove that the three-fifths formula “was neither an explicit endorsement of a racial hierarchy nor a precursor to the militant proslavery ideology” that was to come, but rather a means to protect property rights.³⁰ Instead of accepting this explanation, one which mitigates the delegates’ ethical culpability, the author looks for evidence of consideration of morality. He finds it from at least one delegate, Delaware’s John Dickinson, who ponders in his private notebook, “what will be said of this new principle of founding a right to govern freemen on a power derived from slaves, . . . [who are] themselves incapable of governing yet giving to others what they have not?”³¹

The effectiveness of the book is in the author's ability to turn facts into a story, to create a cast of characters that the reader is invested in, and to weave a narrative of a true adventure. With any good adventure story, the reader is tempted to look for a hero and a villain. Within the context of slavery,

if there is a villain in this story it is the collective *indifference* of the Founding Fathers to the inhumanity of the institution to which they gave sanction. It was an indifference born both of their sense of innate superiority over African Americans and of their preoccupation with protecting *property rights*, even if that meant accommodating themselves to a "necessary evil."³²

This story's hero is harder to find. It is tempting, and often occurs in other writings on the Convention, to allow the fog of moral failure to overwhelm the success of the Founders.³³ Here, the author laments the deficiencies of the Founders, but tactfully recognizes the brilliance of the legal document they created. While he does not go as far as elevating any of the delegates to the status of hero, the product of their diligence and patriotism may be commended and celebrated despite their individual flaws.

Service Above Self

With the variety of personal, political, and moral motivations of the delegates, it is unsurprising that the Convention was a slow-moving slog, with progress snagged on the barbs of ego and obstinacy at almost every step. The interdependent nature of nearly every debate created a unique challenge because reaching any form of resolution on one issue almost always required the resolution of another.³⁴ In light of the resulting one step forward, two steps back kind of progress, it would have been easy for the delegates to succumb to the torpor, especially given the personalities of the individuals involved.

Indeed, as Benjamin Franklin observed, the delegates were a group with the "advantage of their joint wisdom," but also a group subject to "their prejudices, their passions, their errors of opinion, their local interests, and their selfish views."³⁵

Franklin's role in the Convention was more of a senior diplomatic advisor than a full participant.³⁶ He provides examples of selfless service and leadership that are the logical byproduct of a life of diplomacy. He acknowledged, "[T]he older I grow the more apt I am to doubt my own judgment and pay more respect to the judgment of others," and he implored his fellow delegates who still had objections to the Constitution at the Convention's end to "doubt a little of his own infallibility—and to make manifest our unanimity—by putting his name to this instrument."³⁷

Compromise and collaboration are necessary foundations of the deliberative process, and military leaders certainly understand how dissenting opinions can often result in innovative solutions.³⁸ This book details the dedication with which many of the delegates, namely James Madison, pursued their task, and in doing so, demonstrates how they put the success of their mission paramount to all else.³⁹

Perhaps inherent in this kind of selfless service is an understanding of, and humility regarding, one's role in the larger mission. This book provides a profile of George Washington during a unique time in his life—after his successful military leadership during the Revolutionary War and before he was elected as the first President of the United States. He is reserved, restrained even, because he is ever aware of the effect that his words and actions have on others.⁴⁰ Washington knew that he likely had more influence over the politics of the fledgling country than any other man, but as he explained to his friend General Henry Lee, "influence is not government."⁴¹

Military leaders and lawyers in almost all circumstances can glean an important lesson on emotional intelligence from Washington. His restraint allowed debates to proceed without the undue influence of his stature. He played the role of arbiter at times, but seldom offered his own opinion on a given issue.⁴² His true contribution was "not merely his prestige and gravitas, but, just as importantly, his calm and deliberative leadership."⁴³ Washington's self-awareness and steadfast belief in the endurance of republican liberty made him the leader that the Convention needed—not an abstract folk hero, but a responsible and resolute guide to realizing a "more perfect union."⁴⁴

Conclusion

For attorneys, especially those in the military, the Constitution is at the core of their practice. Certainly, the more attorneys appreciate its origins, the better they can interpret and apply it every day. Many practitioners might be haunted by memories of constitutional law classes and see the Constitution as arcane, complex, and unwieldy in application to modern problems. The narrative nature of this book portrays the Constitution as the product of patriotic aspirations, dogged advocacy, and admirable compromise. In this way, it makes the Constitution more tangible to all readers and encourages them to experience the saga of its creation with intellectual scrutiny and even excitement.

Today, most Americans likely do not associate Independence Day fireworks with George Washington's mental tempest and sleepless nights in 1787; my son was clearly unbothered by such a parallel as he slept peacefully. But if at some point in the future he should find himself looking to gain a deeper understanding of what a handful of imperfect, yet dedicated individuals are capable of, I would encourage him to look to the deeds of these plain, honest men and the revolutionary document they created. **TAL**

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Notes

1. RICHARD BEEMAN, PLAIN, HONEST MEN: THE MAKING OF THE AMERICAN CONSTITUTION 412 (2009) (quoting 3 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 85 (Max Ferrand ed., rev. ed., reprt. 1966) [hereinafter THE RECORDS]). Reportedly, at the close of the Convention, in response to being asked if the delegates had succeeded in creating a republic, Benjamin Franklin responded, "a republic, if you can keep it." *Id.*
2. BEEMAN, *supra* note 1, at 7.
3. *Id.* at 196.
4. *See id.* at xviii–xxii. The author even lists the principal actors of the Convention as "characters" and provides brief descriptions of each, reminiscent of cast biographies in a play. *See id.*
5. *See id.* at 423 (concluding that the Constitution is an "extraordinary document of the Founding Fathers," deserving of "veneration" but that it is imperfect and can be considered "just a step" in "securing the blessings of liberty promised by the Revolution of 1776").
6. *See, e.g.*, Jorge A. Vargas, *Enforcement of Judgments and Arbitral Awards in Mexico*, 5 U.S.-MEX. L.J. 137, 142 (1997) (finding that articles in the Mexican constitution were inspired by the Supremacy Clause of the U.S. Constitution); Russell L. Weaver et al., *Defamation*

Law and Free Speech: Reynolds v. Times Newspapers and the English Media, 37 VAND. J. TRANSNAT'L L. 1255, 1259 (2004) (stating that Australia's constitution was based on the U.S. Constitution); Alberto F. Garay, *A Doctrine of Precedent in the Making: The Case of the Argentine Supreme Court's Case Law*, 25 SW. J. INT'L L. 258, 262 (2019) (drawing a connection between the Argentinian constitution and the U.S. Constitution).

7. *See id.* at 270. The author's references to constitutional theories are limited to the context of debates among the delegates. For example, Edmund Randolph, a delegate of Virginia, was responsible for an initial draft of the Constitution, and put forth two principles to guide the text. *See id.* The first principle essentially espouses a "living constitution" theory that the text should be interpreted "in light of changing times and circumstances." *Id.* The second, conversely, is reminiscent of modern "originalist" theory, which focuses on "the precise words of the Constitution in a manner in which they would have been understood by eighteenth-century Americans." *Id.* As the author points out, "one cannot help but be impressed by the extent to which the framers remained true to those two principles," despite their apparent dichotomy. *Id.*

8. *See, e.g.*, JOSEPH J. ELLIS, *THE QUARTET: ORCHESTRATING THE SECOND AMERICAN REVOLUTION, 1783–1789* (2016) (lauding the accomplishments of specific Founders—George Washington, Alexander Hamilton, John Jay, and James Madison—without extensive discussion on the immorality of continuing the practice of slavery); JILL LEPORE, *THESE TRUTHS: A HISTORY OF THE UNITED STATES* (2018) (presenting a more sobering and at times admonishing account of the Convention).

9. BEEMAN, *supra* note 1, at 21.

10. *Id.*

11. *Id.* at 348.

12. *Id.* at 246.

13. *Id.* at 246 (quoting 2 THE RECORDS, *supra* note 1, at 92–93).

14. *Id.* at 61–62.

15. *Id.* at 348. For example, the preamble to the Constitution was drafted towards the end of the Convention, and rather than serve as just a stylistic opening to the document, it was intended to convey the idea of sovereignty espoused in the rest of the document. *See id.* A deliberate decision was made to "place the authority for establishing the new government . . . in the hand of the 'the people of the United States,'" rather than the people of the individual states. *Id.* (quoting 2 THE RECORDS, *supra* note 1, at 590).

16. *Id.* at 224 (quoting 1 THE RECORDS, *supra* note 1, at 461–62).

17. *Id.* at 222.

18. *Id.* at 224 (quoting 1 THE RECORDS, *supra* note 1, at 461–62).

19. *Id.* at 225.

20. *See id.* at 25, 66. Madison's time at Princeton included extensive study of both moral philosophy and political philosophy, namely that of Adam Smith and David Hume. *Id.* at 25. The latter's discussion of an "extended republic" would influence Madison's later thoughts on an American republic. *Id.* at 25–26. Many of the delegates were educated at prestigious schools that would have included philosophy in their course of study. *See id.* at 66.

21. Sovereignty is critical to analyzing issues of double jeopardy in the context of criminal prosecutions. *See* U.S. CONST. amend. V. Sovereignty is also a bedrock principle of international law and informs international humanitarian law and the law of armed conflict. *See* U.N. Charter art. 2, ¶¶ 3, 4; OFF. OF GEN. COUNS., U.S. DEP'T OF DEF., DEPARTMENT OF DEFENSE LAW OF WAR MANUAL § 1.11.3 (12 June 2015) (C1, 31 July 2023).

22. *See* BEEMAN, *supra* note 1, at 225.

23. *Id.* at 333.

24. *Id.* at 214.

25. *Id.*

26. *Id.*

27. *See id.* at 320. During debates on the issue of slavery, Luther Martin, a Maryland delegate, went as far as saying that the question was "whether the Southern states shall or shall not be parties to the Union." *Id.* (quoting 2 THE RECORDS, *supra* note 1, at 364); *see also id.* at 55 (explaining Madison's understanding that debates would center around relative political power of Northern and Southern States); *id.* at 107 (detailing Madison's realization that representation based on "free inhabitant" would alienate slave-owning Southerners); *id.* at 205–09 (summarizing contentious debate on representation and role of property, including slaves, in determining representation).

28. *Id.* at 214.

29. *Id.* at 334.

30. *Id.* at 214.

31. *Id.* at 214–15 (quoting SUPPLEMENT TO MAX FARRAND'S THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 158 (James H. Hutson, ed., Yale Univ. Press 1987)).

32. *Id.* at 334 (emphasis added) (quoting THE LIFE AND SELECTED WRITINGS OF THOMAS JEFFERSON 51 (Adrienne Koch and William Peden eds., Mod. Lib. 1944)).

33. *See* sources cited *supra* note 8.

34. *See, e.g.*, BEEMAN, *supra* note 1, at 239 (emphasizing the "challenge of finding the proper balance between independence and excessive power" in the context of executive powers because the delegates had yet to agree on the "character of the American presidency" and the President's relationship to the people and other branches of government).

35. *Id.* at 360 (quoting 2 THE RECORDS, *supra* note 1, at 641–43).

36. *See id.* at 36–40 (identifying Franklin as a delegate that, despite his advanced age and poor health, "would embody the spirit of compromise necessary if the thirteen independent states were to come together in an effective and durable union.").

37. *Id.* at 361 (quoting 2 THE RECORDS, *supra* note 1, at 641–43).

38. *See* U.S. DEP'T OF ARMY, DOCTRINE PUB. 5-0, THE OPERATIONS PROCESS para. 2-92 (31 July 2019) (describing the military decision-making process, including the development of various courses of action and subsequent analysis and comparison of those courses of action).

39. *See, e.g.*, BEEMAN, *supra* note 1, at 90, 234. Madison showed a willingness to change his opinion dramatically regarding the relationship between the executive and legislative branches. *See id.* Where he originally proposed

and advocated for an executive that was indirectly elected by the legislature, he later advocated for a complete separation of the branches. *Id.*

40. *See id.* at 6–7 (describing Washington's thoughtful approach to addressing officers of the Continental Army about their grievances); *id.* at 17 (detailing Washington's response to General Henry Lee's proposition that Washington should use his influence to bring order in Massachusetts after Shay's Rebellion); *id.* at 362 (demonstrating Washington's restraint during debates on representation in the legislature, stating that his speech "was neither eloquent nor forceful").

41. *Id.* at 17.

42. *See id.* at 362 (discussing Washington's role in the representation debates).

43. *Id.* at 40.

44. U.S. CONST. pmb.