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John W. Compton: *The Evangelical Origins of the Living Constitution*. (Cambridge, MA: Harvard University Press, 2014. Pp. 261.)

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In telling the story of the emergence of the New Deal constitutional order, scholars have traditionally offered a political explanation for the Supreme Court's decision to repudiate an interpretation of the Constitution that sought to secure property rights, an unfettered market economy, and limited government. Threatened by Franklin Roosevelt's court-packing plan, the Supreme Court (and most notably Justice Roberts) capitulated to the demands of a popular president in 1937 and began to ratify the New Deal's vision of a national government that would play an active role in sustaining the health of the economy. Bolstered by subsequent Roosevelt appointments, the Court then solidified its new understandings of the commerce clause, economic due process, and federalism to the point where it had seemingly abandoned policing the federal government's regulation of the economy.

In recent years, scholars such as Barry Cushman and Richard D. Friedman have cast doubt on this standard narrative by providing accounts of the constitutional revolution of 1937 that emphasize a more incremental process of doctrinal change. Like these revisionists, John Compton seeks to demonstrate that the traditional story focuses too much on short-term political developments to the neglect of the longer-term evolution of court doctrine that provided the legal scaffolding to support it. However, Compton's innovative *The Evangelical Origins of the Living Constitution* departs significantly from other revisionist accounts in one crucial respect: instead of focusing on economic developments, it emphasizes the impact of evangelical Protestantism on court doctrine and shows how such doctrinal shifts helped forge the path to a "living constitution."

To demonstrate how evangelical Protestantism altered court doctrine, Compton begins by sketching the original constitutional order, which he characterizes as secular and primarily concerned with protecting property rights. Compton concedes that early Americans did not enjoy unlimited property rights, but he nevertheless contends that such rights were secure so long as they coincided with traditional understandings of what constituted property. Hence, while state and local courts sanctioned the regulation of property when its use threatened the health, safety, and morals of the community, Compton contends that the judiciary nevertheless protected the traditional property rights inherent in slaves, liquor licenses, and lottery grants. In the wake of the Second Great Awakening and the rapid proliferation of evangelical Protestantism, however, Compton maintains that evangelicals challenged the original constitutional order and what constituted legitimate property and regulatory frameworks. Instead of seeking to mitigate the public effects of gambling and drinking through regulation, evangelical moral reformers

instead insisted that the sale of property that threatened public morality should be banned. When state legislatures began to adopt laws that deprived liquor dealers of their licenses and lottery operators of their grants, affected individuals sued, arguing that they were being deprived of their property rights.

These lawsuits pitted the original constitutional order against a vision of the law that embraced evangelical Protestantism's emphasis on using public policy to secure public morality. During the 1840s, state courts frequently reinforced the former and sided with the aggrieved property owners, thus rejecting the latter's claim that private rights be subordinated to the public good. However, in the aftermath of the realignment of the 1850s, both federal and state courts chipped away at the property rights of those engaged in the liquor and lottery industries. To illustrate this shift, Compton considers three areas of adjudication: the contract clause, economic due process, and federalism (as determined by the judiciary's interpretation of the scope of the commerce clause). By tracing the impact of the lottery and liquor rulings that created problematic exceptions to the Supreme Court's doctrines in these areas, Compton persuasively shows that they contributed to the erosion of the original constitutional order and its repudiation in 1937.

Still, one could ask: how much of the living Constitution is directly attributable to the influence of evangelical Protestantism? After all, the members of the legal community (e.g., Oliver Wendell Holmes and Roscoe Pound) who led the charge against the original constitutional order were not evangelical Protestants or particularly sympathetic to their moral agenda. Instead, they instrumentally cited the lottery and liquor cases as evidence that the Supreme Court was applying its doctrines selectively and had altered its understanding of economic liberty in response to changes in public opinion. Moreover, if the court had already exempted liquor and lottery cases from the prevailing rules of constitutional adjudication, then there was presumably nothing to prevent it from likewise accommodating industrial and economic regulation, as the times required. While Compton acknowledges that the most influential critics of the old order lacked ties and sympathies with evangelical Protestantism, he nevertheless believes that their legal perspective shared a common premise with that of evangelical moral reformers, namely that "the primary aim of the constitutional enterprise was *not* to protect established property rights or ancient jurisdictional boundaries but rather to provide for the wellbeing of the present generation of Americans" (135).

A more problematic aspect of Compton's study has to do with its murky account of how public opinion and group politics contributed to the increased willingness of federal judges to sanction lottery bans and liquor prohibition after the 1870s. For example, his discussion of the Supreme Court's decision to uphold a state law that deprived a lottery operator of its duly authorized grant presumes rather than demonstrates the public's widespread disapproval of lotteries, and then doesn't really explain why the Court's unelected

justices were so responsive to such disapproval. Likewise, Compton doesn't fully explain why the Supreme Court was willing to exempt prohibition measures from its economic due process doctrine (beginning in 1887) except to state that the prohibition movement "was again a national force" and that "a decision holding that liquor owners in dry areas were entitled to compensation would wreak havoc on liquor regulation . . . throughout much of the nation" (114). While it is certainly the case that the prohibitionists of the 1880s were able to exploit electoral instability to secure nineteen state prohibition referenda during this decade, they won only six of those contests. Moreover, while several states did adopt local option laws during the 1880s, antiliquor activists lacked either the time or the inclination (especially in the North) to amass much dry territory through them by 1887. Hence, it is not clear whether *Mugler v. Kansas* was really the product of a court that feared a powerful public backlash and/or the consequences of introducing further uncertainty into liquor-control efforts.

Still, these are minor deficiencies in an impressive book that does much to rescue the morals cases of the late nineteenth century from the scholarly tendency to dismiss these decisions as narrowly construed and irrelevant to the revolution of 1937. *The Evangelical Origins of the Living Constitution* cogently illustrates how these cases introduced inconsistencies into postbellum court doctrines and then became instruments for dismantling the original constitutional order. It supports its main argument with deft textual analyses of the appropriate cases, and engages with the relevant public-law literature in an intelligent fashion. Most significantly, however, this book calls into question influential accounts of the original constitutional order and the trajectory of constitutional development after the Civil War. In doing so, it unsettles more than just the story of the "switch in time that saved nine," and proposes a more comprehensive account of the progressive constitutional regime than others have previously offered.

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Francis D. Cogliano: *Emperor of Liberty: Thomas Jefferson's Foreign Policy*. (New Haven: Yale University Press, 2014. Pp. xiii, 302.)

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In this lucid study, Francis Cogliano provides a comprehensive review of Thomas Jefferson's lengthy career on the global stage. While many of Jefferson's initiatives, such as the Louisiana Purchase, have been exhaustively mined by scholars since Henry Adams, the grace and power of Cogliano's study is its breadth and application of cohesive mortar between what are often seen as disparate and desultory Jeffersonian gambits. Most importantly, Cogliano's work is faithful to the historical record in understanding Jefferson's