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The Evangelical Origins of the Living Constitution. By John W. Compton. Cambridge, MA: Harvard University Press, 2014. Pp. 272. $47.50 (cloth). ISBN: 9780674726796.

During the early twentieth century, secular progressive reformers began to challenge long-standing constitutional precedents in an attempt to regulate labor and commerce. Franklin Delano Roosevelt's New Deal was a part and a product of this movement, and its successful expansion of the federal government's prerogatives and powers hinged on a series of U.S. Supreme Court rulings that upended *Lochner*-era property rights in favor of social welfare legislation. The Progressive Era and the New Deal legislation thus sparked legal and political changes that transformed the constitution into a "living" document, and permanently altered the relationships between citizen and state. Or so we thought.

John W. Compton's *The Evangelical Origins of the Living Constitution* challenges this almost axiomatic narrative by arguing that the living constitution was born in the mid-nineteenth century, largely in response to evangelical Christians' activism. In recent years, scholars like Larry Kramer and Sarah Barringer Gordon have produced important studies on "popular constitutionalism" that show how constitutional meanings have been challenged by political activists since the early republic. Yet no one has documented the origins of living constitutionalism as convincingly as John Compton does in this book. Compton argues that the evangelical moral reformers of the mid-nineteenth century helped lay the legal groundwork for living constitutionalism by pushing laws that regulated alcohol and lotteries in the 1830s. Eager to enact morality-based legislation for the betterment of society, evangelical activists quickly realized that state and federal law stood in their way: contract law, interstate commerce norms, and the federal Constitution's due process clauses prevented governments from banning alcohol and gambling. Compton shows how, despite their initial setbacks in court, evangelical reformers successfully pressured courts to uphold their statutes through an unusually broad reading of the commerce clause and narrow interpretations of the interstate commerce and due process clauses. According to Compton, living constitutional jurisprudence thus took root in American law much earlier than most scholars have assumed, and through the efforts of a surprisingly Christian constituency. Thus, when justices like Oliver Wendell Holmes later spoke of the constitution as a living document, they were not so much constructing a new jurisprudence as applying an already-emerging set of precedents in new and influential ways.

Compton organizes his book chronologically in three sections. In the first chapter he covers the early republic and explores the "ways in which the American constitutional order was shaped by late eighteenth-century society." In Compton's early America, the constitutional system is pragmatic, efficient, and secular. The framers and those who followed crafted a "commercial republic" that prioritized "material prosperity and security" over "tendentious moral and religious concerns" (16).

In the second section of this study—chapters 2 through 4, which constitute the bulk of this book—Compton examines the political consequences of the Second Great Awakening in the middle of the nineteenth century, focusing on a series of cases that were argued in state appellate courts between the 1830s and 1850s.

In chapter 3 he explores evangelical efforts to abolish property rights that applied to alcohol and lotteries. Courts had previously ruled that bans on the production or sale of liquors violated personal property and commercial rights, and they initially resisted evangelical-backed reform

efforts in favor of allowing state legislatures to regulate but not prohibit liquor sales or lottery drawings. By the 1850s, however, jurists began to change their attitudes toward moral reforms, favoring social stability over individual rights. Maine was the first state to prohibit the production or sale of alcohol in 1851, and a dozen more states followed suit within five years (63–67). Compton links this trend to the emergence of the Republican Party. Unlike the Whigs or Democrats, Republicans welcomed evangelicals' moral reforms because, in addition to their general opposition to drunkenness and lotteries, they also sought to eradicate slavery—another controversial "property" issue that pitted reformers against a heavy bulwark of legal precedent. Compton notes that the Republican Party appointed nearly every judge who went on to endorse the constitutionality of the state-wide prohibition of alcohol. These jurists concluded that vices that threatened to undermine the social, political, and especially moral health of the republic "could be abolished without regard for the constitutional rights of property owners" (17). In brief, these jurists adopted a new and dynamic set of criteria for adjudicating constitutional claims—one that focused not merely on whether a statute "was consistent with the traditional rights of property owners and criminal defendants, but whether the 'evil' in question was sufficiently serious to warrant the destruction of private property" (82).

In chapter 4 Compton moves from state to federal courts and looks at how the Supreme Court interpreted morals legislation. Just as state courts initially struck down evangelical efforts to abolish property rights regarding alcohol and lotteries, so too did federal courts in the 1870s push back against these laws. Compton argues that popular opinion and legislative pressure moved the Court to endorse "the constitutionality of state liquor and lottery bans, as well as federal restrictions on the interstate traffic in immoral commodities" (17). The Court reversed course, according to Compton, largely because of the widespread support for evangelical-backed moral reforms. At the time, commentators who preferred *Lochner*-era property rights warned that expanding states' police powers was a slippery slope toward a bigger and more intrusive federal government—one that would gradually wrest control of businesses and corporations, labor conditions, wages, and other issues from private owners (93).

In the final section, chapter 5, Compton documents the breakdown of the traditional constitutional order (18). While previous scholars look to Holmes's dissents during the *Lochner*-era to explain the beginning of the shift toward broad readings of the Constitution, Compton demonstrates that these courts were only building off of what previous jurists began a half-century or so earlier. Just as important to his argument, Compton insists that the opinions handed down in the 1930s relied on the arguments that moral reformers of the previous century had used to limit alcohol sales and lottery drawings. Chief Justice Charles Evans Hughes and President Roosevelt's lawyers during the New Deal, for example, cited earlier liquor and lottery cases when arguing before the Supreme Court. In the influential case of *Home Building and Loan Association v. Blaisdell*, 290 U.S. 398 (1934), for instance, the Court upheld a state law that suspended mortgage lenders' ability to foreclose on defaulted homes, with Justice Hughes arguing that a "similar rule [had] been applied to the control by the states of the sale of intoxicating liquors" (154). Such rulings marked the success of progressives' calls for "an expansive reading" of the commerce clause and a "narrow conception of economic due process," but built in important ways on earlier precedents (18). In other words, Compton shows how cases involving alcohol and lotteries upended previous interpretations of contract rights, property rights, due process, and federalism. By the time progressive-minded reformers began their work at the turn of the twentieth century, they could and did argue that the same impetus behind those rulings could be applied to their own moral crusade—not against drunkenness and gambling, but against child labor, and in favor of lower working hours, higher wages, and unionization.

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This is an important book because it shifts the central locus of the constitutional history of the United States back at least a half a century. It also contributes to the historiography of nineteenth and twentieth-century religion and politics—and to our broader understanding of how these spheres intersect and interact with the law. Finally, it sheds light on contemporary political discourse. Modern conservatives often point to President Woodrow Wilson as the progenitor of living constitutionalism, citing the famous 1912 campaign speech in which he called for a living constitution and encouraged his fellow citizens to distance themselves from the legal and political anachronisms of the Founding generation.[1] Critics suggest that Wilsonian progressives thus undermined the traditional constitutional order so that they could pass their own economic version of morals legislation. As Compton explains, while modern conservatives argue that "the route to moral improvement runs *through* the constitutional principles of the framers, many of their nineteenth-century forebears believed precisely the opposite: that any hope of national regeneration depended on a turn *away* from the inflexible property protections and jurisdictional boundaries of Founding-era constitutionalism" (2).

While Compton's contribution can hardly be overstated, his selection of materials follows a stubborn trend among even the best scholars writing on religion and the law today: Compton largely ignores Catholics. Compton fails to mention, for example, the legions of Roman Catholics who, under the leadership of Father Theobald Matthew and others, joined dozens of Catholic temperance organizations that sought to make the United States dry. If the temperance movement played such a pivotal role in the birth of living constitutionalism, one wonders why Compton did not include in his study organizations like the Catholic Total Abstinence Society, which was founded in the middle of the nineteenth century and subsequently became a major player in the temperance movement. In fact, Compton's otherwise keen analysis mentions the presence of American Catholics only to highlight the anti-Catholic motives of their Protestant counterparts. Protestants consolidated their reform efforts, Compton writes, because of the "sudden appearance of an identifiable outgroup: namely, the millions of Irish Catholic immigrants who arrived in the United States" (35). Compton is certainly justified in arguing that "much of the evangelical activism of the antebellum period" stemmed from anti-Catholic impulses (35). But why ignore the hundreds of thousands of Catholics who were either actively involved in the temperance movement or who signed pledges against alcohol consumption?

Compton's oversight raises an interesting and important question: How, and to what extent, did otherwise antagonistic groups of Protestants and Catholics work in concert for the moral and legal reforms that laid the foundations for the constitutional revolution that Compton traces in this book? Such questions are not only important for getting the history right: they may also be useful for understanding how and why Catholics and evangelicals find common cause on contemporary political and legal debates despite substantive theological and ecclesiological disputes.

A second slight in this book is related to the way it separates the liquor and lottery reform movements from abolitionism. Compton opens this book with an anecdote from the famous abolitionist William Lloyd Garrison. But he rarely connects these moral reform causes. There were significant differences between the movements for abolition and prohibition. To be sure, the "evangelical origins of the living constitution" had roots in abolitionist soil no less than in efforts to ban alcohol and lottery drawings. Compton is right to point out that Chief Justice Hughes and others made reference to "intoxicating liquors" and not chattel slavery when finding precedents for their opinions.

1 Woodrow Wilson, "The New Freedom," *Woodrow Wilson: The Essential Political Writings*, ed. Ronald J. Pestritto (Lanham: Rowman & Littlefield, 2005), 121.

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Yet he overlooks a large body of scholarship that documents how Garrison, Theodore Parker, and other abolitionists advocated in the antebellum period a constitutional jurisprudence that would weigh the evolving norms and needs of a rapidly changing society against long-standing precedent. More attention to that scholarship would help readers locate Compton's argument within a broader historiography.

None of these critiques, however, should dissuade readers from engaging this remarkable book. Compton convincingly argues that the idea of a living constitution began much earlier than scholars have suggested, when evangelicals pressured courts to relax traditional constitutional norms governing property rights and commercial regulations. Justices on the Supreme Court in the 1930s did not so much invent living constitutionalism as apply existing legal doctrines to new cases in new contexts (165–76). Compton writes clearly and draws upon a wealth of sources to make a compelling argument. He offers keen insights into the antebellum period, the Progressive Era, and modern politics. A whole generation of graduate students in constitutional law will have to read this book. And they will be better off for it.

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