

Book Notes

THE LANGUAGE OF THE CONSTITUTION: A SOURCEBOOK AND GUIDE TO THE IDEAS, TERMS, AND VOCABULARY USED BY THE FRAMERS OF THE UNITED STATES CONSTITUTION. By Thurston Greene. Stuart B. Flexner, Editor-in-Chief. Westport, Conn.: Greenwood Press. 1991. Pp. 1074. \$99.50.

This work results from a collaborative effort by an attorney, a lexicographer, two historians and a legal researcher. It is intended to illuminate the meanings of key words and phrases in the Constitution and the Bill of Rights by showing how these words and phrases were used before and during the time when the Constitution and the Bill of Rights were drafted.

The work highlights eighty-five words and phrases determined to be of "continuing interest—and differing interpretation—since the era of the Founding Fathers." The words and phrases selected for inclusion range from legal terms (e.g., *due process of law*, *ex post facto law*) to everyday terms (e.g., *arts*, *sciences*, *people*). Omissions are quickly spotted by consulting Charles W. Stearns' *A Concordance to the Constitution of the United States of America*, which is appended to the text. Curious omissions include the terms *judgment*, *equity*, *representation* and *tribunal*. Surprisingly, the work treats the term *immunities* twice, once by itself and, later, as part of the phrase *privileges and immunities*, where it repeats many of the same sources presented under *immunities*.

The number of terms included in the work is small, but by limiting the number of terms, the authors were able to include numerous references to historical sources for each word or phrase, yet still produce a compact, one-volume work. To create this work, the authors located the sources they include by electronically scanning existing machine-readable collections, such as *The Constitution Papers* and *The Documentary History of the Ratification of the Constitution*. They also, as part of their preparation of this publication, developed several new machine-readable texts, including *The Federal and State Constitutions, Colonial Charters, and Other Organic*

Laws, Francis N. Thorpe, ed., and *Pamphlets on the Constitution of the United States*, Paul L. Ford, ed. These historical databases will certainly prove valuable for future constitutional scholarship.

Although it may not have been envisioned as such, *The Language of the Constitution* functions very much like an encyclopedia of quotations. The eighty-five words and phrases covered are presented in alphabetical order. For each, the authors offer one or more excerpts from the Constitution or the Bill of Rights showing where the terms appear. These excerpts are followed by numerous passages of varying lengths quoting the same words and phrases from sources which would have been familiar to the Founders between 1787 and 1791. The sources, arranged in chronological order, date back to 1215 and include American and English charters, laws, political writings, as well as constitutional convention proceedings and debates. Under the phrase *republican form of government*, for example, readers are referred to sixty-three passages. These include extracts from Thomas Paine's *Common Sense*, James Madison's *The Federalist*, and the United States Confederation Congress' *The Northwest Ordinance*. An abbreviated citation is given for the source of each passage. Abbreviations are explained at the front of the work, and full bibliographic information is given for each source quoted.

From an efficiency perspective this work has one minor shortcoming. Its table of contents lists each word and phrase covered, but key words found in phrases are not separately listed, even though they are covered by the text. A researcher interested in the use of *regulate*, for example, will not find that term listed in the contents under "R," even though the word is covered under *commerce*, *regulate*. Being able to zero in on each term through the table of contents would enhance this work's usefulness as a reference tool. Fortunately, the authors have provided a detailed index of terms, names, texts and subject matter covered by the work. The index does include access to the above example under *regulation of commerce*.

Greene's *The Language of the Constitution* provides a fascinating historical perspective which helps constitutional researchers see how the language of the Constitution and the Bill of Rights was developed. One conclusion becomes quickly apparent in consulting this work: the writers of the Constitution and the Bill of Rights relied heavily on the language of preexisting works. Many of the terms and phrases used are identical to those used in contemporaneous documents available to the drafters. What is less apparent is the extent to which this work will help researchers decipher the

meanings intended by the Founders. Repetitive examples of common phraseology may not suffice to illuminate the ideas embodied in them.

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THE CARROT OR THE STICK FOR SCHOOL DESEGREGATION POLICY. By Christine Rossell. Philadelphia: Temple University Press. 1990. Pp. xvi, 260. \$22.95 (paper).

Describing herself as a "liberal and child of the sixties," Christine Rossell disputes three decades of liberal ideology in arguing against forced busing to achieve school desegregation. Instead, in what she coins "the new civil rights alternative," Rossell contends that choice plans, when coupled with magnet program incentives, are not only the most equitable, efficient and effective means to desegregate, but are also "morally superior" to mandatory reassignment plans.

Rossell begins by discussing the evolution of school desegregation remedies following *Brown v. Board of Education*. Against this backdrop, she examines the traditional white response—noncompliance—to forced busing, and contends that magnet-voluntary plans will avoid this typical white reaction. Rossell's faith in magnet schools to achieve integration has its intellectual foundation in public choice theory. For example, she states that

[t]he primary assumption behind the implementation of a magnet school program in a segregated neighborhood school system is that parents will evaluate the educational program of the neighborhood school and that of the desegregated magnet school in rational, programmatic terms. The corollary assumption is that the additional money spent on the magnet school and its special theme will be sufficient to induce large numbers of white parents to choose the magnet schools and thus desegregate both the individual schools and the larger school system.

Rossell similarly relies on the "economic" behavior of schools themselves for the magnet-voluntary approach to work. Couched in typically Keynesian terms, she presumes that

the competition that emerges in a choice plan provides all the right incentives to both consumers and produ-

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