

Review of Wilson, *The Flexible Constitution*

My work is featured prominently and treated positively. I appreciate this and it can't help but contribute to my enthusiasm for this project. Of course, I also believe my comments on the manuscript to be "true." And, I hope they are helpful.

I think you should publish *The Flexible Constitution* with minimal revisions.

The perspective is perhaps a bit too "authoritative." That is the author sounds like he thinks he is more important than some might believe. For instance, on pg 18 "My work opposes..." is perhaps stronger than it needs to be. The author might offer alternatives instead. As in "One might consider...." There are examples where the author makes himself more present than he needs to throughout the book.

Mark Tushnet proposed, in a review of Wilson's work, that the footnotes should all be at the bottom of the page. I think this is a good point. This is a dense book and the more that is kept together the more readable it will be, I believe.

One of the things I think is special about this book is Wilson's excitement about the Constitution and contests over its meaning. This is not as evident in tone as it might be but it is evident in the commitment Wilson projects in his treatment of debates over the meaning of the American Constitution. Because of issues of trust that allow the reader to become immersed in the author's concerns, the perspective is very important. I have trouble with some of the philosophical argument. I'd rather be hearing about the details the cases raise. But the author has my attention throughout and I'm interested in what he is up to.

I am disappointed that Wilson does not find more commonality with Jack Balkin. This is someone who I think might want to work with a thesis like the one Wilson puts forth and I don't believe Balkin is as misguided as Wilson says he is (circa p. 65).

There are many really nice little observations that move the book along in a wholesome way. Like "The best place to begin a discussion about originalism is to start with the past." (p. 26)

I have to admit that I am not as interested in debates about originalism as many of my colleagues and I like the philosophy part of this book better but I think there is a pretty good balance. And, when Wilson brings new insight to the originalist debates he sucks me in. I find Ch. 5 "The Constitution as Old Society" fresh and compelling, for instance. It mixes traditional knowledge and a critical sense of what was going on in America at the time of the founding, with Wilson's innovative perspective.

Ch. 8 "The Flexible Constitution" contains the thesis of the book and though I thought it a little odd to have a chapter with the same name as the whole I think this works. His example of the problem of the Air Force seems fresh and interesting to me. It's very basic

but I haven't heard it before. And I like the discussion Wilson undertakes about the meaning of "year" over time.

Regarding the discussion of connoisseur judgment, I am always reluctant to inject French words into a discussion of the American Constitution. But in this case it seems to work. There will be resistance, of course, but I think this is a really important concept. It illuminates for me more than the Constitution but in many respects the character of political power in America today. Wilson does not do anything with another book I wrote but it follows from his reading of language and the Constitution. It is called *The Cult of the Court* and it features attention to the Court's exalted position as the final interpreter of the Constitution.

I am left with a final observation on the book. Reflecting on why someone would read it other than being featured prominently or asked to review it. I think the book is very clear yet important. The writing says complex things in straightforward ways. That is a reason to use it. The book is also refreshing. It offers new treatments of old materials. And, there is stuff in it that one can use. I can see teaching with it. Assigning it for comprehensive exams and recommending it to colleagues.