

# Legal Communication & Rhetoric: JALWD

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## BOOK REVIEW

**Bruce Allyn Findlay & Esther Blair Findlay**  
*Your Rugged Constitution*

Louis J. Sirico Jr., reviewer

# Explaining the Constitution

*Your Rugged Constitution*

Bruce Allyn Findlay & Esther Blair Findlay (Stanford University Press 1950, 1969, 2014), 296 pages

Louis J. Sirico Jr., rev'r\*

In 1950, the Stanford University Press published *Your Rugged Constitution*,<sup>1</sup> a simple explanation of the Constitution, written by two K–12 educators. The book proved so popular that the press published an updated edition in 1969 and reissued it in 2014. Although the authors never defined what they meant by “rugged,” presumably they meant that the Constitution was sturdy and robust. The use of this word fit with the 1950s view of the document and the country’s polity—it was the era of consensus, the end of ideology.<sup>2</sup> For the citizen, the Constitution was perfect and straightforward. Analyzing it required no exploration of conflicting interpretations.

In reality, of course, the Constitution is imperfect and complex. This reality presents a challenge to writers seeking to explain the document’s principles to lay readers. In *Your Rugged Constitution*, the writers master this challenge.

The book discusses each constitutional provision and ends each discussion with a “you give—you get” explanation that frames the discussion in contractual terms. For example, Article 4, Section 2, Clause 1, announces the “privileges and immunities clause.”<sup>3</sup> The discussion ends with these words:

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**1** BRUCE ALLYN FINDLAY & ESTHER BLAIR FINDLAY, *YOUR RUGGED CONSTITUTION* (1950, 1969, 2014).

**2** “In that era of general goodwill and expanding affluence, few Americans doubted the essential goodness of their

society.” DAVID HALBERSTAM, *THE FIFTIES* x (1993). See also DANIEL BELL, *THE END OF IDEOLOGY* (1960) (describing the intellectual life of that decade). Yet Halberstam noted, “Social ferment, however, was beginning just beneath this placid surface.” HALBERSTAM at ix.

**3** “The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.”

*You give:* Orders that the states must be fair to the citizens of other states.  
*You get:* (a) Protection against unfairness as you go from one state to another; (b) citizenship in a great nation as well as in your own state.<sup>4</sup>

The genius of the book lies in its success in explaining the Constitution's text in plain English, of course within the constraints of consensus politics. The left-hand page displays a provision of the Constitution and the right-hand page (and sometimes succeeding pages), explains the provision's meaning. It concludes with a few pages entitled "Your Country and You!" which likens the Constitution to a blueprint for "your house of freedom." Writing the book was no mean feat. Although the Constitution was written in a plain-English style circa 1787, it sometimes proves a challenge to the modern reader.

The authors, then, serve as translators. Just as American writers would find it challenging to translate an overseas statute or constitution into clear American English, so too would a modern American writer find it a challenge to translate the Constitution's late-eighteenth-century language into today's language. Here, the authors prove up to the task, usually by offering a textual explanation of a provision.

Still, even this type of textual translation requires considerable effort. A study of the authors' work serves to identify the challenges that all legal translators face whether they translate from another century, from another language, or from another discipline, for example, medicine, psychology, philosophy, or formal rhetoric.

Here are three illustrative issues that translators face, each with illustrations from *Your Rugged Constitution* and the Constitution itself.

**Challenge #1: How to translate when the definitions of words change over time.** Article II, Section 4 offers a prime example. It authorizes impeachment of the President and other government officials "for, and conviction of, treason, bribery, or other high crimes and misdemeanors." In Federalist No. 65, Alexander Hamilton offered an imprecise, but commonsense definition of the grounds for impeachment: "offenses which proceed from the misconduct of public men, or in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated political, as they relate chiefly to injuries done immediately to society itself."<sup>5</sup>

Despite considerable debate, the meaning of "high crimes and misdemeanors" remains unresolved. This book's audience would not be interested in rehearsing that debate. For the authors, then, a short, general

4 FINDLAY & FINDLAY, *supra* note 1, at 161.

5 THE FEDERALIST NO. 65, at 439 (Alexander Hamilton) (Jacob E. Cooke ed., 1961).

definition is sufficient: “The ‘other high crimes and misdemeanors’ are acts which are morally wrong or have been forbidden by laws.”<sup>6</sup> This explanation should satisfy the modern reader’s need to grasp the general meaning of the text.

Another challenge for the translator is the Eighth Amendment, which forbids “cruel and unusual punishment.” As the Supreme Court has declared, the phrase lacks a fixed meaning: “The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.”<sup>7</sup> Here, the authors glide over the continuing controversy on the meaning with a very general sentence: “[The amendment] also rules that people convicted of crime shall not be tortured, nor be fined or imprisoned more than is fair.”<sup>8</sup> Given the heated continuing controversy on the matter, the nonlegal reader might expect examples of what constitutes torture, unfair fines, and unfair prison sentences. The writers thus faced the challenge of explaining concepts whose meanings are unclear.

**Challenge #2: How to simplify complex sentences.** The Constitution offers a number of tangled sentences. For example, Article I, Section 2, Clause 2 reads, “No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.” The provision begs for a tabular format, and the book’s authors provide it:

Your Representative Must Be—  
 At least twenty-five years old.  
 A citizen of the United States for at least seven years.  
 A resident of the state in which he is elected.<sup>9</sup>

Consider Article VI, Clause 2:

This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding.

6 FINDLAY & FINDLAY, *supra* note 1, at 141.

7 *Trop v. Dulles*, 356 U.S. 86, 101 (1958).

8 FINDLAY & FINDLAY, *supra*, note 1, at 211.

9 *Id.* at 19.

In addressing the Supremacy Clause, the book's authors explain the need for determining which government branch has the last word on which laws prevail. They then offer a single clear sentence summarizing the Constitutional provision: "Clause 2 of Article 6 directs that the Constitution, the treaties, and the laws of the United States shall be obeyed instead of state and local laws, whenever the laws disagree."<sup>10</sup> This explanation provides a clear statement of the Constitution's text.

**Challenge #3: How to reorder information that is not in chronological order.** Ordering information in chronological order almost always improves the comprehensibility of the text. This passage from Article I, Section 7, Clause 2 illustrates the difficulty a reader faces in understanding text that is not in chronological order:

If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be law.

The book offers a streamlined version of the text: "A bill becomes law unless it is vetoed within ten days."<sup>11</sup> I have drafted a more detailed version:

If Congress presents a bill to the President and the President does not return it to Congress within ten days (except Sundays), the bill becomes law. However, if Congress adjourns and thus prevents the return of the bill, the bill does not become law.

These textual examples should be familiar, because each has spawned controversy over its meaning.<sup>12</sup> Even clauses and sections that are clearly written can generate litigation. Yet the book papers over any ambiguities and policy debates. The reader would not know, for example, that critiques of the Constitution are so extensive that a group of thirty-nine distinguished scholars has contributed to a book entitled *Constitutional Stupidities, Constitutional Tragedies*<sup>13</sup> each criticizing some aspect of the

<sup>10</sup> *Id.* at 185.

<sup>11</sup> *Id.* at 61.

<sup>12</sup> See, e.g., Joseph Isenbergh, *Impeachment and Presidential Immunity from Judicial Process*, 18 YALE L. & POL'Y REV. 53, 67 (1999) (setting out diverse views on the meaning of "high crimes and misdemeanors"); *Glossip v. Gross*, 135 S. Ct. 2726 (2015) (finding that the use of midazolamin in a lethal injections protocol did not violate the Eighth Amendment); *Powell v. McCormack*, 395 U.S. 486, 550 (1969) (holding that Congress cannot impose qualifications for seating members other than those specified in Article I, Section 2, Clauses 1 & 2); *Kennedy v. Sampson*, 511 F.2d 430, 440 (D.C. Cir. 1974) (dealing with whether an intersession adjournment is an "adjournment" for purposes of a pocket veto).

<sup>13</sup> CONSTITUTIONAL STUPIDITIES, CONSTITUTIONAL TRAGEDIES (William N. Eskridge, Jr. & Sanford Levinson eds., 1998).

sacred document. *Your Rugged Constitution* truly is a product of the age of consensus.

An analysis of the book, then, leads the reader to note two issues, one somewhat technical and one political.

First, the efforts of translating the Constitution demonstrate the tension between (a) providing an accurate text that provides detailed precision and (b) writing in a style that is accessible and interesting to the general public. This tension arises in practically any effort to provide the public with an explanation of legal, policy, or scholarly information. As lawyers, policymakers and academics increasingly continue to focus on communicating with one another and not the public, the tension grows. In contrast this book is a good-faith and relatively successful effort at reducing the tension.

Second, popular writing does its readers a disservice when it avoids conflicting positions on interpretations and critiques of even hallowed documents and ideas. Readers are entitled to the full story. Otherwise, they are unprepared for the disagreements and crises that the future may hold. Moreover, they miss out on the continuing dialogue that enriches public discussion. Here, the book fails. Even though the book is written for an audience that includes schoolchildren, that audience is entitled to something more than a plain English translation.

The authors could have improved the book by including thought-provoking questions for discussion. For example: Would you impose any additional eligibility requirements for serving as a member of the House of Representatives? Would you consider the death penalty to be cruel and unusual punishment? Why might the President use a pocket veto instead of vetoing a bill outright?

I do not want to appear overly critical. The book is a successful effort at translating an important document. It contributes to developing a well-informed citizenry and society.

Legal writing professionals and teachers struggle to make complex texts understandable to a variety of audiences ranging from lay readers to judges. We can sharpen our skills by studying the similar efforts that produced *Our Rugged Constitution*.