

BOOK REVIEW

KERMIT ROOSEVELT III, *THE NATION THAT NEVER WAS: RECONSTRUCTING AMERICA'S STORY*

by
*Ainslee Johnson-Brown**

In *The Nation That Never Was*, Kermit Roosevelt provides an alternative view of American history that views the schism prompting the Civil War as a structural break in the country's national story. The three key elements of the American origin story—the Declaration of Independence as a statement of universal liberty and equality, the Revolution as a military stand in promotion of those ideals, and the Constitution as a codification of the Declaration—are the trinity of canons against which every historically significant event is judged. Roosevelt calls on the reader to employ a method favored in disciplines that use statistical models in developing theories by “adjusting the baseline”¹ for modern America's founding. The author's selected date is November 19, 1863—the date of President Abraham Lincoln's Gettysburg Address in which he declared that “this nation, under God, shall enjoy a new birth of freedom,” signifying his faith in human rights and his hope that this country would reestablish its commitment to freedom.²

With this new lens in mind, Roosevelt begins by examining the concept of “We” that starts the Constitution's preamble to offer the basis for a storyline he refers to as the “standard story.” Modern America construes “we” to apply universally to all citizens. With the standard story, we accept that eighteenth-century norms placed limitations on non-white non-men, but as we evolve as a society those restrictions on equality loosen—and all is harmoniously well. Roosevelt counters that the universal application of “we” was intended to be as narrow as democracy could sustain. Following the belief that the Constitution codifies the

*The University of Akron School of Law, J.D., exp. 2023; Fellow, The Center for Constitutional Law.

1. See, e.g., Rajesh Selukar, SAS Institute, Inc., [Detecting and Adjusting Structural Breaks in Time Series and Panel Data Using the SSM Procedure](#) (2017).

2. Abraham Lincoln, Address at Gettysburg, Pennsylvania, in ABRAHAM LINCOLN: SPEECHES AND WRITINGS, 1859-1865, at 536 (Don E. Fehrenbacher ed., 1989); see Stacey Hiller, *A New Birth of Freedom: Human Rights*, 7 B.U. PUB. INT. L.J. 369, 369 (1998).

Declaration of Independence, Native-Americans (described by the Founding Fathers as “merciless Indian savages”) were intended to be and remain excluded from basic citizenship. The history of Black-Americans is a bit more complex—which Roosevelt uses to renounce tradition and redraw the starting line.

Almost like a Trojan horse, the book recounts American history through the progressive line of continuity that is familiar in the standard story. America was founded to protect fundamental human rights. We valiantly rebelled against greed and injustice; each step forward brings us closer to the principles decided by the Constitutional Congress. Along the way, Roosevelt underlines cracks in the story of continuity, at times echoing sentiments of and furthering ideas set forth in Nikole Hannah-Jones’ controversial work, *The 1619 Project*. He furthers his point by offering that early Americans did not center their origin story around the Constitutional Congress until after the Civil War. Although the standard story is not historically accurate, “a national story works if it unites us”³ and the standard story formed at that time when America needed unity more than ever.

Having successfully fissured the standard story, the book proposes that the values of modern America “come from somewhere else”⁴ and are invoked by those that “may not really be the heirs of the signers of the Declaration.”⁵ Citing the tendency of the seceding states to invoke the Declaration of Independence as the authority that provides for separation, the author argues that the country built by the 1776 document and the Constitution codifying its ideals was nullified and replaced by one based on the Reconstruction Amendments—making the 38th Congress our true Founding Fathers. To demonstrate his point, Roosevelt walks through the Fourteenth Amendment sections highlighting the grand departures from the system of government that preceded the secession of states. “The Fourteenth Amendment is not about hypothetical people created in the state of nature, possessing natural rights that may or may not translate into legal rights in society. It is about real people born in the United States and possessing legal rights and citizenship.”⁶ In the end, the book suggests the adoption of a new triangle⁷: the Gettysburg Address embodying of our current values of liberty and equality, the Civil War as a demand for those

3. KERMIT ROOSEVELT III, *THE NATION THAT NEVER WAS: RECONSTRUCTING AMERICA’S STORY 8* (Univ. Chicago Press 2022).

4. *Id.* at 52.

5. *Id.*

6. *Id.* at 160-61.

7. *Id.* at 201-02 (2022).

values, and the Reconstruction Amendments as the constitutional codification of those ideas.

This book offers a digestible continuation of recent publications⁸ on constitutional law and modern America. Roosevelt's writing offers a reassessment of American history in a way that signals nostalgic reverence to secondary school curriculum, while peeling back the emotional connection we have to the standard story. However, *The Nation That Never Was* creates a vacuum in the hollowed center of America's unifying story, leaving the reader to ruminate on America's capacity and desire to correct its course. While Roosevelt draws a direct line between the Reconstruction Congress' intent and today's diversity and inclusion ideals, the reader is left to wonder why the parallel feels so far from reality. The void invites a sequel that examines the role that the Supreme Court has played in maintaining the gap.⁹

8. See ELIE MYSTAL, *ALLOW ME TO RETORT: A BLACK GUY'S GUIDE TO THE CONSTITUTION* (2022).

9. Accord Natsu Taylor Saito, *Alien and Non-Alien Alike: Citizenship, "Foreignness," and Racial Hierarchy in American Law*, 76 OR. L. REV. 261, 288 (1997); Alexander Tsesis, *Enforcement of the Reconstruction Amendments*, 78 WASH. & LEE L. REV. 849, 851 (2021); Peter Nicolas, *Reconstruction*, 10 UC IRVINE L. REV. 937 (2020).