



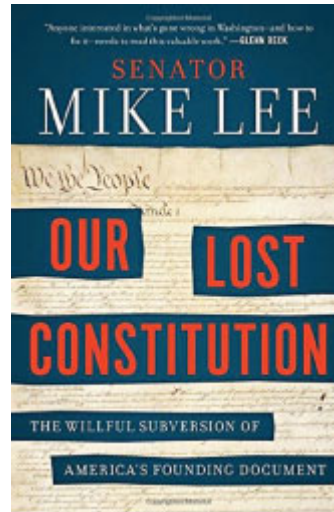
Written by [Steve Byas](#) on November 7, 2016

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Correcting Constitutional Chaos

Our Lost Constitution: The Willful Subversion of America's Founding Document, by Senator Mike Lee, New York, New York: Sentinel/Penguin Publishing, 2016, 244 pages, paperback.

Mike Lee listened attentively to his father, then solicitor general of the United States under President Ronald Reagan, as he explained America's "long-standing abortion debate." When his father concluded the explanation, Mike had one question: "Shouldn't this issue be addressed by the states rather than by the federal courts?"



Mike Lee was in the fourth grade at the time, and yet his understanding of the Constitution was already beyond what one will often hear in America's law schools and from the federal bench. Lee's father, Rex Lee, was very pleased at his son's grasp of the constitutional principle of federalism.

In this book, Lee demonstrates he still has a solid understanding of the principles of our fundamental law. In an entertaining style, he weaves in dramatized snippets of American history to illustrate what the framers of the Constitution were thinking when they placed certain provisions in the document. He then exposes how this vision has been subverted in our day, and finally, what we can do to restore, at least to some extent, our constitutional republic.

"Far too many members of Congress don't understand the Constitution they've sworn to defend — not because they *can't* understand it but because they make little or no effort to do so," Lee laments. "Some Supreme Court justices aren't much better; too many of them understand our founding document but refuse to acknowledge that its most important function is to limit and check power." And presidents? Lee says they are often "even worse."

While Lee is a Republican, he does not consider this just a Democrat-caused problem. "It is politically advantageous for them [presidents and members of Congress] to defer all constitutional questions to the courts, which can then carry all responsibility (and any accompanying blame) for the proposal's unconstitutionality." He then provides the example of President George W. Bush signing the McCain-Feingold bill in 2002, "even though he knew major parts of it violated American's right to free speech." But he signed the bill anyway, with the explanation, "I expect that the courts will resolve these legitimate legal questions as appropriate under the law."

Lee insists that the president takes an oath to defend the same Constitution that federal judges take, and yet presidents of both parties rarely cite constitutional questions when exercising the veto. Congress is no better.

The framers expected the Congress to be jealous of its powers, and that it would resist any effort by the executive to appropriate any of those powers. As designed by James Madison and the other framers, the Congress was to be the most powerful branch. Because of that, the question of who would be in the



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Congress was perhaps the most divisive issue faced at the constitutional convention.

Most students of American history have heard about the Great Compromise of the convention. In an effort to satisfy both the larger population states (such as Virginia) and the smaller population states (such as New Jersey), one house of Congress (the House of Representatives) would be based on population, while in the Senate, each state would be equally represented, regardless of the size of its population. This equal representation of each state in the Senate is the only part of the Constitution that can never be changed, even by constitutional amendment.

But Lee also examines an aspect of this compromise that is ordinarily not discussed in modern history and government textbooks. Madison and other delegates from the larger population states were concerned that their states might be required to come up with more taxes, because of their larger populations. As a way to address this concern, Lee notes that Benjamin Franklin offered a solution, which would involve requiring that all bills for raising money would have to originate in the House. And of course, the Senate would then have to approve of any such revenue measures, as with other bills.

Lee then shifts his narrative to our time, and the passage of ObamaCare, and explains how Congress violated this part of the Constitution with its passage. He notes that H.R. 3590, introduced in the House in 2009, was a piece of legislation entitled the Service Members Home Ownership Tax Act. It sought to “amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees.”

As Lee notes, “Although no one realized it at the time, this uncontroversial bill would soon become the vehicle chosen by the president and his congressional allies to sidestep the Constitution they had sworn to protect.” The bill passed the House, 416-0.

Later, Senator Harry Reid, the Democratic majority leader at the time, needed to introduce Obama’s healthcare bill. “But the bill had at least seventeen different tax provisions, and, thanks to Ben Franklin, the Constitution bars the Senate from originating tax laws,” Lee said. So Reid simply took the House bill that concerned homebuyers credit, and introduced an amendment that would strike all that language, and replace it with Obama’s health-insurance plan! Such an action displays utter disregard for the rule of law.

This is how the supporters of ObamaCare were able to pass the ObamaCare healthcare law, which was also a tax bill, despite the clear language of the Constitution that all revenue-raising measures had to originate in the House. “Of course,” Lee commented, “if Reid’s ‘amendment’ could satisfy the origination clause, the clause was pointless.”

Other chapters examine other provisions of the Constitution, why they were adopted, and how Congress, the president, and the courts have worked together to subvert the clear intent of the Framers. For example, Lee quotes Article I of the Constitution that clearly states, “All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives.” He then gives examples of how presidents, including Obama, have exercised legislative power in a clear contradiction to the explicit language of the Constitution.

As President Obama said when Congress refused to adopt one of his proposals, “If Congress won’t act ... I will.” Lee writes, “Those are not the words of a president. Those are the words of a king.”

Lee also addresses the various ways that the Supreme Court has subverted the Constitution, and the



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neglect of various constitutional limitations on government power, such as the Fourth Amendment. Here he argues that the Fourth Amendment's protections against unreasonable search and seizure have been ignored with some provisions of the Patriot Act. In his discussion of some of the actions of the National Security Agency (NSA), Lee said, "Like general warrants [illegal under the Fourth Amendment], the NSA's program covers everyone — not just those suspected of a crime. Like general warrants, the NSA's [phone data collection] program allows the government to search first and name suspects later."

And he discusses the abuse of the "commerce clause" of the Constitution to expand federal power, and the neglect of the use of the 10th Amendment to contain federal power.

But Lee does not just provide a litany of violations of the Constitution — he also offers several practical solutions to restore our "lost" Constitution.

He notes ways in which the courts could act to properly defend the Constitution, and ways in which Congress could act to restore the constitutional separation of powers. He covers two ways to rein in the executive branch. One idea he offers is a method to constrain the federal bureaucracy, and another idea is a proposal to limit presidential power to what is found in the Constitution itself — by greater use of the constitutional "power of the purse" that belongs to Congress.

Finally, Senator Lee suggests various ways that the people themselves can effectively restore the Constitution. "First we have to influence the attitudes of those around us, making every effort to persuade our friends, neighbors, colleagues, aunts, and uncles (even the crazy ones who we think will never listen) that constitutionally limited government not only matters but is essential to our prosperity as a nation and to our way of life," Lee suggests. He continues by offering other practical suggestions on how private citizens can influence their elected officials in an effective way.

It is also refreshing that Lee makes no call for a "Convention of the States" as a part of the mix in restoring the Constitution. This is good, because such a proposed solution could actually make matters even worse — possibly even much worse. As it is now, there is nothing actually wrong with our Constitution. Adding another amendment or two to the Constitution, even if those amendments were good, would serve no purpose if the Congress, the president, and the courts ignore them as they do the rest of the document. All the changes suggested by Lee can be accomplished without changing the Constitution, because our actual need is for public officials to follow the Constitution that we have now.

And that can only come from an informed electorate, educated in the Constitution's provisions that protect our life, liberty and property. It is not necessary to persuade every person in America, or even a majority, to get us back on track. As Samuel Adams said, "It does not require a majority to prevail, but rather an irate and tireless minority, keen to set brush fires in people's minds."

This entertaining and informative book is a great addition to the library of a patriot determined to set those brushfires and win back our Constitution. Lee has a proven record of fidelity to the Constitution himself. Since winning election to the Senate in 2010, his voting record of 92 percent has placed him slightly behind only Senator Rand Paul of Kentucky at 93 percent, and slightly ahead of Senator Ted Cruz of Texas with 90 percent, as measured by the Freedom Index of The New American magazine, in adherence to the Constitution.



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