

# BOOKS

## The Foundations of American Constitutional Government

Compiled by Robert D. Gorgoglione  
Introduction by Clarence B. Carson

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Reviewed by Daniel F. Walker

**W**e've all heard the abominations which pass for popular political discourse throughout America today.

"The American way is the way of democracy; the majority rules."

"Human rights obviously are more important than property rights."

"Rights are given to us by the government."

"The 'general welfare' clause of the Constitution justifies our welfare state and the redistribution of wealth."

Admittedly, current times offer some hope for a re-birth of appreciation of fundamental constitutional values. At the Clarence Thomas hearings, Richard Epstein's *Takings* was waved around by a Joseph Biden terrified at the prospect of the national government being required to compensate citizens when federal regulations diminish individuals' rights to property. The U.S. Supreme Court has, albeit meagerly, begun to recognize constitutional protection of property rights. This year the Tenth Amendment, too, was rediscovered by the Supreme Court, the federal legislative branch has been informed that there are limits beyond which statutes cannot go. State legislatures are passing "10th Amendment Resolutions" as shots across the bow of the Beltway leviathan.

Still, the rediscovery of the Constitutional design has a long way to go. Several years ago, Robert Bork referred to the Ninth Amendment as an "inkblot." Few conservatives expressed any dismay at Bork's commentary. Even in the midst of a so-called Congressional "revolution," block grants from Washington to the states, with fewer Federal conditions, are considered an indication of "federalism," as if under that concept the states are only quasi-administrative units of the national government—but with more "freedom" to craft programs, freedom "allowed" by Congress.

When an overwhelming majority of legislative "revolutionaries" and movement "leaders" fail to exhibit a sound, complete grasp of our primary, foundational document of governance, it is all the more important for the citizenry itself to grasp the essence of that document—to understand its principles, its historical context, the guiding presuppositions and beliefs of those who drafted the Constitution and those who ratified it.

FEE's most recent collection of essays, *Foundations of American Constitutional Government*, is just the publication for anyone who wants a thorough grounding for understanding our Constitution and applying it to our political life. This collection of previously published *Freeman* essays spans 30 years, including contributions from historian Clarence Carson; the late M. E. Bradford, the noted "Southern agrarian" conservative; philosopher John Hospers; historian Robert Higgs; and economist Dwight Lee, among others. The book is marketed as a primer, but be assured that the person who absorbs this book's lessons will gain a sober grasp of the intellectual ground from which the Constitution grew, its historical context, what the Founders intended it to accomplish, the permissible reach of government powers, and how profoundly "undemocratic" our government was structured to be—and why that's so. (The primary drawback of this book is the appendix; while it contains for reference the original Constitution and the first ten amendments, the other 17 amendments are not included. Also, the absence of the Articles of Confederation, predecessor to the Constitution, is regrettable.)

Several essays stand out. George W. Nilsson's essay, "Not in the Constitution," carefully examines the context and meaning of the "general welfare" clause, oft-cited and terribly misunderstood. This essay should be read by every political science undergraduate student, every first-year law student, and every public official in America. The gist of the essay? There is no grant of plenary power to the national government; as Nilsson wrote, "Knowing what led up to the war, and reading the charges in the Declaration of Independence, can anyone for a minute think that the colonists generally, and the members of the convention specifically, would have adopted a constitution which granted general welfare powers to the federal government?" Clarence Carson's essay on "The General Welfare" nicely complements the Nilsson essay.

Robert Higgs' essay regarding individual rights and the nature of government is a reality-based summary which should be widely read.

Higgs destroys the false dichotomy between "human rights" and "property rights," but not before reminding us that "[e]very government, ultimately if not immediately, relies on physical violence to enforce its rule."

Professor Dwight Lee's piece on "The Political Economy of the U.S. Constitution" offers a particularly good review of the U.S. Supreme Court's economic jurisprudence through 1986. Lee's likening the government to the role of a referee in a football game is just the sort of illustration appropriate for those who seldom or never have thought through the implications of Constitution-related discussions they've heard before.

M. E. Bradford's contribution, "Not So Democratic," is an outstanding essay regarding the profoundly "undemocratic" beliefs of the framers of the Constitution and the numerous anti-majoritarian mechanisms within the document. The Constitution is no mere blueprint for populist, majoritarian government; the super-majority votes required for amending the Constitution obviously are structured and required to prevent tinkering by bare majorities. Consider the Senate, where the least populous and most populous states are represented by the same number of Senators: two. A simple majority is not sufficient to override a Presidential veto; two-thirds of the House and two-thirds of the Senate must vote accordingly. Other examples of anti-majoritarian mechanisms abound. One cannot read Bradford's essay without a deeper appreciation for the "anti-democratic" measures in our Constitution which passionate, fleeting majorities on given issues cannot ignore, measures which safeguard us from the tyranny of the majority.

Clarence Carson's essay on "The Meaning of Federalism" is an excellent survey of the topic, highly recommended. A point particularly appreciated by this reviewer is Carson's attention to the phrase of states' rights: "states have powers (as do all governments), not rights. . . . Rights belong to individuals in the American constitutional system." Amen. The less semantic confusion over rights and powers, the better.

Finally, John Hospers' essay concerning "Freedom and Democracy" cleanly picks apart the mythology of democracy as "self-government." "[W]hen people speak of democracy as self-government, they are not speaking about each person governing himself; they are speaking of a process in which a majority of voters, or a majority of members of a legislature, make decisions which have the force of law for everyone, including those who are opposed to what is

enacted." Participating in decision-making is one thing; living with the consequences of collectively made decisions is entirely another. Hospers' piece is a solid companion to Bradford's essay; together, they force the worshippers of "democracy" and "the will of the people" to reconsider the ramifications of their beliefs.

Overall, *The Foundations of American Constitutional Government* is a refreshing and provocative review of historical context, the substance, and the political theory infused within the Constitution. Students and non-students alike would do well to arm themselves with this book before confronting those "modern interpreters" who twist the Constitution to justify the intrusive, belligerent "Nanny State" we know as the federal government. □

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## Leviathan at War

edited by Edmund A. Opitz

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Reviewed by Robert Higgs

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**P**erhaps the most valid justification of government is its defense of citizens against foreign aggressors. But when governments wage war, a thin line separates defense and offense. And even in a defensive war, governments typically deprive their own citizens of many liberties. Historically, war has done more than anything else to enhance the power of governments and to diminish the liberties of the people. Classical liberals have always recognized the dangers of war and supported policies, such as free international trade, that reduce the likelihood of war.

The Foundation for Economic Education has stood squarely in this classical liberal tradition, and over the years its monthly publication, *The Freeman*, has presented many articles alerting readers to the domestic dangers of war and espousing policies that promote peaceful international relations. *Leviathan at War*, edited by Edmund A. Opitz, reproduces many of those articles as well as several other commentaries. The longest essay in the collection, Wesley Allen Riddle's "War and Individual Liberty in American History," is a previously unpublished contribution.