



Our Republican Constitution: Securing the Liberty and Sovereignty of We the People

Randy E. Barnett

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A concise history of the long struggle between two fundamentally opposing constitutional traditions, from one of the nation's leading constitutional scholars—a manifesto for renewing our constitutional republic.

The Constitution of the United States begins with the words: “We the People.” But from the earliest days of the American republic, there have been two competing notions of “the People,” which lead to two very different visions of the Constitution.

Those who view “We the People” collectively think popular sovereignty resides in the people as a group, which leads them to favor a “democratic” constitution that allows the “will of the people” to be expressed by majority rule. In contrast, those who think popular sovereignty resides in the people as individuals contend that a “republican” constitution is needed to secure the pre-existing inalienable rights of “We the People,” each and every one, against abuses by the majority.

In *Our Republican Constitution*, renowned legal scholar Randy E. Barnett tells the fascinating story of how this debate arose shortly after the Revolution, leading to the adoption of a new and innovative “republican” constitution; and how the struggle over slavery led to its completion by a newly formed Republican Party. Yet soon thereafter, progressive academics and activists urged the courts to remake our Republican Constitution into a democratic one by ignoring key passages of its text. Eventually, the courts complied.

Drawing from his deep knowledge of constitutional law and history, as well as his experience litigating on behalf of medical marijuana and against Obamacare, Barnett explains why “We the People” would greatly benefit from the renewal of our Republican Constitution, and how this can be accomplished in the courts and the political arena.

Our Republican Constitution: Securing the Liberty and Sovereignty of We the People Details

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From Reader Review Our Republican Constitution: Securing the Liberty and Sovereignty of We the People for online ebook

Fred Leland says

Understanding our founding documents

This book is a great resource for helping to remind us of our founding documents the Declaration of Independence and the Constitution of the United States as a police officer and police trainer the history of these documents are often neglected in training for state statutes and procedures. To be better, more effective, fair and impartial these founding documents and what they mean to American

Kristi Richardson says

This is a good example of what Originalist thinking on the Constitution means. I didn't like the fact that he went on about how smart he was to overturn Obamacare and then had to backtrack and say why he lost the argument.

Basically the argument is that the Constitution has to be read as is. If you want to allow wire taps, or other types of arguments, you will have to create amendments through the voters or the Congress.

My personal opinion is closer to Louis Brandeis that the Constitution is a living, breathing document that can be interpreted by the intention of the Founding Fathers and can be updated to allow laws to exist in the present day on things that were not a part of the history of the Constitution.

I gave this a three rating because I believe the thinking is flawed, but the book was well done.

Michael Hatcher says

I found this book very thought-provoking. A key point is that the author's use of democratic constitution and republican constitution is not the same as the current Democratic and Republican parties. I agree with about 85-90%, which is rare. My one complaint is that while the author acknowledges that current day Republicans are also guilty of the abuses he mainly lays on "progressives" he seems to downplay the extent to which that is true. One example he could have cited and is glaring in omission is the "conservative" efforts to institutionalize their version of Christianity in federal law.

Curtis says

This book was a pleasure to read. The author convincingly argued his thesis of the original meaning and intent of our Constitution. Not only was the history fascinating (there are some fascinating facts regarding the ideas included in the Declaration of Independence, and the connections between it and the Constitution), but Professor Barnett also gave some great context for the origin of our separation of powers in government. I would recommend this book to anyone wishing to learn more about our Constitution, and/or hear a

wonderful argument for constitutional originalism.

Susan says

I had originally started reading this book and felt the first couple chapters themselves justified the price of the book. It seemed very helpful to explain what the heck is going on in this country! (America) It can be rather hard to understand at times, discussing law cases from history, and I ended up pausing my reading of this book for quite a while. A recent news story about the separation of Church and State and online discussions that resulted, prompted me to think about all this again. I don't quite understand the discrepancy between having a Declaration of Independence that declares our rights as being inalienable and having been endowed by our Creator, which then led to the Constitution, instituted to protect these rights...and the eventual "progress" to now having God being essentially like Voldemort, "He-Who-Must-Not-Be-Named".... It appears as if our Declaration of Independence has been almost entirely ignored for a long time. The Constitution seems to be considered as a stand alone document, thus losing a significant aspect by doing that...anyway, that got me to return to this book. I was able to read it straight through from the beginning again much more easily. I think it is an extremely important book for all Americans to read. It explains how our Constitution has come to be interpreted in two different ways, one way based in seeing our sovereignty, "We the People", as individuals, the other as a group. It actually makes a big difference. It discusses majority rule, the effect of Progressivism of both Republicans and Democrats, the interpretation of the Constitution as a "living document"...It starts at the very beginning and from actually even a little before, explaining the earlier thinking that influenced our Founders when they wrote the documents... I feel it is very important to honestly assess what side one comes down on, and to understand why...there will be those that fall on both sides I'm sure, but there are consequences to all this stuff and we are experiencing them every day, seemingly more and more...

Farhan Naushad says

Great book. Audible narration isn't great, though. The narrator tries to do different accents when quoting others as if it was a fiction read.

There's one minor error in the book. Women got their voting right with the 19th amendment, not the 20th - but that might just be a typo.

I recommend reading it with the *The Constitution: An Introduction* by Michael and Luke Paulsen.

Paul says

While I very much agree with Barnett's conclusions and I think he's on the right side in basically all the cases he brings up, I personally find these rights-based frameworks about as compelling as the concept of objective morality (i.e. I don't see any particular evidence for it), and as such most of his arguments fall flat to my ears.

I would be very interested in seeing the same arguments recast from an outcomes or practicality based standpoint - I think this would be much more compelling to people who disagree with Barnett's positions (see the bleeding heart libertarians) than simply explaining how the constitution has been gutted out and

repurposed; from the liberal perspective that's a good thing!

The American Conservative says

“Georgetown law professor Randy Barnett is the most prominent libertarian in legal academia today. His latest book, *Our Republican Constitution: Securing the Liberty and Sovereignty of We the People*, shows why. Characteristically of libertarian legal scholars, Barnett decries the essentially unchecked power of the federal legislative and executive branches (I agree with him about that) and advocates that the courts exercise far broader veto power over federal and state policymaking (which is not my favorite idea).

Barnett bases his argument for reinvigorated judicial imperialism on a peculiar reading of the United States’ founding documents—one holding that the Constitution was the act of one people, and that somehow this means individual Americans are sovereign. The sovereignty of the people, in turn, underpins Barnett’s longstanding claim that the Constitution embraces a “presumption of liberty” that courts must uphold against the other branches of government.”

<http://www.theamericanconservative.co...>

Andrew Willis says

Well presented and persuasively argued. Would like more focus on the limits of judicial activism, but that does not appear to be a strong concern for Barnett.

Ethan says

As usual, Professor Barnett is so thorough in both his logic and his research. Libertarianism's greatest legal scholar, in my mind.

Brad says

Great overarching points occasionally lost in the weeds.

William says

The driving thesis in Randy Barnett's latest is that there are basically two ways of reading our founding document. Barnett categorizes under the heading of "the Democratic Constitution" any interpretation that defers to the majoritarian outcome of the political process and as "the Republican Constitution" any interpretation that declares unconstitutional laws that violate individual liberty.

So John Roberts's decisions upholding Obamacare? Democratic Constitution. Reconstruction-era decisions

upholding Jim Crow laws? Democratic Constitution. New Deal court deferring to FDR? Democratic Constitution. But *Lochner v. New York*? Republican Constitution. *Brown v. Board*? Republican Constitution. Etc.

In this way, Barnett proceeds through our country's history—branding as heroes, in the mold of those who integrated our schools, judges who strikes down even the mildest restraints on contract; and lumping in with slavery defenders any court that enforces economic regulation. In so doing, Barnett rarely bothers to parse out that different types of legal issues implicate different Constitutional provisions. Instead, every undesirable law must run afoul of a personal liberty protected by the Ninth Amendment's penumbras and/or fail to satisfy the requirements of substantive due process.

Barnett's ridiculously oversimplified approach necessarily ignores glaring examples of judicial overreach. He focuses almost exclusively on the trendy topic of economic liberty and doesn't bother to address abortion, *Obergefell*, or our unhinged establishment clause jurisprudence.

The book could also have used another coat of polish. Barnett mentions in the acknowledgments that the writing process included a substantial reorganization, and some of the seams from that reorganization show. For example, a new case is referred to as if the reader is already familiar with the details, and then only introduced and explained later.

All of that said, the book was not a total waste of time. It is an easy read with a pleasant informal style, and the history of constitutional development was a fun review. I hadn't thought about some of these issues since law school, and it was nice to get a refresher and clarify some of my thinking.

Bob Miller says

Mr. Barnett makes the case that neither the federal or state governments are sovereign in the United States, instead the individual people are joint sovereigns. The discussion throughout this book is based on court cases and the rulings of judges since the founding of our nation. The main thrust is that actual democracy, majoritarian rule, can be totalitarian and that there is evidence that the constitution was written in such a way as to guard against that tendency. Yet over the years, for various political reasons, court rulings have reinterpreted those guards and made them meaningless. In concluding remarks, Barnett states that "government is instituted by the people as individuals, that presidents and congressmen are the servants of the people as individuals, and that the just powers of government must protect the rights of each and every person."

The structure of our federal government, with three separate branches, with all legislative power in only one branch, with only the enumerated powers granted to the congress for legislation, with the senate selected by state legislators, all provide guards against majoritarian rule, and even more, they provide guards against either tyranny of the legislators or tyranny of the president. My impression is that these guards were insufficient primarily due to the issue of slavery, then later the economic domination over former slaves and more recently the segregation of people into classes by laws that allow political domination by majoritarian rule. Even the bill of rights and subsequent amendments clarifying those rights were insufficient guards of our individual sovereignty, and perhaps even eroded the rights they defined, and those omitted.

Barnett's discussion of the income tax was weak. While the income tax enabled an increase in federal revenue, whether that method of taxation is a problem is not clear. He does point out that "The federal

government has been able to exceed the enumerated limits on its powers by bribing or coercing the states with their own citizens' money to use their more extensive powers as Congress sees fit". In the last 30 years, the political parties oppose each other on income tax rates, the degree of progressive rates and deficit spending, which are all related to the enumerated powers of congress, but not clearly an issue with the income tax itself.

Also, with the historical focus that is common with analysis of the constitution, the purpose and meaning of arguments presented at the time are easily misunderstood and subject to incorrect interpretations. Those founders and many generations that followed are no longer able to clarify their meaning or defend their written statements. The same comments might be applied to the court decisions cited by Barnett, but those written opinions are more complete arguments than those surrounding the constitution. Still, by citing other cases and other opinions, one might be able to present a completely different perspective than Barnett has chosen.

Overall, the book is impressive and I agree on many points. I favor individual sovereignty and oppose majoritarian rule, both by popular democracy and by our representatives in congress. I favor case by case decisions on principle and oppose conflation of issues by political parties resulting in control of government by a subset of people claiming to represent the will of the people in general. I favor limiting the federal government, and all other levels of government, to enumerated powers and oppose omnibus appropriations that hide usurpation of those limits. I am probably more extreme in my view of individual rights than Barnett in that I oppose laws that place prior restraint on individuals and prefer individual liability for their actions. Protection against potential future crime is the first step to tyranny. With Barnett, and with other contemporary writers, I favor an article V convention to propose amendments to our constitution in order to restore individual rights and sovereignty.

Andy Dollahite says

Set primarily in the legal quarrels over Obamacare, this book clearly outlines the philosophical and practical differences between a republican/representative republic and what has devolved into a purer democracy with an entrenched unaccountable bureaucracy. The vision of limited government securing liberties inherent in the individual citizens has been replaced with a government that grants such liberties. All branches of government have contributed to the fundamental changes we've experienced.

E says

Read the summary to see what this book is about. Basically, we desperately need to understand that individuals hold many absolute rights, and the will of the majority cannot take them away. Judges mustn't defer to the mere possibility that legislators did not intend to curtail rights, or that executives did not mean to fail to protect such rights adequately. Basically, the question comes down to this: did we form the government, which then granted us rights? Or did we have individual rights that needed protected, and then formed the government to protect those rights (granting them certain limited and delimited powers--and no more--in order to do so)? How you answer this question will direct how you understand the Constitution, how you understand the need for an "activist" judiciary (activist in the sense of protecting individual rights, and not being afraid to strike down legislation in order to do so), how you understand the mess that the twentieth-century progressive movement made of things, and more.

This book is not very clearly organized. Sometimes it's an historical overview, other times he gets into the weeds of various issues (due process, for example) without clearly explaining why. But the material itself is wonderful.
