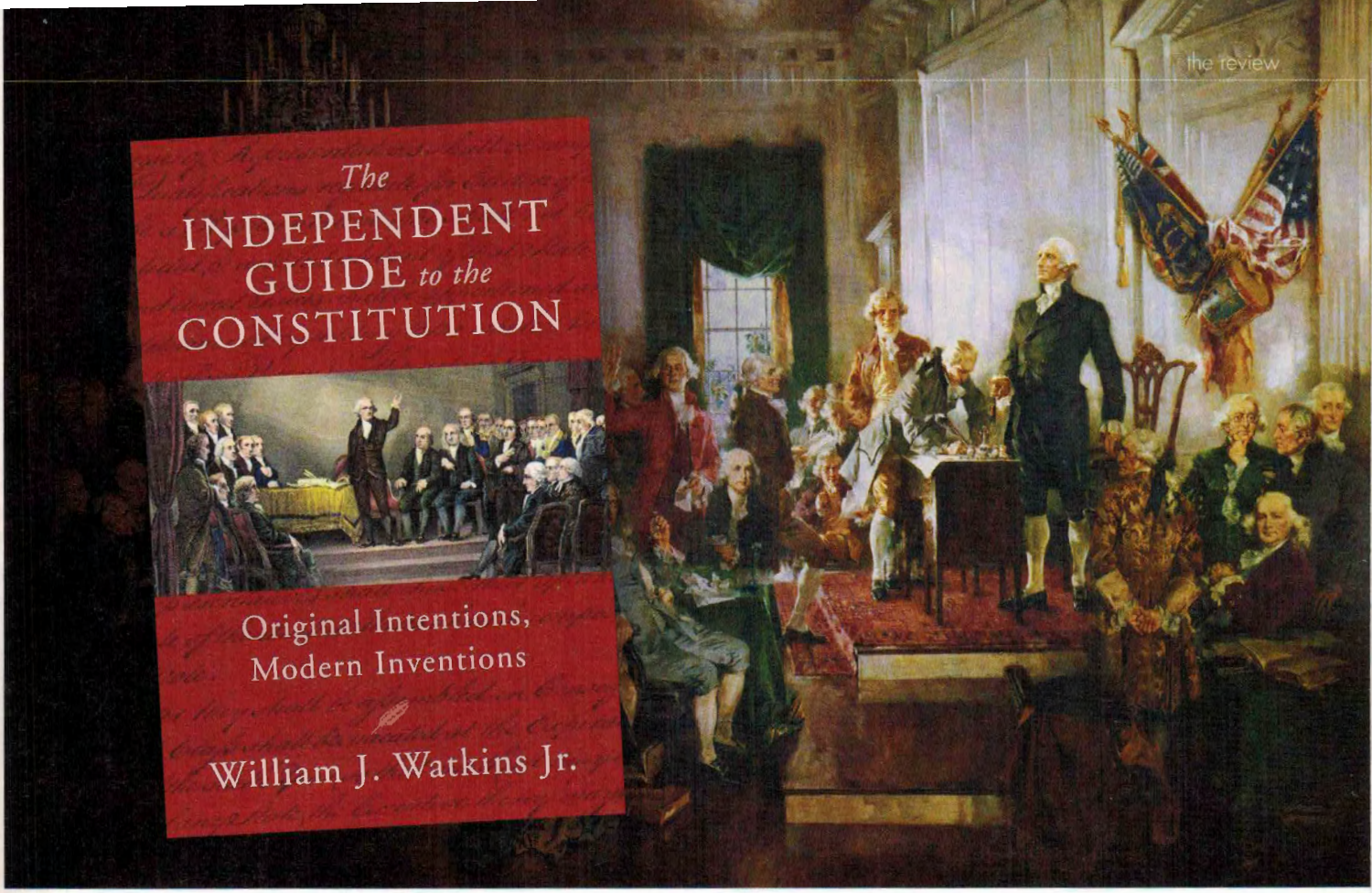


ORIGINAL INTENT

by Laurence M. Vance

The Independent Guide to the Constitution: Original Intentions, Modern Inventions, by William J. Watkins Jr., Oakland, California: Independent Institute, 2026, 384 pages, hardcover.

William Watkins has hit another home run. Like his earlier books — *Crossroads for Liberty: Recovering the Anti-Federalist Values of America's First Constitution* (2016), *Judicial Monarchs: Court Power and the Case for Restoring Popular Sovereignty in the United States* (2012), and *Reclaiming the American Revolution: The Kentucky and Virginia Resolutions and Their Legacy* (2004) — *The Independent Guide to the Constitution: Original Intentions, Modern Inventions* is essential reading, not just for those who espouse the "strict construction originalism" of the author, but for anyone who believes that the Constitution and the opinions of those who bequeathed it to us still matter.

Watkins, who holds degrees in both history and law, is a research fellow at the Independent Institute, a libertarian think tank. He is a former law clerk to Judge William B. Traxler, Jr., of the U.S. Court of Appeals for the 4th Circuit, and is president of the Greenville, South Carolina, Lawyers Chapter of the Federalist Society. He has served as a prosecutor and defense lawyer, and has practiced in various state and federal courts.

The format of *The Independent Guide to the Constitution* is unique, consistent, suitable, practical, and excellent. After an important preface (to which I will return), the Constitution — including the preamble — is explored in intricate detail, article by article, section by section, and clause by clause. The discussion of each article, section, and clause is organized under four headings: purpose, background and development, distortions, and discussion and solutions. There is a summation at the end of each constitutional article, except for Articles V and VII, which each consist of just one clause. After a note on the Bill of Rights, which originally "applied only to the general government," the same fourfold discussion is followed for each of the constitutional amendments, with a summation after the last amendment.

The book is enhanced by several features. There is a very detailed table of contents, with "topics subject to vigorous debates" in boldface. This includes subjects such as popular sovereignty, taxing and spending, the general welfare, regulation of commerce, declaring war, necessary and proper legislation, commander in chief, full faith and credit, amendment procedure, federal supremacy, most of the 14th Amendment, and the whole of the First, Ninth, and 10th Amendments. The book's pages are large, with

the text in double columns. There is an afterword, followed by two appendices. First is the text of the Constitution, which I recommend that people read before perusing the book. Second is the author's resolutions on state and federal power offered "as model resolutions to be adopted in the several state legislatures." The book contains more than 1,600 notes and a comprehensive, user-friendly index. Although it is normally desirable to have footnotes at the bottom of the page, because of the nature of the book, the notes are wisely placed at the end of the volume. Supreme Court cases applicable to a particular article or amendment are mentioned throughout.

The book's preface should be carefully read before looking up any article or amendment. Watkins' approach to the Constitution is one of "strict construction originalism," which was "a hallmark of the early republic." He contrasts "Jeffersonian strict construction" with "the originalism fashioned in the early 1980s by scholars associated with the Federalist Society" who often "practice their craft in a manner that augments federal power rather than seeking to cabin it." (Jefferson is quoted throughout the book.) Watkins believes that "Jeffersonian strict construction is the preferred method of construction because it recognizes the exalted place of the people of the several states," not "the amalgamated American people." Many proponents of originalism join with advocates of living constitutionalism in rejecting "the states as preexisting political communities ruled by sovereign peoples and a limited federal government that operates in just a few discrete areas."

I was glad to see that Watkins did not give short shrift to the Constitution's preamble. He points out that "the preamble is a prefatory statement and neither supports nor enlarges the powers delegated to the federal government." Congress should cease using "the preamble in statements of constitutional authority." He explains how "the preamble is also distorted by assumptions that 'the People' in the preamble refers to the American people as one consolidated body rather than the political communities of the different states."

Watkins admirably tackles the most abused clauses in Article I, Section 8 of the Constitution: the general welfare clause, the commerce clause, and the necessary and proper clause. Because the meanings of these clauses have been so perverted, they have become the pillars of the modern welfare/administrative state. Watkins points out that, as James Madison explained, the enumeration of particular powers that follows the general welfare clause shows that it did not confer plenary power on the national government. The commerce clause has for many years been erroneously interpreted to mean economic activity in general. This is how, "under the guise of regulating interstate commerce, Congress has enacted federal criminal statutes, civil rights laws, and health care programs." Watkins explains that the commerce clause was only concerned with actual "trade between persons of one state and another." It was intended to limit interstate trade barriers, not allow Congress to regulate the internal commerce within the states, and certainly not to regulate anything that could somehow affect commerce. The necessary and proper clause has been abused from the very beginning of the Republic. Watkins contends that "one step in returning to a federal government with few and defined powers will require resurrecting Jefferson's insistence that 'necessary' extends only to those means that must accompany the delegated power so that it is not rendered nugatory."

Another important and highly relevant clause in Article I, Section 8 is

the clause regarding the declaration of war. Watkins is adamant, and rightly so, that it is solely Congress that holds the war power. Yet, "Congress has largely abandoned its constitutional role as the body that determines war and peace." This has led to "perpetual wars and aggressive military actions (including bombings, cruise missile strikes, and drone attacks) based on the president's judgment and discretion." The Framers of the Constitution recognized that it was the executive branch that was prone to launch unnecessary wars. Watkins has some harsh words for the congressional Authorization for Use of Military Force (AUMF) — first given to President Dwight Eisenhower in 1955, and most recently issued after the attacks of 9/11 — and the War Powers Resolution of 1973. The AUMF gives the president "carte blanche over the use of force" and "a power reminiscent of Britain's eighteenth-century monarchs." The War Powers Resolution "recognizes executive power far outside the constitutional scope" and "codifies presidential excesses" instead of limiting presidential power.

The limited power of the president, as set forth in Article II of the Constitution, is today just the opposite, especially when it comes to his role as commander in chief. Watkins is highly critical of the American president using "the armed forces as his personal security force" and claiming "the power to commit American troops to hot spots across the globe without consulting Congress."

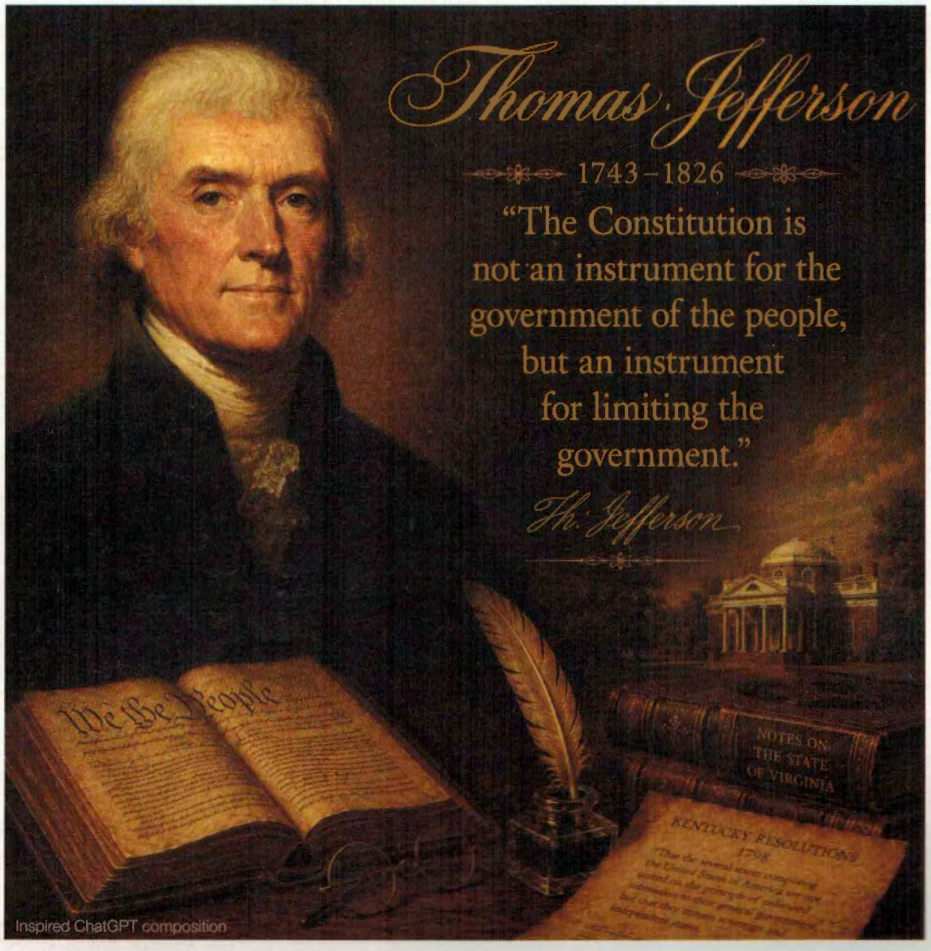
In his discussion of Article III on the judicial branch of government, Watkins makes a careful distinction between judicial review and judicial supremacy. He believes that "the modern concept of judicial supremacy would shock the founding generation, including John Marshall himself."

The author's comments on the First, Second, 10th, and 14th Amendments are particularly relevant. He views modern Supreme Court jurisprudence as "far afield from the original understanding of the First Amendment," especially when it comes to the establishment clause. He is adamant that the Second Amendment supports the individual right to keep and bear arms. He believes that if "limited, constitutional government is ever to return to our shores, the Tenth Amendment will be a starting point." In his masterful discussion of the 14th Amendment, Watkins takes on substantive due process, birthright citizenship (as it is commonly understood), and the idea that the Bill of Rights applies to the states because it has been (selectively) incorporated into the 14th Amendment.

Watkins is uncompromising in his defense of a strict construction of the Constitution. Thus, in addition to his remarks on the 14th Amendment that will make progressives squirm, he regularly criticizes Presidents Abraham Lincoln and Franklin D. Roosevelt, Alexander Hamilton, and Yale constitutional law Professor Akhil Amar.

The book shows how the federal government has not merely drifted from the Constitution, but completely abandoned it. It also shows us that there is a simple solution: returning to a strict construction of the Constitution.

The Independent Guide to the Constitution is what it claims to be. It is not a history of American government and jurisprudence or a libertarian critique of the shortcomings of the Constitution. The book "does not claim to have all the answers or to be an exhaustive discussion of the Constitution." It "is a mere starting point for average Americans who care about their country and who are not content to leave interpretation of the Constitution to the federal judiciary." I have several "guides" to the Constitution on my bookshelves, and there are many more of them that can be found online. The *Independent Guide to the Constitution* will be my first choice when I want a refresher on any clause or amendment in the Constitution, and I consider it to be an essential resource. ■



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