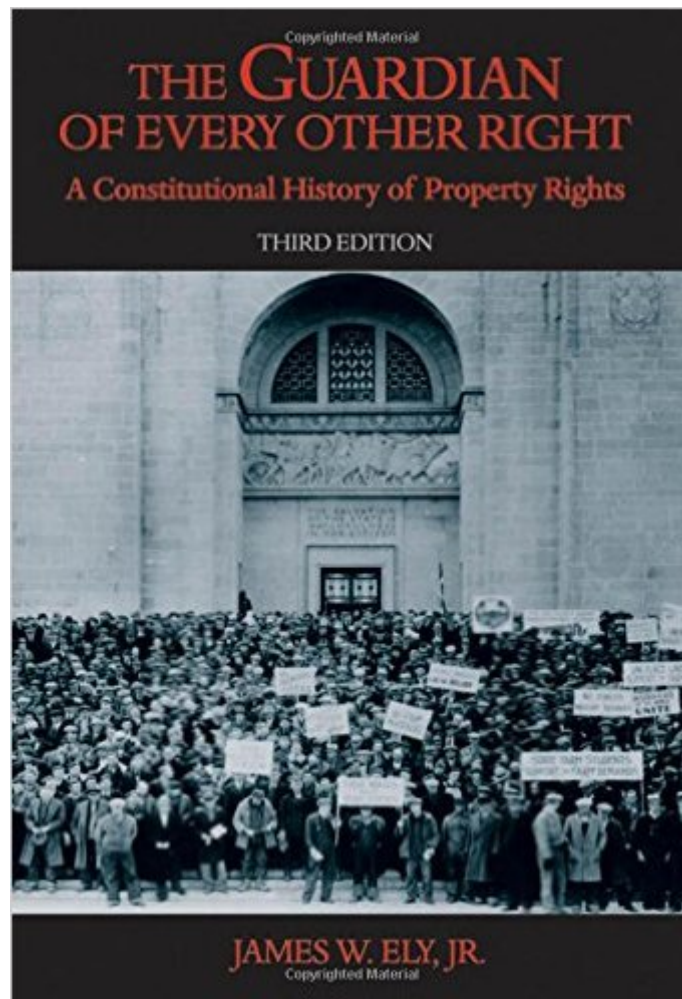


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# The Guardian Of Every Other Right: A Constitutional History Of Property Rights (Bicentennial Essays On The Bill Of Rights)



## Synopsis

The Guardian of Every Other Right chronicles the pivotal role of property rights in fashioning the American constitutional order from the colonial era to the current controversies over eminent domain and land use controls. The book emphasizes the interplay of law, ideology, politics, and economic change in shaping constitutional thought and provides a historical perspective on the contemporary debate about property rights. Since publication of the original edition of this work, both academic and popular interest in the constitutional rights of property owners has markedly increased. Now in its third edition, this text has been revised to incorporate a full treatment of important judicial decisions, notable legislation, and scholarship since the second edition appeared in 1997. In particular, Ely provides helpful background and context for understanding the controversial Kelo decision relating to the exercise of eminent domain power for "public use." Covering the entire history of property rights in the United States, this new edition continues to fill a major gap in the literature of constitutional history and is an ideal text for students of legal and constitutional history.

## Book Information

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## Customer Reviews

This is a very well conceived survey of the history of property rights in the United States. Ely seems to see American constitutional history as having four great periods. The first period is the colonial and early national period up to the ratification of the Constitution. The second period runs from that first Washington administration up to the adoption of the Reconstruction Amendments after the Civil War. The third period runs from then until the so-called "revolution of 1937" when the Supreme

Court did a turn around from its resistance to New Deal programs. From 1937 to the present time constitutes the final period of Ely's history. Obviously, from this perspective, the three great moments in U.S. constitutional history were 1. the original ratification of the Constitution, 2. the ratification of the 14th Amendment and 3. F.D.R.'s successful campaign to change the approach of the Supreme Court in 1937. To this history, Ely applies the following three analytical principles: 1. The framers of the Constitution and the Bill of Rights "envisioned some degree of federal judicial review of the substance of economic legislation" (Ely, p.9). 2. The framers did not regard personal and property rights as separable. "Indeed, the framers saw property ownership as a buffer protecting individuals from governmental coercion." (p. 43) 3. However, property is not constitutionally entitled to preferential treatment. Constitutional rights are not unlimited. In many cases, there are competing interests that must be balanced. Ely's survey of the colonial and revolutionary period serves to remind us that there has never been a period of time when property rights were granted unfettered priority.

The published reviews present a fairly accurate picture of the book. First, it is concise, always appreciated in a dry subject. Second, it is historical, not only in its order of presentation but also in the mode of analysis. It starts in the right place, America in the colonial period, and marches up to the 2006-07 Supreme Court term. It is blissful, and I mean blissful if you have read other works on this subject, free of lengthy disquisitions on the superiority or bankruptcy, depending on your point of view, of particular economic theories; and likewise blissfully free of cant, quack social science and meta-theoretical discussion that focus on academics' views far more than on actual events. Last, it is fairly balanced, and certainly the most balanced treatment I can find out there. The other reviewer says that the author "wears his conservative heart on his sleeve" and I respectfully disagree. The author delivers his story very much in a "on the one hand, on the other hand" fashion. There are many, especially in the not-for-profit world, who would like to impose a Hegelian narrative on the subject laying out a teleological progress toward the elimination of any "reification" or "privileging" of private property rights in favor of a "redistributive constitutional regime" that has been interrupted by evil reactionaries who would return us to the era of 16-hour workdays and child labor. There are others who would have you believe that intelligent life peaked when Adam Smith wrote *The Wealth of Nations* and all economic regulation is foam from the mouth of raving Marxists. This author paints a much more factual and balanced picture, which is summed up in three sentences (page 9): "First, the framers ...

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