

AMERICAN CONSTITUTIONALISM  
VOLUME II: RIGHTS AND LIBERTIES  
Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 7: The Republican Era — Foundations/Principles/Judicial Power to Protect Rights

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David J. Brewer, *The Nation's Safeguard* (1893)<sup>1</sup>

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David J. Brewer was appointed to the U.S. Supreme Court by President Benjamin Harrison in 1890 after serving extended stints on the Kansas Supreme Court and in the federal circuit courts. He served on the Supreme Court for twenty years. The son of Christian missionaries, Brewer was known for his religious conviction, his dedication to the protection of property rights, and for his frequent forays into public speaking. Although an early dissenter on the Fuller Court, the conservative trajectory of the Court soon brought him into the majority and converted his dissents into constitutional doctrine.

In this speech, delivered to the annual meeting of the New York Bar Association in Albany, Brewer voiced the growing concern with “lawlessness” that was animating the legal community at the turn of the twentieth century. The populist backlash against industrial and commercial advancement posed, in his view, the looming danger of the coming years. Delivered in the immediate aftermath of the bloody Homestead Strike at a Pennsylvania steel mill, Brewer’s speech warned of a growing belief in “coercion” and “force” that was willing to throw aside law and rights. Two years later, Brewer wrote the court’s opinion in *In re Debs* (1895), upholding the federal government’s actions to break up the Pullman Strike.

... I do not propose to discuss the foot-pad or the burglar; they are vulgar and brutal criminals in whose behalf there has as yet been organized no political party. I wish rather to notice that movement of “coercion,” and which by the mere force of numbers seeks to diminish protection to private property. It is a movement which in spirit, if not in letter, violates both the eighth [thou shalt not steal] and tenth [thou shalt not covet] commandments; a movement, which seeing that which a man has attempts to wrest it from him and transfer it to those who have not. It is the unvarying law, that the wealth of the community will be in the hands of a few ... and hence it has always been, and until human nature is remodeled always will be true, that the wealth of a nation is in the hands of a few, while the many subsist upon the proceeds of their daily toil. But security is the chief end of government, and other things being equal, that government is best which protects to the fullest extent each individual, rich or poor, high or low, in the possession of his property and the pursuit of his business. ...

...  
This movement expresses itself in two ways. First, in the improper use of the labor organizations to destroy the freedom of the laborer and control the uses of capital. ...

...  
The other form of this movement assumes the guise of a regulation of the charges for the use of property subjected, or supposed to be, to a public use. ... [I]t subjects all property to and its uses to the will of the majority ... [and] robs property of its value. ...

...  
It is said that the will of the people would often be delayed or thwarted and that this is against the essential idea of government of and by the people. But for what are written constitutions? They exist, not simply to prescribe modes of action, but because of the restraints and prohibitions they contain. Popular

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<sup>1</sup> Excerpt taken from David J. Brewer, “The Nation’s Safeguard,” in *Proceedings of the New York State Bar Association, Sixteenth Annual Meeting* (New York: New York State Bar Association, 1893), 37–47.

government may imply, generally speaking, that the present will of the majority should be carried into effect; but this is true in no absolute or arbitrary sense, and the limitations and checks which are found in all written constitutions are placed there to secure the rights of the minority. Constitutions are generally, and ought always to be, formed in times free from excitement. They represent the deliberate judgment of the people as to the provisions and restraints which, firmly and fully enforced, will secure to each citizen the greatest liberty and utmost protection. They are rules prescribed by Philip sober to control Philip drunk. When difficulties arise, when the measures and laws framed by a majority are challenged as a violation of these rules and a trespass upon the rights of the minority, common justice demands that the tribunal to determine the question shall be as little under the influence of either as is possible. . . .

. . . I am firmly persuaded that the salvation of the nation, the permanence of government of and by the people, rests upon the independence and vigor of the judiciary. To stay the waves of popular feeling, to restrain the greedy hand of the many from filching from the few that which they have honestly acquired, and to protect in every man's possession and enjoyment, be he rich or poor, that which he hath, demands a tribunal as strong as is consistent with the freedom of human action and as free from all influences and suggestions other than is compassed in the thought of justice, as can be created out of infirmities of human nature. . . .



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