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# CLAREMONT

REVIEW OF BOOKS

*A Journal of Political Thought and Statesmanship*

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## **The Chinese Threat by David P. Goldman**

A Publication of the Claremont Institute

PRICE: \$6.95

IN CANADA: \$9.50





Fisher devotes many pages to disputing the Court's treatment of corporations as "persons" protected by constitutional guarantees. There are many interesting points in his recital of relevant history (including that late 19th-century rulings treated the conclusion as established without ever setting out a full argument for it). He concludes that *Citizens United v. Federal Election Commission* (2010) was wrong to extend First Amendment protection to corporate expenditures in aid of political campaigns. Yet Fisher ignores the central argument in the majority opinion there: if corporations have no free speech protection, can the government impose censorship on the *New York Times* (owned by a corporation) or CNN (owned by another)?

Weiner defends the Warren Court's ruling in *Williamson v. Lee Optical Co.* (1955), upholding a state law prohibiting the sale of eyeglasses except by licensed opticians. Commentators for decades took the decision to mean that courts should not second-guess

political determinations on the justification for economic regulation. Elsewhere in the book, Weiner acknowledges that the Constitution specifically sets out safeguards against political measures "impairing the obligation of contracts" or letting "private property be taken...without just compensation." He makes no effort to explain what rules could allow the sort of extreme deference illustrated by *Lee Optical* while still maintaining the force of actual constitutional protections for economic activity.

**M**ETA-DOCTRINES ABOUT RESPECT for political deliberation are no substitute for actual constitutional doctrines. If we're worried about judges acting impulsively or heedlessly, we might welcome more emphasis on precise interpretations—even if disputable in relation to what the original meaning was—as a way of pinning down judicial decision-making and making results more predictable. These

books never get down to the level of assessing particular doctrines.

If the concern is to stop ambitious or disruptive judicial interpretations in the first place, these authors may seem too modest in their pleas for restraint. Why not limit the power of courts by constitutional amendment? A number of European countries impose limited terms on constitutional court judges. Canada's 1982 Constitution makes constitutional decisions of the Supreme Court subject to parliamentary override. Still there are complaints about judicial activism in Canada as in most European countries. Even in our democratic era (or especially in our era), people want checks on elected politicians. Not even clever constitutional design can force citizens to be more thoughtful or more keen about defending their civic privileges. Vague appeals for judicial restraint aren't likely to do better.

*Jeremy Rabkin is a professor at George Mason University's Antonin Scalia Law School.*

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Book Review by Andrew D. Carico

## GOD, MAN, AND THE CONSTITUTION

*Great Christian Jurists in American History*, edited by Daniel L. Dreisbach and Mark David Hall.  
Cambridge University Press, 342 pages, \$130

**I**N THIS IMPRESSIVE NEW VOLUME, EDITORS Daniel L. Dreisbach and Mark David Hall have put together 17 contributions examining 19 Christian jurists from the colonial period through today, detailing how Christianity informed their jurisprudence and identifying where they lived up to the faith and where they fell short.

Dreisbach, a professor of justice, law, and criminology at American University, challenges the shibboleth of a "godless" Constitution in his cogent introduction, noting that the founders' thinking regarding limited government, separation of powers, checks and balances, and a representative system presupposed the Christian teaching of a fallen human nature.

The book breaks down into four sections. The first profiles colonial-era figures (e.g., John Winthrop and William Penn) who drew from their Christian worldview in establishing the legal foundations of the nascent colonies. The second examines prominent founding-era jurists (e.g., James Wilson, John Jay, and John Dickinson), showing how

Christianity influenced their thoughts on revolution, resistance to power, opposition to slavery, and the moral content of natural law and English common law.

Section three looks at 19th- and early 20th-century jurists. Especially noteworthy is the life of Justice John Marshall Harlan, who, though an early supporter of slavery and opponent of Abraham Lincoln, was led by his Presbyterian faith to see America as part of God's plan for liberty's expansion and slavery's eradication—a sentiment implicit in his famous "color-blind Constitution" dissent in *Plessy v. Ferguson* (1896).

Section four analyzes six modern jurists engaged in our current "culture wars." Although the late Supreme Court Justice Antonin Scalia held that his originalism prevented him from judging based on his Catholic faith, his faith still informed his text-based jurisprudence, teaching him about formal rules and categories, a respect for terminology, and original sin. In a similar way, the Catholicism of Robert P. George, McCormick Professor of Jurisprudence at Princeton Uni-

versity, deeply informs his jurisprudence, not least in his interpretation of the so-called new natural law as providing reasonable grounds for moral truths.

**T**HIS ADMIRABLE COLLECTION CONTAINS important implications for Christians worried about the contemporary sanctity of the rights of conscience, but the editors could have addressed more directly in this volume how Christianity can both protect itself and continue to inform the American political and legal order in an increasingly post-Christian world.

Still, readers will come away with a greater appreciation of Christianity's influence on America's legal and political development. The book may even embolden future jurists to proclaim Christianity's continuing world-historical significance, having found inspiration in these great Christian jurists.

*Andrew D. Carico is assistant professor and chair of the Division of Humanities at William Jessup University.*

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