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LENGTH: 345 words**HEADLINE:** Is the Constitution Libertarian?**BYLINE:** Randy Barnett**BODY:**Jul. 14, 2009 ([The Volokh Conspiracy](#) delivered by Newstex) --

That is the question I addressed in my B. Kenneth Simon Lecture at the **Cato Institute** last September on Constitution Day. I have now posted the article by the same name that will appear in the Cato Supreme Court Reporter [here](#) on SSRN for downloading.

Here is the abstract:Ever since Justice Holmes famously asserted that "the Constitution does not enact Mr. Herbert Spencer's Social Statics," academics have denied that the Constitution is libertarian. In this essay, I explain that the Constitution is libertarian to the extent that its original meaning respects and protects the five fundamental rights that are at the core of both classical liberalism and modern libertarianism. These rights can be protected both directly by judicial decisions and indirectly by structural constraints. While the original Constitution and Bill of Rights provided both forms of constraints, primarily on federal power, it left states free to violate the liberties of the people - and even enslave their own people - subject only to their own constitutions. The constitutional protection of individual liberty was substantially enhanced by adoption of the Thirteenth and Fourteenth Amendments, which abolished slavery and extended the power of the federal courts and Congress to protect the rights of individuals from violation by state governments. Libertarianism has much less to say about either the conduct of foreign policy or the proper institutional allocation of foreign policy powers (though some libertarians mistakenly accord to foreign states a sovereignty that properly belongs only to individuals). Perhaps not coincidentally, the Constitution provides few constraints on the foreign policy decisions of the political branches, or on the allocation of power between them. To answer the question, "Is the Constitution Libertarian?," I had to discuss what is meant by "libertarian" as well as address some misconceptions about libertarianism made even by some libertarians.

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