

Foundations of Constitutional Freedom

A Reader on Classical Liberal Thought from Solon to van Notten



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One-Sentence Summary

This comprehensive reader traces the intellectual development of liberal constitutional thought from ancient Athens to modern stateless societies, presenting essential texts and biographical insights from fourteen pivotal thinkers who shaped humanity's understanding of how freedom can be constitutionally secured and maintained across different historical epochs.

About This Book

Publication Details:

- **Author:** Michael von Prollius
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Genesis and Methodology:

This reader emerged from the recognition that constitutional approaches to securing human freedom represent one of humanity's greatest intellectual achievements, yet remain poorly understood in their historical development and philosophical coherence. The work was conceived for Detmar Doering's series on central themes and achievements of liberalism, aiming to make accessible the foundational texts that shaped liberal constitutional theory.

The compilation process involved identifying pivotal moments in the development of constitutional thinking about freedom, from Solon's establishment of the rule of law in ancient Athens through contemporary experiments in stateless governance. The editor's approach combined biographical context with carefully selected representative texts, creating what he describes as a "timelessly educational" mixture of personal information and textual analysis.

The organizing principle follows the chronological development of constitutional thought while highlighting persistent themes: the relationship between law and freedom, the limitation of political power, the protection of individual rights, and the institutional arrangements necessary for sustaining free societies. This structure allows readers to grasp both the historical evolution and enduring relevance of constitutional liberalism.

Author's Note:

The process of searching (as with Althusius), knowing (as with Solon), and discovering (as with Gasser) these authors provided lasting intellectual enrichment. The combination of biographical information with selected representative texts creates an educational experience that transcends historical periods, offering timeless insights into the constitutional foundations of human freedom.

Book Abstract No.5

The Constitution of Freedom

Classical Liberal Constitutional Theory from Ancient Athens to Modern Stateless Societies

Introduction

The constitution of freedom has never been fully realized. While existing and past constitutions contain liberal elements, humanity has yet to succeed in completely securing individual freedom effectively. Traditional separation of powers offers insufficient protection in its conventional form, leaving people as both citizens and subjects rather than truly free individuals capable of full human development and dignity.

This reader presents **fourteen pivotal thinkers who contributed essential insights to understanding how freedom can be constitutionally secured and maintained.** Their work spans over 2,500 years, from Solon's establishment of the rule of law in ancient Athens to Michael van Notten's analysis of stateless governance in modern Somalia, demonstrating both the continuity and evolution of liberal constitutional thought.

I. Foundations of Constitutional Government: Ancient and Medieval Origins

Solon of Athens (594 BC): The Birth of the Rule of Law

Solon's constitutional reforms represent the foundational moment of Western constitutional thought. His *Eunomia-Elegy* articulates the core principle that good order

(*eunomia*) emerges through the rule of law rather than the rule of men. Solon's reforms established several enduring constitutional principles:

- **Legal Equality:** All citizens equal before the law regardless of social status
- **Property Rights:** Protection of legitimately acquired property
- **Popular Participation:** Citizens' right and duty to participate in governance
- **Judicial Independence:** Courts as protectors of law against political manipulation
- **Written Law:** Public codification making law accessible to all

Solon's insight that "Disorder brings many evils to the state, while Order shows all things well-arranged and orderly" establishes the fundamental connection between constitutional structure and social flourishing that echoes throughout liberal thought.

Thomas Aquinas (1273): Natural Law Foundations

Aquinas's *Summa Theologica* provides crucial theoretical foundations for constitutional limitation of political power through his hierarchy of law: natural law, divine law, church law, and state law. His key contributions include:

- **Limitation of Rulers:** Even sovereigns must submit to law
- **Purpose of Government:** The state serves people, not vice versa
- **Source of Political Authority:** Legitimate government derives from the community
- **Rational Foundation:** Law must be based on reason accessible to human understanding

Aquinas establishes that human positive law gains legitimacy only insofar as it derives from and conforms to natural law, providing intellectual foundations for later constitutional limits on governmental power.

Johannes Althusius (1603): Federal Constitutional Theory

Althusius's *Politica* marks the beginning of systematic constitutional thinking about federal arrangements and popular sovereignty. His innovations include:

- **Popular Sovereignty:** The people, not rulers, are the ultimate source of political authority
- **Subsidiarity:** Political functions should be performed at the most local level capable of handling them
- **Federal Structure:** Constitutional arrangements that balance local autonomy with broader coordination
- **Constitutional Limits:** Rulers exercise authority only within constitutional constraints

Althusius argues that "the essence of the kingdom belongs to the people and the administration to the ruler," establishing the constitutional principle that governmental authority is delegated and limited rather than absolute.

II. Liberal Constitutional Revolution: Enlightenment Foundations

John Locke (1690): Government by Consent

Locke's *Two Treatises of Government* provides the philosophical foundation for constitutional limitation of governmental power through consent of the governed. His constitutional framework includes:

- **Natural Rights:** Life, liberty, and property as pre-political rights
- **Limited Government:** State authority extends only to protecting natural rights
- **Separation of Powers:** Legislative and executive functions must be separated
- **Right of Revolution:** People may overthrow governments that violate their trust
- **Taxation by Consent:** No taxation without representation

Locke's principle that "the great and chief end of men's uniting into commonwealths and putting themselves under government is the preservation of their property" establishes property rights as the cornerstone of constitutional order.

Immanuel Kant (1797): The Rechtsstaat Concept

Kant's *Metaphysics of Morals* develops the theoretical foundation for the constitutional state (*Rechtsstaat*) based on rational principles of justice. His contributions include:

- **Universal Principle of Right:** "Right is the sum total of conditions under which the will of one can be reconciled with the will of another according to a universal law of freedom"
- **Republican Constitution:** Government based on freedom, dependence of all upon legislation, and equality before the law
- **Separation of Powers:** Constitutional division between legislative, executive, and judicial authority
- **International Law:** Constitutional principles extended to relations between states

Kant argues that right is inherently connected with the authority to coerce, establishing that constitutional government requires both legal limits and enforcement mechanisms.

Wilhelm von Humboldt (1792): The Minimal State

Humboldt's *The Limits of State Action* articulates perhaps the most restrictive constitutional theory of legitimate governmental authority. His framework limits the state to:

- **Security Functions Only:** Government may act only to prevent harm to others
- **Individual Development:** The highest purpose is "the highest and most harmonious development of human powers to a complete and consistent whole"

- **Spontaneous Order:** Social coordination through voluntary association rather than governmental direction
- **Constitutional Restraint:** Systematic limitation of political authority to essential functions

Humboldt's principle that the state should provide only "abstract general rules directed toward security concerns" establishes the theoretical foundation for minimal state constitutionalism.

III. Practical Constitutional Reform: 19th Century Innovations

Freiherr vom Stein (1808): Administrative Decentralization

Stein's administrative reforms in Prussia demonstrate practical application of constitutional principles through decentralization and local self-government:

- **Municipal Self-Government:** Local communities managing their own affairs
- **Administrative Reform:** Professional civil service bound by law rather than personal loyalty
- **Bicameral Systems:** Two-chamber legislatures to balance different interests
- **Personal Freedom:** Legal abolition of serfdom and establishment of property rights

Stein's reforms show how constitutional principles can be implemented through administrative restructuring rather than only through formal constitutional documents.

IV. 20th Century Constitutional Innovation: Defending Freedom

Walter Lippmann (1936): The Good Society and Judicial Government

Lippmann's *The Good Society* argues for constitutional government based on judicial rather than administrative principles:

- **Government by Law:** Social governance through law rather than administrative command
- **Judicial Character:** All governmental functions should operate according to judicial principles of impartial rule-application
- **Market Framework:** Constitutional protection of competitive markets through legal framework
- **Limited Democracy:** Democratic procedures limited by constitutional constraints

Lippmann argues that "a liberal society does not take over the administration of men's affairs from them. It provides justice among men who take their affairs into their own hands."

Adolf Gasser (1943): Municipal Freedom as Constitutional Foundation

Gasser's *Municipal Freedom as Europe's Salvation* identifies local self-government as the constitutional foundation for resisting totalitarianism:

- **Communal Autonomy:** Local self-government as the basis of all constitutional order
- **Subsidiarity Principle:** Higher levels of government only handle what lower levels cannot
- **Direct Democracy:** Citizen participation in local governance as school for constitutional citizenship
- **Federal Structure:** Constitutional arrangements building from bottom-up rather than top-down

Gasser demonstrates that constitutional resistance to tyranny requires strong local institutions capable of independent action.

Leonhard Miksch (1947): Constitutional Economics

Miksch's *Competition as Task* develops the constitutional framework for competitive markets:

- **Market Constitution:** Legal framework distinguishing between market processes and market framework
- **Competition Policy:** Constitutional requirement for government to maintain competitive conditions
- **Rule of Law in Economics:** Economic governance through general rules rather than administrative discretion
- **Ordoliberalism:** Constitutional theory integrating market freedom with governmental framework responsibility

Miksch argues that competition "as a state arrangement" for consumer welfare requires constitutional protection through "legal organization of the market."

V. Contemporary Constitutional Models: Federal and Post-State Alternatives

Friedrich A. Hayek (1979): A Constitutional Model

Hayek's *Law, Legislation and Liberty* presents the most comprehensive modern proposal for constitutional reform based on separation of law-making from government:

- **Two-Chamber System:** Separate assemblies for law-making and governmental administration
- **Evolutionary Law:** Constitutional distinction between discovered law and governmental commands
- **Spontaneous Order:** Constitutional framework enabling rather than directing social coordination
- **Limited Democracy:** Democratic procedures constrained by constitutional principles

Hayek's model addresses the fundamental problem that "those who make the laws also lead the government" by creating genuine separation between rule-making and rule-implementing institutions.

James M. Buchanan (1984): Constitutional Political Economy

Buchanan's *The Limits of Liberty* develops the contractual theory of constitutional order:

- **Constitutional Contract:** Unanimous agreement on basic rules preceding ordinary politics
- **Procedural Rules:** Constitutional focus on process rather than outcomes
- **Fiscal Constraints:** Constitutional limits on governmental taxation and spending
- **Constitutional Revolution:** Fundamental reform of basic institutional structure

Buchanan argues for "constitutional revolution" consisting of "behavioral constraints on the scope of collective decision-making authority" agreed to by all members of society.

Anthony de Jasay (1991): Post-Political Constitution

De Jasay's *Choice, Contract, Consent* develops the most radical constitutional theory, arguing for elimination of political authority:

- **Presumption of Freedom:** All intended actions are free unless proven otherwise
- **Convention over Legislation:** Social coordination through voluntary conventions rather than political commands
- **Property Rights:** All property as private, eliminating "public" ownership
- **Non-Political Order:** Social order without political authority

De Jasay argues that "laws of submission that involve a duty of political obedience are to be rejected" as morally unacceptable impositions on individual autonomy.

Michael van Notten (2005): Stateless Constitutional Order

Van Notten's *The Law of the Somalis* analyzes how constitutional order can exist without state institutions:

- **Customary Law (Xeer):** Constitutional order based on evolved rather than imposed law
- **Polycentric Legal System:** Multiple independent legal authorities applying common principles
- **Compensatory Justice:** Legal focus on restitution rather than punishment
- **Clan-Based Governance:** Constitutional structure based on kinship and voluntary association

Van Notten demonstrates that "the rule of law can exist without the state" through traditional Somali legal institutions that provide "maximum protection of rights with absolute minimum administration."

Further thoughts arising from the reader:

A. Constitutional Principles Across Time: Persistent Themes

The Rule of Law vs. Rule by Law

Throughout these diverse thinkers runs the distinction between genuine rule of law (where law constrains all power-holders) and mere rule by law (where political authority uses law as an instrument of control). Constitutional government requires:

- **Legal Supremacy:** Law as supreme authority rather than instrument of political will
- **General Application:** Legal rules applying equally to rulers and ruled
- **Predictability:** Known and stable legal principles enabling individual planning
- **Independent Adjudication:** Courts capable of ruling against political authority

Separation and Limitation of Powers

Constitutional thinkers consistently identify concentration of power as the enemy of freedom, developing various mechanisms for separating and limiting governmental authority:

- **Functional Separation:** Different institutions handling legislation, execution, and adjudication
- **Temporal Separation:** Different terms and election cycles for different offices

- **Federal Separation:** Multiple levels of government with distinct jurisdictions
- **Constitutional Limits:** Some areas placed beyond reach of any governmental authority

Individual Rights as Constitutional Foundation

The protection of individual rights emerges as the ultimate purpose of constitutional government, though thinkers differ on which rights are fundamental:

- **Natural Rights Tradition:** Life, liberty, and property as pre-political rights
- **Constitutional Rights:** Specific legal protections for individual freedom
- **Procedural Rights:** Fair legal processes for resolving disputes
- **Economic Rights:** Constitutional protection for voluntary exchange and property

Popular Sovereignty and Democratic Limits

Constitutional thinkers consistently advocate popular sovereignty while recognizing the need to limit democratic majorities:

- **Government by Consent:** Legitimate authority derives from the governed
- **Constitutional Constraints:** Some matters beyond reach of majority vote
- **Minority Protection:** Constitutional safeguards for individual and minority rights
- **Democratic Process:** Popular participation within constitutional framework

B. Contemporary Relevance and Critical Assessment

Enduring Constitutional Challenges

The constitutional problems identified by these thinkers remain relevant to contemporary governance:

- **Power Concentration:** Modern governments combine legislative, executive, and administrative functions
- **Interest Group Capture:** Political processes dominated by organized special interests
- **Democratic Overreach:** Majority tyranny threatening individual rights and minority interests
- **Bureaucratic Growth:** Administrative agencies exercising quasi-legislative and quasi-judicial powers
- **International Governance:** Need for constitutional principles beyond nation-state level

Modern Applications

Contemporary constitutional design can benefit from historical liberal insights:

- **Competitive Federalism:** Multiple jurisdictions competing for citizens and investment
- **Constitutional Economics:** Legal framework ensuring competitive markets
- **Procedural Safeguards:** Due process protections in administrative as well as judicial proceedings
- **Technology and Privacy:** Constitutional principles applied to digital age challenges
- **Global Governance:** International institutions constrained by constitutional principles

Limitations and Criticisms

Several aspects of historical constitutional liberalism require updating:

- **Democratic Exclusion:** Many historical thinkers assumed limited suffrage
- **Social Assumptions:** Traditional family and community structures may no longer obtain
- **Economic Complexity:** Modern economies may require more sophisticated regulatory frameworks
- **Global Integration:** Nation-state constitutionalism may be insufficient for global challenges

C. The Unfinished Constitutional Project

Why Constitutional Freedom Remains Unrealized

Despite centuries of constitutional theorizing and experimentation, the full constitutional protection of individual freedom remains elusive due to persistent challenges:

- **Political Incentives:** Politicians benefit from expanding rather than limiting their own power
- **Interest Group Politics:** Organized minorities capture political processes at expense of diffuse majorities
- **Democratic Illusions:** Popular election mistakenly equated with legitimate authority
- **Constitutional Erosion:** Gradual expansion of governmental power beyond constitutional limits
- **Crisis Expansion:** Emergencies used to justify permanent expansion of political authority

Constitutional Renaissance Requirements

Achieving genuine constitutional government requires addressing fundamental problems:

- **Institutional Innovation:** New mechanisms for separating and limiting power
- **Cultural Foundation:** Social understanding of and commitment to constitutional principles

- **Economic Framework:** Market institutions that support rather than undermine constitutional government
- **International Order:** Constitutional principles extended to global governance
- **Technological Adaptation:** Constitutional protection of freedom in digital age

The Path Forward

The constitutional tradition presented in this reader suggests several directions for contemporary reform:

- **Genuine Separation:** Real rather than formal division between law-making and governmental administration
- **Subsidiarity Implementation:** Systematic decentralization to most local competent level
- **Competitive Governance:** Multiple jurisdictions offering different governmental arrangements
- **Private Alternatives:** Market and civil society institutions reducing dependence on political authority
- **Constitutional Restraint:** Binding limits on governmental scope and methods

D. Conclusion: The Timeless Relevance of Constitutional Liberalism

Universal Principles in Diverse Forms

Despite differences in historical context and specific proposals, the thinkers in this reader share fundamental insights about constitutional government:

- **Freedom as Purpose:** Constitutional government exists to secure individual freedom rather than to achieve collective goals
- **Law as Constraint:** Genuine law constrains power-holders rather than empowering them
- **Popular Foundation:** Legitimate authority derives from the governed rather than from tradition, conquest, or expertise
- **Limited Scope:** Constitutional government has specific rather than general authority
- **Institutional Design:** Freedom requires careful attention to governmental structure rather than relying on good intentions

The Continuing Struggle

The constitution of freedom remains an unfinished project requiring constant vigilance and renewal. Each generation must rediscover and reapply constitutional principles to new circumstances while preserving the essential insights of previous constitutional thinkers.

The eternal tension between freedom and power, between individual rights and collective authority, between spontaneous order and political direction, continues to require

constitutional solutions. The thinkers presented in this reader provide not final answers but essential tools for addressing these perennial challenges.

Educational Mission

This reader aims to provide "timeless education" in constitutional principles by combining biographical context with representative texts from pivotal constitutional thinkers. The process of "searching, knowing, and discovering" these authors offers lasting intellectual enrichment for anyone seeking to understand how human freedom can be constitutionally secured and maintained across different historical epochs and cultural contexts.

The constitution of freedom awaits full realization, but the intellectual foundations provided by these fourteen thinkers offer essential guidance for that continuing project.

About This Abstract Series

MvP Book Abstracts provide comprehensive English summaries of Michael von Prollius's German publications for international readers. Unlike promotional summaries, these abstracts offer substantial intellectual engagement with research findings and analytical frameworks.

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About the Author

Michael von Prollius is a German historian, economist, and author specializing in the intersection of ideas, institutions, and historical development. He holds degrees in history and economics and has conducted extensive research spanning ancient history, economic thought, political philosophy, and contemporary policy analysis.

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