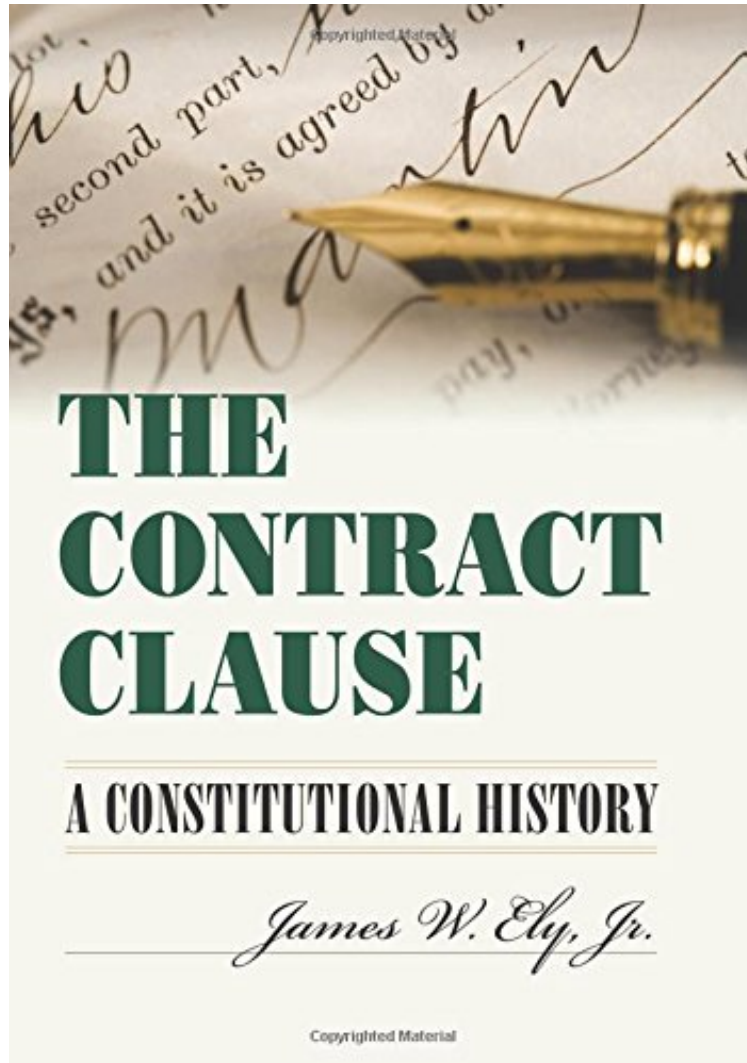


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The Contract Clause: A Constitutional History

James W. Jr. Ely

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James W. Jr. Ely : The Contract Clause: A Constitutional History before purchasing it in order to gauge whether or not it would be worth my time, and all praised The Contract Clause: A Constitutional History:

Few provisions of the American Constitution have had such a tumultuous history as the contract clause. Prompted by efforts in a number of states to interfere with debtor-creditor relationships after the Revolution, the clause Article I, Section 10 reads that no state shall pass any . . . Law impairing the Obligation of Contracts. Honoring contractual commitments, in the framers view, would serve the public interest to encourage commerce and economic growth. How

the contract clause has fared, as chronicled in this book by James W. Ely, Jr., tells us a great deal about the shifting concerns and assumptions of Americans. Its history provides a window on matters central to American constitutional history, including the protection of economic rights, the growth of judicial review, and the role of federalism. Under the leadership of Chief Justice John Marshall, the Supreme Court construed the provision expansively, and it rapidly became the primary vehicle for federal judicial review of state legislation before the adoption of the Fourteenth Amendment. Indeed, the contract clause was one of the most litigated provisions of the Constitution throughout the nineteenth century, and its history reflects the impact of wars, economic distress, and political currents on reading the Constitution. Ely shows how, over time, the courts carved out several malleable exceptions to the constitutional protection of contracts—most notably the notion of an inalienable police power—thus weakening the contract clause and enhancing state regulatory authority. His study documents the near-fatal blow dealt to the provision by New Deal constitutionalism, when the perceived need for governmental intervention in the economy superseded the economic rights of individuals. Though the 1970s saw a modest revival of interest in the contract clause, the criteria for invoking it remain uncertain. And yet, as state and local governments try to trim the benefits of public sector employees, the provision has once again figured prominently in litigation. In this book, James Ely gives us a timely, analytical lens for understanding these contemporary challenges, as well as the critical historical significance of the contract clause.

"A masterful sobering post mortem on a once-vital constitutional protection that has been desiccated by judicial dereliction." *Library of Law and Liberty* "Professor Ely has indeed written the definitive history of the clause that once was the Constitution's most prolific source of litigation. It will immediately become the indispensable text, superseding Benjamin F. Wright's classic but outdated study. With his unrivaled mastery of case law and legal scholarship, Ely has crafted a work that in telling the particular story of the contract clause is also a probing examination of constitutional law's elusive quest to draw the line between governmental regulation and the free pursuit of economic activity." Charles F. Hobson, author of *The Great Chief Justice: John Marshall and the Rule of Law* "Students of the modern Constitution pay little attention to the Contract Clause, yet for more than 150 years it was one of the most litigated issues before American courts. James Ely has done a masterful job in not only analyzing the development of Contract Clause jurisprudence, but does so in a way that will be understandable by lay persons as well as scholars. This will be the definitive book on this subject for many years to come." Melvin I. Urofsky, author of *Dissent and the Supreme Court: Its Role in the Courts History and the Nations Constitutional Dialogue* About the Author James W. Ely, Jr., is Milton R. Underwood Professor of Law, emeritus, and professor of history, emeritus, at Vanderbilt University. His books include *The Guardian of Every Other Right: A Constitutional History of Property Rights and Railroads* and *American Law*, published by Kansas.