The Constitution

A Second Effort

• The Articles of Confederation was this nation’s first Constitution
• Evolved haphazardly while the fight for independence was going on.
• Treated each colony/state as if it were an independent country in a loose federation.
• Why was it necessary to re-write?

• What seems to be lost in the political environment of today is how much it is determined by Constitutional issues.
• Americans’ understanding of the Constitution is limited at best.
• It is clear that even many people in positions of authority and power seem to have little understanding of the Constitution– disregarding debates about interpretation.
• Term Limits – The question of term limits, very much part of the political discourse in the 1990s, has faded since the Republicans took control of the Congress.
• Impeachment – Few people understood that impeachment was intended only for malfeasance unique to the high position of the offender.
• Those who talked about impeaching a President Clinton for adultery and common perjury about adulterous behavior, had little understanding the origins or the legislative history of the constitutional provision.

Shays’ Rebellion

• The ineffective response of the federal government to the revolt led many Founders to believe the Articles were ineffective and unworkable.
• The firm response to Shays’ Rebellion is *prima facie* evidence that the Founders did not believe in the right of any group to form an armed militia.

• Shays’ men were veterans of the Revolutionary War who were protesting against foreclosure on their farms.
• Like every American war to follow, there was an economic downturn following the fight for independence.
• Some extreme right wing conservatives suggest that the Second Amendment allows for the retention of weapons as a curb on governmental authority. The response to Shays’ revolt would indicate that this was never the intent.

The Second Amendment Myth

• The Quakers of Pennsylvania were pacifists- they opposed all warfare.
• They refused to form a state militia
• Native Americans were attacking settlements
• The Amendment sought to allow citizens to petition the federal government to form militia—i.e., a national guard detachment
• In 1866 Colt Firearms advertises to sell surplus weapons from Civil War.
  • In 1787 the average American probably believed that arms were essential.
    --To fight hostile native Americans.
    --To defend against a possible attempt by the British to retake America, which would happen in the War of 1812.
    --To defend against natural predators
    --To kill animals for food.
  All instruments of defense were called arms (i.e. knives, pikes, and swords).
  • Guns were called firearms.
  • In 1787, a gun could fire a single shot, every 40-70 seconds, about fifty yards with very limited accuracy.

The Second Amendment
• The Second Amendment does not refer to the right to personally carry weapons.
• It refers to the formation of state militia when the state neglects to do so
• Every state has a national guard unit, therefore the amendment is moot
• All court decisions support this premise
• The Third Amendment is also moot.

In 1866, Colt Firearms published an advertising campaign to sell surplus Civil War weapons, suggesting that the Second Amendment referred to the personal ownership of guns.
• There is no evidence that the amendment was misconstrued by knowledgeable individuals until that effort to sell off excess Civil War guns to the general public
• It was based on the awkward wording of the Amendment itself.
• The idea was taken from the Virginia State Constitution where the wording was less misleading.
• The Federalist papers discuss this amendment and it was clear that they were referring to state militia.

The Virginia Declaration of Rights
• The Second Amendment of the Constitution was taken from the Virginia Declaration of Rights
• Virginia’s Constitution was adopted June 12, 1776
• Written by George Mason.

  ● Many of the intellectual leaders of the Revolution were Virginians.
  ● The U.S. Constitution was based on the experiences of the thirteen original colonies.
  ● Innovations and other forms of trial and error experience played an important role in what provisions were ultimately adopted by the members of the constitutional convention.
  ● Like James Madison, George Mason was a Founder whose reputation in history has not kept up with his actual contribution.

Section 13
• That a well-regulated militia, composed of the body of the people, trained to arms, is the proper, natural and safe defense for a free state;

  ● Emphasis on “well-regulated.”
  ● Definition of regulation: A law, rule, or other order prescribed by authority. *(Random House Dictionary of the English Language, 1987)*
  ● Does not mean self-regulated groups.
  ● Does not refer to self-proclaimed militias, which are not “well-regulated.”

Section 13 (continued)
• … that standing armies, in time of peace, should be avoided as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power.

  ● It is clear that the author and signatories of the Virginia Declaration of Rights feared the potential threat of a standing army.
  ● They also feared that the military would not be subject to civilian control.

**Articles of Confederation- weaknesses**
• The Articles of Confederation had to be repaired
• Articles had weak central government
• Extremely weak presidency (executive)
• National legislation had to be ratified by 9 of 13 states
• No federal court- no judiciary.
The Articles of Confederation evolved while the colonies were in transition from independent entities to subdivisions of a unified political institution.

Though the British referred to the “North American colonies,” they were never unified under British rule.

For more than 200 years each of the thirteen colonies saw themselves as separate and independent political entities.

**Articles of Confederation- more problems**

- Federal government could not levy taxes
- No power in regulating interstate commerce-- Could not restrain states from levying tariffs.
- Federal government could only declare war
- President had no means to enforce anything— no real executive authority

- Some modern-day conservatives hold similar views to those expressed in the Articles of Confederation.
- They suggest that the only function of the federal government involves national defense. All other governmental functions are reserved for the state.
- There is no indication the Founders intended this to be the position except in the Articles of Confederation.

**The Founders**

- These men were not democrats
- Most were wealthy aristocrats
- The rest were educated merchants & professionals
- Most shared a Calvinist view of humanity— that is, man is born evil.
- In short, most of the Founders did not trust the common man.

- A contradiction existed not only with regards to slavery, but to the degree that the Founders preached democracy while believing that democracy was dangerous and holding the religious views that man was inclined to evil.
- **Remember**: The common man who does not own land will not have the franchise until 1820.

**A Republic, Not a Democracy**

- The people elect representatives who will take action.
• A republic like Rome, not a democracy
• People do not make decisions
• Representatives make decisions and are held accountable
• Has polling changed all this?

| • Polling has made the president, and Congress, more responsive to the whims of the people. It has removed the isolation the Founders intended for our representatives. |
| • This is in contrast to Parliament where a government can be brought down at any time by a vote of “No Confidence.” |
| • The Founders knew that there were tough decisions that had to be made in which the response seemed wrong at the time, but by the time the representative stood for election it would be evident whether the choice made was right or wrong. |

**The Constitutional Convention**

• George Washington presides
• Twelve states present
• James Madison is the intellectual leader of group
• Most believed they would be rewriting the Articles of Confederation.
• They went far beyond their mandate.

| • Washington was a symbol of the nation. A symbol of something greater than he was as an individual—like Lincoln, Martin Luther King or Nelson Mandela. |
| • His presence at the Constitutional Convention was both essential as a symbol and practical. |
| • At the same time some feared that Washington’s popularity might result in a dictatorship. |
| • Hamilton had proposed a “President for Life” position that was similar to a monarch. |
| • It was essential that Washington refrained from any grab for power. He contributed enormously to the national good by willingly stepping down and observing the rule of law. |

**Compromises**

• The Great Compromise
• Three-fifths Compromise
• Slavery is permitted to continue
• Compromise will become a tool necessary to democratic rule
• When there is absolute authority no compromise is necessary.
We will see, time and again, that compromise is essential to the functioning of democratic rule.

Dysfunction takes place in political environments where compromise is missing.

The Republican majority which took both houses of Congress in 1994 believed that it did not have to compromise with the Democratic minority or the President.

Some believe that the Impeachment of President Clinton was more of an effort to remove the need for compromise with the Executive than it was an effort to remove a president for malfeasance.

Why was slavery permitted to continue?

- Some critics say the Founders were wrong to have permitted slavery to continue
- The states where the slave-owning aristocrats controlled the government would have never joined the Confederation or the Union.
- Allowing slavery to continue was essential to bring all 13 former colonies into union.

  - If the South had not first vested its future with the other former colonies there would never have existed a means to pressure the elite of the South to end slavery.
  - The Union of former northern colonies might have eventually conquered a never-unified Confederacy in some version of Manifest Destiny which allowed people of European descent to conquer the indigenous people.
  - Lack of trade would have eventually pressured the independent South to end slavery if it had not been part of the Union for 70 years prior to the Civil War, but it might not have ended until well into this century.

The Presidency

- To the Founders the Presidency was an unknown
- They had seen only colonial governors and members of parliament
- Most executives were monarchs
- They feared the president’s power to grow to dictator as it had with Oliver Cromwell.

  - Alexander Hamilton had proposed a presidency-for-life where the President of the republic would function as a ceremonial, and largely powerless human symbol of the nation.
  - It was clear Hamilton had George Washington in mind.
  - This type of presidency is used in many nations, France and Ireland are examples. Though in Ireland and France the President has a fixed term, the office is largely ceremonial resembling more the function of a monarch than an elected representative.
Federalism

- A system of government in which there are more than one locus of power
- In the American form of federalism power is shared between the states and the federal government.
- The ratification of the Constitution, the Civil War, Civil Rights and most current ideological debates focus on where that power resides— and to what degree
  - Americans who call themselves “Libertarian” really are questioning the ratification of the Constitution.

Historical Context

- The Americans had negotiated with the Parliament through the Prime Minister
- They did not want the American elected representative to be plagued by the same political insecurities as the Parliament
- The unknown tenure of the members of Parliament hindered their ability to negotiate with the Americans.
  - The nature of the parliamentary majority was and still is tenuous because holding the power of the executive depends on keeping members loyal to the majority political party.
  - In other words, with a sufficient number of defections, the Prime Minister of England, or any parliamentary system, can be replaced as prime minister by his or her political opponent.

British Parliament

- One legislative body for the entire nation
- Curbs provided by the monarchy— in constant competition for power with the House of Commons
- House of Lords— appointed by the monarch, could veto legislation of the House of Commons— assisted the monarch in thwarting the power of the lower house
  - The House of Lords held veto power over legislation passed by the House of Commons until the early 20th Century.
  - Until the past fifty years there were no regional authorities.
  - In the past five years Scotland was given its own legislative body.
Northern Ireland has had its own legislative body since it was created as a nation when the southern part of Ireland won its independence. But whenever there has been any conflict the body’s authority has been rescinded and it was dissolved.

**Limited Government**

- Because of the abuses of the British monarchy and the malfeasance of the Parliament, Americans feared governmental authority.
- Though they knew a democratic form of government was necessary, they feared it and sought safeguards.

- Many of the philosophical and political writings of the era preceding and during the Revolutionary War wrote negatively about government because of their experience with the English system where the monarch still maintained a considerable degree of power at the expense of the elected Parliament.
- The limited government these writers criticized did not practice the degree of democratic participation that America would employ within 30 years of the Constitution’s ratification.
- Modern-day writers and philosophers who quote these historical sources which criticize government conveniently overlook the degree of limited democracy which is the source of the critical assessment.

**Safeguards**

- Bill of Rights
- Competing power of states vs. federal government
- Separation of powers between branches
- Impeachment
- Electoral College

- American Conservatives, Libertarians, and anarchists who quote politicians and philosophers from this era in an effort to say that the federal government has routinely abused its authority, usually take those quotes out of their historical context.
- Jefferson is quoted as saying that a revolution should happen every generation.
- Jefferson wrote much as a young man which he would repudiate in either words or actions as an older man.
The whole notion that some form of armed insurrection is justified because this nation was formed by an armed insurrection is false.

Note in the opening of the Declaration of Independence the Founders explain why their insurrection was both extraordinary and necessary.

Made necessary by the abuses of the monarch and the inability of Parliament to address those actions of the king.