

We the People

For We the People A Time of Decision

The Constitution of the United States celebrated 200 years of existence in 1987 with great fanfare. Warren E. Burger, chairman of the Commission on the Bicentennial of the Constitution and Chief Justice of the U.S. 1969-1986, wrote of the "vitality of this remarkable document that has withstood two hundred years of change, including a Civil War, two World Wars, and forty years of 'cold war.'"

Yet, here we are just twenty years later, talking about "broken government," the alarming usurpation of legislative prerogatives by a chief executive who "scorns the rule of law." In spite of a mainstream (corporate) media that seems completely unaware of the problem, credible reporters, lawyers, and intellectuals refer to a constitutional crisis—and even more ominously, portend the decline and coming end of the American Republic with an "empire abroad and an authoritarian state at home." Constitutional lawyer Bruce Fein is writing a book scheduled for publication next April entitled *Constitutional Peril: The Life and Death Struggle of Our Constitution and Democracy*.

As we mark the 220th anniversary of the signing of the Constitution this September 17, let us reflect on the fulfillment of the promise of the Declaration of Independence.



One result of the diminished importance of the study of history and civics in U.S. schools is the failure of Americans to appreciate the uniqueness of the U.S. Constitution: It has the distinction of being the first complete written national constitution and it is the oldest in continuous existence. The framers were radicals who took on the daunting challenge of establishing a meritocracy in an age of aristocracy.

After two centuries, the Constitution, even though it has been amended 27 times (ten of those amendments, the "Bill of Rights" were added a little over a year after the last state ratified) basically reads as it did when the remarkable men known as the Founding Fathers read it. It has endured because of the foresight of its drafters: "...we should not lose sight of the changes which ages will produce," said James Madison." It has endured because of the commitment of the American people to it and the principles it embodies.

Producing a constitutional democracy was not an easy accomplishment in a world where few "truths" were "self-evident." Fifty-five men from twelve states (Rhode Island refused to attend) assembled in the Pennsylvania State House (now

Independence Hall) during the period that began in May and ended in September in Philadelphia.

The delegates endured an unusually hot and humid summer. They were a young crowd by today's standards, mostly in their thirties. Benjamin Franklin must have appeared an ancient oracle at the age of 81. They were educated. Greek and Latin languages and literatures informed the educations and cultural vocabularies of 18th-century Americans.

The adoption of the Constitution was...the most participatory, majoritarian, and populist event the Earth had ever seen.

- Akhil Reed Amar

There were heated exchanges during that hot summer. Franklin noted such an assembly reflected men with "all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views." They came from very different "sovereign" states ("petty" Alexander Hamilton called them), almost independent nations since 1776, and from different regional cultures--the "hard-bitten Calvinism of New England to the worldly hedonism of the Deep South." Their sectional and financial interests as well as their personalities differed, sometimes to the point where sarcasm and incivility resulted.

The meeting had been sanctioned by the Congress of the Confederation the previous February in New York. Most of the delegates came to Philadelphia thinking they were meeting solely to revise the inadequate Articles of Confederation that rested on good faith not powers. The idea that they were to produce a constitution would have scared away two-thirds of its members. The sessions were secret and very little news leaked out and correspondence was guarded. The public, in spite of little information, celebrated that July 4th with toasts to "The Grand Convention."

In spite of the heat and the sometimes acrimonious debates, the delegates were able not only to compromise, but to spring free from the European thought of the day to produce a "miracle." The resulting draft was highly original in some ways, but reflected other constitutional ideas from the states, Britain, Ancient Greece even contemporary Poland. The draft went beyond the differences among the delegates, and represented a "general pattern of beliefs about the social process—a set of common assumptions about history, society, and politics" that was American. Once it was ratified, the idea of a single written constitution became popular the world over.

The delegates recognized that it was not a perfect document—they had had an overriding concern that they had not reconciled the fundamental tensions between implementing the principles of popular majority rule while effecting stable governments that protected the rights and freedom of all citizens. The delegates responded to Franklin's final speech before the convention that "with all its faults," it was "better than any alternative that was likely to emerge." In the end 39 delegates signed the Constitution before it was submitted to the States for ratification.

It takes only about thirty minutes to read the Constitution; scholarship requires several decades. Scholars after several decades of study may disagree as to "original intent" even as they look to the Federalist Papers (with their own share of ambiguities) for guidance. Interpretations have changed—the 1913 "reactionary" interpretation by Charles A. Beard has been discredited by later scholarship that confirms a "profoundly democratic vision of the nation" heralded by the soaring preamble: "We the People" and the public ratification process. It would appear the framers were deliberate in their ambiguities (making "strict construction" difficult if not impossible). One suspects Madison would be confused, if not troubled, by the

term "judicial activism." Sometimes ambiguous, say scholars, but the framers were not neutral. What is crucial: Americans who have generally ignored what for many appeared to be a dry or remote text, have venerated the principles it embodies.

We, the people, do not have to be constitutional scholars. We simply need to remind ourselves of the basic constitutional principles and American traditions. At this time of a divided, angry and anxious nation, it is crucial that we remind ourselves that the Constitution is the supreme law of the land and *why*. The Founders wanted to mend a broken system and improve upon it. It is reasonable that we return to them to help find our way again to mend today's broken system. The U.S. Constitution remains not only relevant, it is crucial.

This story has been told often: Upon exiting the Constitutional Convention, Benjamin Franklin was approached with the question as to what sort of government the delegates had created. His answer was: "A republic, if you can keep it."

It is our decision whether we keep it.

- B. G. Bandler

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RESOURCES

National Constitution Center: <http://www.constitutioncenter.org/>

Read the Constitution: <http://www.constitutioncenter.org/constitution/constitution.pdf>

Print out the Constitution:

<http://www.constitutioncenter.org/explore/TheU.S.Constitution/PrinttheConstitution.shtml>

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