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# Remarks by U.S. Senator Robert C. Byrd The Constitution in Peril

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*U.S Senate*

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# REMARKS BY U.S. SENATOR ROBERT C. BYRD

# THE CONSTITUTION IN PERIL

*The Honorable Robert C. Byrd*[*]


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## I. INTRODUCTION

Ladies and gentlemen, I would like to begin my remarks this morning with a little audience participation.[1] I'm going to ask for a show of hands on two questions: First, how many of you have invested the 197 minutes it takes to watch the

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[*] United States Senator from West Virginia, 1959 – present; B.A., Marshall University; LL.B., J.D., American University. Robert C. Byrd has served in the United States Senate since January 3, 1959, including four years as Secretary of the Senate Democratic Conference (1967-1970), and six years as Senate Minority Leader (1981-1986). In 1989, Senator Byrd became Chairman of the Senate Appropriations Committee, a position he held until 1995. He is now the Ranking Member of the Appropriations Committee. He was also elected by his colleagues in 1989 as President pro tempore of the Senate, a post that placed him third in the line of succession to the Presidency. With that honor, Senator Byrd achieved the distinction of having held more leadership positions in the U.S. Senate than any other Senator of any party in Senate history. In 1994, Senator Byrd was elected to a seventh consecutive six-year term in the Senate, making him one of only three U.S. Senators in American history to achieve that milestone. Adding to these already historic accomplishments, on July 27, 1996, Senator Byrd became the first U.S. Senator in history to cast 14,000 votes.

[1] This is the text of the address delivered by Senator Byrd at the West Virginia University College of Law on April 15, 1998, for the symposium titled "200 Years of Balance: A Symposium on the History of the Constitution and the Separation of Powers." The address, delivered to an audience of students and faculty members in the WVU College of Law's Marlyn E. Lugar Courtroom, presents a history lesson on the United States Constitution and the separation of powers between the three branches of our national government: legislative, executive, and judicial. As a result of the effective arguments of Senator Byrd and others, the U.S. Supreme Court, on June 25, 1998, revoked the line item veto power bestowed on the Chief Executive by Congress in 1995.

current hit movie "Titanic?"

As I suspected, that's nearly the entire group. That also explains why the folks at Paramount Pictures are so happy these days. By the way, for those of you who are "Titanic" buffs, yesterday, April 15, marked the eighty-sixth anniversary of the sinking of that famous ship.

Now, let me see a show of hands from those of you who have also invested 197 minutes actually reading the United States Constitution. Well, that's certainly not a "titanic" proportion. For those of you who did not raise your hand to the second question, I can tell you that you are not alone. It seems that, as a nation, we love our Constitution, but, at the same time, few of us know much about it.

In fact, in a recent nationwide poll, ninety-one percent of the respondents agreed with this statement: "[t]he U.S. Constitution is important to me." Yet, despite such overwhelming reverence for the Constitution, only fifty-eight percent of those polled were able to answer correctly that the Constitution establishes the three branches that make up our federal government. Only sixty-six percent recognized that the first ten amendments to the Constitution are known as the Bill of Rights. Eighty-five percent mistakenly believed that the Constitution says that "all men are created equal," or could not identify at all where that famous statement came from; and only fifty-eight percent identified the following statement as false: "[t]he Constitution states that the first language of the United States is English."

Such poll results are troubling, but they are also enormously illuminating. They tell us that while our educational system is good at ingraining feelings of respect and reverence for our Constitution, that same system is apparently very poor at teaching just what is actually in the Constitution and just why it is so important.

Such a poll also tells us something else. It tells us that many Americans really are hugely ignorant about history. Yet, our Constitution is rooted in history — history that includes the theories, judgments, real life experiences, and sacrifices of millions of men and women for generations which go back even a thousand years and beyond!

So, I am here today at the kind invitation of President Hardesty to talk and to think with you about this marvelous Constitution of ours — about some of its taproots and origins, about its relevance and place in our personal lives — your life and mine — and in the life of our nation today.

In the first half of my speech, I shall trace the origins of our Constitution — in the Bible, in the colonial trading company charters, in the political philosophy of Europe and classical antiquity, in colonial and state constitutions, in the Articles of Confederation, and in English history.

After we touch upon the various roots of the Constitution, we shall discuss one of the most important elements of the Constitution — the power of the purse — and trace its historical basis and its importance. We shall then explore several recent instances in which Congress has undermined its own power, including the exercise of the power of the purse by its passage of the Line Item Veto Act.

Was the Constitution, as Herbert Spencer would have us think, "obtained by a happy accident, not by normal progress?" Was Gladstone correct in his re-

puted observation that the American Constitution was "the most wonderful work ever struck off at a given time by the brain and purpose of man?" Well, hardly. The genius of the Constitution may lie more in the collective knowledge of history, of human nature, and of government, residing in the minds of the Framers — their experience, judgment, and political savvy, if you will — than in sheer creativity or originality.

In 1787, the only written Constitutions existing anywhere in the world were to be found already at work right here in English-speaking North America. I refer, of course, to the 13 state constitutions and to our first national Constitution — the Articles of Confederation, which had become operative in 1781.

The document written in 1787 in Philadelphia did not spring full grown and fully clothed from the minds of the Framers, like Minerva from the brain of Jove. No, indeed! It was the product of long years of experience. The Framers had great familiarity with the tested results of the state constitutions and the Articles of Confederation. Additionally, their political acumen, their knowledge of classical history and continental and British political theory and the British and colonial experience, all came into play in the effort at Philadelphia. At Philadelphia, all of these were honed and tailored by the Framers to fit a long tradition of American constitutionalism that had really begun two centuries earlier with the letters patent to Sir Humphrey Gilbert in 1578 and Sir Walter Raleigh's Charter of 1584.

And of course we must not forget the influence of the Bible. Yes, I said the Bible. The whole notion of a nation, ruled by structured covenants and compacts had its origins in the Judeo-Christian tradition of a just God ruling over, and showering His favors upon, man in exchange for mankind's obedience. The American constitutional tradition derived much of its form and content from Judeo-Christian roots as interpreted by the radical Protestant and other religious groups to which so many of the original European settlers in British North America belonged. This was especially true in New England where covenant theology, social contract theory, and the concepts of a "higher law" blended together.

Donald S. Lutz, in his work entitled, *The Origins of American Constitutionalism*, says: "[t]he tribes of Israel shared a covenant that made them a nation. Make no mistake about it, American federalism originated at least in part in the dissenting Protestants' familiarity with the Bible."

The typical charters granted from the English Crown were *also* covenants which generally required that the colonists pledge their loyalty to the crown in exchange for license to form their own local governments, as long as the laws which the colonists established were not repugnant to English law. Although the colonies were nominally controlled by boards of directors in England, the sheer distance between the British Isles and the colonies, the preoccupation of the British with external threats, together with domestic unrest in England, made it possible for the American colonies to operate with considerable latitude in the formation of their own governments and the administration of their own affairs. Therefore, the colonists wrote documents which, of necessity, reflected local viewpoints and peculi-

arities. These early colonial documents were the forerunners to the various state constitutions, providing a wealth of practical experience in conceptualizing constitutional principles and applying them to the science of workable government.

## II. STATE CONSTITUTIONS

On February 21, 1787, the Confederation Congress resolved that a convention be held in May "for the sole and express purpose of revising the Articles of Confederation" and reporting to Congress and the state legislatures such alterations in the Articles as would "render the federal constitution adequate to the exigencies of government and the preservation of the Union."

But the Framers went beyond the purposes for which Congress had called the convention. Instead of proposing revisions and alterations in the Articles of Confederation, they proposed a new Constitution! It was a bold stroke, indeed.

The Framers were pragmatic politicians, as well as learned men, knowledgeable of history and government theory, but they *never* lost sight of the fact that after the hard task of writing the new Constitution had been completed, there was still the very difficult requirement for ratification by the states. Their own reputations were at stake, as well as the fate of the nation. In order to create a new entity, a national government, the Framers knew that they had to convince the states to voluntarily reduce their own powers to some extent. With that goal in mind, what better place to look for convincing models of form and language for the new Constitution than to those state and colonial constitutional documents which already reflected a consensus of local opinion in the various states, and which had obtained a certain legitimacy, because they had been tested and lived under?

It is no accident then, that we see large portions of the various state constitutions reborn in our national charter. For instance, let us examine Article I of the Constitution and observe the amazing conformity with the equivalent provisions of various state constitutions that had been written a decade earlier in 1776 and 1777.

Article I, Section 1, of the U.S. Constitution establishes bicameralism at the national level by vesting all legislative powers in a Congress, consisting of a Senate and House. At least nine of the state constitutions had similar provisions which vested the lawmaking powers in a legislature consisting of two separate bodies.

The concept of bicameralism, or two houses, was intended to guarantee deliberation in the exercise of legislative power, by requiring that measures be debated and approved by two different bodies before becoming law. Bicameralism institutionalizes deliberation. Its purpose is to afford protection from the mischief latent in popular self-government.

The Great Compromise which was worked out at the Convention and agreed to on July 16, 1787, provided that the Senate would represent a forum of the states — with all states, large and small, having an equal number of votes — while the House of Representatives would reflect the views of, and its representation

would be in proportion to, the population. Most certainly, this approach was borrowed from the example set by the constitution of New York.

The requirement in the U.S. Constitution that revenue bills originate in the House of Representatives was prefigured by at least seven state constitutions, of which Massachusetts and Delaware permitted their senates to propose or concur with amendments to revenue bills as was also later provided in the U.S. Constitution.

The Presentment Clause of Article 1, Section 7, of the U.S. Constitution has been very much in the news lately as it has become the target of that insidious device known as the line item veto. The similarity of the complicated language in the U.S. Constitution's veto and Presentment Clause to the equally complex language of the Massachusetts and New York state constitutions is enough to make one sit up and take notice. Except for some slight variations, the U.S. Constitution appears to replicate, almost verbatim, the text set forth in these two state constitutions. It cannot be said with a straight face that this is a matter of mere coincidence. One can easily see the fine hand and the eloquent voice of Alexander Hamilton, of New York, and Rufus King, of Massachusetts, in the behind-the-scenes discussions that probably occurred in the Convention with respect to these and other clauses in the Constitution which sometimes appear to have been copied, almost word for word, from one or more of the state constitutions.

Other similarities between some of the state constitutions and the U.S. Constitution have to do with the requirement of the legislature to assemble at least once in every year; legislators' privilege from arrest; the laying of taxes by the legislative branch; and prohibitions against bills of attainder and ex post facto laws.

These are just a few of the striking similarities among many of the early state constitutions and the product of the constitutional convention in Philadelphia. The institutional structure set up by our Constitution and even the wording, in considerable measure, had obviously incubated in the laboratory of colonial and state experience. But what of the philosophy behind the selection of the prime parts of these test-tube constitutions? To what extent had the Framers been influenced by the political theorists and republican spokesmen of Britain and the Continent?

## III. POLITICAL THEORISTS

John Locke may be said to have symbolized the dominant political tradition in America down to and during the convention of 1787. Locke believed that society and government are only devices which men agree to in order to secure additional protection for their preexisting rights. Locke had taught social contract theory; he had advocated that taxation without representation or consent is tyranny.

As representatives of the people, the legislature was supreme, Locke believed, but — and this is important — even *it* was subject to the higher laws of society, and as such, it ought to be controlled by some sort of fundamental device. His solution was to limit and control government by separating the legislative from the administrative functions of government so that power could not be monopolized by

either.

The renowned French philosopher, Montesquieu also had a considerable impact upon the philosophy of the Framers, and educated Americans in general were well acquainted with his writings. He had experienced the results of tyranny in his native France, and believed that only separating the judicial, executive, and legislative branches would avoid the certain abuse of concentrated power.

James Harrington in his work, *Oceana*, presented a republican constitutional utopia. He proposed a two-chamber legislature as a caution against the dangers of extreme democracy. Harrington was an advocate of mixed government. The Senate of his *Oceana* would represent the property-owning aristocracy; a large assembly elected by the common people was to represent democracy; with an executive representing the monarchical element to provide a balance of power.

But the notion of mixed government had its actual origins in classical antiquity. Herodotus had expounded it in his writings concerning Persia. The king, the aristocracy, and the common man were pitted against each other in their symbolic forms in one, three-part, mixed-government scheme with the aim of checking power, creating balance, and thus achieving stability.

Polybius, the Greek historian who lived circa 205-125 B.C., extolled the virtues of the Roman Republic and believed that it was an outstanding example of the benefits of a mixed government system. The Roman Constitution, with its three power elements — the consuls (executive), the Senate, and the people — regulated those powers with a scrupulous equilibrium, and it relied on *checks* to maintain *balance*. Polybius summed it up this way:

> [w]hen any one of the three classes becomes puffed up, and manifests an inclination to be contentious and unduly encroaching, the mutual interdependency of all the three, and the possibility of the pretensions of any one being checked and thwarted by the others, must plainly check this tendency. And so the proper equilibrium is maintained by the impulsiveness of the one part being checked by its fear of the other.

Did the classics influence the Founders? Of course. Since the founders were steeped in the classics, it is not surprising that they looked to the Roman Republic, to ancient history, and to classical writings when they sat together to write the American Constitution.

Let us not forget that prior to, and immediately following, the American Revolution, thousands of circulars, pamphlets, and newspaper columns attested to the erudition of Americans, who well understood and delighted in classical allusions. Moreover, the eighteenth century educational system provided a rich classical grounding for the founders, making them familiar with Ovid, Homer, Horace, Virgil, Tacitus, Thucydides, Livius, Plutarch, Suetonius, and many more.

The leading figures of the day were undoubtedly influenced by a thorough knowledge of the vices as well as the virtues of the Roman Republic and the Roman Empire, the orations of Cicero and the Greek Demosthenes, and the wisdom to

be found in the Holy scriptures. They used classical symbols, pseudonyms, and allusions to communicate through pamphlets and the press. Remember, the Federalist essays by Hamilton, Madison, and John Jay were signed "Publius."

Carl J. Richard put it this way in his book, *The Founders and the Classics*: "[i]t is my contention that the classics exerted a formative influence upon the founders, both directly and through the mediation of Whig and American perspectives. The classics supplied mixed government theory, the principal basis for the U.S. Constitution. . . . In short, the classics supplied a large portion of the founders' intellectual tools."

The rich tapestry of political theory with which the Framers were so familiar had profound impact on them as they drafted the Constitution.

## IV. ARTICLES OF CONFEDERATION

But, the main ingredient in the constitutional soup was in many ways a document which failed, and about which not much is generally known — the Articles of Confederation.

The Articles of Confederation were the direct written predecessor to the Constitution. They were, in effect, an experiment. They taught hard and valuable lessons that would be remembered. The system created by the Articles was fatally flawed in a number of ways. It was really only a sort of "league of friendship" agreed to by the states. Congress consisted of one House only, in which each of the thirteen states had only one vote. And Congress wore two hats. It not only served as the legislative branch but was also given the duties of the executive. But, despite all of this authority, it was not given any real means of enforcement. Congress had no control over foreign or interstate commerce, and no power to raise money through taxation. It could only make requisitions on the states and then hope that the states would respond affirmatively, which was frequently not the case. In foreign affairs, Congress could approve treaties, but it had no means to make the states obey treaty requirements.

In order to appease the states' natural aversion to central authority, the Continental Congress, which wrote the Articles of Confederation, dealt with the people only through the filter of the several states, and it provided no authority for the national government to act directly upon citizens. This was no doubt the greatest weakness under the Articles. Attempts to change and improve the Articles failed because it was impossible to get the unanimous consent of the legislatures of the thirteen states, which was required for any amendment to the Articles — another fatal flaw.

Yet, the Articles of Confederation must not be considered as a total failure. They must not be underestimated in importance. The Continental Congress — in devising the Articles — had framed the first written Constitution *ever* to establish a system of government in which certain powers were vested in a central government while others were retained by state governments — an extraordinary historical achievement!

The fledgling nation profited greatly by having lived under these seriously flawed Articles for six years. Indeed, the experience of the difficulties for the nation under the cumbersome Articles added needed efficacy to the newly-crafted, but controversial concept of federalism, and to the understanding by the people that while the states' powers needed protecting, the national government must have some limited, but direct, powers of its own over individual citizens. In this case, experience provided a foundation that no amount of theorizing could have created.

Hence, the wisdom and experience that came to fruition in the U.S. Constitution had germinated in the colonies' attempts at written constitutions and charters, the state constitutions, the Articles of Confederation, the Framers' grounding in the classics, and the wisdom of church covenants and the Bible.

## V. THE BRITISH BACKGROUND

But what of the history of the motherland? Many of the bedrock principles and institutional concepts and practices embedded in American constitutionalism hark back to England or, in some instances, even to the Anglo-Saxon period prior to the Norman conquest.

Although the English Constitution is largely unwritten, it does include many written documents such as the Magna Carta (1215), the Petition of Right (1628), and the English Bill of Rights (1689), all of which, to some degree, directly influenced the content of our own Constitution. Various other English charters, common law court decisions, and statutes composed the English constitutional matrix, and they were also eventually reflected in our own organic law framed in Philadelphia.

For example, the writ of habeas corpus *ad subjiciendum*: "[y]ou have the body." Habeas corpus is one of the most celebrated of all Anglo-American judicial procedures and has been called, the "Great Writ of Liberty." It derives from the English common law writ that commanded that a prisoner be produced at the court for such disposition as the court might order. Traces of its existence can be found in the reigns of Edward III, Henry VI, and Henry VII, and some scholars even trace it to a Roman source and specifically refer to the forty-third book of the Pandects. The first text is the line from the "Perpetual Edicts," where the praetor declares, "produce the freeman whom you unlawfully detain."

Under Charles II, the habeas corpus act of 1679 guaranteed that no British subject should be imprisoned without being speedily brought to trial, establishing an effective procedure to examine the sufficiency of the actual cause for holding a prisoner. We can see the principle of showing just cause for detention in Article I of the Constitution, which absolutely prohibits suspension of the writ of habeas corpus, "unless when in cases of rebellion or invasion, the public safety may require it."

Another English statute that made its impact on the thinking of the Framers was the British Act of Settlement of 1701, which mandated that royal judges were to hold their offices for life instead of "during the king's good pleasure," as had

been the case prior to 1701. After 1701, judges could be removed only as a result of charges of misconduct, which had to be proved in Parliament. The Framers insured the independence of the federal judiciary by adopting the phrase "during good behavior" in Article III of the Constitution, to define the tenure of federal judges.

The forerunner of our own grand jury, referred to in the fifth amendment to the Constitution, hails from the time of William the Conqueror, in 1066, and the trial jury probably also had Continental origins. Although, according to Sir William Blackstone, in England, mention of juries was found "so early as the laws of King Ethelred, and that not as a new invention." By 1275, in the reign of Edward I, it was firmly established that a petit jury of 12 neighbors would determine the guilt or innocence of the accused. Five centuries later, jury trial in criminal cases was required by Article III of the United States Constitution. The next time you are called for jury duty, take a moment to ponder the fact that you are participating in a procedure with historical roots that stretch back 900 years or more.

But, the supreme fountainhead of English liberty was, of course, the Magna Carta, signed by King John on June 15, 1215 — 783 years ago! It is one of the enduring symbols of limited government and the rule of law. It was the language of practical men and it proclaimed no abstract principles, but simply, in sixty-three clauses, redressed wrongs.

Five centuries later its impact on our Federal Constitution, for example, was evident in the "due process" phrase, which is equivalent to the "law of the land" phrase in Magna Carta — the Great Charter — whose impact was also evident in the guarantees for "just compensation" in the Fifth Amendment of our own Bill of Rights, and the "excessive fines" prohibition in the Eighth Amendment. Even Congress' Article I power to fix the standard of weights and measures was not something new, for the barons at Runnymede required, in Magna Carta, such standards.

The Fifth Amendment right against self incrimination and the Fourth Amendment prohibition against "unreasonable searches and seizures" were examples of the evolutionary process by which, in some instances, certain ancient elements of the British constitution were filtered through the state constitutions and later into the U.S. Constitution.

But by the end of the revolutionary era the American idea of a constitution differed dramatically from the English. The English Constitution included fundamental principles and rights, and all existing laws, traditions, and institutions. It was not written — not a separate document with a unique standing. It was what it was. As such, the common law and every law enacted by Parliament became part of the British Constitution. As Blackstone had observed, there was really no higher power than Parliament.

But in America, a new idea about ultimate legal authority had evolved. The Constitution was envisioned as no actual part of the government at all, but, rather, it was to be a higher, distinct, and superior entity. Government in the United States was viewed as merely a creation of the written Constitution. That Constitu-

tion represented the supreme sovereignty of the American people themselves. The Constitution was fundamental law, which was immune from even legislative encroachment. It was a huge departure from the experience of the several states. In all but two states, the constitutions were written by the legislatures, and could, of course, be altered or abolished by those same bodies. But, in this new approach, if the national Constitution required change, the sovereign people would have to be the ones to change it. Thus, the concepts of popular sovereignty and the higher law tradition were blended and incorporated into a unique new kind of American constitutionalism.

## VI. AMERICAN FEDERALISM

The Founders also departed from practically all historical precedents by producing the system known as American federalism, and they did this with great care and skill, for the issue of the states' sovereignty was a flashpoint upon which the endeavor at Philadelphia could very quickly have disintegrated.

The Constitution really consists of two types of provisions. One set of provisions is concerned with structure — the separation of functions, the departments of administration, the House of Representatives, the Senate, the President, the Judiciary, and their relations to one another.

The other set of provisions is concerned with the relation of the states to the general government. The powers of the general government are limited, and the powers of the states are also under certain restrictions. This federalism was entirely new. There was nothing like it in the colonial charters or in the state constitutions of 1776 and 1777.

The development of federalism went through similar stages and took almost as long in its processes as the development of the structural parts of the Constitution. It had been an important and a much debated question for more than a hundred years before 1776, and more than twenty plans of power sharing had been suggested and discussed.

As the Articles of Confederation aptly demonstrated, the protection of the states' prerogatives continued to be held very dear, even in the face of the exigencies of newly claimed independence and armed conflict with Britain. What the Framers successfully crafted in 1787 was a system which retained enough sovereignty for the states to keep them from rejecting the new Constitution, and, at the same time, provided sufficient power to the national government so that it could be effective at home, and establish a credible presence in international affairs — quite an achievement!

Ingeniously, the Framers, with the Great Compromise, provided this sense of the states' autonomy and continued sovereignty. But, especially helpful in this regard was the concept of enumerated powers. The jurisdiction of the new, proposed government, wrote Madison in The Federalist Number 39, extended "to certain enumerated objects only, and left to the several states a residuary and inviolable sovereignty over all other objects."

What happened in Philadelphia was, then, truly extraordinary. The Framers called upon ancient and tried principles of governance, looked extensively to the lessons of English history, laced that knowledge with political acumen and practical colonial and state experience, and created a complex and mixed government of dispersed powers — some separate, some overlapping — which they based upon the philosophical principle of consent of the governed. Then they protected that principle with a further internal system of delicate checks and balances, which set up tensions that could only be relieved by cooperation and concurrence between the branches. On top of all of that, they called upon their astute reading of the total American experience to create a Constitution which was, in the words of John Marshall, "intended to endure for ages to come."

Considered from this point of view, I believe that the stellar achievement of the Framers is clearly undeniable. Washington, writing to Lafayette on February 7, 1788, referred to the product of the Framers as "little short of a miracle." And, indeed, the beneficent hand of Providence seems to have brought about a convergence of time and circumstances and men of genius, all of which were conducive to the production of such a document. As Catherine Drinker Bowen has said:

> [a]ctually, it was the one moment, the one stroke of the continental clock when such an experiment had a chance to succeed. Five years earlier and the states would not have been ready. Since then the creation and operation of their own state constitutions had taught them, prepared them. Five years later and the French Revolution, with its violence and blood, would have slowed the states into caution, dividing them (as it indeed divided them) into opposing ideological camps.

But there was certainly no "miracle at Philadelphia," in the sense that it simply fell like manna from heaven. Rather, the achievement there happened because extremely capable, knowledgeable men drew upon their formidable experience and their spirit of compromise, and their wisdom and familiarity with history, to meet their objective of establishing a system that had the best possible prospects of receiving approval of the states, and of maintaining freedom. They created a system that could be adapted "to the various crises of human affairs."

But, just as the birth of the new nation depended on the quality of the men who gave it life, so does its continued vitality depend upon the quality of the men and women of succeeding generations and their determination to preserve the governing principles and powers set forth in the Constitution.

I will now take some of your questions for a brief time. Then, after a short break, we will return, continue our historical journey, and take a look at just how well we have fared under our now 200 year old charter. Is it guiding us safely through the ages? We shall see.

When we ended our discussion last, we had said we would begin again by looking at how well we have fared after 200 years of constitutional government. What tools did the Framers give us to protect what they had so ingeniously crafted

and how well have we used these tools of preservation? In the Federalist Number 48, Madison asked, "[w]ill it be sufficient to mark with precision the boundaries in the Constitution of the government, and to trust to these parchment barriers against the encroaching spirit of power?" The Framers' knowledge of English history and their deep understanding of human nature had taught them that the answer to Madison's question was a resounding, No! The Framers' solution was to bolster the "parchment" barriers in the system with what we commonly refer to as "checks and balances."

Madison, writing in the Federalist Number 51, observed that, because such "*external* checks" were ineffective, maintaining the separation of powers would require "*internal* checks" that linked the officeholders' personal ambitions to their duties. Officials would fiercely defend and uphold their various constitutional prerogatives if they felt that doing so also furthered their own personal aspirations. Thus, it is the concept of "ambition checking ambition" — not virtue — which helps to maintain our constitutional structure and purpose.

But, what else did the Framers construct to protect our liberties? As we shall see, the absolute bedrock of the people's continued freedom from tyranny and excesses of all types of authority is, again, anchored in the pages of history. It is the power of the purse.

Since time immemorial, Anglo-Saxon kings, and the early English kings, had levied taxes on their subjects with the advice and consent of the Witenagemot or King's Council — and, with the coming of the Normans, the *Magnum Concilium*, or Great Council — which was the historical precursor of Parliament. By the way, I often refer to my staff as my Witenagemot, and to a smaller inner-office group as my Witan or my *Curia Regis*. They *are* wise and trusted advisors, and besides, it makes them feel good!

During the development of Parliament in the 1300's, the king continued to seek approval of revenues he wanted for the operation of government and for military activities in Scotland, France, and elsewhere. In return for granting the king's requests for money, however, Parliament began to extract concessions from the king and secure the redress of grievances. If the king resisted, then Parliament would simply refuse to grant his requests for money — the classic "*quid pro quo*" so essential to good legislation and compromise.

In 1297 — *701* years ago — this effective practice was formalized when Edward I reluctantly agreed to the "Confirmation of the Charters." In doing so, he agreed that, in the future, he would not levy "aids, taxes, nor prises, but by the common consent of the realm."

By 1395, all grants to the King were made "by the Commons with the advice and consent of the Lords." Approval of all monies began in the House of Commons. The right of the Commons to originate taxes and money grants had only become a right by tradition and custom, but it was a custom not easily shaken. For example, Henry IV had failed in 1407 when he tried to proceed first through the House of Lords. The Commons simply refused to accept such as being "a great prejudice and derogation of their liberties." It is no coincidence that Article I, Sec-

tion 7, of the U.S. Constitution reflects the very same principle: "[a]ll Bills for raising Revenue shall originate in the House of Representatives."

It was not long until Parliament began to express its views on just exactly how, and for what, such money grants were to be spent. The specificity and detail in some of these early appropriations are striking. For instance, a grant was made to Edward IV in 1472 to cover the expenses of 13,000 archers for one year at a daily wage of sixpence.

Slowly, we see the power of the purse gradually becoming honed, sharpened, refined, and utilized as an effective tool, not only for resisting unreasonable demands of the King, but also for effectively promoting specific policy objectives which were important to Parliament.

The right of Parliament to check or audit accounts followed, as a natural consequence, the practice of making annual appropriations for specified objectives. Even as early as 1340, a Committee of Parliament was appointed to examine the manner in which the last subsidy had been expended. Henry IV resisted a similar audit in 1406, but in 1407 he conceded to Parliament the right to scrutinize the ways in which appropriations were spent, and such audits became a settled usage.

These two principles — that of Parliament's appropriating monies, and that of auditing or oversight — were combined by the Framers in a single paragraph of our Constitution. Article I, Section 9, says "[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time."

Remember that it was mainly the violation of the principle of taxation by consent of those paying the tax that led to the revolt of the colonies in America. The Declaration of Independence, explicitly names, as one of the reasons for separation from England, "imposing taxes on us without our consent." Thus, we see that the power to appropriate monies and "to lay and collect Taxes" are vested by Article I, solely in the legislative branch, the people's duly elected representatives.

James Madison summed up in a very few words the significance of the power of the purse in the protection of the people's rights and liberties. Referring to the House of Representatives in Federalist Number 58, he said: "[t]his power over the purse, may in fact be regarded as the most compleat and effectual weapon with which any Constitution can arm the immediate representatives of the people for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure."

This essential tool — control of the purse by the people's representatives in Congress — lies at the very foundation of our freedoms. It is the fulcrum of the people's leverage. As enshrined in the Constitution, it is one of the chief protectors of all our cherished freedoms. This control of the purse is one of the most effective bulwarks ever constructed to repel a despot, control a tyrant, or shackle the hands of an overreaching executive. Chip away at this fundamental barrier and one chips away at the very cornerstone of the people's liberties.

But, incredibly, we, in our day, seem to be intent on doing just exactly that

— steadily chipping away at the power of the purse, and at the other constitutional powers and prerogatives of the people's representatives in Congress as well.

## VII. CONSTITUTIONAL AMENDMENT TO BALANCE BUDGET

An effort to mandate a balanced budget each year through an amendment to the Constitution is one such threat to the control of the purse and to the delicate balance so carefully crafted by the Framers. Such an idea has become almost universally popular in our country. But, *popular* is not always the equivalent of *wise*, as we shall see.

A balanced budget constitutional amendment was first introduced in 1936, and various versions have been proposed by Congress and introduced regularly since the 1970's. Yet, the only proposed balanced budget amendment ever to have passed the Senate was S.J. Res. 58, adopted by the Senate in 1982. I voted for it. That is right. I voted for it. I had not yet read and researched the venerable history of the power of the purse to the degree that I now have. Since that time in 1982, I have focused carefully on the proposal. I now fully understand its dangers. I have never since supported any version of such an amendment, and I, more than any other Senator, have repeatedly led the successful charge against it.

I believe that if such an amendment were ever adopted and enforced, there would be major ramifications for the separation of powers, possibly serving to justify presidential impoundments of funds to meet the amendment's requirements or even involving the judiciary in overseeing portions of the budget process.

The advocates of riveting a requirement for a yearly balanced federal budget into the text of the Constitution, for the most part, are advocates of a particular economic theory which teaches that deficits, especially sizable ones, are economically, politically, and morally ruinous, and not necessarily in that order. But, as Justice Oliver Wendell Holmes once observed, "a Constitution is not intended to embody a particular economic theory . . . ." Such an amendment would subjugate all goals to an inflexible standard. It would tend to ignore such economic cycles as recessions. It would turn a blind eye to the needs of our people during such natural disasters as floods, hurricanes, droughts, and earthquakes.

Moreover, such an amendment would tend to advance the further erosion of Congress's already marked deterioration as a true deliberative body. Instead of enlightening public debate about the needs of our people and the ordering of our national priorities, under the restrictions of such an amendment, every choice, henceforth, would be shackled to the all-pervasive, overpowering constitutional requirement for budget balance.

In the last quarter of this century, federal budgeting has monopolized center stage in American politics. Yet, the taxing and spending powers of the Congress, ironically, have become the focal point of efforts to construct procedural devices that would limit their unfettered operation, instead of efforts to promote a general recognition and understanding that these taxing and spending powers are absolutely *central* to our liberty.

Indeed, the primary purpose of the legislative branch is to be found in its unique capacity to publicly, in the light of day, and under the hot lights of full media scrutiny, sort through competing interests, deliberate, reconcile, apportion public treasure, and forge laws, compromises, solutions, and priorities which are compatible with our national objectives and with the public good.

But, sadly Congress no longer functions primarily as a truly deliberative body, and the historic, time-tested, and wise constitutional order we all profess to so revere is beginning to realign itself accordingly. I believe that our constitutional structure is increasingly in peril, and that it is the people's branch which is in most danger of giving way. Congress is excessively concerned with political party matters, petty partisanship, and wants increasingly to just delegate portions of its legislative authority, including its power of the purse, to other entities.

Let me give you a particularly galling illustration of exactly what I mean. On March 23, 1995, the Senate passed by a vote of sixty-nine to twenty-nine, the Line Item Veto Act — a self-mutilation of its own power over the purse, driven by popular misconception, a lack of understanding about the importance and the history of control of the purse strings, and an amazing disregard for the Constitution. This was an act of sheer, irresponsible, raw, demagoguery!

In a too-clever attempt to end-run the Bicameralism and Presentment Clauses of the Constitution, the Line-Item Veto Act allows the President to sign an appropriations bill into law and then, quite preposterously, within five days, strike out parts of that same law which he does not like.

It, in effect, gives the President power to unilaterally amend legislation after it has become law. It makes him a superlegislator. He can now completely circumvent the will of both houses of Congress, and alter the careful compromises, which are such an essential part of lawmaking. Congress's only recourse to the violence the executive can now do to its careful deliberations is to begin a disapproval resolution, which requires a rollcall vote in each House, and which the President can also veto.

So much for hundreds of years of history, experience, and human bloodshed! So much for the long centuries of British experience in controlling a tyrannical monarch. We took the easy way out in Congress. We handed the Executive Branch a power that Presidents had been salivating after for years — the line item veto!

And why does the Executive covet this device so much? Not so much because it gives the executive control over federal spending, because, of course, it does not. The line item veto only allows such canceling of money items in about one-third of the total budget. Mandatory programs and entitlement programs — where the expenditure growth really is — cannot be touched by the "line out" authority in this nefarious law.

No, it is not for the purpose of control of the deficit that Presidents have wanted a line item veto. It is greed for more power — power to intimidate members of Congress. This device allows the President to threaten to cancel items which benefit various congressional districts or states in exchange for a vote on a treaty, a

vote on a nomination, or even support for the President's own funding priorities. With this insidious tool, the peoples' elected representatives can be squeezed like putty in the hands of a President. Can you imagine Lyndon Baines Johnson with such a weapon? Talking with Johnson always left one feeling like one arm could never be used again. With a line item veto, he would have been formidable, indeed!

On two occasions I have joined with several of my colleagues in the Congress in an effort to have the Line Item Veto Act declared unconstitutional by the Supreme Court. Both times, a U.S. District Court has declared the law unconstitutional, and might I add that both U.S. District Court judges who wrote those opinions were appointed by Ronald Reagan, the loudest proponent of the line-item veto, although all Presidents in this century except Taft have wanted the power.

In June of 1997, in the case of *Raines v. Byrd*, the Court ruled that, as Members of Congress, we had not suffered personal injury, and, therefore, lacked judicial standing. I have higher hopes for our second journey to the High Court, where we will appear as friends of the Court. This time, the legal challenge is being brought by parties who stand to suffer great economic damage as a consequence of the President's actions under the Line Item Veto Act.

Each and every one of you ought to be seriously concerned about what Congress has done. Along with myself, every single citizen of this nation ought to be fervently hoping that the Supreme Court strikes this law down. Again and again, throughout history, we have seen the control of the purse as exercised by Congress as the ultimate arrow in the people's quiver when it comes to reigning in an overly zealous executive. We cannot take our liberties for granted. Be assured that the executive branch never sleeps. It is always hungry — hungry for more power.

There are powerful forces which constantly work toward expansion of the power of the Executive Branch and the President — the bully pulpit; the sheer size of the bureaucracy which serves that President, and its ability to operate on a day-to-day basis without really much scrutiny by the public; his vast patronage powers as titular head of his party; and the often heard presidential claim of being the sole figure in the government who represents all of the people — all of these work to enhance the actual power of the executive. But among the most compelling of all of the devices which contribute to a precipitous enhancement of presidential authority is the appellation "Commander in Chief" and the term "national security."

The term "national security" is one which can be used to cover many activities, missions, or goals — secret or otherwise. Like love, it can be made to cover a multitude of sins. I believe that the United States is in a period of increasing peril for its constitutional institutions, and that such buzzwords as "Commander in Chief" and "national security" will be increasingly invoked by Presidents as various international situations arise. Involvement of the nation in military ventures always results in the expansion of presidential powers, especially in the area of justifying presidential use of military force without congressional authorization.

For example, in recent years Presidents have increasingly claimed that executive war power authority is sanctioned by the U.S.' membership in such world organizations as the U.N.

Consider our near debacle in Somalia. This began as an effort by our nation and others to provide food and humanitarian aid to war-torn Somalia. But, after the deaths of some American soldiers involved in that effort, the mission then changed, and became an unwise attempt by U.N. forces to settle disputes between African warlords. What an impossible task! Don Quixote had a better grip on reality when he went out to tilt at windmills! Incredibly, this unwise venture was only finally stopped when I led an effort in Congress to shut off the money for the operation.

Here is a bit of background on that event. The U.N. Security Council passed a Resolution on December 3, 1992, authorizing member states to use military force to ensure the distribution of humanitarian aid and protect relief agencies. A statement to the Nation by President Bush on December 4, said: "[o]ur mission has a limited objective — to open supply routes, to get the food moving, and to prepare the way for a U.N. peacekeeping force to keep it moving." President-elect Clinton responded on the same day: "I support President Bush's decision to dedicate U.S. forces in support of the United Nations' clearly-defined humanitarian mission."

The first U.S. forces arrived on December 8. The U.S. Senate endorsed the limited humanitarian mission in Senate Joint Resolution 345 in February 1993, in which we authorized the use of "all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia."

Note carefully what that resolution endorsed. It endorsed a limited grant of authority for a strictly humanitarian purpose. It was not a grant of authority for nation-building or forced political reconciliation, or for military action by U.S. forces. The effort was called Operation Restore Hope. The humanitarian mission was successful, and massive starvation was ended in Somalia. Nevertheless, three months later, in May 1993, the mission changed, without endorsement or debate in the Congress. U.N. peacekeeping forces began operating under Chapter Seven of the U.N. Charter; that is, in a situation where the conflicting parties in Somalia had not signed on.

In effect, peace was being forced on unwilling parties, and the Senate had never approved the transformed mission, which, later in May, evolved further into a shaky experiment in political and economic nation-building using American forces. This nation-building miracle was to be pulled off in Somalia, a country whose political and economic institutions had completely failed. I wrote a *New York Times* op-ed entitled, "Perils of Peacekeeping," in which I called for the removal of U.S. forces because the original humanitarian mission "has now been totally eclipsed by a gang war in which the U.S. is taking sides under the U.N. umbrella." I thought that summed up the situation quite nicely.

In September, during debate on the Fiscal Year Defense Authorization bill, I announced that I would offer an amendment to cut off funds for the operations by

a date certain. Amazingly, my threatened use of the power of the purse to thwart this unauthorized use of the U.S. military led both of the then party leaders of the Senate, George Mitchell and Bob Dole, to work with the White House to circle the wagons, and prevent a vote on my amendment! Members from across the political spectrum voiced concern over my desire to put some limits on the President's so-called war making authority. Sometimes, I wonder *if anybody* in Washington has read the Constitution! Meanwhile, the White House indicated that it was reevaluating the mission and would begin a withdrawal. Instead of a funding cutoff, a compromise was reached to produce a report on withdrawing U.S. forces.

I concluded that we were on a fast train to disaster. I was right. On October 3, eighteen American soldiers were slaughtered in a fifteen-hour battle. This led to the horrific television spectacle that many of you may vividly remember, of the subsequent dragging of a U.S. soldier's body by truck around Mogadishu, the capital of Somalia. I was sickened. All I could think of was the poor family of that soldier. I was determined to offer an amendment to cut off funding after a certain date, and I said so. The White House, again, lined up both Mitchell and Dole to block a vote. After considerable negotiation, a compromise was finally reached in which the Senate did pass my amendment to cut off funding at the end of March 1994. It was a later time frame than I wanted, but it was a completely effective exercise of the power of the purse. Incidentally, it was the first conclusive use of that power of the purse since the 1974 end of U.S. participation in the conflict in Vietnam. But, I had to contend with the opposition of the White House and both the Republican and Democratic leaders of the Senate in order to assert the Senate's constitutional prerogatives.

Since that time, the threat of the power of the purse has been used more frequently as a preferred mechanism to keep the current administration's military operations overseas in check. Bosnian operations have been funded on an annual basis with so-called "drop-dead" dates (the latest one being May 1, 1998) unless further authorized by Congress. President Clinton has recently announced that he wants Congress to authorize an indefinite extension of a U.S. military presence in Bosnia. I am considering offering an amendment which would call upon the Administration to leverage greater involvement of other NATO members with ground forces before we spend more U.S. treasure in that troubled part of the world.

To me, the lesson here is clear. The power of the purse, i.e., the need for funds in such cases, has become the only way to force a debate and to force a vote in Congress about the wisdom of such risky foreign adventures, and, therefore, the only way to expose the obvious dangers in such efforts to the American people.

Just as Congress' control over the purse can be the ultimate tool in reigning in the power of a runaway executive, just so can the line item veto become the ultimate tool for the convenient expansion of a President's powers. Suppose the Administration had been able to threaten members with the line item veto authority in exchange for support for one of these risky foreign enterprises? Our history might be vastly different from what it is today.

Truman in Korea, Bush in the Persian Gulf, Clinton in Haiti and in Bosnia

and in the Persian Gulf — all of these represent instances of a President's claiming authority for military action, and thereby quite effectively circumventing the constitutional authority of the Congress as the sole entity which can declare war and commit American lives and treasure to such efforts. But, some may say, we are part of the international community. We must support others so they will support us. These observations may be true, but they are beside the point.

The constitutional framework arranged by the Framers speaks with crystal clarity regarding the war powers. The authority to initiate war rests solely with Congress, except for one narrow area — the inherent defensive authority to repel sudden attacks on our country, which is granted to the Commander in Chief. Let us listen for a moment to the words of President Abraham Lincoln in a letter to William H. Herndon on the subject of the exercise of the unfettered use of the war power by a President:

> [a]llow the President to invade a neighboring nation, whenever he shall deem it necessary to repel an invasion, and you allow him to do so, whenever he may choose to say he deems it necessary for such purpose -- and you allow him to make war at pleasure. Study to see if you can fix any limit to his power in this respect, after you have given him so much as you propose. If, today, he should choose to say he thinks it necessary to invade Canada, to prevent the British from invading us, how could you stop him? You may say to him, 'I see no probability of the British invading us' but he will say to you 'be silent; I see it, if you don't. . . .'

Well, obviously, Lincoln had it absolutely right with regard to the constitutional wisdom of the Framers. And the legislative histories of both the U.N. Participation Act and the NATO Treaty firmly establish that the President has no type of unilateral war power authority granted to him by virtue of our country's participation in these two international organizations. It is entirely preposterous to claim that an international treaty, which must be consented to by the United States Senate, somehow strips the Senate and the House of their constitutional mandate to declare war! Oh, and by the way, calling a conflict a "police action" does not give the President magical authority to use military force without the authorization of Congress, any more than calling a dog a cat suddenly empowers a dog to climb trees.

## VIII. AMBITION V. AMBITION

But, Senator, why don't members of Congress rise up and assert their constitutional prerogatives? What about the Federalist Papers? Why doesn't ambition check ambition as the Framers intended?

We may be seeing a modern perversion of what the framers thought of as "ambition." Ambition in politics today, I fear, has become simply the more mundane "ambition" to be reelected. And with such a limited horizon — reelection as

the *sine qua non* of public life — an instinct for ducking and dodging tends to prevail. Why take on the hard questions when there is an attractive option like the massive delegation of powers to other authorities?

Yes, let's give more and more power to the President, who is, of course, not even directly elected by the people. The trend becomes even more perverse when one considers that, generally, less than half of the eligible voters in the United States elect the electors who, in turn, elect the President. Gone are the lessons of history.

But, some of you may be wondering why I am so concerned. After all, the Bill of Rights is always there to protect the people's liberties. Well, let's take a look at the historical background on the Bill of Rights.

On September 12, 1787, the only major task left for the delegates at the constitutional convention was to adopt, engross, and sign the finished Constitution reported by the Committee on Style. The delegates were tired. It was hot. They wanted to go home. At some point, George Mason remarked to Elbridge Gerry that he, "wished the plan had been prefaced by a Bill of Rights," to help quiet any lingering public worries about the new Constitution. No stirring speech about civil liberties occurred. No motion was made for the adoption of a Bill of Rights. Elbridge Gerry moved for a Committee to prepare a bill; Mason seconded the motion. Without any debate the delegates then promptly defeated the motion ten to zip! A motion to endorse freedom of the press was also defeated after Roger Sherman declared, "[i]t is unnecessary. The power of Congress does not extend to the press."

This is an extremely revealing comment. It clearly demonstrates the complete faith which the Framers had in the actual structure — the formalized separations of powers, and the checks and balances — of the government they had set up to protect the people's liberties. Not a delegate to the convention opposed a Bill of Rights in principle. It was simply that an overwhelming majority believed that it was just unnecessary. In fact, some worried that if a separate list of rights were framed which omitted some rights, those omitted rights might be the first infringed. The framers were realists, and they understood well that such a paper protection of rights meant very little, especially in times of popular hysteria or war. And all of them could cite examples of gross violations of such rights in the states which had bills of rights in their constitutions.

In truth, our own much touted, much heralded Bill of Rights — which became part of the Constitution on December 15, 1791 — was an afterthought which came to be adopted because of political expediency. The lack of a Bill of Rights was being used as their strongest argument by the anti-federalists — those who opposed ratification. Patrick Henry even went about claiming that the proposed Constitution empowered the United States to torture citizens to confess their violations of congressionally enacted law! In state after state, where ratification was in some doubt, Federalists pledged themselves to various amendments to protect civil liberties. In historical fact, our Bill of Rights was, in the main, the result of political necessity for the Federalists' cause to ensure ratification of their brilliantly-crafted

Constitution. Likewise, a Bill of Rights was embraced by many anti-federalists, mostly as a tactic to help defeat the proposed Constitution.

If we go back to our poll numbers of this morning, we will recall that only sixty-six percent of those questioned even recognized that the first ten amendments to the Constitution are the Bill of Rights. I wonder how many would know or even believe that the Bill of Rights was actually viewed by the Framers as unnecessary, and that it was finally adopted as a sort of gimmick to help ensure ratification? I would wager not many.

So, where have we finally touched down after our long flight from the brilliance of the founders' vision in 1787 to the complexities of the 1990's? I suspect that the winds of expediency, of demagoguery, of apathy, and, yes, of ignorance may have blown us quite far from that carefully chartered constitutional course. In a world fascinated by speed and efficiency and consumed by the exigencies of coping with the race and pace of events, it is all too easy to become uninterested in, or impatient with, the arcane workings of our constitutional system. But a way must be found to restore genuine interest in the Constitution and in the rationale behind the structure of government which it supports. It is easy to take our freedoms for granted. It is easy to forget, indeed, especially if one never even knew, about the hundreds of years of human history, the bloodshed, the sacrifice, and the experience that went into the final production of the Constitution that we regard so highly, yet, obviously no longer really comprehend. The reverence for the Constitution that was reflected in the poll I cited when we began this morning is heartening, but it is not enough to protect our Republic through the next 100 years.

While few would suggest amending the Bill of Rights, other constitutional amendments which would do major damage to the power balance in the Constitution are routine, and often are championed by the voting public like mother's milk. I say this not to denigrate in any way our Bill of Rights, but only to point out the disparity between the way it is regarded by the public, and the way the other vital constitutional protections of our liberty are viewed.

The Bill of Rights — which was tacked onto our basic charter as a postscript to help ensure its ratification by the states — is viewed by many as the prime protector of our freedoms, while the first seven articles are often seen only as prime targets for change. Such views are wrongheaded and dangerous. They reveal a total ignorance of the need to diligently assert the prerogatives of the people's branch.

As a nation, we are all guilty of abominably lax vigilance over our responsibilities — members of Congress who cower at the slightest criticism, and who do not even bother to study and understand the document they take a solemn oath to support and defend; Presidents eager to grab power to make their mark on history larger; representatives of the media, who report significant events without really understanding them because they don't understand history; talk-show demagogues who rail over the airways, while they generate ill-informed and destructive anger; and ordinary citizens, who do not even bother to vote. Let us remember the words of John Philpot Curran, the Irish orator and statesman, who commented that, "[t]he

condition upon which God hath given liberty to man is eternal vigilance; which condition if he breaks, servitude is at once the consequence of his crime and the punishment of his guilt."

Those of us who teach, those of us educated in the discipline of law, and those of us who purport to serve the public in some capacity, have a special responsibility to make others sensitive to the importance of every citizen's role in preserving our freedoms. But, we can all do more, and we must!

## IX. CONCLUSION

We started this day with a most disturbing poll. Let us close with the results of a study which may shed some useful light upon at least one possible reason why such ignorance about our Constitution exists. I refer to the Thomas B. Fordham Foundation's first-ever appraisal of state standards for history in thirty-eight states, published in February of 1998. This is a brand new study, which points out something that I have believed for quite a while. Let me quote from the foreword of the study on its general findings about how thirty-eight states are doing in the effort to teach history to our grade school and high school students:

> the vast majority of young Americans are attending school in states that do not consider the study of history to be especially important. No doubt some children are learning lots of solid history from excellent teachers in fine schools. Their good fortune, however, appears to be serendipitous. State standards rarely constitute a ceiling on what can be taught and learned. But it's not unreasonable to view them as the floor below which no child or school should fall . . . . [W]hen it comes to history, most states have placed that floor where the sub-basement ought to be . . . . [I]n only a few instances is history itself the focus of the state academic standards that pertain to it. In most jurisdictions, history remains mired in a curricular swamp called 'social studies,' . . . .

We can correct this deplorable treatment of history in our schools and we must. For only with a thorough knowledge of history can we ever expect our people to appreciate the gift of the Framers or the experience and the struggles going back centuries which combined to make us free. Only with a citizenry that understands its responsibilities in a republic such as ours can we ever expect to elect office holders with the intelligence to represent the people well, the honesty to deal with them truthfully, and the determination to effectively promote the people's interests and preserve their liberties, no matter what the personal political consequences. We can build upon the respect and reverence we still hold for our Constitution. But we had better start now before, through ignorance and apathy, even that much slips away from us.