DECEMBER 15, 1791 - DECEMBER 15, 2016

Celebrating Freedom

The 225th Anniversary of the U.S. Bill of Rights

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A Special Report Prepared by The Washington Times Advocacy Department

Out of 12 proposed amendments, 10 became the U.S. Bill of Rights

Ratified December 15, 1791

Article I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Article II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Article III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Article IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Article VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

Article VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Article VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Article IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Article X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

On Sept. 25, 1789, the First Congress of the United States proposed 12 amendments to the Constitution. (The 1789 Joint Resolution of Congress proposing the amendments is on display in the Rotunda in the National Archives Museum.)

On Dec. 15, 1791, three-fourths of State Legislatures ratified 10 of the proposed measures, and these became the first 10 Amendments of the Constitution, or the U.S. Bill of Rights.

In 1992, 202 years after it was proposed, the original measure about congressional compensation was ratified and became the 27th Amendment to the Constitution.

The other originally proposed amendment has remained unratified; a 1911 law set 435 as the maximum number of members of the House of Representatives.

CELEBRATING FREEDOM:
The 225th Anniversary of the U.S. Bill of Rights

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Media endorsements under review after divisive election

By Dr. Jeffrey Herbst

The newspaper editorial is emblematic of press freedom and the right of free expression that are at the heart of our democracy. However, especially in light of the recent election, is the newspaper editorial another victim of the disruption that is upending journalism?

There has been much hand-wringing about the media's performance, including feelings that newspapers and cable television gave too much or too little coverage to particular candidates, did not have the pulse of the country and were too reliant on polls that turned out to be wrong. Largely lost in the debate is that an unprecedented editorial assault on Donald Trump seemed to have little effect on the outcome. What does it mean for the editorial voice if the people are not listening?

Overall, more than 240 newspapers endorsed Hillary Clinton, compared to only 19 for Mr. Trump. President Barack Obama received only 99 endorsements before his 2012 re-election, while his opponent, Mitt Romney, had 105. It was hardly a surprise that traditionally liberal newspapers such as The New York Times sided with Mrs. Clinton, but the Times's vehement opposition to Mr. Trump — "the worst nominee put forward by a major party in modern American history" — was notable.

However, the endorsement of Mrs. Clinton went way beyond traditional lines. The Arizona Republic endorsed the Democratic presidential nominee for the first time in its 126-year history, saying, "The 2016 Republican candidate is not conservative and he is not qualified." The newspaper remained adamant, despite a number of death threats to senior editors.

USA Today made its first editorial comment on a presidential candidate in its history — Mr. Trump is "unfit for the presidency" — although the paper did not formally endorse Mrs. Clinton.

The Atlantic endorsed Mrs. Clinton; only the third time that the magazine had sided with a presidential candidate in its 159-year history, saying Mr. Trump "might be the most ostentatiously unqualified major-party candidate in the 227-year history of the American presidency."

The endorsement wave was powerful enough that it might have been thought to affect some critical states. For instance, The Columbus Dispatch, considered by many to be the most coveted editorial endorsement in the nation, given Ohio's history as a swing state, broke with a century of Republican allegiance to side with Mrs. Clinton, declaring, "Donald Trump is unfit to be president of the United States." The Cincinnati Enquirer, with a similar history of Republican support, also went for Mrs. Clinton, describing Mr. Trump as "a clear and present danger."

Mr. Trump defeated Mrs. Clinton in Ohio by 8 percentage points after Mr. Obama had won the state in 2012 by 3 percentage points.

Just for symmetry, it is useful to note that the most important newspaper that endorsed Mr. Trump was probably the Las Vegas Review-Journal, which said Mr. Trump "promises to be a source of disruption and discomfort to the privileged, back-scratching political elites."

Mrs. Clinton won Nevada by 2.4 percentage points.

We will be disentangling the dynamics of this campaign for years to come. Certainly, some editorialists are suffering from popular sentiments against elites and skepticism of national institutions, topics that have trended for some time and accelerated during the campaign. Education levels were also a very powerful predictor, and it is reasonable to assume that less-educated citizens also were less likely to have read the many editorials that excoriated the man they eventually elected to the White House.

These newspapers also may not have persuaded many Trump supporters. Many publications went out of their way to say that those siding with the Republican candidate had legitimate grievances given rising inequality, the disappearance of traditional manufacturing jobs and foreign policy setbacks. The newspapers and magazines then argued that Mr. Trump was not going to address those problems. But the publications fell into the very trap that Mr. Trump exploited during the presidential debates when he repeatedly asked Mrs. Clinton why she had not addressed his supporters' concerns during her many years at or near the center of power. That may not have been fair, but it was a powerful debating point that probably had resonance when many read about their legitimate grievances but were not told when or how those issues would be addressed.

Finally, the editorial voice may have been muffled because of the way news is being distributed. Increasingly, a large number of readers get their newspaper stories via social media, especially Facebook. This may be a useful strategy on the part of newspapers to attract more readers and capture digital ad revenue. However, the commodification of news stories means that readers see articles in a feed that may seem increasingly disassociated with a particular paper. It also may seem that the newspapers themselves have lost their grounding in the communities, if people read their stories in a stream that includes news from other sources, omnipresent cat videos and greetings from relatives.

Whether the editorial voice, especially in the age of social media, can ever be recovered is unclear. It is certain, especially after an election with nearly unanimous editorial skepticism about the eventual winner, that it can no longer simply be assumed that a newspaper or magazine endorsement means much of anything. These publications will now have to work very hard to justify their sentiments being taken seriously, another challenge when just about every other journalistic certainty is being overturned. Newspapers and magazines will, in short, have to reinvent the editorial voice for the age of social media, just as they are changing almost every other aspect of their publications.

Jeffrey Herbst, Ph.D., is president and CEO of the Newseum and the Newseum Institute. He has served as president of Colgate University, was provost at Miami University and taught at Princeton University for 18 years. He is the author of the award-winning "States and Power in Africa" (2000) and co-author, with Greg Mills, of "Africa's Third Liberation" (2012) and "How South Africa Works and Must Do Better" (2016).

James Madison: Champion of the 'cause of conscience'

By Dr. Charles C. Haynes

No cause was dearer to James Madison's heart than the cause of conscience. And no founder of our country was more responsible for what is now the world's boldest and most successful experiment in religious freedom, or liberty of conscience, for all.

Madison's vision of religious freedom was shaped as a young man growing up in Orange County, Virginia. At an early age, he was outraged by the imprisonment of Baptist preachers for the crime of "publishing their religious Sentiments." In 1774, Madison wrote to his friend William Bradford, describing the jailing of Baptists as "that diabolical Hell conceived principle of persecution," and asked him to "pray for Liberty and Conscience to revive among us."

Two years later, in 1776, a 25-year-old Madison traveled to Williamsburg to represent his county at the convention called to declare Virginia's independence from Great Britain. At a key moment in the proceedings, young Madison successfully called for an amendment to the venerable George Mason's draft of the Virginia Declaration of Rights, changing "toleration in the exercise of religion" to "free exercise of religion."

With that small change in language, Virginia moved from toleration to full religious freedom — a precedent that would greatly influence the new nation's commitment to free exercise of religion under the First Amendment. No longer would government have the power to decide which groups to "tolerate" and what conditions to place on the practice of their religion.

Ten years later, in 1786, Madison led the successful battle to disestablish the Anglican Church in Virginia by enacting the Act for Establishing Religious Freedom, drafted by Thomas Jefferson. Under Madison's leadership — and with the support of Baptists and other dissenting groups — the Virginia General Assembly became the first legislative body in history to disestablish religion.

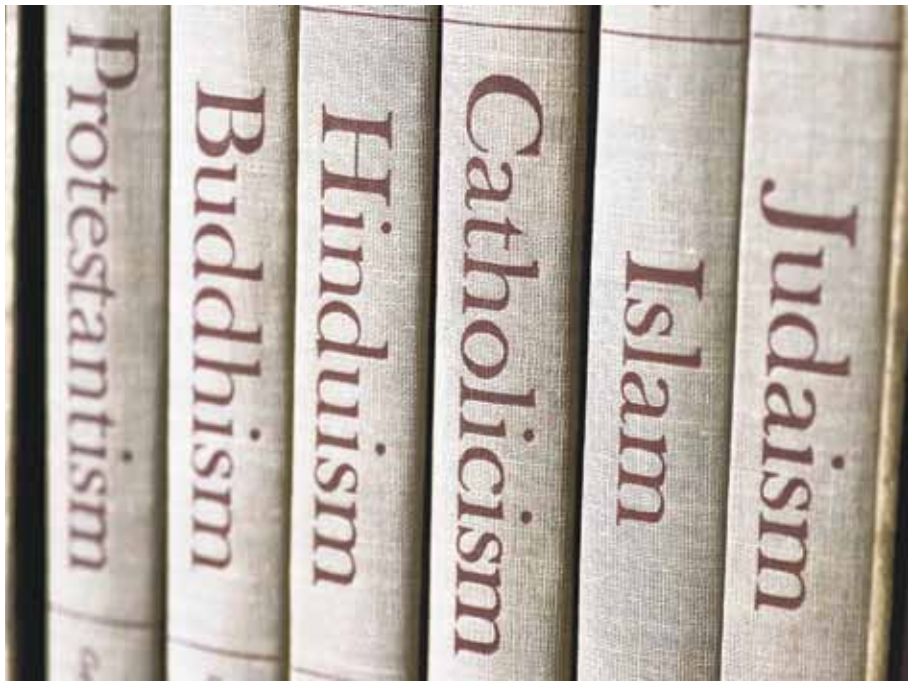
"The Religion then of every man," Madison wrote during that bitter fight, "must be left to the conviction and conscience of every man to exercise it as these may dictate."

In Madison's vision, religious freedom is an inalienable right that must be protected for people of all faiths and none, including the smallest minorities and least popular beliefs. Commitment to the cause of conscience means little unless government takes seriously all claims of conscience — and then works to provide accommodations whenever possible.

When the matter of enumerating rights was debated at the Constitutional Convention in 1787, Madison — who provided the template for the "checks and balances" in the Constitution — was at first unconcerned about the absence of a bill of rights. To list some rights, he believed, might leave others unprotected and imply that the federal government had power to determine which rights to guarantee.

Jefferson — and popular opinion in his home state — persuaded Madison otherwise. "A bill of rights," Jefferson wrote to his close friend, "is what the people are entitled to against every government on earth ... and what no just government should refuse."

As a result, Madison drafted the Bill of Rights in 1789, including what was to become the First Amendment to the U.S. Constitution. Based on that draft, Congress adopted and the states subsequently ratified two principles — "no establishment" and "free exercise" — that protect one freedom: religious freedom, or liberty of conscience, as a fundamental, inalienable right for every person.



In Madison's vision, religious freedom is an inalienable right that must be protected for people of all faiths and none, including the smallest minorities and least popular beliefs. Commitment to the cause of conscience means little unless government takes seriously all claims of conscience – and then works to provide accommodations whenever possible.

Madison was convinced that separating church from state and protecting the right of all people to follow the dictates of conscience was an arrangement in freedom that would endure for the ages. After enacting the Act for Establishing Religious Freedom in 1786, Madison wrote to Jefferson in Paris: "I flatter myself that with this statute we have in this country extinguished forever the ambitious hope of making laws for the human mind."

Madison was, to put it mildly, overly optimistic. The United States did not live up to the full promise of religious freedom in the 18th century — and we have struggled to do so ever since, as Native Americans, African Americans, Catholics, Jews, Mormons, Jehovah's Witnesses and now Muslims can attest.

Nevertheless, 225 years after the ratification of the First Amendment, the religious liberty clauses still stand as a barrier to those on one extreme who would reimpose their religion on others and those on the other extreme who would banish religion from the public square altogether.

At a time when division and distrust poison our body politic, can we overcome the ignorance and contention surrounding the First Amendment? Can we fulfill the Madisonian ideal by reaffirming liberty of conscience for all people, including those with whom we deeply disagree?

We must.

Charles C. Haynes, Ph.D., is vice president of the Newseum Institute, founding director of the Religious Freedom Center of the Newseum Institute, and senior scholar at the First Amendment Center. His column, "Inside the First Amendment," appears in newspapers nationwide, and he is author or co-author of six books, including "First Freedoms: A Documentary History of First Amendment Rights in America" (2006) and "Religion in American Public Life: Living with Our Deepest Differences" (2001). He is a founding board member of Character.org (http://character.org), serves on the steering committee of the Campaign for the Civic Mission of Schools, and chairs the Committee on Religious Liberty.

The First Amendment works — and will, if we still have it

By Gene Policinski

Our First Amendment freedoms will work — if we still have them around to use.

Those five freedoms — religion, speech, press, assembly and petition — have been challenged at various times in our nation's history, as many would say they are today. But the very freedoms themselves provide the means and mechanisms for our society to self-correct those challenges, perhaps a main reason why the First Amendment has endured, unchanged, since Dec. 15, 1791.

Case in point: The tragic mass shooting in Orlando, Florida, on June 12 was followed by a burst of anti-Islamic rhetoric across the country after the killer declared allegiance to ISIS. The speech, however hateful, generally was protected by the First Amendment.

But in turn, those attacks were followed by pushback in the other direction. Muslim leaders decried the use of their faith to justify hatred of the United States or homophobic terrorism. Opposition was ramped up to the idea of increased surveillance of Muslims in America and now-President-elect Donald Trump's suggestion for a temporary ban on Muslims entering the United States.

In two rounds of national polling in the Newseum Institute's annual State of the First Amendment survey, support for First Amendment protection for "fringe or extreme faiths" actually increased after the Orlando attack, compared with sampling done in May.

The number of people who said First Amendment protection does not extend to such faiths dropped from 29 to 22 percent. In both surveys, just over 1,000 adults were sampled by telephone, and the margin of error in the surveys was plus or minus 3.2 percentage points.

The First Amendment is predicated on the notion that citizens who are able to freely debate — without government censorship or direction — will exchange views, sometimes strongly and on controversial subjects, but eventually find common ground.

Of course, that kind of vigorous and robust exchange in the marketplace only can happen if there is a "marketplace" — freedom for all to speak — and a willingness to join with others in serious discussion, debate and discourse that has a goal of improving life for us all.

Here's where the survey results turn ominous: Nearly four in 10 of those questioned in the 2016 State of the First Amendment survey, which was released July 4, could not name unaided a single freedom in the First Amendment.

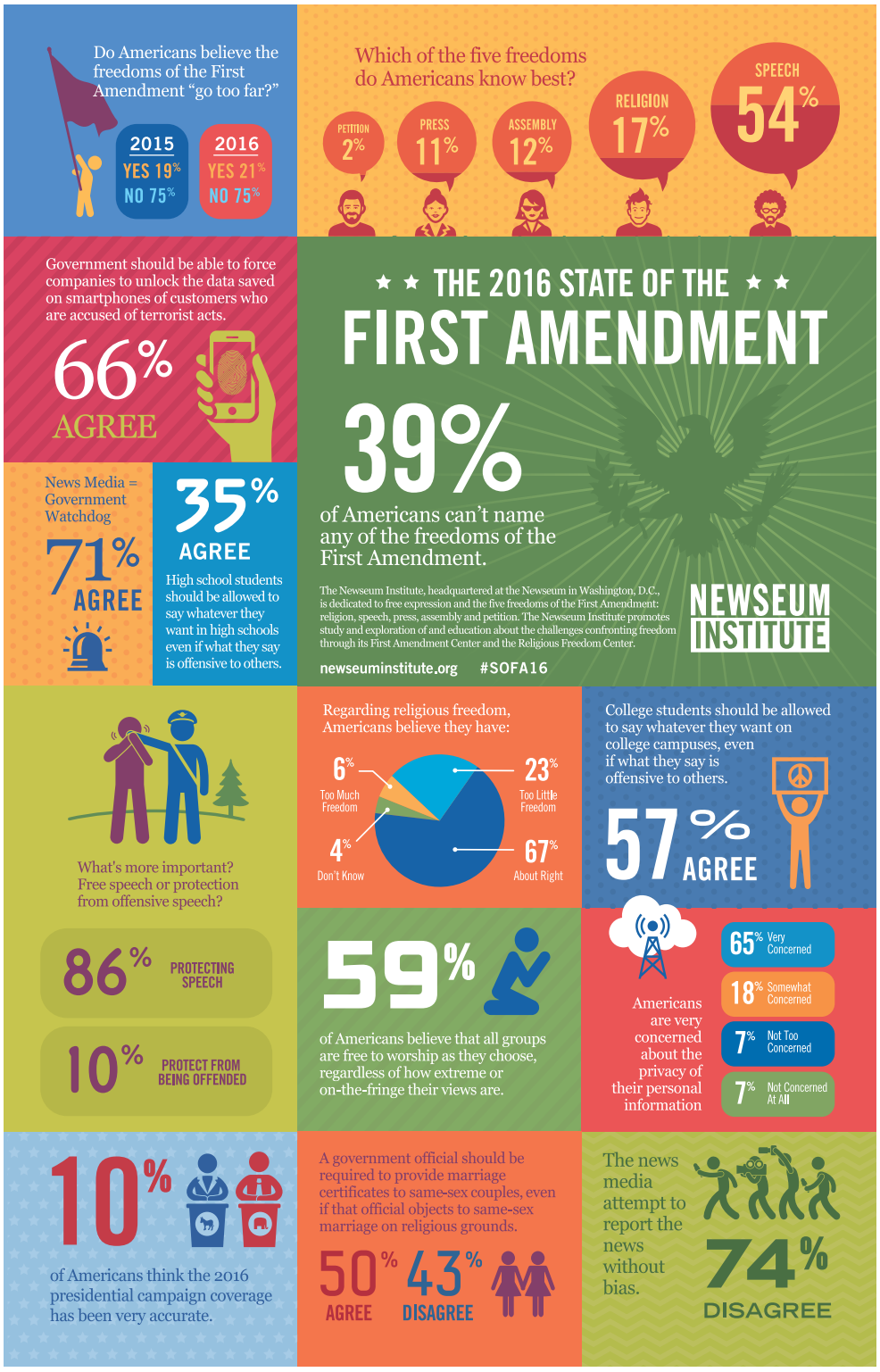
Perhaps not identifying by name even one of the five freedoms is not the same as not knowing you have those core freedoms. But neither does the result build confidence that, as a nation, we have a deep understanding of what distinguishes our nation among all others and is so fundamental to the unique American experience of self-governance.

We have thrived as a nation with a social order and a government structure in which the exchange of views is a key to solving problems. The nation's architects had a confidence and optimism that such exchanges in the so-called "marketplace of ideas" would ultimately work for the public good.

What would those founders think of a society in which so many seem to favor the electronic versions of divided "marketplaces" that permit only that speech of which you already approve or that confirms your existing views?

Or worse yet, a society in which the five freedoms are used as weapons — from cyberbullying to mass Twitter attacks to deliberate distribution of "fake news" — to figuratively set ablaze or tear down an opponent's stand?

As a nation, we cannot abandon the values of our First Amendment freedoms that protect religious liberty, that defend free expression at its widest definition and that provide a right to unpopular dissent, without fundamentally changing the character of our nation.



As a people, we must stand in defense of the values set out in the First Amendment and Bill of Rights some 225 years ago, even as we face one of the deepest public divides on a range of issues in our history.

And we must revisit and renew our faith in a concept expressed in 1664 by English poet and scholar John Milton and later woven deep into the institutional fabric of America: that in a battle between truth and falsehood, "who ever knew truth put to the worse in a free and open encounter?"

Gene Policinski is chief operating officer of the Newseum Institute, which includes the Religious Freedom Center, the First Amendment Center and NewseumED. One of the founding editors of USA Today, he is a veteran multimedia journalist, hosting online audio and video programs at the Newseum Institute, and a frequent speaker and author on First Amendment issues.

A short history of the Bill of Rights

By Julie Silverbrook

A central part of my work as executive director of The Constitutional Sources Project (ConSource) is educating American citizens about the United States Constitution.

When I speak to citizens around the country about the Constitution, and ask them what they view as the most important part of that document, they inevitably cite a provision of the Bill of Rights.

Why is this so? It's likely because the Bill of Rights articulates our national values and ideals, including: the guarantee of freedom of speech, religion and the press; the right to assemble; the promise of a speedy trial by jury; the protection against double jeopardy and unreasonable search and seizure; and the recognition of the right to bear arms. The Bill of Rights strikes a personal chord, the way the Declaration of Independence does, and the structural provisions of the Constitution do not (at least, not for most).

And, yet, too few Americans know the history of our Bill of Rights. In honor of the 225th anniversary of the ratification of the Bill of Rights, I'm providing here a brief history of the document.

On Sept. 12, 1787, five days prior to the end of what came to be known as the Constitutional Convention, George Mason from Virginia proposed that the delegates preface the new Constitution with a Bill of Rights.

Mason's proposal was rejected almost unanimously. The prevailing view, as expressed by Roger Sherman of Connecticut, was that "The State Declarations of Rights are not repealed by this Constitution; and being in force are sufficient."

Alexander Hamilton in Federalist 81 explained, "I go further, and affirm that bills of rights, in the sense and in the extent in which they are contended for, are not only unnecessary in the proposed constitution, but would even be dangerous. They would contain various exceptions to powers which are not granted; and on this very account, would afford a colourable pretext to claim more than were granted. For why declare that things shall not be done which there is no power to do?" James Madison described bills of rights as "parchment barriers."

And so the Constitution, signed on Sept. 17, 1787, was submitted to the states for ratification with no Bill of Rights.

But that was clearly not the end of the story.

Mason went on to list the lack of a bill of rights as one of his chief objections to the new Constitution. Thomas Jefferson, writing to James Madison from Paris, said that "a bill of rights is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse, or rest on inference."

"When I speak to citizens around the country about the Constitution, and ask them what they view as the most important part of that document, they inevitably cite a provision of the Bill of Rights. Why is this so? It's likely because the Bill of Rights articulates our national values and ideals .... "

Ratification of the new Constitution was not guaranteed. And, while the bill of rights became a rallying call for Antifederalists interested in limiting the reach of the new federal government, there was a more clamorous group who favored amendments that would alter the structure and powers of the new federal government.

For Federalists like James Madison, the latter was unacceptable. Madison understood that the Antifederalists wanted government authority to reside with the state governments, believing that the people's liberties would be best protected under a decentralized system. It's important to understand Madison's decision to draft and push Congress to pass the Bill of Rights in the context of this struggle: Madison's amendments were intended, in the words of historian Carol Berkin, "to weaken, if not crush, the continuing opposition to the new federal government [that Madison] was instrumental in creating."

That opposition was real. The ratifying conventions in New York, Virginia, North Carolina, South Carolina, Massachusetts, New Hampshire and Rhode Island all proposed amendments to the Constitution for the First Congress to consider after the Constitution was ratified. The amendments proposed by Massachusetts and, to some extent, New Hampshire focused on altering the structure and powers of the government and only incidentally included or mentioned the need for a bill of rights. Virginia, New York, North Carolina and later Rhode Island, on the other hand, each proposed a prefatory bill of rights, separate from and prior to any proposed structural amendments to the Constitution.

Once the Constitution was adopted, newly elected Representative James Madison urged the First Congress to reject amendments that would change the structure of the Constitution, and instead adopt a bill of rights as suggested by Virginia and New York. By 1788, Madison had come to see the broader value of a Bill of Rights. He wrote to Thomas Jefferson, saying that "the political truths declared in that solemn manner acquire by degrees the character of fundamental maxims of free Government, and as they become incorporated with the national sentiment, counteract the impulses of interest and passion."

Madison proposed to insert his proposed amendments into the text of the Constitution itself. In his first proposal, he intended to expand the Preamble to include principles drawn from the Declaration of Independence. In his second proposal, he moved to change Article I, Section 2, Clause 3, to revise the rules by which Congress could expand its membership. His third proposal, which was to be inserted in Article I, Section 6, Clause 1, was to restrict when members of Congress could vote to raise their salaries. He also recommended that the representatives insert into Article I, Section 9 of the Constitution specific rights limiting the powers of Congress. Seven of these limitations became part of the 10 amendments ratified by the state legislatures in 1791.

Of that list, the language Madison viewed as, perhaps, the most important was this: "The exceptions here or elsewhere in the constitution, made in favor of particular rights, shall not be so construed as to diminish the just importance of other rights retained by the people; or as to enlarge the powers delegated by the constitution; but either as actual limitations of such powers, or as inserted merely for greater caution."

Madison also suggested the inclusion of this language in Article I, Section 10: "No State shall violate the equal right of conscience, freedom of the press, or trial by jury." In addition, he proposed modifications to Article 3, including a guarantee of trials by juries for suits at common law. He also drafted a new Article 7, reading: "The powers delegated by this constitution, and appropriated to the departments to which they are respectively distributed: so that the legislative department shall never exercise the powers vested in the executive or judicial; nor the executive exercise the powers vested in the legislative or judicial; nor the judicial exercise the powers vested in the legislative or executive departments."

Madison's attempt to incorporate the Bill of Rights into the main body of the Constitution was ultimately rejected by Congress. The House, instead, voted on 17 supplements to the Constitution and sent them to the Senate for consideration. The Senate, in turn, reduced the number to 12, excluding in the process Madison's restrictions on state government. A conference committee of the House and Senate reconciled the two versions and submitted 12 amendments to the states for ratification.

On December 15, 1791, Virginia became the 10th of 14 states to approve 10 of the 12 amendments, and thus the 10 amendments that came to be known as our Bill of Rights were ratified. Two hundred and two years later, the second of the list of 12 amendments submitted to the states — regarding congressional compensation — was ratified and became the 27th Amendment to the United States Constitution. The first proposed amendment – regarding congressional apportionment — was never ratified.

You can explore the legislative history of the Bill of Rights at www.ConSource.org.

Julie Silverbrook is executive director of The Constitutional Sources Project (ConSource.org), a nonprofit organization devoted to increasing understanding, facilitating research, and encouraging discussion of the U.S. Constitution by connecting individuals with the documentary history of its creation, ratification and amendment. Julie holds a J.D. from William & Mary Law School. In 2015, she and venture capitalist Chuck Stetson founded the National Constitutional Literacy Campaign.

National Archives' celebration of the Bill of Rights' 225th anniversary

By National Archives

As the permanent home of the Bill of Rights, no institution is better poised to celebrate the 225th anniversary of this extraordinary document than the National Archives. Doing so in grand scale in 2016 and 2017, the Archives is undertaking a groundbreaking national initiative to explore the power of the Bill of Rights and our enduring system of government through local and national exhibits for adults and children, a symposium on the current state of individual rights, and educational efforts in Washington, D.C., and around the country.

A first for the Archives, this unified platform of public programming and outreach will engage every possible audience in the story of "Amending America," featuring digital, exhibition, educational and programmatic elements.

A father explains the Bill of Rights to his sons during a March 2016 visit to the National Archives in Washington, DC. Image by Jeff Reed, courtesy of National Archives and Records Administration.

The "Amending America" exhibit

Between March 2016 and September 2017, nearly a million visitors will have the chance to experience "Amending America," a special exhibit at the National Archives in Washington, D.C., which is free and open to the public.

On view in the museum's Lawrence F. O'Brien Gallery, the exhibit features original documents from the National Archives that highlight the story of how we have amended, or attempted to amend, our Constitution in order to form a more perfect union.

Through four different themes, the exhibit explores the more than 11,000 proposals presented in Congress to amend the Constitution, as well as the impact the 27 ratified amendments have had on our daily lives. Topics include individual rights, the power and structure of the Federal Government, and the amending process.

"National Conversations"

In addition to the Washington, D.C., exhibition, the National Archives will undertake a unique coordinated effort to ensure that people across the country have access to the records and discussions that surround the Bill of Rights and the history of our Constitutional amendments.

The first "National Conversation," held in Atlanta, focused on civil rights and justice and featured a Q&A between former President Jimmy Carter and Derreck Kayongo, CEO of the National Center for Civil and Human Rights.

The second "National Conversation," held in Chicago, focused on the challenges to and future of civil and human rights for the LGBTQ community and featured a keynote by noted author and poet Richard Blanco.

The third "National Conversation," held in New York, focused on women's rights, gender equality and advocacy, and featured panel discussions and remarks by national figures, including Rep. Jerrold Nadler, New York Democrat; New York City Council Speaker Melissa Mark-Viverito; and award-winning broadcast anchor and CEO of Starfish Media Group Soledad O'Brien.

The fourth "National Conversation," held in Los Angeles, focused on immigration, access and barriers, and featured a discussion between Julissa Arce, activist and author of "My (Underground) American Dream," and Jeff Yang, author and cultural critic.

The next event on "Education Access and Equity" will be held Feb. 1, at the George W. Bush Library and Presidential Museum, Dallas, Texas.

The series will culminate in Washington, D.C., where the Archives will host a multiday event with major political and cultural leaders. The broad initiative will be unified through online platforms and live-streaming opportunities, which in turn offer platforms for national social media engagement.

Presidential libraries, traveling and classroom pop-up exhibits

A companion traveling exhibit, "Amending America: The Bill of Rights," is now up at the Houston Museum of Natural Science and will move to the Sixth Floor Museum at Dealey Plaza in Dallas in January.

The exhibit will travel to numerous locations where institutions will have the opportunity to bring the content of "Amending America" to their communities.

Like the traveling exhibit, classroom pop-up displays will present key information about the Bill of Rights and Constitutional amendments. In addition to schools, libraries and community centers will be places to display the pop-up exhibit.

Exhibits at our Presidential Libraries carry through the theme. Earlier this year the Jimmy Carter Library and Museum in Atlanta hosted "The Continual Struggle: The American Freedom Movement and the Seeds of Social Change," an exhibit of artwork inspired by the civil rights movement. Through the end of 2017, visitors to the Harry S. Truman Library and Museum in Independence, Missouri, can see "A More Perfect Union: How Critical Presidential Elections Shaped the Constitution."

Education and public programs

To more deeply engage the public of all ages, the Archives will accompany each of the preceding elements with an array of educational and programming efforts. In addition to highlighting "Amending America" through current initiatives — such as DocsTeach.org, student and teacher workshops, themed Family Days, and other interactive learning experiences in Washington, D.C. — the Archives will greatly expand its offerings by hosting such events at regional facilities and partner institutions nationally, including Kansas City, Dallas, New York City, Atlanta and Los Angeles.

The Archives will also offer a diverse series of free public programs to further expand the audience's understanding of the different themes addressed in "Amending America," as well as highlight additional topics not featured in the exhibit. These programs include lectures, panel discussions, film screenings and webcasts from the William G. McGowan Theater at the National Archives Museum in Washington, D.C.

The National Archives and Records Administration protects and preserves the nation's most important legal and historical records, including the Bill of Rights, Declaration of Independence and the Constitution. To learn more about exhibits and events highlighting the Bill of Rights, visit their website at archives.gov/amending-america/

Military veterans visit the Rotunda of the National Archives in 2015, where they can view the original Declaration of Independence, U.S. Constitution, and Bill of Rights. Image courtesy of National Archives and Records Administration.

Madison and the 'counterbalancing of human interests'

By Jonathan R. Alger

As the president of the public university named for the man who drafted the Bill of Rights and as a lawyer, I have often witnessed tensions as colleges and universities struggle to balance rights of free expression with equality of opportunity and freedom from discrimination. This balancing act is messy, complicated and emblematic of a struggle that James Madison and the other Founders addressed head-on: How do we ensure the rights of a diverse citizenry while maintaining conditions that would bind together an evolving population into a nation with a collective sense of civic purpose?

Often, debates on campuses and in society regarding hot-button topics related to race, gender, religion, sexual orientation, etc., have degenerated from respectful civil discourse into shouting matches, personal attacks and even violence. We can — and must — strive to do better to preserve and enhance this grand experiment in self-governance put into place over two centuries ago.

As we celebrate the 225th anniversary of the Bill of Rights, we need to remind ourselves of how this can happen.

First, we should look to history and recognize that this collision of rights threatening the "social contract" is not new.

The English philosopher Thomas Hobbes wrote in 1651 that in the pure state of nature, human life would be "solitary, nasty, brutish and short." That's because a pure state of nature would lack political order; everyone would have a right to everything. We'd be in a constant state of a "war of all against all."

By signing on to the social contract, each of us gains security in exchange for subjecting ourselves to some degree of political authority. Hobbes might say that we accept a set of rules limiting *our* behavior in exchange for protection by the same set of rules governing *others'* behavior.

President Madison saw the need for a political structure that would allow creative tensions among various factions to be given voice, test one another, and compete and coexist within a set of boundaries. A year before he rose to introduce the Bill of Rights, Madison wrote in 1788, "If men were angels, no government would be necessary." Madison's political philosophy was thus rooted in a clear-eyed assessment of human nature, and a recognition that we are all fallible.

In 1787, Madison wrote in Federalist No. 10 that the essence of the new government proposed in the Constitution would be based on counterbalancing human interests. He believed that the more liberty a government afforded its citizens, the more likely competing factions would keep any one group from dominating. Fundamentally, the engine of governance envisioned by Madison, and written into the Bill of Rights and the Constitution, celebrated human diversity as a political virtue.

As frustrating as it might seem at times, the underlying premise of Madison's approach was that competing opinions are, in fact, a civic good. No matter how strongly we feel that the other side is politically or socially wrong, *we actually need that other side,* according to Madison's conceptual framework for governing.

No matter where we are on the political spectrum, we can reinforce our constitutional system by respecting one another enough to admit that we need, and benefit from, people who have different opinions, backgrounds and beliefs.

We can avoid a "solitary, nasty, brutish and short" future by focusing not only on our rights, but also on the responsibilities that go along with those rights. For example, our rights of free speech correspond with a responsibility to accept rights of opposing factions to hold their viewpoints. In higher education, we can model this balancing act with vigorous debates in which facts, evidence and information are shared — and active listening and respect are practiced and valued.

The rules of engagement that make higher education and our system of government function optimally are not easy. They can't all be defined precisely or enforced like statutes — such is the price we pay for the freedoms we enjoy. But the best way for us to honor the Bill of Rights may be to remember the balance and interplay between individual rights and the needs of the community. Madison embodied that vision in his life's work, and it remains the true calling of all citizens today.

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Jonathan R. Alger, J.D., is the sixth president of James Madison University, where he focuses his efforts on making JMU the national model for the engaged university. Prior to his tenure at JMU, Mr. Alger served as senior vice president and general counsel at Rutgers University and as assistant general counsel at the University of Michigan, where he played a key role in Michigan's two landmark Supreme Court cases on diversity and admissions. He has advised universities nationwide on how to build and sustain diversity initiatives and programs. Mr. Alger earned his juris doctorate with honors from Harvard Law School and his bachelor of arts with high honors from Swarthmore College. For more information, contact Bill Wyatt at 540-568-4908 or wyattwj@jmu.edu.

There is freedom in compromise

By C. Douglas Smith

By the closing gavel of America's first Congress, a new representative government of the people had made the dreams of the Constitution's drafters real, enshrining the first rights of conscience, petition, privacy and the rule of law into a Bill of Rights.

American lawmakers adopted the first 10 Amendments all at once, in 1791, culled from more than 200 suggested changes during the state ratification debates over the previous two years. This was Congress' first contract with America, which is to say our first contract with ourselves. James Madison took the responsibility of drafting the words, having already taken the responsibility of assembling the pieces, and he wrote to clarify the people's guaranteed rights and explain the limits to the government's power, established for the protection of its citizens.

Looking back from today, it's still a monumental moment, as Yale's Akhil Amar has said a "hinge-point" in human history, between tyranny and democracy. But there has always been a gap between rights promised and rights delivered in America. The Founders failed to confront the institution of slavery. The enfranchisement of women took more than a century to get right, and even today we still have pay inequality. The history of Native Americans is littered with broken contracts and abuses. And a

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Saving the Bill of Rights through education

By Lewis F. Larsen

I have been wondering what James Madison, the namesake of the James Madison Memorial Fellowship Foundation, would think about the 2016 presidential contest. Madison, commonly acknowledged as the Father of the Bill of Rights, did not shy away from political controversy, but even he may have been chagrined at the tone and tenor of our recent election.

The contentious election season left many Americans stunned, both by its results and by its aftermath. The media, exercising its First Amendment rights, told us for months that the election outcome was certain — and the final vote surprised us all. In the days leading up to and following the election, individuals across the political spectrum felt threatened as they expressed their political opinions. There was angry name-calling. Some friendships were broken. Attempts to disrupt political events and peaceful protests occurred throughout the country.

Freedom of speech, freedom to assemble peaceably, and freedom of religious thought and practice have all been challenged on our nation's streets, campuses, political rallies, and through some social media posts.

The nation seems utterly divided. How do we heal a public that has been wounded by angry and verbal insults? How do our cities heal when their downtowns have been overrun by people voicing their anger through violent protests? How do we go forward as a nation if the protections of our Bill of Rights are continually ignored, challenged and misunderstood?

As calmer heads prevail in the days to come, we will certainly witness the lawful and peaceful transition of power, but probably not without protest — both lawful and otherwise. The challenges to the Bill of Rights, the most significant protection for individual citizens against government excess, will likely continue.

James Madison himself initially rejected the call to add a bill of rights to the Constitution. Only when challenged by James Monroe in the heat of a congressional campaign about his views on religious liberty did Madison assert his commitment to a bill of rights. On winning his congressional seat, Madison went to work proving Monroe wrong by drafting and securing the successful passage of the Bill of Rights in Congress.

Committed to the values of limited government and individual liberty, Madison ultimately advocated for a bill of rights to "fortify the rights of the people against the encroachments of government."

There is something profoundly powerful when citizens understand their civic responsibilities and exercise their rights as they fulfill those responsibilities. As Madison said, "Knowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power which knowledge gives." Only citizens with knowledge and understanding of our nation's constitutional principles can preserve our liberty.

"Knowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power which knowledge gives." Only citizens with knowledge and understanding of our nation's constitutional principles can preserve our liberty.

Established by Congress in 1986, the James Madison Memorial Fellowship Foundation was created to strengthen the teaching of the history and the principles of the Constitution in America's secondary schools.

Today, nearly 1,500 James Madison Fellows, including U.S. Secretary of Education John B. King, Jr. (a New Jersey Fellow from the Class of 1995) and National Council for the Social Studies President Peggy Jackson (a New Mexico Fellow from the Class of 2002), are helping students and colleagues better understand and appreciate the protections of the Bill of Rights.

Foundation Trustees Sen. John Cornyn, Texas Republican, and Sen. Benjamin L. Cardin, Maryland Democrat, are staunch advocates of improved and expanded civic education. As Mr. Cornyn notes, "There is a fundamental need to teach young people, who will be tomorrow's citizens, knowledge and understanding of the basic principles of limited government and constitutional liberty on which individual freedom and public good depend."

But James Madison Fellows cannot alone provide the requisite knowledge and skills for our citizenry. The cure for this social ill must be a renewed national emphasis on civic education in our local school districts, encouraged by state and national governments. A handful of nonprofits, supported by just a few philanthropic sources, emphasize improved civic education as their primary mission, but much more is required if we are going to reverse the decline in civic knowledge.

In 1822, James Madison wondered, "What spectacle can be more edifying or more seasonable, than that of Liberty and Learning, each leaning on the other for their mutual and surest support?"

If our generation needs the Bill of Rights to protect our liberties, future generations will need the Bill of Rights even more. Only a renewed determination to educate our citizens about the Bill of Rights can provide the much-needed support for our freedoms.

Lewis F. Larsen is president of the James Madison Memorial Fellowship Foundation in Alexandria, Virginia. (www.jamesmadison.gov)

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a quick glance at the newspapers will confirm that the struggles to right these wrongs continues today.

What we can say proudly, as a nation, is the adoption of the Bill of Rights established the first self-improving system that protects essential human freedoms, and it also instigated the astonishing rise of modern democracies throughout the globe.

Freedom House notes there was not a single liberal democracy with universal suffrage at the turn of the 20th century, including our own. But by 2000, 120 of the world's 192 nations had adopted a form of government with universal suffrage. The number continues to grow (123 today) because humans naturally want freedom.

In our work at Montpelier, we educate people whose work requires a comprehensive understanding of the Constitution and our system of government: teachers, law enforcement officers and public officials. I witness firsthand how the issues of our time create space for new protections and challenges of our rights, and how the law evolves over time to guarantee our freedom. Nothing is ever perfect, but I continue to believe that a more perfect union is attainable.

I know that many people feel pessimism about the state of global and national politics. I am not one of them, though I am discouraged principally by our country's low voter turnouts and disillusionment with government. Government and politicians, the members of our first Congress, passed legislation that has granted us our freedoms. They didn't do it without compromising, and they didn't do it behind closed doors. They felt a tremendous urgency to get something accomplished they knew would define the nation's history.

Madison said, "But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary."

Madison and the rest of the Framers, recognizing that humans usually act in their own self-interest, designed a government capable of protecting ourselves from ourselves by creating gridlock when the majority and the minorities can't agree. In other words, our system works best when there is a productive gravity in the middle of the two main parties, not at the poles of each. Government wasn't designed for politics; it was the other way around.

Now that the U.S. national elections have been resolved, we should stop feigning surprise that there are political and ideological differences between our two major parties. American has been divided many times before, and the next cycle of division will begin the day after the inauguration. But we need our lawmakers to recognize problems, articulate solutions and pursue compromises.

As Americans, we need to trust our system of government, listen to each other and rebuild the gravity in our center by understanding what it is we want. We have many more interests in common than the current state of our politics would suggest. If the next Congress is looking for an agenda to pursue, they should start there.

C. Douglas Smith is vice president for the Robert H. Smith Center for the Constitution at James Madison's Montpelier.

Madison's humility: The Bill of Rights unifies U.S.

By Dr. David J. Bobb

Before James Madison was for the Bill of Rights, he was against it.

Today, after the 2016 election, and in the midst of fierce debates over fake news, free speech and the purpose of government, we can still learn from Madison's humility.

Before the United States came to have its own Constitution, many of the state constitutions had brief, bold statements of the rights of each individual. Governments were limited so that opportunity was not.

Someone might try to create a constitution "in his closet or in his imagination," Madison mused. But unless the constitution starts with human nature, it is destined for failure. Constitutions are made for people, and people are imperfect. Still, despite their flaws, human beings are capable of self-government. His groundbreaking political theory was that people could be trusted with self-government — if the right structural protections were put into place.

Madison argued that a good constitution should set the framework for freedom. Good government should never impede the progress of civil society. It must be strong in the protecting the rights of citizens. If it goes beyond that end, it endangers everyone.

Madison argued that a good constitution should set the framework for freedom. Good government should never impede the progress of civil society. It must be strong in the protecting the rights of citizens. If it goes beyond that end, it endangers everyone.

The main reason Madison opposed including a list of rights in the Constitution was philosophical. Governments don't grant natural, or human, rights. Rather, they protect them. Why list those rights and risk people thinking that government gave them the rights that are theirs on account of the "laws of Nature and of Nature's God"?

Only when it became clear in Madison's mind that the Constitution would not advance out of the Philadelphia Convention and be ratified by the states without inclusion of a statement of rights, Madison bowed to the political reality and rolled up his sleeves. As a member of the first Congress, Madison culled the list of rights from over 200 down to a more manageable number, after which various congressional committees whittled it further to 12, and the state ratification process to the final 10.

Madison's brilliance shined most brightly when he didn't get his way. On the losing end of nearly two-thirds of the key votes in the Constitutional Convention, Madison was humble enough to keep plugging away, despite the defeats. He knew that the cause of freedom was bigger than himself.

The same held true in the debate over the Bill of Rights, as Madison set aside his initial reservations and saw it as a way of educating citizens. If Americans reflected on the rights they had, and understood that the Ninth and 10th Amendments meant that the people and the states retained all rights and powers not specifically cited, there would be a good chance for more meaningful national unity.

This idea of civic education was novel. It said that while we'll never achieve national unanimity about every policy (except by eliminating liberty), to function well as a people we must affirm a common purpose and learn better how to negotiate our differences.

Madison came to believe that the Bill of Rights could be a rallying point for citizens otherwise divided into a multitude of factions.

In the aftermath of the bitter 2016 election, it's worth recalling Madison's example. Despite his eventual support of the Bill of Rights, the "Father of the Constitution" never gave up his worry that that document, and the first 10 Amendments, are but "parchment barriers" if the people do not know and defend them.

The Bill of Rights may be 225 years old, but it's still good as new.

David J. Bobb, Ph.D., is president of the Bill of Rights Institute, and author of "Humility: An Unlikely Biography of America's Greatest Virtue."

Why the First Amendment is 'first in importance'

By Dr. Owen Anderson

The First Amendment is first, not simply because it falls at the beginning of a list of amendments, but because it articulates the first freedom and the nature of that freedom. It guarantees the freedom essential to humans as rational beings.

By connecting the freedom of religion with the freedom of speech, the First Amendment gets to the essence of what it is to be a human — for it is self-evident that we are thinking beings. We use reason to form thoughts, and we think in order to make sense of, or give meaning to, our experiences in light of our basic beliefs.

Our most basic beliefs answer the most basic questions that can logically be asked. These include beliefs about authority, existence and value. Because of how these beliefs shape the rest of our worldview, and because of their relationship to our search for meaning, they are identified as our religious beliefs.

To be concerned for thinking, reason and meaning is to be concerned for common ground in human civilization.

The historical circumstances of the First Amendment might include the background of the European Wars of Religion and the role of the Church of England in the British government. However, philosophically, it is about what is needed for humans as rational beings to prosper.

After the Peace of Westphalia in 1648 ended the religious wars, an increased but still limited freedom of religion was enforced.

Today, the First Amendment protects against coercion in matters of religious belief and practice. This is because coercion is contrary to the nature of belief and thought.

Although a person can in some measure be coerced into outward conformity, it is impossible to impose a change of belief through external laws. At best, it makes a person agree until the threat of force is removed.

In beliefs about the basic questions, any attempt to impose agreement without understanding is contrary to the nature of thought. There is a natural liberty of thought that is, in the words of the Declaration, inalienable.

This is why only rational beings can have freedom of thought and action. The freedom to make choices only comes from thinking about what is valuable and making a judgment. This kind of rational freedom is found when a person understands and acts to achieve some goal. In this sense, the First Amendment protects the essence of human nature as thinking beings, and any attempt to limit this freedom is an attack on human dignity.

The freedom of thought and the search for meaning are essential to the freedom of speech. Our religious beliefs are about what is real, and what is real is public. Similarly, speech is public as the expression of beliefs about what is real and valuable. Any attempt to limit speech is also an attempt to limit thought.

Our freedom to think and pursue meaning involves our need to publicly deliberate about our beliefs and especially in those areas where we remain divided. And this is why the First Amendment remains the first in importance.

We continue to be divided and have disagreements about our most basic beliefs. This Amendment not only gives us the freedom to believe and practice our particular religions, but also the freedom to discuss and debate over these differences. The more we understand the role of basic beliefs in how we interpret experiences, both individually and collectively, the more we will see why agreement is important. It is as thinking beings that we can begin to increasingly realize the goal of "*E pluribus unum.*"

Owen Anderson, Ph.D., is an associate professor in the New College at Arizona State University, where he teaches courses in philosophy and religious studies. He has been a fellow of the James Madison Program at Princeton University and is the author of "The Declaration of Independence and God: Self-Evident Truths in American Law" (Cambridge University Press, 2015).

Building the wall: Jefferson and the First Amendment's religion clauses

By Dr. Barbara A. Perry

Just up the mountain from where I sit at the UVA's Miller Center lies the final resting place of the university's founder, Thomas Jefferson.

The obelisk that he designed to mark his gravesite at Monticello lists the three accomplishments of which he was proudest: authoring the Declaration of Independence, establishing the University of Virginia, and drafting the Virginia Statute for Religious Freedom.

His collaboration with neighbor and friend, James Madison, to implement the religious freedom law in 1786 provided part of the foundation for the First Amendment's guarantees that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

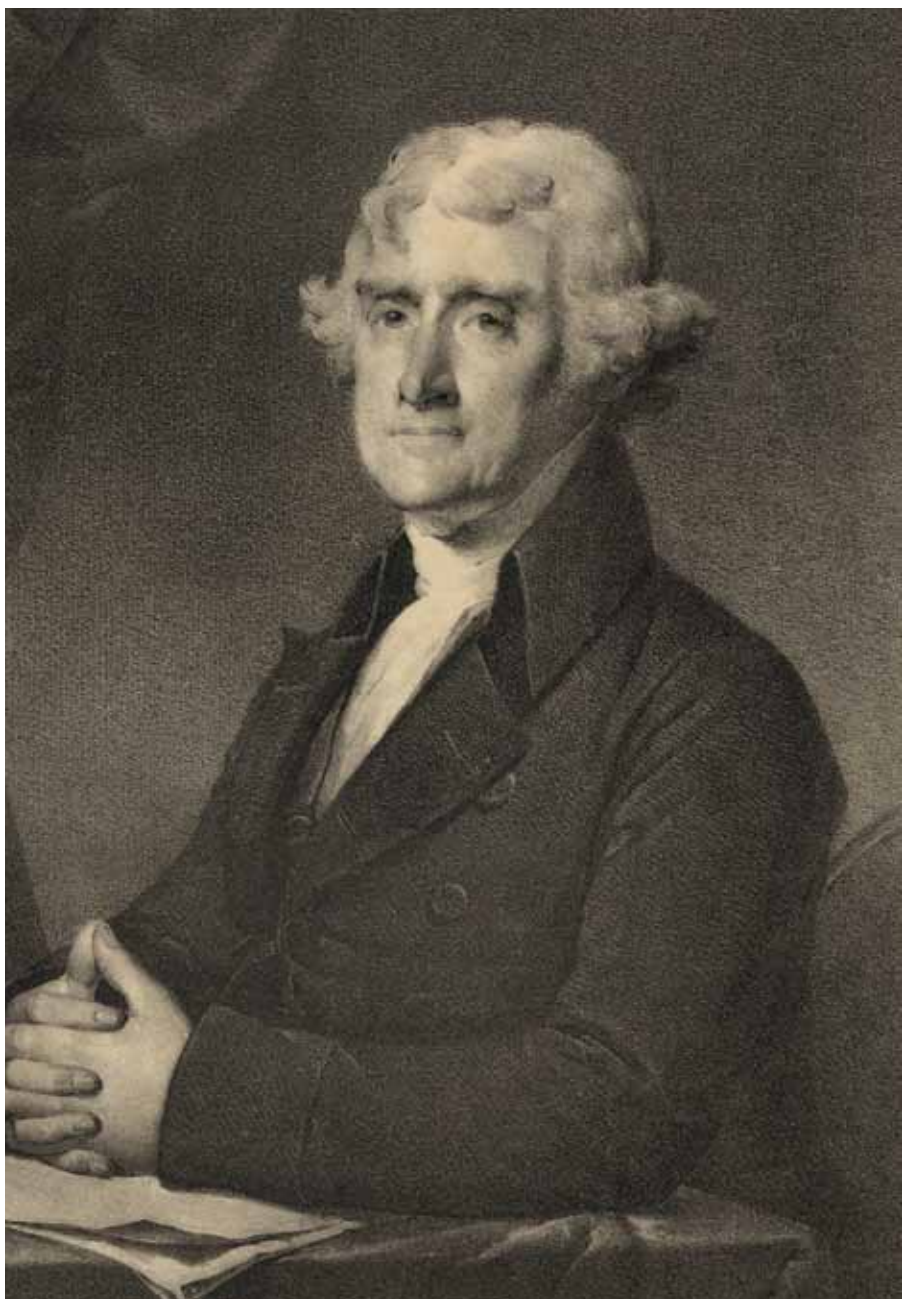
Although it was Madison, the Father of the Constitution, who also penned the first 10 Amendments that we know as the Bill of Rights, Jefferson's 1802 interpretation of the First Amendment's religion clauses has had a lasting impact on church-state issues.

When the Danbury (Connecticut) Baptist Association requested that President Jefferson declare a day of fasting to reconcile the nation after the particularly acrimonious and divisive 1800 presidential campaign, Jefferson demurred, explaining to the Baptists: "Believing with you that religion is a matter which lies solely between man and his God, that he owes account to none other for this faith or his worship, that the legislative powers of government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should 'make no law respecting an establishment of religion, or prohibiting the free exercise thereof,' thus building a wall of separation between Church and State."

Jefferson's simple metaphor became a mainstay of modern church-state jurisprudence in the 1940s, via President Franklin Roosevelt's first Supreme Court nominee, Justice Hugo Black. FDR cemented the Jefferson image in the American mind by successfully advocating for a monument to him, which FDR proudly dedicated in 1943 on the Tidal Basin in Washington.

Four years later, Black, who shared many of Jefferson's religious and philosophical attitudes, invoked the wall imagery in the 1947 case of Everson v. Board of Education of Ewing (N.J.) Township. Although he upheld New Jersey's reimbursement of bus fare to parents of parochial school students, Black's majority opinion defined his view of church-state separation by applying the Jeffersonian language of his 1802 letter to the Danbury Baptists. "In the words of Jefferson," Black wrote, "the clause against establishment of religion by law was intended to erect a 'wall of separation between church and state.'" Indeed, Jefferson's verbiage, as applied by Justice Black, is probably more familiar to the general public than the First Amendment's actual language.

Although it was Madison, the Father of the Constitution, who also penned the first 10 Amendments that we know as the Bill of Rights, Jefferson's 1802 interpretation of the First Amendment's religion clauses has had a lasting impact on church-state issues.



Jefferson was a master architect of a variety of literal walls. His "Academical Village," as he labeled UVA, is bounded by tall walls, short walls, walls with gates, and serpentine walls. The latter, only one brick thick to save on sparse building materials, are wavy, not straight, in order to ensure strength. Justice Robert Jackson noted that they symbolize a wall of separation between church and state that might be undulating, rather than uniform.

As with all constitutional interpretation, there is no unanimity on the meaning of Madison's First Amendment religion clauses or Jefferson's metaphor. Some justices have followed Black's strict separationism. Others have embraced the opposite view that the wall theory comes dangerously close to violating the Free Exercise clause, and therefore government must accommodate religion, as long as it does not exact support for a state denomination. Landing squarely in the middle are justices who argue for neutrality: the government can neither promote nor inhibit religion and must not become excessively entangled with it.

Near the end of his life, as he wrote his autobiography, Jefferson recalled that the debate over his religious freedom statute proved that "its protection of opinion was meant to be universal." An amendment to the bill was proposed to refer to Jesus Christ as the "holy author of our religion." A majority of Virginia legislators rejected it, proving to Jefferson that "they meant to comprehend within the mantle of its protection the Jew and the Gentile, the Christian and Mahometan, the Hindoo and infidel of every denomination."

Recently, 500 students at Jefferson's university stood and cheered Khizr Khan after he spoke of America's greatness in welcoming him, a Pakistani Muslim, to its shores. On this 225th anniversary of the Bill of Rights, the Jeffersonian heritage of religious freedom, embodied in the First Amendment, endures — an especially important legacy in an increasingly diverse 21st century America.

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George Mason: The Virginia statesman who insisted on a bill of rights

By Scott Stroh

"That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety." — Article 1, Virginia Declaration of Rights

On May 6, 1776, the fifth Virginia Convention assembled in Williamsburg. Delegate George Mason, elected "with some difficulty," remained home suffering from gout. Once recovered, he arrived in Williamsburg on May 17.

Concurrently, the Second Continental Congress continued meeting in Philadelphia and asked the colonies to organize new governments. In response, the Virginia Convention established a committee for this purpose, boasting over 30 members at the start.

Mason received an appointment to this Committee on May 18. Consuming his energy and interests, he soon experienced frustrations with the Committee, which he communicated to Richard Henry Lee, writing, "We are now going upon the most important of all subjects — government: The Committee appointed to prepare a plan is, according to custom, over-charged with useless members.....We shall, in all probability have a thousand ridiculous and impracticable proposals, & of Course, a Plan form'd of hetrogenious, jarring & unintelligible ingredients..."

Mason did not resign himself to this fate and began writing a plan for government and bill of rights independently. He worked quickly and efficiently.

Once complete, Mason's Virginia Declaration of Rights included articles stating that government exists for the common benefit, protection and security of the people, and when found inadequate to this purpose, a majority of the community have a right to reform, alter or abolish it.

Mason went on to articulate the separation of powers, parameters for suffrage and the right to free elections. Other articles included provisions for the due process of law, procedural safeguards for criminal defendants, the right to a speedy trial, the right to trial by jury, protections against excessive bail, protections against self-incrimination, and the protection of property from public use without consent.

Mason continued by expressing that "the freedom of the press is one of the greatest bulwarks of liberty," that "a well regulated militia ... is the proper, natural, and safe defense of a free state," that standing armies in times of peace are dangerous to liberty, and that "all men are equally entitled to the free exercise of religion."

These articles were ratified on June 12, 1776 by the Virginia Constitutional Convention.

"Part of the genius of the Declaration of Rights lay in Mason's ability to combine Enlightenment political philosophy with the English legal tradition to express in scarcely two pages the ideology of the American Revolution," wrote Mason biographer Jeff Broadwater. "In giving legal sanction to popular sovereignty, individual equality, and the right to revolt against an oppressive government, Mason codified basic liberal principles not then recognized in American and English law," he wrote.

In 1787, as one of three delegates to the Constitutional Convention who refused to sign the Constitution, in part because it lacked a bill of rights, Mason was no less committed to the ideas he first expressed in 1776.

Stating that he would "sooner chop off his right hand than put it to the Constitution as it now stands," Mason's work continued after leaving Philadelphia, and he joined Patrick Henry in opposing ratification when Virginia took up the issue in 1788.

Mason faced constant public criticism as a result of his dissent, but his continued advocacy for a bill of rights built momentum for its ultimate adoption — and he lived long enough to see its addition to the Constitution before passing away at Gunston Hall in 1792.

Mason's Virginia Declaration of Rights also became a foundational work for attempts at articulating rights in other countries and at other times in our history. Two pages in length, George Mason's Virginia Declaration of Rights expressed ideas of seminal importance, ideas which proved influential in American history and which remain incredibly relevant today.

As we celebrate the 225th anniversary of the Bill of Rights, I ask you to also remember George Mason and the Virginia Declaration of Rights on its 240th anniversary. A great way to do so is by visiting Gunston Hall.

Scott Stroh is executive director of George Mason's Gunston Hall in Lorton, Virginia. A graduate of Randolph-Macon College and Middle Tennessee State University, he currently serves as an affiliate member of the University of Virginia School of Architecture's Center for Cultural Landscapes, vice president of the Mount Vernon-Lee Chamber of Commerce, and board member of the Mason Neck Citizen's Association and Council for the Virginia Association of Museums. He can be reached at sstroh@gunstonhall.org. You can learn more about Gunston Hall at www.gunstonhall.org.

Patrick Henry and the Bill of Rights

By Mark Couvillon

"*You are not to inquire how your trade may be increased, nor how you are to become a great and powerful people, but how your liberties can be secured; for liberty ought to be the direct end of your government.*" So stated Patrick Henry to the delegates who assembled in Richmond in June 1788 to decide if Virginia should accept or reject the United States Constitution.

Just a few blocks away from where the Ratifying Convention was meeting stood St. John's Church, where, in 1775, Patrick Henry had demanded "Liberty or Death!" Now, 13 years later, the elder statesman saw the same threats to the people's rights under the proposed Constitution as they had faced under King George III.

Believing that the U.S. Constitution contained sufficient checks to protect the rights and privileges of the people, the Federalists, led by James Madison, did not include a bill of rights in the document.

This was unacceptable to Henry, who saw potential abuses of power throughout the proposed Constitution, especially in its "implied" powers. "*The rights of conscience, trial by jury, liberty of the press, all your immunities and franchises, all pretensions to human rights and privileges, are rendered insecure, if not lost by this change in government*," warned the Great Orator.

To counter these threats, Henry moved that amendments be added to the Constitution prior to its adoption and proposed 40 articles that provided for such specific rights as freedom of speech, assembly and religion, as well as the right to keep and bear arms, for no excessive bail or cruel and unusual punishment, and for keeping the jury system "sacred and inviolable."

In order to gain enough votes in favor of ratification, the Federalists countered Henry's measure by agreeing to recommend amendments to Congress after its adoption. The compromise worked. On June 21, 1788, Virginia became the 10th state to ratify the U.S. Constitution.

Not relying on the half-hearted pledge of the Federalists, Patrick Henry led the charge to insure that a bill of rights was added. When the Virginia state legislature convened in the fall of 1788, Henry introduced a resolution to instruct their delegates in Congress to call for a general convention, comprised of all the States, to draw up amendments to the U.S. Constitution.

Knowing Madison's opposition towards amendments, Henry also nominated Richard Henry Lee and William Grayson (two Antifederalists) to the newly formed Senate, to insure a bill of rights would be adopted.

Defeated from a seat in the Senate, Madison was forced to make a campaign pledge to the voters to push for amendments in order to secure his election to the House of Representatives. Believing a second convention would weaken the federal government, Madison stole the thunder from the Antifederalists by agreeing to introduce amendments on the floor of Congress a day before the Virginia resolution calling for a second convention was presented.

Although Henry was pleased to see the basic rights of the people protected, he was chagrined to learn that Madison introduced none of the amendments that he had presented before the Virginia Ratifying Convention, which secured the states from the encroachment of the federal government, including his article forbidding direct taxation by Congress and for placing term limits on the President.

Though Patrick Henry had refused to attend the 1787 Philadelphia Convention, which drew up the Constitution, his role in the formation of the new government cannot be overstated. Aided by his powerful oratory during the Virginia Ratifying Convention, "The Son of Thunder" put that document through the fire — hammering every part of it, testing it for flaws and weaknesses — and, as a result, made the Constitution stronger than before.

And though James Madison is regarded today as the "Father of Bill of Rights," it was Henry, more than any other, who forced him to introduce those revered amendments, which have since become a bulwark against governmental oppression. Without the pressure from Patrick Henry and his party, first in the convention, and then in Congress, it is doubtful if the U.S. would have had a federal bill of rights in its present form.

Historian Mark Couvillon is curator of Red Hill, the Patrick Henry National Memorial, located near Brookneal, Va., which is dedicated to promoting the ideas and philosophy of "The Voice of the Revolution." He is the author of "Patrick Henry's Virginia" (2001) and "The Demosthenes of His Age: Accounts of Patrick Henry's Oratory by His Contemporaries" (2013), and edited the 1872 Edward Fontaine Manuscript on Patrick Henry.

The Free Exercise Clause and the 'positive good' of religion

By Dr. Peter Augustine Lawler

The first words of the Bill of Rights are "Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof."

Those words, the result of a legislative compromise, introduced into our Constitution the idea that religion is a positive good.

It's clear what establishment of religion means: Government privileges one church (or form of institutional religion) over all the others, as in the Church of England. Congress can't do that!

And so it's clear what religion means — an organized body of thought and action. Every American is free to be an observant member of a relational institution where people share the truth about God together. Free exercise is freedom of religion, the freedom to orient one's thought and action around the truth of who each of us as a creature.

Before the addition of the religion clauses of the First Amendment, the Constitution was silent on religion, except to prohibit religious tests for office. God himself was conspicuously absent, and some have even suggested that ours was the first anti-ecclesiastical founding. Religion, in this view, becomes the freedom of the wholly privatized and even isolated conscience, with no social or political significance at all.

But with the Free Exercise Clause, the distinction between state and church — which is part of the distinction between state and society — showed up in our Constitution. The presumption of the Constitution became that each of us is a social and religious being, open to the truth about the God who is not merely a political illusion.

Our Constitution is silent on God because the American forms of theology aren't merely civil theology. And each of us is more than a mere citizen of the United States. Religion is an inviolable limit on both the omnipotence and omnicompetence of the state. Religious freedom is granted not only to particular individuals, but to the church as an organized society with its own authority over the souls of its members.

So when the Supreme Court has interpreted the Free Exercise Clause, one concern has been that individuals are able to live according to their religious convictions without political impediment.

Another concern of the Court, which has been more insistent in recent years in reaction to the intrusive mandates of big government, has been to protect the self-government of institutional religion.

In Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission (2012), the Court unanimously affirmed the "ministerial exception" to generally valid employment laws. Requiring a church, the Court said, "to accept or retain an unwanted minister ... interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs."

A third concern, as Justice Anthony M. Kennedy explained in his concurring opinion in the 2014 Hobby Lobby case, is that free exercise also be understood as "the right to express ... [religious] beliefs and to establish one's religious (or nonreligious) self-definition in the political, civic and economic life of our larger community."

From Justice Kennedy's view, part of the relational autonomy we all share is to bring one's religious self-definition — a fundamental feature of personal significance — to bear in every dimension of the relational life each of us shares with others.

Free exercise doesn't mean that an American citizen can simply exempt himself or herself from a valid law. A Catholic American president, for example, has to enforce the current laws concerning abortion, although he or she can and should deploy all constitutional means available to have them changed.

Before the addition of the religion clauses of the First Amendment, the Constitution was silent on religion, except to prohibit religious tests for office. God himself was conspicuously absent, and some have even suggested that ours was the first anti-ecclesiastical founding.

And a Baptist county clerk has to marry two members of the same sex if he or she wants to remain a clerk.

A fear today is the recently announced right to same-sex marriage will inevitably intrude upon the freedom of the churches to define and organize themselves according to a different (often sacramental) understanding of what marriage. Religious institutions fear they will either have to change to conform to the most recent definitions of "nondiscrimination" or be ostracized from political life under our Constitution and denied benefits available to all good citizens.

There's already some evidence to validate that fear.

But Justice Kennedy, in his 2015 Obergefell (same-sex marriage) opinion for the Court, showed us a way out: He understood marriage as a fundamental right protecting an indispensable relational institution that's only deformed when arbitrarily defined by government. All that needs to be done is to accord the same dignity to the church (or other form of institutional religion), and that's what the Free Exercise Clause, properly understood, does.

And maybe even President-elect Trump will show us his own path: He has no interest, of course, in undoing the right to same-sex marriage. But he's also pledged to protect the churches from the mandates of big government, and there's no denying that he got a huge amount of support from voters who are concerned — above all — about free exercise of religion.

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The Founders' view of freedom of speech and the press

By Dr. David F. Forte

For a century or more, judges, academics, politicians, news personalities and everyday Americans have debated just what the First Amendment's protection of freedom of speech means.

Is it primarily concerned with political speech? Does it give the press special privileges? What about demonstrations, flag burnings, profanity, movies, cable, the internet?

To find out what the Founders of the country believed, we just have to look at what came out of their mouths.

In 1774, the First Continental Congress met in Philadelphia to organize a coordinated resistance to the latest oppressions by the British Parliament. In particular, the Americans were outraged by the "Intolerable Acts," which, in response to the Boston Tea Party, had closed the port of Boston, put the colony of Massachusetts directly under the control of the Crown, allowed for the quartering of troops in homes, and provided for trial in England of royal officials accused of crimes.

That Congress put forward a comprehensive list of "Declarations and Resolves," authored by John Dickinson, that declared the rights of the colonists and condemned the depredations of those rights by Parliament. That document would lead to the Declaration of Independence two years later.

At the same time, the Congress sent a "Letter to the Inhabitants of Quebec," also authored by John Dickinson, in hopes of convincing the French Catholics there of the righteousness of the American resistance. In that letter, Dickinson listed a number of rights that the Americans were defending.

And now we come to the crux of it:

"The last right we shall mention, regards the freedom of the press. The importance of this consists, besides the advancement of truth, science, morality, and arts in general, in its diffusion of liberal sentiments on the administration of Government, its ready communication of thoughts between subjects, and its consequential promotion of union among them, whereby oppressive officers are shamed or intimidated, into more honourable and just modes of conducting affairs."

Let us look at the breadth and depth of this right.

"*The advancement of truth, science, morality, and arts in general.*" This not a mere self-expressive right, but a truth seeking right, a right bottomed on natural law and those fundamental goods that every person is entitled to pursue.

"*Its diffusion of liberal sentiments on the administration of Government.*" Freedom of the press will persuade those in government to work for the common good, and not for their own advantage. In the words of the time, freedom of the press will promote public virtue.

"*Its ready communication of thoughts between subjects, and its consequential promotion of union among them.*" Dickinson, who was the most prolific of writers defending the American cause, had seen how his own works, as well as those of other Founders, had brought together this most disparate people from Massachusetts to Georgia, from artisans to planters, from seafarers to back country folks, in a common cause. Freedom of the press had begun to shape colonists into a nation, an American nation.

"*Whereby oppressive officers are shamed or intimidated, into more honourable and just modes of conducting affairs.*" Men prefer to commit their sins in private, to deny, dissimulate, deflect or defuse. But freedom of the press is a rod on those in authority so that they will put aside their passions and conduct themselves as true representatives of the people.

We know, nonetheless, that for the Founders, freedom of speech was a commodious right. It is a truth-seeking right. It inheres in the nature of man and is essential to his pursuit of happiness.

There was no more authoritative writer in the Revolutionary generation than John Dickinson. He authored the resolves of the Stamp Act Congress, the Resolutions of the First Continental Congress, Letters from a Farmer in Pennsylvania, Declaration of the Causes and Necessity for the Taking up of Arms (with Jefferson), the Olive Branch Petition, as well as the Letter to the Inhabitants of Quebec. Although he did not sign the Declaration of Independence, he was the first after Washington to take up arms in defense of the new nation. He drafted the Articles of Confederation, was a delegate to the Constitutional Convention, and authored a number of essays in defense of the Constitution. We can be assured that he spoke for the other Founders.

Although there would be abuses against Tory printers during the Revolution, and although the line between protected and illegal speech would continue to require careful consideration, we know, nonetheless, that for the Founders, freedom of speech was a commodious right. It is a truth-seeking right. It inheres in the nature of man and is essential to his pursuit of happiness.

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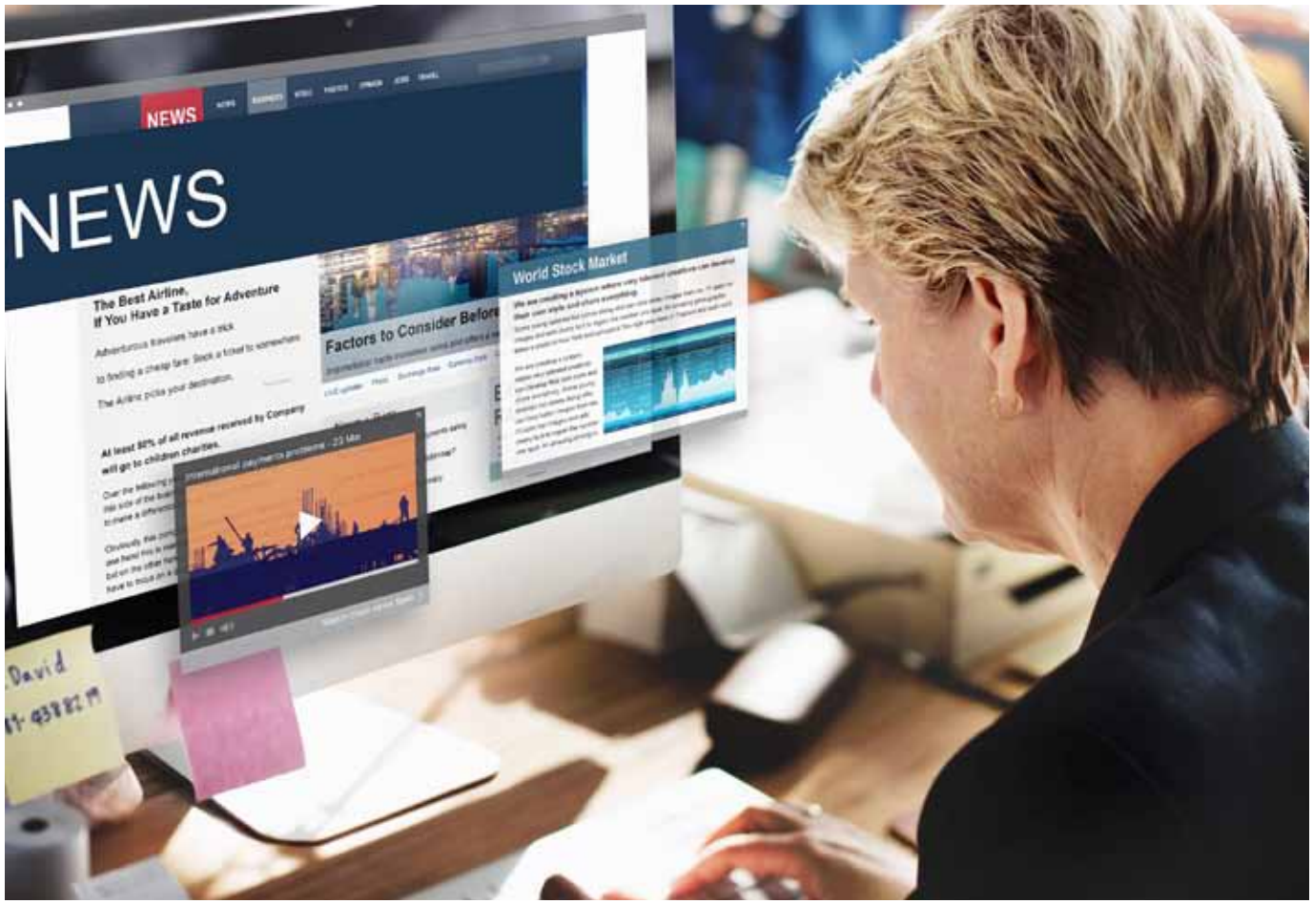

The Second Amendment: A fundamental principle of American liberty

By Dr. Joyce Lee Malcolm

The Founders would not have been surprised that the Second Amendment "right of the people to keep and bear arms" survives.

What would have surprised them was that it very nearly didn't.

The right of self-defense it protects had been considered the primary law of nature since antiquity. Other governments may have forbidden their people to have weapons to protect themselves, but the English did not. Englishmen had a long-standing duty to be armed to keep the peace and, beginning with the English Bill of Rights of 1689, that duty became a right.

Like other rights Americans derived from England, the original English right to have arms had restrictions — in this case religious and class limits, although these fell away by the early 19th century. In his classic work popular with the Founders, "Commentaries on the Laws of England," William Blackstone referred to the right of having arms as a "natural right of resistance and self preservation, when the sanctions of society and laws are found insufficient to restrain the violence of oppression."

He insisted no government could take the right to self-defense away. In contrast to any limitations on the English right, the American Second Amendment assumed "the right of the people to keep and bear arms" and decreed it "not be infringed."

For most of its history, the Second Amendment was understood to confer an individual right, notwithstanding hundreds of various regulations. But in the 1960s, widespread riots and three political assassinations led to demands for stricter gun controls. Campaigns began for onerous restrictions on private ownership of firearms, including total bans.

Along with these, came a debate over the core meaning of the Second Amendment. The gist was that Americans had been wrong to believe the Second Amendment guaranteed them an individual right. The words of the amendment were parsed to disabuse them of that idea. Rather than the "well-regulated" militia as a reason for general ownership of weapons, it was argued that the amendment merely ensured that states have a militia and that membership in the militia, today's National Guard, constituted the only right to be armed.

To advance this hypothesis, the amendment was interpreted as exclusively military. Unlike reference to "the people" in the First and Fourth Amendments protecting individual rights, we were told that in the Second Amendment "the right of the people" merely intended a "collective" right.

"Arms" meant only military weapons, "to bear" meant carrying weapons in a military force. "Keep" was ignored.

There was even the claim that if an individual right were intended, it only protected 18th century weapons.

Those opposed to the individual right interpretation even claimed the individual right was a brand new idea. Laurence Tribe, in the 1979 edition of his popular textbook, "American Constitutional Law," relegated the Second Amendment to a footnote. A generation of law students were taught accordingly.

In 2008, the Supreme Court acted.

In the case of District of Columbia v. Heller, the Court examined the meaning of the Second Amendment for the first time. The justices overturned Washington, D.C.'s ban on residents keeping handguns in their homes, affirming the individual's right to keep and bear those weapons in common use for self-defense and other lawful purposes.

In contrast to any limitations on the English right, the American Second Amendment assumed "the right of the people to keep and bear arms" and decreed it "not be infringed."

Two years later, in McDonald v. City of Chicago, the Supreme Court incorporated the Second Amendment's individual right throughout the country, finding it "a fundamental principle of American liberty."

Despite these decisions, debate continues. Both landmark opinions affirming the right of Americans to keep and bear arms were passed by 5-4 majorities, with the dissenting justices asking that they be overturned. Further, some judges are choosing to ignore the high court.

Moves to protect and expand the right to be armed are, however, rapidly advancing in the states. Forty-four state constitutions include a right to be armed, and only nine of the 50 states have restrictive rules to prevent residents from carrying a concealed weapon, while 11 states permit any resident who lawfully owns a firearm to carry it concealed without further requirements.

Millions of Americans own and use firearms peacefully. Despite the recent uptick in gun violence in a few cities, the past 20 years have seen a dramatic drop in gun crime and gun homicides.

The Second Amendment affords Americans a right and ability to protect themselves and their loved ones. It places ultimate trust in the good sense of the American people, as the Founders intended.

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The Third Amendment: A neglected measure for a skeptical age

By Adam J. MacLeod

Could you pick the Third Amendment out of a lineup? You might be forgiven for not recognizing it.

The Third Amendment has no corporate sponsors. Its meaning is not the subject of vigorous congressional debates. Yet it is not difficult to find. If you point your nose between the National Rifle Association billboard slogan and William O. Douglas' penumbras and emanations, you will run smack into the Third Amendment.

A short, modest constitutional provision, the Third Amendment states, "No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law."

Perhaps it is so little known because it has enjoyed unbroken success. Americans safely assume that, although Grandma or Uncle Joe might show up uninvited during the holidays expecting to occupy the spare bedroom, members of the 82nd Airborne Division will not.

The Third Amendment is a model security for ordered liberty in a skeptical age such as ours.

Today cultural and governing elites exploit every ambiguity in the meaning of rights that the Constitution does declare, such as private property and the right to bear arms. And they read into indeterminate constitutional provisions "rights" that have no grounding in the Constitution at all. The structure and nature of the Third Amendment discourages such adventures against ordered liberty in two ways.

First, it is grounded in a tradition that ties liberty to obligation. The liberty secured by the Third Amendment was not invented by the Amendment's drafters. Instead, like the other rights declared in the text of the Bill of Rights, the Third Amendment is deeply rooted in America's identity and jurisprudential commitments. Together with the Second and Fourth, it declares and codifies a cluster of ancient, common law liberties and obligations designed to preserve the sanctity of the home.

Historically, these included the customary rights and duties of the citizen militia to bear arms and defend the homeland, and the corresponding duty of the king not to maintain a standing army. (Suspicion of standing armies has since waned, but the duty not to quarter them in homes has not.) This arrangement meant that every household had soldiers in it that had men in it. But the soldiers were not rowdy young men from distant lands given to raping and pillaging. Instead, they were the husbands, fathers and brothers of those within the home, motivated to fend off foreign enemies by love of what lay behind them.

Englishmen and colonists of British North America alike held dear the sanctity of the home and the customary liberties that secured it. Antecedents to the Third Amendment can be found in British constitutional landmarks, such as the Petition of Right submitted to Charles I. Yet Americans valued this liberty so highly that they invoked its infringement by George III as a cause of their political separation from Britain.

Second, the Third Amendment does not state an abstract right that is subject to qualification and curtailment.

Perhaps [the Third Amendment] is so little known because it has enjoyed unbroken success. Americans safely assume that, although Grandma or Uncle Joe might show up uninvited during the holidays expecting to occupy the spare bedroom, members of the 82nd Airborne Division will not.

Instead, it identifies and imposes on government concrete, fully determined duties. The complaint in the Declaration of Independence that the king was "quartering large bodies of armed troops among us" is not that the king deprived the colonists of a speculative property right. Rather, the king breached a particular constitutional duty. That duty is given greater specification in the Third Amendment, which distinguishes between peacetime and wartime, and limits exercise of the war power within the rule of law.

Ordered liberty exists only where the rulers are constrained. That government has duties of abstention is why people enjoy liberty. Yet the government will abstain only where the people lawfully exercise self-governance. Those who ratified the Third Amendment understood that duty is inherently tied up with liberty. Sustainable liberty — the ordered liberty that arises out of virtuous self-governance — begins not with an assertion of abstract right but rather with a commitment to govern ourselves, lest government have cause to arrogate power over us.

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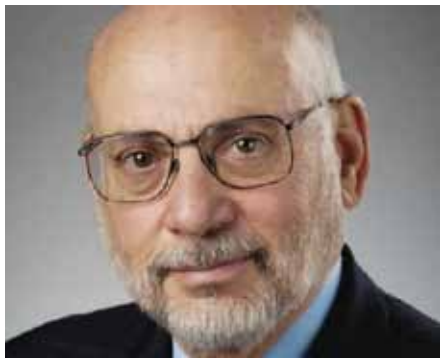

The Sixth Amendment: How one man's courage saved 'trial by jury'

By Dr. Stephen H. Balch

Historians don't know very much about 17th century London merchant Edward Bushel. He was neither prominent nor, as far as we know, unusual in other respects. Yet in 1670, with 11 other ordinary Londoners, he put his freedom and livelihood at stake rather than bow to lawless, menacing authority.

Bushel held no state office. He certainly hadn't chosen the risks that attend a political career. He and his colleagues had merely been called to serve as jurors in a case where the high and mighty badly wanted a particular outcome. Nonetheless, as jury foreman, he followed his conscience, endured official abuse, and with his fellow jurors, ultimately prevailed — establishing in Anglo-American jurisprudence the unequivocal right of juries to render impartial verdicts, a key Sixth Amendment guarantee.

The case they heard was that of William Penn, the future founder of Pennsylvania, and William Mead, both arrested after Penn had spoken to a crowd in London's Gracechurch Street, the nearby the Quaker meeting house having been closed by the authorities.

From the very first gavel, the court had made its malice towards Penn and Mead obvious. It was customary for defendants to take off their hats before a judge, but it was a religious duty for Quakers to keep them on. When the bailiffs removed the defendants' hats for them, the judge ordered them replaced, then fined the pair for not being uncovered. After Penn complained that the judge had not specified the law under which he was charged, citing his rights under Magna Carta, the judge had him and Mead hauled out of the courtroom.

But the authorities weren't able to find anyone able to testify as to what exactly Penn had preached, nor that the crowd was disorderly, nor that Mead had done anything other than listen. The jurors thus brought in a verdict that convicted Penn only of being "guilty of speaking or preaching in Gracechurch Street," without adding the more damning "to an unlawful assembly." Mead was acquitted.

Law students still read about the decision that court's chief justice, Sir John Vaughn, delivered: A jury could not be punished simply on account of its verdict.

The verdicts made the Lord Mayor of London, present at the trial, sputter with rage, while the judge told the jurors that they would not be dismissed unless they delivered a verdict to the court's liking. Ordered to convene again, and for good measure locked overnight without food, water or a chamber pot, the jurors returned the next day with their verdicts unchanged. Now the mayor threatened to cut jury foreman Bushel's throat, and the judge wished out loud for an English version of the Inquisition.

For a second night, the jurors were placed under hard confinement. And this finally did change their verdict. Both defendants were acquitted!

With that thumb in his eye, the judge sent Penn and Mead back to jail for "contempt," and with them the jury, who were told they would be imprisoned until they paid a fine of 40 marks. Eleven complied, but not Bushel, who stayed in the Old Bailey while appealing his case to a higher court.

Law students still read about the decision that court's chief justice, Sir John Vaughn, delivered: A jury could not be punished simply on account of its verdict.

But it was Bushel's courageous defiance of official power to which we really owe the principle of jury independence. Though he is almost entirely forgotten, we wouldn't have had a Sixth Amendment without this uncommon, common man.

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James Madison and the 'acrobatic history' of the Ninth Amendment

By Dr. Lynn Uzzell

The history of constitutional interpretation is notorious for its occasional contortions of speech and logic. But in the case of the Ninth Amendment, history has been truly acrobatic. Whereas the original purpose of this amendment was to guard against expansions of federal power, its recent interpretations have tended (you guessed it) to expand federal authority.

When the Constitution was first being debated during the Ratification period of 1787-88, many Antifederalists denounced the plan of government because it did not contain any bill of rights. Several Federalists, including James Madison, countered that a bill of rights was not only unnecessary in a constitution of limited powers, it was even "dangerous, because an enumeration which is not complete is not safe."

The Federalists argued that any enumeration of rights would unavoidably imply powers that had never been granted. For instance, if the Framers were to add a provision declaring that Congress had no power to abridge the right of free speech, that prohibition would imply that Congress would have possessed that power without the prohibition. And the Framers did not wish to imply that Congress possessed any powers except the ones that had been enumerated.

When Madison wrote to Thomas Jefferson about the prospects of adding a bill of rights, he confessed: "My own opinion has always been in favor of a bill of rights, provided it be so framed as not to imply powers not meant to be included in the enumeration."

And when proposing a bill of rights to the First Congress, Madison acknowledged that this fear — "that those rights which were not singled out" would be insecure by implication — was "one of the most plausible arguments I have ever heard urged against the admission of a bill of rights into this system." But he assured Congress that his proposal for what would eventually become the Ninth Amendment should prevent any such misinterpretation of the Constitution.

Therefore, the Ninth Amendment (like the 10th Amendment) was always intended to be nothing more than a rule of construction: a guide for understanding how the Constitution was meant to be interpreted.

Madison's initial proposal for the Ninth Amendment makes these intentions clear: "The exceptions here or elsewhere in the Constitution, made in favor of particular rights, shall not be so construed as to diminish the just importance of other rights retained by the people, or as to enlarge the powers delegated by the Constitution; but either as actual limitations of such powers, or as inserted merely for greater caution" (emphasis added).

However, Congress streamlined Madison's wording by removing the clauses about the enlargement of federal powers.

Virginia delegate Edmund Randolph was incensed when saw the revised version, believing that Congress had removed the most important part of the amendment. Virginia's objections to the final wording of the Ninth Amendment actually delayed that state's ratification of all the amendments for two years, which delayed ratification of the entire Bill of Rights.

Madison was flummoxed trying to understand the basis of Virginia's objections, because he believed that the protection of individual rights and the protection against expansions of federal powers were merely two sides of the same coin: "the distinction," insofar as Madison could see it, was "altogether fanciful."

Alas, among Madison's most charming blind spots was this one: He earnestly believed that Americans could always be trusted to interpret the Constitution in accordance with its intended meaning.

Madison's faith was proved disastrously misplaced with recent interpretations of the Ninth Amendment. In

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No congressman a judge in his own cause: The enduring teaching of the 27th Amendment

By Dr. Alan Gibson

The Constitution's 27th Amendment — sometimes known as the "Compensation" or "Rip Van Winkle" amendment — reads: "No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened."

Consistent with its explicit language and original purpose, this amendment ostensibly at least requires our national legislators to "pay forward" any salary increase that they vote themselves and successfully face their constituents during re-election to accept it.

The 27th Amendment, it will be remembered, was originally the second of 12 proposals sent to the states by Congress for ratification in September 1789. But the "Compensation amendment" — along with the original first amendment that regulated increases in the number of representatives to keep pace with population growth — became stillborn in 1791, when only six of the 11 necessary states approved it.

But while the original first amendment offered an unworkable plan for bolstering representation and was quickly rendered obsolete by acts of Congress that increased and eventually fixed the number of House members at 435, the "Compensation" amendment expressed concerns about corruption and self-dealing by politicians that never became irrelevant. When the popularity of Congress collapsed in the 1970s, as a result of economic recession and several high-profile congressional scandals involving favoritism to vested interests, outright bribery, and sexual misconduct, the ratification process for it was restarted in 1982 and completed a decade later. Two hundred and two years after its original submission to states, the "Rip Van Winkle" became fundamental law.

Why should we care about the 27th Amendment on the 225th anniversary of the Bill of Rights?

One common answer points to this remarkable story of its resurrection and ratification. That story is all about citizen Gregory Watson, a relentless, strategic and intelligent University of Texas undergraduate and later state legislative assistant who was the necessary, if not sufficient, cause of ratification.

Angered by the middling grade and snarky comments he received on a research paper in which he proposed reigniting the ratification of Madison's then-forgotten "Compensation" amendment, Watson singularly tugged it through the ratification process. He wrote letters, made calls, spent his own money when he had little to spare, plead and cajoled until bipartisan support for the amendment ensured its passage on May 5, 1992.

Watson certainly provides us with a remarkable story of one citizen's ability to create change. What is seemingly never pointed out, however, is that the amendment does not seem to have been necessary or helpful in either of its original goals.

A vigilant public, which has consistently proven its willingness and ability to chasten Congress throughout American history, already stood between Congress and unmerited and exorbitant salary increases.

Furthermore, the 27th Amendment failed almost immediately to secure the other goal that Watson and its champions sought: abolishing the "sneaky" procedures for salary increases Congress developed in the 1970s and eventually embedded in the Ethics Reform Act of 1989.

These regulations, which are still in place, make salary increases for members of Congress automatic unless they explicitly reject them. They also ensure that increases are modest, if not nominal, by indexing salary increases to changes in private sector wages and to general salary increases for other federal employees. Finally, they cap salary increases altogether at 5 percent.

To the consternation of Watson and others who fought for the "Compensation" amendment, federal courts swiftly dismissed 27th Amendment challenges to the congressional cost of living adjustment (COLA) system. Pay increases under the COLA system meet constitutional muster under the 27th Amendment, federal courts have held, because they do not take effect until after an intervening election and do not require the passage of new legislation.

The federal courts have also dismissed 27th Amendment challenges based upon standing issues and the claim that the issues raised by opponents of the COLA system are political questions incapable of generating standards for judicial resolution. Considered from Watson's perspective, the federal courts put the Rip Van Winkle amendment back to sleep almost immediately after he woke it up!

The most important reasons for reconsidering the 27th Amendment on the 225th anniversary of the Bill of Rights are found in the ethical axiom underlying it, namely: the proposition that "no man is allowed to be a judge in his own cause," the importance of that axiom in James Madison's political thought, and its potential lightning, if taken seriously, as a foundation for countering public corruption by office holders today.

In contrast to Watson and 20th century champions of the "Compensation amendment," Madison did not believe that members of Congress were likely to abuse their power to set their own salaries. Abuse of this power, Madison presciently observed at the Virginia Ratifying Convention, would be deterred by "the certainty of incurring the general detestation of the people."

The primary problem that the "Compensation amendment" addressed, in Madison's eyes, was that, by giving members of Congress the right to determine their own salary, it had made them judges in their own causes. Such an arrangement, Madison protested, had created a "seeming impropriety" and "seeming indecorum" in the political system. By preventing members of Congress from dipping their hands in the public coffers, this amendment, he maintained, would remove the appearance of impropriety that drained public faith in the government and the politicians who ran it.

Such concerns for conflicts of interest ran throughout Madison's career, were the source of numerous rules and restrictions that he favored to prevent public officials from taking part in proceedings in which they stood to benefit, and were at the core of his normative vision of an impartial republic.

Today, with or without the 27th Amendment, corrupt members of Congress would be foolish to pursue a public path to private riches through their power to set their own salaries. Too many, much easier roads are open. The ability of former members of Congress to cash in immediately upon their retirement as lobbyists on the connections made during their years in Congress is only the most common and obvious.

As Americans celebrate the 225th anniversary of the Bill of Rights, we would do well to remember and renew Madison's opposition to self-dealing politicians. If Madison was right — that trust and legitimacy go hand in hand with impartial procedures that establish decorum in government — this seems as good a place as any to begin restoring the trust politicians need to govern and the faith that our political institutions require and merit.

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Griswold v. Connecticut (1965), Justice Arthur Goldberg wrote that "the right of privacy in the marital relation is fundamental and basic — a personal right 'retained by the people' within the meaning of the Ninth Amendment." In other words, the Ninth Amendment was being used to grant the Court an authority to decide which rights (unnamed within the Bill of Rights) now deserved protection by the federal government. It was being used as an expansion of federal authority over state laws.

In his dissent, Justice Potter Stewart criticized the Court's interpretation of this amendment: "to say that the Ninth Amendment has anything to do with this case is to turn somersaults with history." Nevertheless, the Court's reasoning in Griswold has turned somersaults in "privacy cases" ever since, including Roe v. Wade (1973). It has been a truly acrobatic history.

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Our 'two' Bills of Rights

By Dr. Robert Lowry Clinton

The first 10 Amendments to the United States Constitution, widely known as the American Bill of Rights, were adopted in 1791 under pressure from the Antifederalist opponents of the Constitution. In its echo of the Declaration's timeless principle of inalienable rights, it is certainly a document worthy of veneration; yet appropriate veneration requires reflection in the light of history and a clear view of exactly what is being venerated.

When it comes to the Bill of Rights, a conundrum becomes immediately evident, for it is plain that the Bill of Rights in effect today is not exactly the Bill of Rights handed down to us by the Founders, either in its legal application or its philosophical foundation. If we are really celebrating its 225th anniversary, then we should be celebrating the document that was handed down to us 225 years ago, and this means that we will be celebrating something which is in some respects a dead letter. Let us see what this means.

First, when we celebrate the Founders' Bill of Rights, we celebrate a document designed chiefly to protect states and their citizens from federal aggrandizement. The final article in the Bill of Rights is the 10th Amendment, which reserves any power not granted to the national government (or denied to the states) to the states or their citizens. As the 10th Amendment suggests, the original Bill of Rights was designed to limit only the national government, thus leaving space for states to exercise autonomy in their mode of recognizing the rights of their own citizens.

This was the common understanding for more than 150 years of the nation's existence.

It was not until the middle of the 20th century that the U.S. Supreme Court began to "nationalize" the Bill of Rights through a process it called "selective incorporation," according to which the Court applies whatever provisions it chooses against the states on a case-by-case basis.

This process, by now nearly complete, has had the effect of turning the Bill of Rights from a document designed primarily to protect states and their citizens from an overbearing national government into a document that authorizes enhanced federal control of both individuals and states.

Second, when we celebrate the Founders' Bill of Rights, we celebrate a document intended to guarantee the inviolability of rights originating in God or nature, not in government. Yet the Court's selective appropriation of the Bill of Rights in the manner described above laid a foundation for its ultimate appropriation of the entire Constitution through the doctrine of judicial supremacy.

Briefly stated, judicial supremacy is the doctrine that the Court has exclusive, final authority to determine the meaning of all constitutional provisions — including the Bill of Rights.

Judicial supremacy has, in effect, produced a different constitution than the one given to us by the Founders. This new constitution — usually termed the "living constitution" — is based on the idea that the Founders' Constitution (and the original Bill of Rights) is "outdated" and needs to be periodically "updated" in order to "keep up with the times." The living constitution, when coupled with judicial supremacy, means the Court is entitled to change the Constitution (and the Bill of Rights) via interpretation whenever it likes.

In its new capacity as exclusive interpreter of the Constitution, the Court has interpreted the Bill of Rights in ways that would have been unrecognizable to anyone living 225 years ago.

In 1947, it began the process of excluding religion from the public square by falsely declaring that the First Amendment erected a "wall of separation" between church and state. In 1962 and 1963, it declared school-sponsored prayer and Bible reading unconstitutional, and in 2000, it outlawed prayer at high school football games.

In 1965, the Court fabricated an extra-constitutional "right to privacy" based, in part, on several provisions in the Bill of Rights, and in 1973, it included abortion in that right. In 1992, the Court, while upholding its own fabricated right to abortion, arrogantly declared that the American people must earn their legitimacy as a People by recognizing that the Court "speaks before all others for their constitutional ideals," and in 1997, it explicitly denied the authority of the people's representatives in Congress to interpret the Constitution with any conclusive effect.

In 2003, the Court fabricated a constitutional right to engage in homosexual sodomy, and in 2013, it declared Section 3 of the Defense of Marriage Act (DOMA) unconstitutional. Finally, a succession of federal courts — and finally the Supreme Court — declared same-sex marriage bans in several states unconstitutional.

The cases mentioned above represent just a few of the instances in which the Court has invented new rights — such as the right to engage in homosexual sex acts, or cancelled old ones — such as the right to life of an unborn child. Thus, it appears that many of the rights we currently have are not the work of God or nature, but rather of government, particularly of the courts.

This suggests that the foundation of the rights embodied in the living constitution and the foundation of the rights embodied in the Founders' Constitution are not the same.

The Founders' Constitution protects rights conceived as anterior to government; the living constitution seems to regard rights as gifts of government. In his dissenting opinion in Obergefell v. Hodges (2015), Chief Justice John G. Roberts Jr., perhaps had something like this in mind when exhorting the victorious proponents of same-sex marriage to celebrate, but not to celebrate the Constitution, "for it [the Constitution] had nothing to do with it." Or perhaps he simply spoke better than he knew. So let us celebrate, and be fully aware of what we celebrate.

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The 10th Amendment and revival of federalism

By Tim Donner

There has always been scant argument among constitutional scholars about which of the amendments in the Bill of Rights is most important. Most of course will answer that it is the First Amendment, guaranteeing freedom of speech, press, assembly, religion and petition for government redress of grievances.

But when it comes to the amendment that has been the most ignored, misinterpreted or abused, few could argue against the 10th Amendment.

It reads: *The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.*

This amendment, which serves to institutionalize a system of governance known as dual federalism, is the corollary to the few and defined powers assigned to the federal government. It was designed to leave no doubt that powers not specifically granted to the executive, legislative and judicial branches in the Constitution belong to the states or the people.

But as the federal government, most specifically the executive and judicial branches (the president and the courts), have continually expanded their purview and grasped powers far above and beyond those prescribed by the Framers and enumerated in the Constitution, federalism has taken a beating.

Up through the Civil War, the people identified more with their own states than they did with the United States. Citizens of Virginia were more Virginians than they were Americans, and likewise with people in other states. The concept of forfeiting sovereignty to the federal government was largely anathema, and hardly on the radar.

That changed profoundly when Abraham Lincoln became president in 1861. Lincoln aggressively exercised federal authority in attempting to thwart secessionist movements in states that would become a part of the Confederacy. This structure of increased federal control remained in place after that war, and has

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Conserving the uniquely exportable Bill of Rights

By Dr. Dwight Newman

In 2012, Supreme Court Justice Ruth Bader Ginsburg travelled to Egypt to tell an audience that they should not seek to model their own constitution after that of the United States. In place of the U.S. Bill of Rights, she held up such models as the South African Constitution, the European Convention on Human Rights, and the Canadian Charter of Rights and Freedoms.

Her effective denigration of the same Bill of Rights she has happily used to judicially reshape American policy on various issues was just one aria in a larger opera about a purported decline of American constitutional influence abroad. For example, almost simultaneously, law professors David S. Law and Mila Versteeg published a major article in the New York University Law Review arguing that there was an empirically measurable decline in the international influence of the U.S. Constitution.

In tune with Justice Ginsburg, they claimed that constitutional instruments like Canada's Charter of Rights were having a very significant influence, moving toward eclipsing traditionally influential American constitutionalism.

At least in some circles, the sun seemed to have set, leaving only a night full of whimpering anxieties about waning American power and a long American decline.

There is no doubting that some features of Canada's Charter of Rights have been internationally influential. Some countries engaged in recent constitution-making, for example, have drawn directly upon Canadian legal text on some technical matters, like proportionality analysis for limits on rights. On that matter, American approaches based on clearer, bright-line tests and standards of scrutiny have not been as widely adopted of late.

But two important responses arise.

First, even on such points, approaches like that of Canada have developed out of specific engagement with American rights traditions. Some countries have wanted to entrench different tests on certain specific matters or even substantive positions on some specific issues. For example, some more recent constitutions have included language specifically authorizing affirmative action or restrictions on hate speech.

As far as that goes, they have certain resemblances to one another more than to the U.S. Bill of Rights. Most countries have not copied the Second Amendment either. But the deeper parentage of equality rights and free speech still stems from the American rights tradition more than from any other.

Second, on some such matters, the American tradition continues to conserve something that others are losing. For instance, when the American tradition largely stands against proportionality tests and balancing-based approaches, it does so because of reasons arising from the proper roles of courts and legislators. At this November's Federalist Society National Lawyers Convention, Supreme Court Justice Samuel A. Alito, Jr., reminded participants of his departed colleague Justice Antonin Scalia's prescient warning on balancing tests: "Give a judge a balancing test, and the case will almost always come out the way the judge wants."

As a Canadian constitutional law professor, my hand is extended today in celebration and gratitude to our neighbor nation, whose Bill of Rights birthed great constitutional ideals. The export of these ideals has made an enormous contribution to the world and continues even today in sometimes less obvious forms

If other countries are not following the United States on a matter like that, there is no American decline to bemoan. There is instead reason to stand firm in the traditions of the Founders.

However, both standing firm in that way and rebuilding the export potential of the U.S. Bill of Rights require ongoing work to conserve the intellectual foundations and future firepower of American constitutionalism.

The United States must never forget those glory years that birthed a new nation of liberty and of fundamental moral principle. The world must not either. But national memory and world influence cannot be taken for granted if the philosophical work of the Founders is cast aside or left to gather dust on ancient shelves while pseudo-intellectuals frolic in the latest academic fashions.

As a Canadian constitutional law professor, my hand is extended today in celebration and gratitude to our neighbor nation, whose Bill of Rights birthed great constitutional ideals. The export of these ideals has made an enormous contribution to the world and continues even today in sometimes less obvious forms.

At the same time, that contribution can never be taken for granted. In the United States and around the world, we must both celebrate this anniversary of the U.S. Bill of Rights and rededicate our efforts to conserve the ideals and traditions that it so boldly embodied upon this Earth.

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served to gradually escalate the power of Washington, D.C., and diminish the independent authority exercised by the states.

Defenders of this increasingly unbalanced dual federalism are emboldened by the so-called supremacy clause in Article 6 of the Constitution, which reads: *This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing [sic] in the Constitution or Laws of any State to the Contrary notwithstanding.*

Politicians tend to be quite selective when it comes to the application of the 10th Amendment, as they are with so many other elements of the Constitution. For the last 60 years or so, opposition to federal power and support for states' rights was largely concentrated among those attempting to reject racial desegregation in the South. But now we are beginning to witness the reverse. With the federal government weeks away from being controlled entirely by Republicans, more and more Democrats are adopting the states' rights position on so-called sanctuary cities that provide a safe harbor for illegal immigrants.

But when it comes to the amendment that has been the most ignored, misinterpreted or abused, few could argue against the 10th Amendment.

The 10th Amendment is also undergoing a serious test on the issue of marijuana. The drug is illegal under federal law, but nine states have legalized it for both recreational use and sale (and several other states have voted to legalize recreational and/or medical use). Federal and state laws will at some point — likely in the near future — need to be reconciled.

Gay marriage was an issue thought by many to be the dominion of individual states but the debate was effectively ended in 2015, when the Supreme Court ruled it a constitutional right for all Americans. With the change of administrations and the Court now likely to be dominated by strict constructionists and originalists in the tradition of the late Justice Antonin Scalia, it is possible that this issue will be revisited in arguments about both dual federalism and the proper role of the federal judiciary.

To be sure, a genuine revival of federalism will hardly happen overnight. It may not be at the forefront of people's thoughts with the changing of the guard in our nation's capital, but these issues regarding sanctuary cities, marijuana and gay marriage have, at a minimum, put the proper application of the 10th Amendment back in the discussion for the months and years ahead.

Timothy E. Donner is founder and president of One Generation Away, a nonprofit organization dedicated to preserving the vision of a free America by applying our founding principles to the issues of today.

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