The 21st Century Constitution

Barry Krusch

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“In 1992 as this book was nearing completion, Barry Krusch published what may well be the most thoughtful and thorough reframing of the Constitution yet attempted. His study, THE 21ST CENTURY CONSTITUTION: A NEW AMERICA FOR A NEW MILLENNIUM, is the first proposed rewriting of the Constitution to take account of the twentieth-century revolutions in information and communications technologies; it is also noteworthy for its intellectual grounding in the American Revolution’s series of experiments in government.

Krusch, a 34-year-old computer consultant living in New York City, began his labors in 1987, prompted by the commemoration of the Constitution’s bicentennial. Struck by the contrast between the political creativity of the Revolutionary generation and the increasing ineffectiveness of their modern counterparts, Krusch pursued two complementary lines of research. He steeped himself in the primary sources produced by the framing and ratification of the Constitution in 1787-1788, and he traced the divergences between the Constitution as written and the Constitution as administered (the “Empirical Constitution”). In 1990, Krusch opened a file on rewriting the Constitution on GENIE, a national computer bulletin board. He posted draft revisions of selected constitutional provisions and solicited comments from other users of GENIE, using the accumulating drafts and comments as the raw material for his first comprehensive presentation of a clause-by-clause revision of the Constitution.

Four major themes shape Krusch’s proposals. First, emphasizing the vital role that access to information must play in democratic governance, he proposes that modern information and communications technologies be the core of a new constitutional framework. Technological constitutionalism of this type, he maintains, could make it possible for all Americans to take part in government. Second, he seeks to close the gap between the written Constitution and the Empirical Constitution, so that divergences between theory and practice in constitutional government no longer would sap the legitimacy of the constitutional system. Third, Krusch urges the reworking of constitutional doctrines of separation of powers and checks and balances, and the recasting of key institutions such as the Senate, to improve government’s responsiveness and efficiency while incorporating added protections for individual rights. Fourth, Krusch stresses the dangers to democracy posed by professional politicians and the major political parties and the need to restore ordinary citizens as the true sources of sovereign power. His proposals therefore would, for example, exclude members of the major parties from holding federal legislative, executive, or judicial posts.

Krusch’s plan of revision differs in several notable ways from all previous attempts to rewrite the Constitution. His plan is distinct from the parliamentary tradition (though it shares that tradition’s dissatisfaction with separation of powers) and from Tugwell’s executive-centered model (though, like Tugwell, Krusch seeks to bridge the gap between the theoretical and actual operation of American government). While retaining the structure and much of the original language of the 1787 Constitution, Krusch hopes to construct a form of government in which ordinary citizens retain and exercise power to
set national goals and objectives and to monitor effectively the doings of their elected and appointed officials. Finally, thanks to his familiarity with modern computer technology, Krusch has helped to advance the theory of electronic governance beyond the model of the ‘electronic town hall’ familiar to most Americans from the tantalizing 1992 Presidential initiative of H. Ross Perot.”
A NOTE TO THE READER: THE PRISONER'S DILEMMA

One of the chief goals of this constitution is to solve one of the more critical problems in game theory, and for societies in general, the “Prisoner’s Dilemma.” This theory, which was formally defined in the fifties by two researchers at the RAND corporation, explains (for this writer) the decay of societies and the escalation of violence better than almost any other theory extant. It also explains why we HAVE governments, for those of you who were curious regarding this issue, and why a good government (or suitable replacement) is ESSENTIAL for a healthy nation. Because a satisfactory account of this theory would have taken far too many pages in my book, I barely referred to it in the 1992 edition, and assumed, perhaps erroneously, that people were familiar with it. I still do not discuss this theory in Chapter One (choosing instead to focus on more traditional arguments), but could have easily made it the sole topic of discussion in that chapter. Absence of evidence is not evidence of absence: this theory lies in the background behind virtually every significant change I have made to the 1787 Constitution.

If you do not understand this theory, I highly recommend the following sources as essential background for further reading, and as an extension to Chapter One. Without an understanding of this underlying problem (a mathematically based problem which locally manifests itself in particular, discrete ways, but globally transcends not only local and national cultures, but also time and space!), there can be no true comprehension of possible solutions.

Prisoner's Dilemma by William Poundstone
Evolution of Cooperation by Anatol Rapaport
Metamagical Themas by Douglas Hofstadter
Outline of THE 21ST CENTURY CONSTITUTION

SOCIETAL GOALS
A MORE PERFECT UNION
END
AMERICANS TO ESCAPE NATIONAL PRISONER'S DILEMMA
MEANS
PRIMARY LEGISLATIVE RESPONSIBILITY
WELL-FUNCTIONING FEDERAL SYSTEM
INSURE DOMESTIC TRANQUILITY
END
PROVIDE FOR THE COMMON DEFENSE
LOW CRIME RATE
LOW FEAR
MEANS
WELL-FUNCTIONING GOVERNMENT (ALL CONSTITUTIONAL PROVISIONS WORKING IN CONCERT)

PROMOTE THE GENERAL WELFARE
END
SECURE THE BLESSINGS OF LIVING TO OURSELVES AND OUR POSTERITY
HIGH STANDARD OF LIVING
REDUCTION OF WORK HOURS
LOW CRIME
CLEAN ENVIRONMENT
GOOD MEDICAL CARE
MEANS
WELL-FUNCTIONING GOVERNMENT (ALL CONSTITUTIONAL PROVISIONS WORKING IN CONCERT)

ESTABLISH JUSTICE
END
GUARANTEE FAIRNESS TO THE greatest EXTENT POSSIBLE
GUARANTEE ALL THE RIGHTS TO WHICH PEOPLE ARE DUE
MINIMIZE OR ELIMINATE CORRUPTION
MEANS
COMPETENT COUNSEL REQUIREMENT
PRESUMED INNOCENT REQUIREMENT
RIGHT TO PRIVACY
DISPROPORTIONATE PUNISHMENT PROHIBITION
RELAXED STANDING REQUIREMENT
RELAXED JUSTICIABILITY REQUIREMENT
EQUAL ACCESS REGULATIONS
FINANCIAL DISADVANTAGE CONSIDERATION RE: DATABASE ACCESS
CITIZEN VETO POWER
FILTERING
TAX LIMITATION
CHECKS AND BALANCES

CITIZEN EDUCATION
ENDS
INSURE THAT ALL PEOPLE ARE ADEQUATELY REPRESENTED ACCOUNTABILITY
MEANS
RIGHT TO LEARN TO READ
RIGHT TO LEARN TO WRITE
RIGHT TO LEARN TO REASON
RIGHT TO COMMUNICATE INFORMATION
RIGHT TO NATIONAL DATABASE ACCESS
NATIONAL DATABASE
NATIONAL CHANNEL
RIGHT TO HOME EDUCATION

GOVERNMENT GOALS

POPULAR REPRESENTATION

END

GIVE ALL AMERICANS A STAKE IN THEIR GOVERNMENT
PROPERTY RIGHT: TAXPAYERS SUPPORT GOVERNMENT, HAVE
RIGHT TO CONTROL OUTCOMES DERIVED FROM THEIR INCOMES

MEANS

ANNUAL TERM
LEGISLATIVE VETO
LEGISLATIVE COMMITTEES
ELECTORAL COLLEGE ABOLISHED
CONSTITUTIONAL FORMAL RECOGNITION OF WOMEN
NATIONAL OBJECTIVE
NATIONAL POLL
NATIONAL INITIATIVE
NATIONAL REFERENDUM
RIGHT TO PROPOSE LEGISLATION
ACCESSIBILITY OF CONSTITUTION (PLAINLY WORDED)

EFFICIENCY

END

CONSERVE RESOURCES OF TIME AND MONEY

MEANS

INSURE FISCAL RESPONSIBILITY
AUDITOR
FLEXIBLE AMENDABILITY
TIMETABLES
NUMERICAL RATING
DELEGATION
PROVIDE FOR EFFICIENCY IN GOVERNMENT
ELECTRONIC POSTAL SERVICE
NATIONAL DATABASE
FEDERAL ACADEMY
DEFENSE EXPENDITURE CAP

INTEGRITY

END

MAINTAIN CITIZEN CONFIDENCE IN GOVERNMENT

MEANS

PERFORMANCE RATING
RULES FOR THE PROCEEDINGS OF CONGRESS
PUBLISH THE VOTING RECORD
VOTE-TRADING PROHIBITION
DISCREPANCY PROHIBITION
EVALUATION
LEGISLATIVE REVIEW BOARD
SENATE OVERSIGHT
ELECTIONS COMMISSION
DEPARTMENT OF RIGHTS ENFORCEMENT
VERBATIM REPORT REQUIREMENT
AUDITOR
ETHICS LEGISLATION
POTENTIAL MISCONDUCT PROHIBITION
LOBBYING RESTRICTIONS
TERM LIMITATIONS
PROHIBITION OF SIMULTANEOUS POLITICAL PARTY MEMBERSHIP
AND GOVERNMENT SERVICE
CONSTITUTIONAL GOALS

CLARITY
END
SPECIFICITY/NON-AMBIGUITY
MEANS
SEPARATION OF POWERS
ENUMERATION OF POWERS
DIRECT INCORPORATION OF AMENDMENTS
ONE-SUBJECT REQUIREMENT
INTERNAL RESOLUTION OF INTERNAL INCONSISTENCIES
FORMAL RULES OF CONSTRUCTION
STATUTORY DEFINITION
CONGRESSIONAL DEFINITION
HYPOTHETICAL EXAMPLE REQUIREMENT

FLEXIBILITY
END
KEEP CONSTITUTION AND GOVERNMENT CURRENT WITH CHANGING TIMES
MEANS
POWER TO CHANGE TERMS
CONSTITUTIONAL SUPPLEMENT

STABILITY
END
MAINTAIN FORM OF GOVERNMENT
MEANS
PROVIDE A NOMINATING PROCESS FOR ALL BRANCHES OF GOVERNMENT
ENSURE THAT OFFICEHOLDERS ARE ADEQUATELY EDUCATED FOR THEIR POSITIONS
ALTERNATE

SURVIVABILITY
END
MAINTAIN FORM OF CONSTITUTION
MEANS
SENATE OBLIGATION TO OVERSEE CONGRESSIONAL OBLIGATIONS
PROVIDE MECHANISMS FOR SELF-ENFORCEMENT
IMPEACHMENT PROVISIONS
NATIONAL RECALL
UPDATE

THE 21ST CENTURY CONSTITUTION was first prepared three years ago. Since that time, I have received suggestions for changes. Many of these ideas make sense. I will put all suggested changes here which I believe have merit, and not in the document itself, since re-compiling the document takes too long.

Please remember that my proposed constitution is simply a draft version, just one of many that will be submitted for the people’s consideration and revision. Your input is necessary! This is not a “top-down” procedure.

The following are the latest proposed textual changes to the THE 21ST CENTURY CONSTITUTION:

Article 1, Section 9, Clause 10 changed to one of the following:

TO REGULATE THE RIGHT OF THE PEOPLE TO KEEP AND BEAR ARMS, PROVIDED THAT THE RIGHT TO KEEP AND BEAR PISTOLS, RIFLES, AND AMMUNITION FOR SAME SHALL NOT BE INFRINGED, AND PROVIDED THAT ANY OTHER LAW OR RULE REGARDING THE REGULATION OF ARMS BE SUBMITTED TO THE NATIONAL REFERENDUM, AND THAT SUCH REGULATION SHALL REQUIRE A THREE-FIFTHS MAJORITY FOR PASSAGE;

or

[other language]

POSSIBLE CHANGES “ON THE TABLE”

Eliminate variable term length provision: length of terms fixed at 1 year for Representatives, 2 years for Senators.

Possible problem with right to education (vs. right to not be educated)

LRB delegates elected by people? [for annual terms?].

Quarterly referendum on appropriations (no appropriations without people’s go-ahead).


Federal Academy not located in Capitol. Federal Academy Reporter elected by people for a single annual term with salary based on satisfaction.

Possible people’s nominations (vs. house and senate nominations).
“Common-carrier” channels guaranteed: at least five, with at least four different policies (first come, first served; auction; voting; lottery).

Secret ballot guaranteed.

Term limits for executive branch personnel.

Express right of jury nullification.

Incentive program: Million-dollar salary for Representatives and Senators with increases or decreases in salary based on citizen satisfaction.

**Phasing in of Constitutional clauses:**

1st phase:

1) annual term for representatives, biannual for senators, no staggered terms, 2) no political party membership for government officials, 3) quarterly referendum on appropriations, 4) common carrier channels, 5) public financing provisions, 6) citizen nominating process, 7) penalties for rights violations (with enforcement), 7) ethics provisions, 8) vote-trading prohibition, 9) “Pay-as-you-go” requirement (no more debt — taxes raised across the board and spending cuts to reach balanced budget).

Phasing in subsequent phases takes place only by National Initiative (effective only when 3/5 majority vote reached).

**TEXT CHANGES**

CHANGE “. . . all the rights of the People of the United States were GRANTEEDin the Preamble!” TO “. . . all the rights of the People of the United States were RECOGNIZED in the Preamble!” Rights are not granted by government; they are inherent in individuals. My mistake.

B. Krusch
January 26, 1995
THE 21ST CENTURY CONSTITUTION

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**Introduction**

People are not so easily got out of their old Forms, as some are apt to suggest. They are hardly to be prevailed with to amend the acknowledge’d Faults, in the Frame they have been accustom’d to. And if there be any Original defects, or adventitious ones introduced by time, or corruption; ‘tis not an easie thing to get them changed, even when all the World sees there is an opportunity for it.\(^1\)

—John Locke, *Second Treatise*, 1689

All experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed.

—*The Declaration of Independence*, 1776


We have many problems in society, but our worst problem is a seeming inability on the part of our Government to deal with our problems. And yet, our form of government was supposed to remediate our problems. The Preamble to our Constitution states that the Constitution was established in order to, among other things, “promote the general Welfare.” Yet a cursory analysis reveals that our Government is falling far short of the mark. Does the existence of a $4,000,000,000,000 National Debt that necessitates $300 billion in annual interest payments help “promote the general Welfare”? No. Does the inability of government to come up with a health-care solution help “promote the general Welfare”? No. Does the domination of Congress by special interests help “promote the general Welfare”? No. Unfortunately, these problems (and many, many others) have not only persisted over time, but are getting worse; to the extent that many people feel that they will never be solved — that “there’s nothing you can do about it.”

The Framers of our Constitution did not feel this way. They felt that not only could Government solve these and other problems — it was its chief reason for being! In fact, the mark of the success of Government was the extent to which it solved those problems. Interestingly enough, the situation confronting the Framers was parallel to our own. They were also faced with an
inept Government (which, among other things, created a National Debt that
could not be paid under the existing Constitution), but their response was
different from ours, and definitive; they lost no time in going to the root of their
problem, by completely revising the existing constitution (known as the
“Articles of Confederation”).

Needless to say, this was a controversial approach. In 1787, many had
argued that the United States was better off remaining a loose confederation of
States, and that a strong National Government was not desirable. To counter
this assertion, James Madison, Alexander Hamilton, and John Jay had to devote
36 essays in *The Federalist*, the political classic written in defense of the 1787
Constitution, to the topic of the inadequacy of the Articles for the Union, and
the erroneous nature of the major premise of the supporters of the Articles: that
“united we fall, divided we stand.” As the authors of *The Federalist*
conclusively demonstrated, the more proper formulation was “united we stand,
divided we fall.” A group of confederated States was doomed to inefficient
duplication of resources, an inability to pass legislation for the common good,
and a tendency to interstate conflict that could be resolved only by war. The
Constitution drafted in the Philadelphia of 1787 was designed to solve the
problems of 1787, and did so — dramatically. But the 1787 Constitution was
not designed to solve the problems of 1987, and therefore it should be no
surprise that many clauses in the Constitution are no longer relevant for modern
times. Nor should it be surprising that the Constitution omits many clauses that
are necessary for an Information Age. Designing a political system appropriate
for the times is one of the most important tasks a people can undertake. Our
Framers did so, and we ought to follow their example.

The issues in this book, needless to say, are serious, and deserve serious,
careful thought. The Framers of our Constitution were well aware of the
enormity of the task they undertook, and fully expected future generations to
evaluate their handiwork in the light of subsequent experience — a task we will
undertake here. In Chapter One, *Why We Need A New Constitution*, we will see
why the Constitution drafted in 1787, while adequate in many respects, has
ultimately led to the violation of seven critical criteria for a just, efficient, and
workable Government — criteria the Framers themselves saw as legitimate. In
Chapter Two, *The 21st Century Constitution*, the only democratic alternative to
the 1787 Constitution authored since 1787 is presented — a constitution far
more likely to satisfy the seven critical criteria enumerated by the Framers than
the Constitution they drafted. And finally, in Chapter Three, the *Epilogue*, we
will see how the New Constitution will change life in America, and explore
strategies to secure its enactment.

Let’s begin with an analysis of the adequacy of the Constitution in light of
contemporary reality.
Chapter One

Why We Need A New Constitution

AFTER an unequivocal experience of the inefficacy of the subsisting Federal Government, you are called upon to deliberate on a new Constitution for the United States of America. The subject speaks its own importance; comprehending in its consequences nothing less than the existence of the UNION, the safety and welfare of the parts of which it is composed, the fate of an empire, in many respects, the most interesting in the world.²

—Alexander Hamilton, Federalist 1

INTRODUCTION

The Constitution of the United States, currently residing in a helium-filled glass case in Washington, D.C., was drafted in 1787. The America of 1787, a country with a population nearly half that of the New York City of 1987, was a country predominantly comprised of farmers. For that pastoral time (a time which saw the creation of idyllic works of music like Mozart’s Eine Kleine Nachtmusik), the form of Government designed by the Framers was perfectly adequate, allowing America’s natural magnificence to blossom. However, as the Third Millennium approaches, more and more Americans are beginning to feel that in many critical respects, our form of Government is now “out of joint” with the times. We have had, in Hamilton’s words, “an unequivocal experience of the inefficacy of the subsisting federal government.” Our problems have steadily mounted, and it is becoming increasingly clear that our Government will not, or cannot, deal with these problems. Consequently, there has been a noticeable increase in frustration with our political system, as The New York Times reported in 1991:

To many Americans, politics has become remote and sterile, posing false choices. For all the angry abortion debate, as an example, most Americans could probably agree in two minutes on a six-word policy: Discourage abortions but don’t ban them. Yet in the political arena, the extremist fury drags on for still more years, oblivious to urgent concerns . . .

In a sobering new report, the Kettering Foundation’s David Mathews cites reaction against a political system that is perceived as so autonomous that the public is no longer able to control and direct it.
People talk as though our political system had been taken over by alien beings. "3

However, dissatisfaction with Government is nothing new in America, since our complaints with Government are structurally based — that is, societal maladies and unrest have arisen directly from the structure of Government instituted by the Framers. For this reason, historical criticisms appear contemporary. Consider this paragraph, written by Frank Cook (editor of the New York World) in 1923:

The American people were never before so critical of their government as they are now. They were never before so cynical about their government. They rail at the politicians, they jeer at Congress, they blackguard the President, whoever he happens to be, but they never stop to inquire whether their government was established to meet the demands they are making on it. If they did, they would be obliged to admit that it was not. They ask a rigid, inflexible government to function as a responsible and flexible government. They ask a government of checks and balances to function as a political manifestation of democracy. They ask a government of co-ordinate and independent branches to function as a unit. It cannot be done. In spite of all their ardent devotion to the Constitution, it is apparent that they know little about the Constitution. They have turned it into a fetish and they burn a vast quantity of incense before it, but they have forgotten its origins and have lost contact with its purposes. What they think it is, or what they think it must be, is something that it was never intended to be, and can never be made to be, except by a process of almost revolutionary revision. "4

The more things change, the more they stay the same. Complaining about Government has become one of the less enjoyable American pastimes. But as Cook perceptively noted, people have consistently failed to discover the fountainhead of the American pathology. It has been said that the one thing people can learn from history is that people have learned nothing from history, and contemporary experience is providing a ringing endorsement of that dictum. But somewhere, somehow, the cycle must stop, and people must heed Cook’s advice, and begin the process of constitutional analysis — an analysis that of necessity begins with an examination of the symptoms of deep-rooted troubles: our seemingly intransigent societal ills.
THE PREAMBLE AND OUR PROBLEMS

Government deficits, the spiraling imbalance of trade, inconsistencies in foreign policy, illegal immigration, unemployment, the decay of our cities, the abuse of the environment, the staggering cost of elections, and the piracy of special interest groups — these problems and a host of others have led thoughtful citizens to question whether our political system is capable of meeting the challenge of modern government.5

— Committee on the Constitutional System

We know what the outcomes of a successful Constitution are, since the Preamble to our Constitution states that it was ordained and established “in order to” effect six main goals: “form a more perfect Union,” “establish Justice,” “insure domestic Tranquility,” “provide for the common Defence,” “promote the general Welfare,” and “secure the Blessings of Liberty to ourselves and our Posterity.” Therefore, at least some of the indicators of Governmental success or failure are the extent to which the Objectives outlined in the Preamble have been achieved.

This measuring rod established in the Preamble is not flattering to our Constitution: even a cursory analysis of whether or not these goals have been met reveals serious inadequacies. For example, one of the primary goals of the Constitution is to “establish Justice.” Justice, of course, must by definition mean justice for all. But as the Brookings Institution Task Force found in their evaluation of the justice system in the area of civil litigation, this goal has not been achieved. In America, “justice” is meted out to those with the most spare time on their hands and the deepest pockets:

In many courts, litigants must wait for years to resolve their disputes. In the meantime, their attorneys pursue ever more expensive means of discovery to prepare for trial, often having to duplicate their preparation when trial dates are postponed. Among the bulk of cases that are never tried but settled, many are overprepared and overdiscovered. In short, civil litigation costs too much and takes too long.

The high costs of litigation burden everyone. Our businesses spend too much on legal expenses at a time when they are confronted with increasingly intense international competition. They pass those costs on to consumers, who then pay unnecessarily high prices for the products and services they buy. People who take their cases to court or who must defend themselves against legal actions often face staggering bills and years of delay.6
Prophetically, Luther Martin, one of the Framers of our Constitution, indicated that this would be a future concern in an address delivered to the Maryland Legislature on November 29, 1787. In that address, Martin referred to an “almost . . . certain prospect of ruin . . . where the middle and common class of citizens are interested . . .”, and stated that “the citizen . . . even if ultimately prosperous, must be attended with a loss of time, a neglect of business, and an expense which will be greater than the original grievance, and to which men in moderate circumstances would be utterly unequal.”

The area of civil litigation, of course, is not the only area where injustice is done. The field of criminal “justice” is a world where the innocent are imprisoned, where people who cannot afford bail are incarcerated for months, and a world where disproportionate and disproportionately applied sentences abound. As Anne Strick reported in her lengthy and extraordinarily detailed book *Injustice for All*,

Defendants from the world of organized crime are let off five times oftener than are ordinary persons. Black criminals tend to receive prison terms averaging nearly one third longer than whites. Poor defendants serve fully twice as long as those with enough money to hire their own lawyers. Suspects brought into New York’s overflowing courts receive lighter penalties than those unlucky enough to be convicted of the same crime upstate.

But the failure to “establish Justice” is only one benchmark. A failure to find solutions for the important social dilemmas of the day — a failure to promote “the general Welfare” — is another key indicator of structural inadequacy. Consider Hamilton’s observation regarding the “inefficacy” of Government. If even the passage of simple laws like the Brady Bill (a measure requiring a seven-day waiting period for the purchase of handguns) presented grave difficulties (as one Representative said, “[i]t has been frustrating taking a simple commonsense measure and having to invest such enormous energy and resources in getting it passed . . . We’ve had to raise the visibility of this proposal to an unwarranted level in relation to what it can do.”), it should be no surprise that the more problematic issues of the day pose even greater difficulties.

A brief survey of contemporary journalism reveals real shortcomings in the enactment of the “general Welfare” Clause. Consider, for example, the environment, and the solution our Government has promulgated to cope with another fine mess we’ve gotten ourselves into, toxic waste dumps:
The Environmental Protection Agency’s ‘Superfund,’ established a decade ago as the ultimate solution to the nation’s toxic waste crisis, is mired in billions of dollars in administrative costs and attorney’s fees that threaten to make the program the most expensive public policy fiasco in U.S. history.

In dozens of interviews, environmental experts, former federal officials and industrial leaders across the country told of litigation costs so staggering that the final Superfund bill could be double that of the savings and loan debacle.

Initially, the Superfund’s legislative sponsors expected the cleanup to be accomplished in a single five-year program costing less than $5 billion. Today, analysts predict that the program could balloon to $1 trillion in industry and federal spending and take half a century to complete.

At least $200 billion of the total, they say, is likely to be consumed in ‘transaction costs’ that do not include any spending for actual cleanup. Most of this amount will be for corporate attorneys’ fees in thousands of lawsuits. . . .

EPA records show that only 33 toxic waste sites have been fully cleaned and removed from the agency’s National Priorities List of the 1,236 most hazardous sites.

‘This is a program that hardly ever gets anything right,’ said Joel Hirschhorn, an environmental consultant in Washington, D.C., and former chief Superfund researcher at the congressional Office of Technology Assessment. A 1989 study by the office found that overall, ‘50 to 70 percent of spending in the Superfund program is inefficient.’

Many of those familiar with the program say the Superfund was doomed to failure from its inception because of fundamental flaws in the legislation that created it.

If current projections of Superfund-related expenditures are accurate, analysts say, the cost will be at least $2,000 for every American — reflected in price increases passed along to consumers on countless chemical and petroleum-based products used in every U.S. home — without even covering the removal of hazardous wastes. . . .

Some analysts believe that an immense government bailout — at direct taxpayer expense — will eventually be needed to finish the toxic cleanup and to provide emergency backing for commercial insurance companies facing enormous Superfund-related liability.

‘Where is the money? How much has been used? On what?’ asked Carmine Iannuzzi, president of Massachusetts-based Camger Chemical Systems, which made the protective coating for the mustard gas suits
worn by troops in the Persian Gulf war. ‘It seems like a lot of money has simply vanished without accomplishing anything.’ . . .

[A]ccording to chemical industry and environmental group sources, as much as $12 billion has already been consumed in transaction costs — primarily feeding an immense new legal industry that has emerged to negotiate Superfund cases. About $8 billion has been used for clean-up. . . .

According to the study by the Office of Technology Assessment, legal fees and overhead associated with the Superfund could eventually exceed $200 billion, or 44 percent of anticipated total costs. Other sources say the transaction costs, most of which will be borne by private industry, may equal 60 percent of the total.

The most comprehensive independent research analysis of the Superfund is a 1989 Rand Corp. study, which is now being updated. Principal researcher Jan Acton said he could not release the new Rand data, which are scheduled for publication in August, but added: ‘The numbers (for attorneys’ fees and overhead) could be truly staggering.’

But there are some individuals who enjoy wading in this environmental quagmire — the attorneys:

It took Dell Perlman ‘no longer than my first Superfund negotiating session’ to conclude that the toxic waste crisis is a bonanza for at least one U.S. industry — the legal profession.

The session, a preliminary hearing on a hazardous dump, was scheduled recently at a high school near a contaminated disposal site. ‘EPA had to hold it in the gym, because so many people turned out,’ said Perlman, who is assistant general counsel for the Chemical Manufacturers Association.

‘I looked around the stands, and I realized they were full of lawyers, all billing their time at around $200 per hour,’ he said. ‘Extrapolate those kinds of costs over the next 10 years, and you come up with quite a figure.’ . . .

[T]here are more than 20,000 U.S. attorneys now specializing in environmental litigation and issues, up from fewer than 2,000 when the Superfund was created in 1980. . . .

Their needs have generated a golden job market where none existed barely, a decade ago. According to the National Law Journal, attorneys six years out of law school who have experience in environmental litigation are being offered salaries of up to $225,000 a year.12
The Superfund legislation may furnish livelihoods, even upper-class livelihoods, but it is not preventing environmental disasters in the making. For example, the EPA reported in 1991 that 22,650 U.S. plants and facilities released 5.7 billion pounds of new toxic chemicals into the environment in 1989 — new releases and emissions coupled with Legislative and Judicial delays against combating these emissions means that “projected costs rise with each day spent in court — rather than at the sites themselves — as untouched toxic wastes seep into groundwater and increase the size of polluted areas that must be cleaned up.”

In the area of National Health, another intrinsic part of the “general Welfare,” our Government maintains the existence of a system that is itself chronically ill:

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The American Health care system is the most expensive in the world, but for those not in its mainstream, the care it offers is among the most unsatisfactory. Americans pay $700 billion a year [and] [l]ife expectancy in the United States is shorter than in 15 other nations, and infant mortality is worse than in 22 other countries. . . .

In any two-year period there are 34 million people without health insurance. But the number who lose their insurance at least temporarily is nearly double that many, 63 million.

For businesses, tension is rising. Companies watch as health care spending devours ever larger portions of their profits. In the 1960’s, businesses spent about 4 to 8 cents of each dollar of profits on health care. In 1990, it was 25 to 50 cents per dollar and rising. . . .

**But on the Potomac, when there is too much interest in a subject a political paralysis can result.** In Congress there have been no fewer than 14 proposals to revamp the national system. At the White House, there have been no major proposals, as political specialists wait for the right conservative proposal and the right moment — just before or just after the election — to put it forward.

In the area of National Defense, another aspect of the “general Welfare,” the United States is beset with a military-industrial complex that has failed to “provide for the common defense” in an efficient manner, and has instead given us debacles such as $640 toilet seats, $1,100 stool-leg caps, and $2000 nuts, not to mention pork-barrel spending like the B-1 bomber:

The B-1 was built on time and roughly within cost, but at a terrible price: it doesn’t work as promised. Its electronics system can jam signals from the airborne radars of Soviet fighters and missiles, but there are apparently others that the system will not jam without a complete
The B-1 will probably limp along with Band-Aid fixes, always a step behind Soviet air defenses, until in a few years it is replaced by the B-2. That’s a huge waste of $28 billion. . . . [and the reasons?]

**Design driven by service agendas.** The Air Force designed the B-1 first, then its mission. . . .

**Contracts not awarded on merit alone.** Sometimes the Pentagon or a powerful state delegation wants to keep a failing contractor in business or a production line open. . . .

**Congressional interests overriding defense.** Once the Pentagon has decided on a large program, the contractor can spread subcontracts to key Congressional districts, building an unstoppable constituency. Subcontracts for the B-1 stretched across 48 states. . . .

The B-2, the B-1 replacement, has turned out to be twice the fiasco at four times the cost.

The breakdown in the Justice System, the Environment, National Health, and National Defense represent only a fraction of the more obvious symptoms of deeply-rooted structural inadequacies. More subtle and disturbing indicators are on the horizon, like the BCCI and Savings and Loan Scandals, and the failure of banks in general:

As many as 440 banks may fail this year and in 1992, costing the insurance fund $23 billion and leaving it with a deficit of nearly $6 billion next year.

[T]he Band-aid solutions being applied, in the form of Treasury borrowing, will do no more than postpone the inevitable bill to taxpayers until after Election Day 1992.

‘We’re in the grand denial phase, just like 1987 and 1988, when Congress and the Administration did nothing about savings and loans,’ said Walker Todd, a lawyer who is on leave from the Federal Reserve Bank of Cleveland to write a book about the Federal Reserve Board.

On Capitol Hill, where the House banking committee is to begin drafting legislation Wednesday to lend billions of dollars of taxpayer money to the battered deposit insurance fund, lawmakers are running scared.

No incumbent sees anything to gain politically by voting to put more public funds at risk, although everyone recognizes something has to be done to avoid further damage to the nation’s financial system. Many members blame themselves as much as the regulators and the Reagan Administration for the savings and loan debacle — Congress, after all,
approved the industry’s deregulation — and they see the possibility of a repeat performance. . . .16

And problems that hit even closer to home are ignored. Alarming statistics have been released in recent years regarding children: 500,000 American children are runaways, 360,000 American children are in foster care, 14,500,000 American children suffer emotional illness or developmental deviations, suicide is the second leading cause of death among children, and 1,000 “crack” babies are born daily.17 Yet in the face of these appalling statistics, the Legislative Branch has taken no decisive action. Nor has the Judiciary, the protector (in theory) of individual rights. As Judge Charles Gill stated, “It is ironic that, although corporations in the United States have long been held to be ‘persons,’ and thus are eligible for constitutional protection, the extent to which children, as individuals, have comparable constitutional rights is still not entirely clear.”18 The working-out of ineffectual social policies continues:

In 1989, there were 1,200 babies born in the Yale-New Haven clinic. Ninety percent of those mothers had used illegal drugs during their pregnancies. Fifty percent had used cocaine within forty-eight hours of delivery. Child abuse cases are up eighty-five percent in the last decade. Sexual abuse cases are up 250% in the same period.

Like most states, Connecticut has a child protective agency. The Connecticut Department of Children and Youth Services (D.Y.C.S) has a child abuse hotline number. It is conceded that sixty percent of such calls are not afforded any response.19

This indicator of social collapse is not confined merely to Connecticut, according to The United States Advisory Board on Child Abuse and Neglect, which concluded that “child abuse and neglect in the United States now represents a national emergency,” and made three findings:

1. Each year hundreds of thousands of children are being starved and abandoned, burned and severely beaten, raped and sodomized, berated and belittled;

2. The system the nation had devised to respond to child abuse and neglect is failing; and

3. The United States spends billions of dollars on programs that deal with the result of the nation’s failure to prevent and treat child abuse and neglect.20
Of course, the “band-aid solutions” America has offered are the only ones it can offer, in a Congressional world where substantive political changes are impossible. This litany of infirmities, and their persistence over time, indicates a causality that is chronic. Something is wrong at the deepest levels of our Government — perhaps in that glass case in Washington, D.C.

Due to these recent developments, it should be no surprise that the focus in the academic world has turned to our political structure. Many academics and former officials of Government have seen the existence of these social developments as symptoms of a disease in the body politic, a disease which is itself rooted in the structure of the 1787 Constitution. Few have stated the issue as succinctly as Abe Fortas, the former Justice of the Supreme Court, who wrote that

The controls that the Founding Fathers adopted are no longer adequate. The balance that the Founding Fathers ingeniously devised no longer exists. It has been destroyed by the complexities of modern life, the vast expansion of governmental function, the decline of Congress . . . and, principally, by its failure to effectively reorganize its management and procedures, and by the enormous increase in presidential power and prestige.21

Fortas was seconded by C. Douglas Dillon, Secretary of the Treasury under President Kennedy, who stated that “until we are prepared to examine the basic structure of our federal system . . . our problems will remain . . . and, in all probability, increase in severity.22 Over time, many in the academic community have attempted to “examine the basic structure of our federal system” and identify the flaws inherent in the 1787 Constitution. To give one example, Whicker, Strickland, and Moore (1987) listed in their book The Constitution Under Pressure five such structural defects:

(1) **Limited number of representatives** results in

   (a) higher constituent to representative ratios.
   (b) unreasonable workloads for representatives.

(2) **Selecting senators on the basis of states**

   (a) violates the democratic criterion of one-person one-vote.
   (b) malapportionment biases power against citizens from large states.
(3) **Non-functionally specialized houses**

(a) leaves citizens unable to effectively disaggregate electorally their policy preferences.
(b) undercuts representative responsibility and accountability and leads to single-issue voting.

(4) **Bicameral passage of all legislation**

(a) results in lengthy delays in developing programs.
(b) creates multiple veto points where interest groups can wield disproportionate power.

(5) **No hierarchical accountability between the Senate and the House of Representatives**

(a) undermines long term planning, national interests, and coordination.
(b) leads to internal committee specialization which disenfranchises voters from most policy initiation.\(^\text{23}\)

This list, of course, is only a starting point. In fact, there have been several books and many, many articles on the imperfections of our Constitution. What is interesting is that while there has been disagreement as to which *particular* structural feature or features are *primarily* responsible for the decay of our Government and society in general, there is a general consensus as to the *genesis* of the problem — the political theory of the Framers, which molded the fundamental shape of our Constitution.
THE POLITICAL THEORY OF THE FRAMERS

The very complication of the business, by introducing a necessity of the concurrence of so many different bodies, would of itself afford a solid objection. . . . [a] source of so great inconvenience and expense as alone ought to condemn the project.24

— Alexander Hamilton, Federalist 75

The consensus among critics of the Constitution is that many of the ordeals we are confronted with in our society are directly traceable to a constitutional structure that was designed by the Framers to be permanently divided against itself. The structure they instituted has resulted in paralysis and a lack of governmental accountability, and a concomitant inability to prevent social breakdown.

This was not completely the fault of the Framers; after all, they were not designing a Constitution for the 21st Century. They were simply trying to create a New Constitution for the 18th Century, since experience with the previous constitution (the Articles of Confederation) revealed fatal flaws in that document. Consequently, our Framers met in the Federal Convention of 1787 to draft a New Constitution for the United States of America. This 1787 Constitution was formed under several new theories of Government — most notably the Separation of Powers Principle and the need for a Bicameral Legislature — which Hamilton enumerated in Federalist 9:

The regular distribution of power into distinct departments — the introduction of legislative balances and checks — the institution of courts composed of judges holding their offices during good behavior — the representation of the people in the legislature by deputies of their own election: these are wholly new discoveries, or have made their principal progress towards perfection in modern times. They are means, and powerful means, by which the excellences of republican government may be retained and its imperfections lessened or avoided.25

In one of the most famous essays in The Federalist, Federalist 51, Madison described how the principle of Government divided against itself into three separate Branches would maintain the integrity of the individual Branches:

To what expedient, then, shall we finally resort for maintaining in practice the necessary partition of power among the several departments, as laid down in the Constitution? . . . [T]he defect must
be supplied, by so contriving the interior structure of the
government as that its several constituent parts may, by their
mutual relations, be the means of keeping each other in their proper
places. . . .

[E]ach department should have a will of its own; and, consequently, should be so constituted that the members of each
should have as little agency as possible in the appointment of the
members of the others.26

A system of Checks and Balances was instituted, which allowed each one of
the three Branches of Government, the Legislative (the lawmakers), the
Executive (the enforcers of the law), and the Judicial (the determinants of
whether or not a law was broken) to restrict in some manner the actions of the
other:

[T]he great security against a gradual concentration of the several
powers in the same department, consists in giving to those who
administer each department the necessary constitutional means and
personal motives to resist encroachments of the others. The
provision for defence must in this, as in all other cases, be made
commensurate to the danger of attack. Ambition must be made to
counteract ambition. The interest of the man must be connected
with the constitutional rights of the place.27

The Framers knew that it was not enough to rely on politicians to “do the
right thing” and maintain the integrity of the Branches themselves; even the
power of voting politicians out of office was not enough to secure the
constitutional structure. Thus, the Constitution would contain within itself the
means of its self-preservation. Under the Separation of Powers Principle as
instituted in the Constitution, each Branch would confront the other.
Government was weakened under the divide et impera [divide and rule] maxim
referred to by Hamilton in Federalist 7:

This policy of supplying, by opposite and rival interests, the defect of
better motives, might be traced through the whole system of human
affairs, private as well as public. We see it particularly displayed in all
the subordinate distributions of power, where the constant aim is to
divide and arrange the several offices in such a manner as that each
may be a check on the other; that the private interest of every
individual may be a centinel over the public rights.28
Since the nature of the powers were different, the nature of the checks also had to be different. Because the Legislative Branch was seen as the most powerful, it was subdivided (again, divide et impera) into a House of Representatives and Senate.

[I]t is not possible to give to each department an equal power of self defence. In republican government, the legislative authority necessarily predominates. The remedy for this inconvenience is to divide the legislature into different branches; and to render them, by different modes of election and different principles of action, as little connected with each other as the nature of their common functions and their common dependence on the society will admit.29

As if this evisceration of Legislative power wasn’t enough to secure the objective of the Framers, the Executive Branch was given what was actually a Legislative power, an overrulable veto, to stop “encroachments” by the Legislative Branch. Thus, the form of Government given to us by the Framers in 1787 was a Legislative Branch divided into two separate Branches, with that Branch checked by a President with veto power, and a Supreme Court with the power (as it subsequently developed) to determine laws unconstitutional — a Government permanently divided against itself. This division sought to preserve the integrity of the Branches, but at a heavy and unavoidable cost: delay in the face of a necessity for action.
THE SEPARATION OF POWERS AND DELAY

[I]t would tend to increase the complexity of the political machine, and to add a new spring to the government, the utility of which would at best be questionable . . . [it] might in practice be subject to a variety of casualties and inconveniences.30

— Alexander Hamilton, Federalist 65 (on a separate body for Impeachments)

The most obvious source of delay in Government due to the Separation of Powers Principle as instituted in the Constitution is the Bicameral House — every law must be passed in identical form by two separate Legislative bodies, a requirement that allows few laws to emerge unscathed. Even in 1776, this notion was seen as counterproductive by an anonymous author, who wrote in “Four Letters on Interesting Subjects” that

The notion of checking by having different houses, has but little weight in it, when inquired into, and in all cases it tends to embarrass and prolong business; besides, what kind of checking is it that one house is to receive from another? or which is the house that is most to be trusted to? . . . That some kind of convenience might now and then arise from having two houses, is granted, and the same may be said of twenty houses; but the question is, whether such a mode would not produce more hurt than good. . . . a perpetual and dangerous opposition would be kept up, and no business be got through: Whereas, were there a large, equal, and annual representation in one house only, the different parties, by being thus blended together, would hear each others arguments, which advantage they cannot have if they sit in different houses. . . .

The chief convenience arising from two houses is, that the second may sometimes amend small imperfections which would otherwise pass; yet, there is nearly as much chance of their making alteration for the worse as the better; and the supposition that a single house may become arbitrary, can with more reason be said of two, because their strength is greater. Besides, when all the supposed advantages arising from two houses are put together, they do not appear to balance the disadvantage. A division in one house will not retard business, but serves rather to illustrate; but a difference between two houses may produce serious consequences.31

This warning, unfortunately, was not heeded by our Framers, even though Madison acknowledged that “this complicated check on legislation may in some instances be injurious as well as beneficial . . . ”32 Over time, a
Committee and Seniority System has been created in both houses of Congress which has exacerbated the latent defects of Bicameralism. Under our Bicameral System as it exists in the 20th Century, the delay has been compounded in a way our anonymous author could not have contemplated:

In order for the average bill to become a law it must be: (1) introduced in both the House of Representatives and the Senate; (2) referred by both houses to separate committees where hearings are held and recommendations are made; (3) debated and passed in both chambers; (4) sent to a conference committee if the versions passed in separate houses are different; (5) approved by each house; and (6) signed into law by the president. Some bills, which overlap into more than one committee jurisdiction in each house or must be sent to subcommittees, have even more obstacles to final passage.

The passage of legislation is extremely difficult under such a decentralized system. The multiple decision points through which a bill must pass require majority coalitions at each gate to push the measure along. There is a complex division of labor in Congress. Responsibilities for specific policy areas are delegated among numerous committees and subcommittees. There are 269 committees and subcommittees in both houses of Congress. Broader issues, like the national defense, education and health care are divided into smaller subissue categories for committee consideration.

The committees decide which bills will be reported to the floor for debate and which will be placed on the back burner of the congressional agenda. Favorable committee reports do not necessarily ensure the passage of the bill on the floor, but the more favorable the report from committee, the greater the probability for passage.

In the Eighty-ninth Congress (1965-1967), 26,566 measures were introduced, 4,200 were reported from committee and 810 became public law. A similar trend continued in the Ninety-seventh Congress: although fewer measures were introduced (only 13,240), 1,877 were reported from committee and 473 became public law. Thus, the committee system as a gatekeeper of what is debated and what is not debated remains extremely important.

As Greenberg (1986) noted, confirming the anonymous author of 1776, the Bicameral System inevitably led to the postponement of action, and has even changed the nature of the legislation ultimately passed. The medium doesn’t allow every message:
The bicameral nature of Congress and its contrasting constituency bases [Districts vs. States] not only serve to slow down the pace of legislation but also significantly decrease the probability that any general purpose legislation will manage to wind its way to completion. These elements of the constitutional organization of Congress make it halting, conservative, and indecisive. The Constitution further contributes to these characteristics by specifying that only one-third of the Senate shall be up for election at any one time, helping to insulate that body from the tides of popular sentiment. By its constitutional organization, then, Congress faces barriers to decisive, popular, and unified action.34

While the Framers approved Bicameralism, they did so with no empirical evidence of its ultimate effects, ultimate effects which were, in fact, seen by them as negative. For example, the result of the Bicameral process was an enfeebledment of Government, and feeble Government was seen as bad Government. As Hamilton stated in Federalist 70, “A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be in practice a bad government.”35 Feeble Government, like a toothless watchdog, would bite neither mailmen nor burglars. What Hamilton wrote in a different context applies equally well to the Bicameral System: “The most to be expected from the generality of men, in such a situation, is the negative merit of not doing harm, instead of the positive merit of doing good.”36

“The positive merit of doing good” was made virtually impossible because of an institutionalized and debilitating delay, a delay which was dangerous even in 1787, a far more relaxed time. As Jay stated in Federalist 64,

They who have turned their attention to the affairs of men, must have perceived that there are tides in them; tides very irregular in their duration, strength, and direction, and seldom found to run twice exactly in the same manner or measure. To discern and to profit by these tides in national affairs is the business of those who preside over them; and they who have had much experience on this head inform us, that there frequently are occasions when days, nay, even when hours, are precious.37

There could be no doubt that the Legislative process, stodgy by nature, would be rendered even stodgier by the Bicameral requirement. According to Justice William O. Douglas, “Legislative power . . . is slower to exercise [than Executive power]. There must be delay while the ponderous machinery of committees, hearings, and debates is put into motion. That takes time; and while the Congress slowly moves into action, the emergency may take its
Delay feeds vicious circles, which are vicious enough without help from Government. Unsolved problems mount. A failure to combat drug abuse leads to crack addiction. Crack addiction leads to crack babies. The existence of crack babies leads to a diversion of medical resources to help the babies. In turn, resources need to be diverted to schools to help these children, many of whom are brain-damaged, blind, or otherwise physically or mentally debilitated. Thus, money that could have been used to create positive effects is wasted in attempting to counter negative effects. What most people would see as insane is inevitable, because in Washington, D.C., structural procrastination impedes fundamental action:

A criticism often leveled at the U.S. Congress is its inability to enact legislation concerned with pressing national problems without long, arduous delays. It is not unusual for Congress to adjourn after a long session without having dealt with some urgent matter before it. In past years it has failed, for example, to pass a fiscal year appropriations bill until months after the date when the actual fiscal year began.

This lack of action handicaps orderly administration. It is not uncommon for Congress to approve minor, nondivisive measures in every session; moreover, in crises it can act quickly. But often it is unable or unwilling to act on pressing problems unless they reach a crisis stage. . . .

Hazlitt (1942) understood that institutionalizing delay because it was occasionally beneficial was like refusing to teach people to think because some would think about committing crimes: “A nation can erect a complicated set of hurdles and barriers to compel itself to delay decisions, but . . . [b]y the obstacles it erects, it discourages itself from making any new decision, regardless of its merits. The self-erected barriers tend to bias its decision unduly against . . . proposed change.” And Hamilton’s fears that “the positive merit of doing good” would be in jeopardy have come to fruition. Today, a permanent stasis is apparent in Congress. As Representative Romano L. Mazzoli (D-KY) stated, “There’s a frustration level. It doesn’t seem like any problem is ever solved around here.”

Thus, the first defect of the Separation of Powers Principle as instituted in the Constitution is that it creates delay in the face of a necessity for action. But that’s only the first problem.
THE SEPARATION OF POWERS AND ACCOUNTABILITY

Another problem with the Separation of Powers Principle as it exists under our Constitution is that the division of responsibility as instituted obliterated accountability. This effect was noted by Hazlitt:

Congress can prevent the President from doing as he wishes but cannot make him do what it wishes. Responsibility is divided and lost even within Congress itself. The Senate can block the overwhelming will of the House, though that will may reflect an equal sentiment in the country. Worse, a single Senate committee chairman, chosen by seniority, can often block the expressed will of the House and prevent the Senate from expressing a will by his mere inaction.

The result of this system, even in their quiet times, as Bryce pointed out, is that the nation does not know ‘how or where to fix responsibility for misfeasance or neglect,’ and ‘no one acts under the full sense of direct accountability.’

According to author Harold Laski,

It is desirable that the source of responsibility for governmental error or wrong should be clear and unmistakable; the American system so disperses responsibility that its detection is approximately impossible. It is urgent that the working of institutions should be conducted in the perspective of discussion which educates and clarifies the public mind; but the essential tasks of operation in America are almost wholly concealed from the public view. . . . A governmental system, moreover, should be sensitive to the opinion of its constituents, and maximize the opportunity of translating a coherent body of doctrine into statute; yet it seems the purpose of American institutions deliberately to avoid the sensitiveness, on the other hand, and to prevent the making of coherent policy upon the other.

Accountability was one of the chief victims of the Separation of Powers. According to Hazlitt, “The great defect of the American system is not merely that it can bring deadlock between . . . the two houses of Congress . . . but that it usually becomes impossible to fix the precise responsibility for that deadlock or to do anything about resolving it.” Hamilton viewed this ultimate consequence of the actions of the Framers in a negative light. As he stated with regard to division of responsibility in the Executive Branch, plurality (assigning the execution of a responsibility to two separate people or bodies) would obliterate accountability.
Plurality . . . tends to conceal faults and destroy responsibility. . . . It often becomes impossible, amidst mutual accusations, to determine on whom the blame or the punishment of a pernicious measure, or series of pernicious measures, ought really to fall. It is shifted from one to another with so much dexterity, and under such plausible appearances, that the public opinion is left in suspense about the real author. The circumstances which may have led to any national miscarriage or misfortune are sometimes so complicated that, where there are a number of actors who may have had different degrees and kinds of agency, though we may clearly see upon the whole that there has been mismanagement, yet it may be impracticable to pronounce to whose account the evil which may have been incurred is truly chargeable.

‘I was overruled by my council. The council were so divided in their opinions that it was impossible to obtain any better resolution on the point.’ These and similar pretexts are constantly at hand, whether true or false. And who is there that will either take the trouble or incur the odium of a strict scrutiny into the secret springs of the transaction? Should there be found a citizen zealous enough to undertake the unpromising task, if there happen to be a collusion between the parties concerned, how easy it is to clothe the circumstances with so much ambiguity, as to render it uncertain what was the precise conduct of any of those parties?

The people remain altogether at a loss to determine by whose influence their interests have been committed to hands so unqualified, and so manifestly improper. . . .

Plurality . . . tends to deprive the people of the two greatest securities they can have for the faithful exercise of any delegated power, first, the restraints of public opinion, which lose their efficacy, as well on account of the division of the censure attendant on bad measures among a number, as on account of the uncertainty on whom it ought to fall; and, secondly, the opportunity of discovering with facility and clearness the misconduct of the persons they trust, in order either to their removal from office, or to their actual punishment, in cases which admit of it.45

This issue is only too contemporary. Take, for example, the topic of the National Debt. Congress blames the President. The President blames Congress. The House blames the Senate, and the Senate blames the House. The Democrats blame the Republicans, and the Republicans blame the Democrats. Who’s at fault? As Woodrow Wilson wrote in 1886:
It is . . . manifestly a radical defect in our federal system that it parcels out power and confuses responsibility as it does. The main purpose of the Convention of 1787 seems to have been to accomplish this grievous mistake. The ‘literary theory’ of checks and balances is simply a consistent account of what our constitution-makers tried to do; and those checks and balances have proved mischievous just to the extent to which they have succeeded in establishing themselves as realities. It is quite safe to say that were it possible to call together again the members of that wonderful Convention to view the work of their hands in the light of the century that has tested it, they would be the first to admit that the only fruit of dividing power had been to make it irresponsible.46

Power is divided under our Constitution not only because legislation must pass two separate Legislative bodies in identical form, and not only because legislation must also survive a potential Presidential veto, but because legislation, even if passed, must be enforced by the Executive Branch. In point of fact, passage of legislation is only the first hurdle; in actual practice, laws can be vitiated by an Executive Branch which does not “take care” that laws be faithfully executed, as required by the Constitution. This Accountability violation was reflected in the headline to an article appearing in The New York Times — “Congress and Administration Trade Blame for Keeping Legislation on Shelf”:

Because of bureaucratic foot-dragging, complex directives from Congress and in some cases ideological hostility, the Federal Government has failed to carry out major parts of health, environmental and housing laws passed with much fanfare in recent years.

The delays have left Congress stymied, consumer groups frustrated and businesses sometimes paralyzed in the absence of prescribed regulations. . . .

Bush Administration officials acknowledge that they have missed many of the deadlines set by Congress for the new laws. But they say Congress is partly to blame because it writes laws of impenetrable complexity with countless mandates and gives Federal agencies insufficient time to write needed regulations.

Federal officials say the problem has become more widespread in recent years. They cite these examples:

Two decades after Congress ordered the Environmental Protection Agency to identify and regulate ‘hazardous air pollutants,’ the agency has issued emission standards for only seven chemicals.
In 1987, Congress established a comprehensive program of assistance to homeless people. But recently Federal District Judge Oliver Gasch accused the Administration of a ‘complete failure’ to comply with the law, saying ‘pitifully few’ unused Federal properties had been made available to assist the homeless. . . .

The Government has yet to issue final regulations for cleaning up waste storage sites under a 1984 law. As a result, thousands of companies are operating ‘under a cloud of doubt and uncertainty,’ said Theresa Pugh, director of environmental quality at the National Association of Manufacturers.

‘There are a million ways for recalcitrant Federal agencies to vitiate a law,’ said Representative Ron Wyden, Democrat of Oregon. ‘It is extraordinarily frustrating. Contrary to what civics textbooks might suggest, passing legislation today is just the very first step. After that, you have to run through a veritable gauntlet of administrative processes and procedures to get the law carried out.’

The Reagan Administration sometimes used administrative delays as a device to enforce its philosophy of less government and to save money, and Congress responded by imposing more specific mandates and tighter deadlines, creating a cycle that aggravated the problem. . . .

Congress, lobbyists, the White House and millions of Americans typically focus on legislative battles, assuming that a bill takes effect when signed by the President. But the partisan sparring over legislation often continues long after it is signed into law.

James M. Strock, enforcement director of the Environmental Protection Agency from 1989 through this February, said the delays led to a vicious circle: When Congress feels that an agency is is moving too slowly, it sets deadlines. The agency fails to meet them, generating further disappointment and distrust on Capitol Hill. So lawmakers set tighter deadlines and more detailed requirements, which the agency finds even more difficult to meet. . . .

Disagreements over new laws are common after a decade in which Republicans controlled the White House and Democrats dominated Congress. Regulations can be written to distort or even to thwart the intent of Congress. To prevent such abuse, Congress writes highly prescriptive laws that read like regulations.

Even when an agency is eager to carry out a new law, it must negotiate with the Office of Management and Budget, which often demands changes in proposed rules to reduce the cost or to minimize the burden on private industry. Congress itself may not provide the money needed to carry out or enforce a new law. . . .
Michael J. Horowitz, counsel to the director of the Office of Management and Budget from 1981 to 1985, said Reagan Administration officials often viewed ‘nonenforcement of the law’ as an easy way to deal with statutes and regulations they disliked.

Federal courts recently criticized the Federal Trade Commission for failing to carry out a simple 1986 law that required health warnings in all advertisements for snuff and chewing tobacco. The commission exempted advertisements on promotional products like T-shirts, beach blankets, baseball caps and coffee mugs.

The law prescribed the exact text of the warnings, which said, for example, ‘This product may cause mouth cancer.’ The F.T.C. argued that people would misread such warnings to mean that T-shirts and beach blankets caused cancer when they were emblazoned with advertisements for tobacco.

In a study of the Medicaid program, Eleanor D. Kinney, a law professor at Indiana University, found that Federal officials issued rules rapidly ‘to implement executive branch initiatives.’ But she said officials were ‘quite slow’ to publish rules needed to carry out laws opposed by the Administration. Thus, she said, rules intended to save money were issued promptly, while rules expanding health care benefits for children and pregnant women were delayed.

Representative Henry A. Waxman, Democrat of California, said, ‘The E.P.A. often produces carefully considered regulatory proposals, based on an extensive record and lengthy studies, only to see them dismissed out of hand by White House officials eager to protect industry from the cost of regulation.’

Note that our current Constitution, as it exists in practice, is in effect a polycameral Government. What began as a separation of powers developed into a blending of powers, with Legislative power gradually coming to be vested in the Executive Branch. This development has led to the demise of yet another critical Principle: the Principle of Majority Rule.
THE SEPARATION OF POWERS AND THE DESTRUCTION OF THE PRINCIPLE OF MAJORITY RULE

In our modern century, this “complicated check on legislation” has indeed proven to be “injurious,” leading not only to delay and a lack of Accountability, but also to a departure from the central maxim of democracy — the Principle of Majority Rule:

The inevitable tendency of our system has been ‘to widen the gulf between the government and the people, to discourage serious political thinking and debate save at moments of grave crisis, to increase the power of corrupt machine politics, and to cultivate an easy-going indifference to abuses. . . . The existing Constitution, however great its virtues in any particular respect, does not permit of genuine popular government. The rigidity of the electoral system, the divorce of the executive from the legislature, and the well-nigh uncontrollable power of the courts combine to centralize political power in the hands of a comparatively few individuals who are only remotely responsible to the people, and whose acts can be reviewed by the people only at long and fixed intervals.’

The final consequence of our system has been the subversion of what Hamilton referred to as “the fundamental maxim of republican government” — that “the sense of the majority should prevail.” As Whicker (1987) noted,

Bicameralism . . . diminishes accountability and effectiveness by providing several more decision points at which powerful special interests may thwart legislation which actually reflects majority opinion. Bicameralism then serves the interests of powerful, often economically based minority factions, which can muster the money, knowledge and resources to engage in machinations in the halls of Congress. Bicameralism does nothing to serve the interests of minority interests which have traditionally been excluded from societal power structures, and often results in thwarting majority rule.

But Hamilton had warned against solutions which violated fundamental maxims:
What at first sight may seem a remedy, is, in reality, a poison. . . . The necessity of unanimity in public bodies, or of something approaching towards it, has been founded upon a supposition that it would contribute to security. But its real operation is to embarrass the administration, to destroy the energy of the government, and to substitute the pleasure, caprice, or artifices of an insignificant, turbulent, or corrupt junto, to the regular deliberations and decisions of a respectable majority. In those emergencies of a nation, in which the goodness or badness, the weakness or strength, of its government is of the greatest importance, there is commonly a necessity for action. The public business must, in some way or other, go forward. If a pertinacious minority can control the opinion of a majority, respecting the best mode of conducting it, the majority, in order that something may be done, must conform to the views of the minority; and thus the sense of the smaller number will overrule that of the greater, and give a tone to the national proceedings. Hence, tedious delays — continual negotiation and intrigue — contemptible compromises of the public good. . . . upon some occasions things will not admit of accommodation; and then the measures of government must be injuriously suspended, or fatally defeated. It is often, by the impracticability of obtaining the concurrence of the necessary number of votes, kept in a state of inaction. Its situation must always savor of weakness, sometimes border upon anarchy. . . .

When the concurrence of a large number is required by the constitution to the doing of any national act, we are apt to rest satisfied that all is safe, because nothing improper will be likely to be done; but we forget how much good may be prevented, and how much ill may be produced, by the power of hindering the doing what may be necessary, and of keeping affairs in the same unfavorable posture in which they may happen to stand at particular periods.  

Unfortunately, our form of Government has not only allowed a “pertinacious” Minority to stifle Majority preferences, it has actually institutionalized the phenomenon. What at first sight seemed a remedy was, in reality, a poison. The multiple decision points required by the Separation of Powers Principle as instituted in the Constitution have given rise to a Government not of, by, and for the People, but of, by, and for the Special Interest Groups.
The Rise of the Special Interests

Because the Government is complicated and fundamentally unaccountable, only special interests can afford to get involved in the political system, since the costs of entry are high, and involvement is not cost-effective for the average Citizen: according to John Gardner (Secretary of Health, Education and Welfare in the Johnson Administration), it is a mistake to think of the Federal Government as a unified entity; rather, “[i]t is a collection of fragments under the virtual control of highly organized special interests . . . In the special-interest state that we have forged, every well-organized interest owns a piece of the rock.”

This consequence was known to the Framers, and was properly feared. In fact, Madison was acutely aware of the threat that special interests (called “factions” in 1787) would acquire an undue influence over Government, and even devoted a famous essay, Federalist 10, to an examination of this concern. To Madison, preventing the threat of faction control of Government was a key role for any constitution. Amazingly, however, Madison dismissed the most critical problem society would face in one sentence! As Elliot (1985) reported,

What has not attracted sufficient notice about Madison’s argument in Federalist 10, however, is the cavalier way in which he dismisses ‘minority Factions’ as a potential threat to the public interest:

If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote, it [a minority faction] may clog the administration; it may convulse the society; but it will be unable to execute and mask its violence under the forms of the constitution.

Madison’s argument that popular elections are sufficient to insure that minority interest groups do not pose a serious threat to the public interest is simply wrong. Madison’s argument depends on the assumption that majorities will take the steps necessary to inform and organize themselves to protect their self-interest, but this assumption is demonstrably wrong, as Mancur Olson has shown in his recent book, The Rise and Decline of Nations.

Madison was wrong because Majority organization is not cost-effective when the benefits of organizing are very slight (i.e., individual Government actions with potential Majority opposition, such as tax loopholes for special interests, result in only a slight cost to individuals who are not a part of the favored Minority) — and the costs of organizing a Majority around discrete
issues are high. No such debilitating effects affect the well-organized special interests, who a) have the funds to organize, b) have a cost-effective financial interest to organize [e.g., a tax loophole can have enormous short-term financial consequences for the special interest], and c) are unified on the issue which most affects them. Compounding these effects, as Elliot further observed, the passage of time has eroded whatever natural checks there were against the ability of special interests to capture the Government:

[The Framers] carefully crafted a political system in which various elements of the federal government would be elected by different constituencies in the hope that diversity in the distribution of interests among the varying electoral constituencies would prevent any special interest group from exercising undue influence over the government as a whole. . . .

The house of Representatives being to be elected immediately by the people, the Senate by the State legislatures, the President by the electors chosen for that purpose by the people, there would be little probability of a common interest to cement these different branches in a predilection for any particular class of electors.

The basic institutional checks designed by the framers of the Constitution to limit the power of interest groups have long since eroded. First, the seventeenth amendment provided direct popular election of Senators. Second, the electoral college has now become largely vestigial, so that as a practical matter, the President is also popularly elected. Third, a vast “administrative state” with broad delegated powers has arisen that lies largely outside the system of checks and balances crafted so carefully by the framers. Finally, as both the country and the nature of government have changed, the principle of geographic diversity of interests, upon which the framers placed primary reliance, is no longer as potent a check on the power of special interest groups as it may once have been. Today there are many interest groups that are more or less evenly distributed throughout the country (social security recipients, for example), and they can bring potent electoral pressures to bear on Representatives, Senators, and Presidents alike.

The cumulative effect of these changes is to render our political institutions systematically vulnerable to the influence of well-organized, narrowly-focused groups seeking subsidies or other forms of preferential treatment from the federal government. The current deficit is merely the
outward symptom of these more fundamental problems, resulting from the way in which our political institutions have evolved.\textsuperscript{54}

The existence of latent structural flaws became apparent when the Nation began incurring its first serious budget deficits in the late 60’s (as a consequence of the Vietnam War). The Government began its slow and inevitable decline, as the special interests began to consolidate their power. By 1978, the systemic nature of our infirmities had become clear, and in November of that year, \textit{The New York Times} devoted a three-part series to an examination of this breakdown in Government:

John Gardner, the founder of Common Cause, the public-affairs lobby, says the nation is being whipsawed by a multiplicity of special interest groups, resulting in ‘a paralysis in national policymaking.’

Daniel Bell, professor of sociology at Harvard, said at a recent meeting of the American Jewish Congress: ‘Our political institutions do not match the scales of economic and social reality. The national state has become too small for the big problems of life and too big for the small problems.’ . . .

Tom Hayden says ‘You can take any issue you want, and the system isn’t delivering. There is no glue holding the country together.’

From the White House, Stuart Eizenstat, President Carter’s chief adviser for domestic affairs, speaks of ‘an increasingly fragmented society.’

Disarray in government and dissatisfaction with it have always been part of the American system. John F. Kennedy is remembered, for example, as a forceful, charismatic President but one who was unable to effect relatively mild reforms in the early 1960’s after having run on a promise to ‘get this country moving again.’ . . .

[T]here is a consensus that no coalition of interests is strong enough to set priorities for the overall public good to effect reforms that have wide public support, to root out inefficiency and corruption in government programs, and to inspire confidence in political leadership.

Many see this disunity as systemic, and therefore separate from, the failures of individual leaders and institutions, the complex new issues that have arisen in recent years and the voter frustration and discontent stemming from government failures.

‘I’m not sure anybody could pull this Government together,’ Representative Morris K. Udall, Democrat of Arizona, remarked . . . .

Congress has decentralized itself until every special interest has access to policy, but the leadership cannot put broad policy objectives into effect.
More and more members of Congress see themselves and present themselves as ombudsmen for their states or districts, rather than as representatives trying to effect broad national and foreign policies. . . .

In a telling prediction, Fred Wertheimer, the senior vice president of Common Cause, noted that:

‘It is a Congress becoming more and more paralyzed in its ability to make decisions on behalf of all citizens. It is a Congress that in the not-too-distant future will be drowning in special-interest group political money.’

On July 19, the House declined to bypass its Rules Committee and vote on legislation to establish public financing of Congressional campaigns for 1980. The Rules Committee, which clears bills for floor action, is opposed to the measure.

Another attempt at passage will be made next year. However, some supporters fear that the large amount of money poured into the campaigns of incumbents who won re-election will make passage of the bill even more difficult, and the phenomenon . . . will go on.

The cycle of our time is that big business requires big regulation — but a constitutional structure inadequate for the passage of necessary legislation means that Legislative power must be delegated to bureaucrats; and, since bureaucrats are not accountable in the traditional sense, Congressmen and/or special interest lobbyists must intervene:

The growing numbers and powers of lobbies have been in part a result of two decades of increased Government involvement in the affairs of powerful economic interests. Over the last 15 years Federal laws and regulations have increasingly put the Government in the business of overseeing or regulating aspects of the automobile, oil, gas, education, and health care industries among others.

In turn, each of these interest groups has organized or expanded its effort to influence Government activities at all levels, and the success of those efforts has stimulated the organization of still other lobbies to augment or oppose the presence of the first in Washington.

‘We have a fragmented, Balkanized society,’ Stuart Eizenstat, President Carter’s chief adviser for domestic affairs, has said, ‘with an economic proliferation of special economic interest groups, each interested in only one domestic program — protecting it, having Government spend more for it, unwilling to see it modified.’ . . .
Tom Matthew, a consultant to several public-interest groups on the political left, says that probably no more than 6 percent of the population is involved in the whole beehive of activity — from the people sending in contributions to some causes to the people traveling to Washington or to state capitals to do their lobbying.

The rest of the population only lives with the results.57

In what can be referred to as the “pusher” theory of Government, the Incumbents of Congress have themselves created the conditions requiring their intervention:

‘The nature of the Washington system is now quite clear, ‘ Morris P. Fiorina, Associate Professor of Political Science at the California Institute of Technology, wrote in a book published last year, ‘Congress: Keystone of the Washington Establishment.’

‘Congressmen earn electoral credits by establishing various Federal programs,’ Mr. Fiorina wrote. ‘The legislation is drafted in very general terms, so some agency must translate a vague policy mandate into a functioning program, a process that necessitates the promulgation of rules and regulations and, incidentally, the trampling of numerous toes. At the next stage, aggrieved and or hopeful constituents petition their Congressmen to intervene in the complex process of the bureaucracy.’

‘The cycle closes,’ he continued, ‘when the Congressman lends a sympathetic ear, piously denounces the evils of bureaucracy, intervenes in the latter’s decisions, and rides a grateful electorate to ever more impressive electoral showings. Congressmen take credit coming and going. They are the alpha and omega.’58

Under the system of rule by special interests, the Congressman has “two principal functions: to make laws and to keep laws from being made . . . . The first of these he and his colleagues perform only with sweat, patience and a remarkable skill in the handling of creaking machinery; but the second they perform daily, with ease and infinite variety.”59 Congressmen can protect your industry — for a price. Here are some examples:

• ‘[I]t was found in extensive experiments that cash housing allowances worked better in many cities than the cumbersome, costly subsidy programs. But such allowances were not even under consideration, a White House official said, because the commercial and professional interests that feed off the subsidy programs in effect would surely block such a move.’
• ‘A number of proposed changes long supported by a majority of the people, according to polls of public opinion, have never been enacted because of special-interest pressure. President Carter sent his tax package to Congress assured, on the basis of polling data, that more than 60 percent of the people favored most of the bill’s provisions. But in the House Ways and Means Committee, it was turned into a vehicle for reducing the capital gains tax as well as for general tax reduction.’

• ‘In 1974, the Senate passed legislation for no-fault auto insurance, intended to save the public money. The American Trial Lawyers Association, whose members earn money for trying negligence suits, set up a political action committee to contribute to Congressional candidates. In 1973, the Senate defeated the measure. Common Cause reported that it found that five Senators who were up for re-election in 1976 switched their votes from ‘yes’ to ‘no’ between 1974 and 1975 and, subsequently, received substantial campaign contributions from the lawyers, who poured half a million dollars into the 1976 campaigns and have continued to make contributions. Last summer, the House Commerce Committee killed a no-fault insurance bill by a vote 22 to 19. The sponsor, Representative Bob Eckhardt, Democrat of Texas, said opposition from the lawyers was the chief reason for the bill’s defeat.’

_The Rise of Special Interests and the Incumbency Effect_

The rise of Special Interest Rule has created an _incumbency effect_; special interests give money to incumbents, who sit on the committees affecting these interests. A permanent _quid pro quo_ is established — votes for contributions. More contributions means a greater ability to defeat challengers. Challengers, who have nothing to “bring to the table,” are at a tremendous disadvantage, as Philip Stern noted in _The Best Congress Money Can Buy_:

In 1986, out of 214 House contests in which the incumbent sought reelection, GE [the General Electric Pac] backed the incumbent in 211 (including 34 in which the incumbent had no opponent). That is, GE selected the incumbent _98.6 percent of the time_. Aside from a single instance where GE backed both the incumbent and the challenger, in only 3 of 214 contests — 1.4 percent — did the GE PAC managers find the challenger preferable to the incumbent. It was as if someone from On High had issued instructions: ‘Never mind candidates’ party affiliation, their attitudes toward big business, or their need for campaign funds. Whatever you do, _support the incumbent_.’ . . .
In contests where incumbents were seeking reelection in 1986, *PACS overall gave more than 88 percent of their money to them and only 12 percent to challengers.*”

The massive influx of cash worked: in 1986, Incumbents had a 98 percent success rate. Incumbents not only receive money from local interests, but also National special interests, interests that have a great deal to gain financially from the “right” votes:

Dallas’s Democratic Representative Martin Frost offers an illustrative case study of the dairy PACs’ generosity to such an urban representative. His largely big-city district contains, at most, three dairy farmers — and some 527,000 dairy consumers. Many of the latter have incomes below the official government poverty line and can ill afford to pay the higher dairy prices the government subsidy program almost surely causes.

Therefore, in voting for the higher subsidy level, Congressman Frost sided with the three dairy farmers in his district against the interests of the hundreds of thousands of consumers. Why?

A relevant factor to consider while pondering that question is the $45,050 the dairy lobby had lavished on this big-city congressman in the eight years 1979 through 1986. That made him the fifteenth-highest recipient of dairy money among the 435 members of the House, rural or urban.

Perhaps the most dramatic charts in Stern’s book are charts showing extremely disturbing correlations between funds received from special interests and votes on legislation affecting those interests. For example, here are the correlations between money received and votes cast for dairy subsidies:

<table>
<thead>
<tr>
<th>OF THOSE RECEIVING THIS AMOUNT FROM THE DAIRY LOBBY IN 1979 THROUGH 1986</th>
<th>... THIS PERCENT VOTED FOR DAIRY SUBSIDIES IN 1985</th>
</tr>
</thead>
<tbody>
<tr>
<td>MORE THAN $30,000</td>
<td>100 %</td>
</tr>
<tr>
<td>$20,000 TO $30,000</td>
<td>97 %</td>
</tr>
<tr>
<td>$10,000 TO $20,000</td>
<td>81 %</td>
</tr>
<tr>
<td>$2,500 TO $10,000</td>
<td>60 %</td>
</tr>
<tr>
<td>$1 TO $2,500</td>
<td>33 %</td>
</tr>
<tr>
<td>ZERO</td>
<td>23 %</td>
</tr>
</tbody>
</table>
This effect, visible on recorded votes, must be even more pronounced where the votes aren’t recorded — in discussions after-hours and within the committees. In this manner, the fundamental maxim of Republican and Democratic Government, Majority Rule, has been entirely subverted.
THE SEPARATION OF POWERS AND UNDUE ATTENTION TO LOCAL INTERESTS

Delay. Unaccountability. Obliteration of the Principle of Majority Rule. But these are not the only consequences of the Separation of Powers Principle as instituted in the Constitution. In addition, the system as instituted interferes with an essential criterion for a desirable Legislature: that the Legislature take a National, as opposed to a Parochial, view.

One desirable criterion for national legislatures is the ability of both individual members and the institution to take a broad national view of problems and to act in the national interest. . . . A small benefit for the nation as a whole, for example, should not necessarily be implemented if serious damage would accrue to a region of the nation. At the same time, a minor benefit for part of the nation should not be purchased at the cost of severe hardship to the nation as a whole.

The authoritative allocation of resources often occurs in national legislatures. This is a critical task and when performed poorly can result in waste. In some instances the resources being allocated are scarce. The waste of such resources may inflict harsh costs on a particular segment in a society or on the nation at large. The thoughtful allocation of resources in an efficient manner can make or break the welfare of a nation.65

The need to restrain the effects of Parochialism were well-known at the Federal Convention. A susceptibility to parochial interests was, indeed, one of the fatal flaws of the Articles of Confederation, as pointed out by Pennsylvania Delegate James Wilson on June 8:

We are now one nation of brethren. We must bury all local interests & distinctions. . . . No sooner were the State Govts. formed than their jealousy & ambition began to display themselves. Each endeavoured to cut a slice from the common loaf, to add to its own morsel, till at length the confederation became frittered down to the impotent condition in which it now stands. Review the progress of the articles of Confederation thro’ Congress & compare the first & last draught of it. To correct its vices is the business of this convention. One of its vices is the want of an effectual controul in the whole over its parts. . . . leave the whole at the mercy of each part, and will not the general interest be continually sacrificed to local interests?66
But the structure of Government given to us by the Framers did not achieve their stated goal that Government should promote the general welfare, and not the local welfare. Part of the reason for this is that even though Congress takes action collectively, voting by Congressmen takes place individually, a structural phenomenon leading to Parochialism:

While the national legislature as an entity may receive low popular ratings, it is possible for individual legislators to receive undeserved high ratings from their states or districts. Many of these legislators are reelected and as incumbents appear to benefit from citizen ignorance. Apparently the electorate perceives that the problems with the national legislature are caused by representatives from districts or states other than their own, and legislators often reinforce this view.

Due to ignorance, citizens may not discern whether or not their representatives are good legislators who can mobilize support for their bills and pass legislation, thereby solving problems and implementing their objectives. Citizens may also have difficulty identifying merely symbolic action wherein legislators express an opinion but suggest no policy changes, or make statements of policy without sponsoring legislation to implement it. . . . Members may contribute to voter ignorance and apathy in a variety of ways. Legislators may stress voter access and identification with the constituents more than what is going on in the national legislature.67

Our constitutional structure inevitably leads to Parochialism for another reason — the delivery of “pork barrel” projects to local constituents:

Congress is often accused of being parochial, reflecting narrowly based constituent interests rather than assuming a national view. . . . One measure of parochialism in Congress is the delivery of pork barrel legislation to congressional districts and states. This may consist of special projects, new programs, or public works or buildings which benefit constituents in a particular geographic region and do not benefit other citizens. The conferment of such benefits is a constant feature of congressional policy making. Particularized benefits have two properties: they are usually given out to a specific individual group or geographic constituency and are usually distributed in an ad hoc fashion so that the member of Congress representing the benefited constituency can claim credit for the allocation. Representatives and Senators view pork barrel legislation as crucial to reelection, a perception which
diminishes the incentive among current members to abolish or limit its use. . . .68

A process which rewards the creation of “pork barrel” legislation must penalize the creation of legislation in the National Interest, and must inevitably effect the quality of legislation:

Given [the] number of legislative hurdles, important legislation is often side-tracked, permanently derailed, or significantly modified by interest groups at any one of the various gates through which proposed statutes must pass. Interest groups have become well aware of the lengthy, sequential, internally specialized, bicameral legislative processes. They often manage to impede or alter bills at veto points along the process. The length of the process is not only ponderous, but in the Washington environment where the interest group legislative ‘hunting season’ never closes, the long duration of the process increases bill vulnerability to special interest attacks. . . .

For example, in 1965 President Lyndon Johnson suggested a bold solution to the problems of crime and poverty in inner-city slums. As the bill was originally drafted, about a dozen cities would have received large sums of money to be spent under federal supervision in order to promote racial integration and renovate the slums. Passage of this program in Congress became a study in compromise. Compromise, in itself, is not an undesirable value, but it can subvert the original purpose of legislation. Proponents of the ‘Demonstration Cities’ legislation had to compromise extensively. They had to dismiss the goal of racial integration, loosen federal control over the administration of the program, and make more cities eligible to participate (approximately 150). What began as a noble attempt to renew decaying urban centers ended up as another pork barrel project that ineffectively divided funds among constituencies in Congress. . . .69

According to Lawrence Dodd, the Constitution lacks a centralizing force which would ameliorate this nascent Parochialism:

The Constitution provides no function or structure to Congress that would create internal congressional incentives supportive of power centralization, coordination, and institutional integrity. It merely assumes that these will be maintained by the natural operation of political life in a simple, agrarian society. When the latter assumption is no longer valid, when it is no longer true that policy problems will be simple and congressional life will draw only a few legislators committed to long-
term congressional careers and power, there is no provision within the constitutional system — no incentive system — that will lead members naturally to sustain mechanisms of institutional centralization.70

A Government without a centralizing force is a Government which compromises by passing Bills which benefit local areas, but can only with great difficulty pass Bills in the National Interest.

Thus the problems that have resulted from the political theory of the Framers. In review, we find that the Separation of Powers Principle as implemented in the Constitution has made impossible the fulfillment of the Preamble strictures that Government must “establish Justice” and promote “the general Welfare.” These two critical criteria have been violated, and so have four other critical criteria: Efficiency, Accountability, Majority Rule, and National Interest Representation. Instead, we universally find in Government Delay, Unaccountability, Minority Rule, and Parochialism.

These six criteria violations are serious enough, but there is one final violation — in fact, the last that will confront any constitution: the violation of the Principle of Constitutional Self-Preservation. The Separation of Powers Principle, in seeking to preserve the form of Government by crippling Government, made the formation of a subterranean, unconstitutional Government necessary. As Hardin (1987) wrote, “It is not simply that the Separation of Powers leads to deadlock (or gridlock) and stalemate . . . the Separation of Powers poses a deadly danger to constitutional government itself.”71 A Principle meant to preserve the Constitution has led inexorably to its downfall.
DELEGATION AND
THE ESCAPE FROM THE CONSTITUTION

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

— Article One, Section One (emphasis supplied)

A weak constitution must necessarily terminate in dissolution, for want of proper powers, or the usurpation of powers requisite for the public safety. Whether the usurpation, when once begun, will stop at the salutary point, or go forward to the dangerous extreme, must depend on the contingencies of the moment. Tyranny has perhaps oftener grown out of the assumptions of power, called for, on pressing exigencies, by a defective constitution, than out of the full exercise of the largest constitutional authorities.  

— James Madison, Federalist 20

Article One, Section One of the Constitution states in no uncertain terms that “All legislative powers herein granted shall be vested in a Congress of the United States . . . .” This reflects John Locke’s view, stated in his Second Treatise, that “the Legislative can have no power to transfer their Authority of making Laws, and place it in other hands.” This Principle was etched indelibly into our Constitution in Article One, Section One, and was well understood by the authors of The Federalist. According to John Jay, the Framers had “given the power of making laws to the legislature . . . .” and Hamilton wrote that “the legislature . . . prescribes the rules by which the duties and rights of every citizen are to be regulated.” This was a power that could not be transferred by the Legislative Branch; according to Madison, “[a]s the people are the only legitimate fountain of power . . . it seems strictly consonant to the republican theory to recur to the same original authority . . . whenever it may be necessary to enlarge, diminish, or new-model the powers of government . . . .” Therefore, it was no surprise when Chief Justice Taft stated in 1937 that “it is a breach of the National fundamental law if Congress gives up its legislative power and transfers it to the President, or to the Judicial branch . . . .”

Under our constitutional system, there are sound reasons to prohibit delegation of this Legislative power. To permit the concept of Delegation would allow the laws created by delegated authorities to evade the system of Checks and Balances created by the Framers: under a constitution of delegated
Legislative authority, the People would have no check against unpopular legislation, a check which was built into the Constitution expressly for that purpose. According to Madison, the Bicameral System instituted in the Constitution would insure that “[n]o law or resolution [would] be passed without the concurrence . . . of a majority of the people . . . .”79 But lawmaking by an unconstitutional “Administrative” Branch would allow evasion of this Bicameral requirement. If such a Branch were to pass a law that the People did not approve, the People would be helpless, since not only would they not know who voted for the law, there would be no one to vote out, since Administrative officials are appointed, not elected by the People.80 Furthermore, even if a counter-law were to be passed by the House of Representatives, that counter-law could be checked by the Senate, President, or Supreme Court — the three checks against popular action in the Constitution. The same would be true were the Supreme Court given Legislative power. Again, any attempt by the People to check Judicial lawmaking[!] directly would itself be checked by the Constitutional bodies existing for that purpose. For this reason, Delegation was strictly prohibited by our Framers. As Hamilton stated,

[E]very act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid.81

But here was the dilemma: a Government must govern, and a constitutionally crippled Government could not constitutionally govern. Thus, a Bicameral Congress hobbled by an institutional delay was forced to delegate its exclusive Legislative authority. With the rise of industry in the Twentieth Century came a veritable explosion of Delegation of Legislative authority by Congress to such entities as the Federal Communications Commission, the Food and Drug Administration, the Environmental Protection Agency, the Interstate Commerce Commission, the Securities and Exchange Commission, the Federal Trade Commission, the Internal Revenue Service, the Occupational Safety and Health Administration — the list goes on and on. As Justice White noted in I.N.S. v. Chadha, 462 U.S. 919 (1983), “legislative authority is routinely delegated to the Executive Branch, to the independent regulatory agencies, and to private individuals and groups.”82 According to Justice White, “the effective functioning of a complex modern government requires the delegation of vast authority which, by virtue of its breadth, is legislative or
'quasi-legislative’ in character . . . .” And though it was the self-appointed umpire of constitutional legitimacy, the Supreme Court nonetheless sanctioned this unconstitutional process: “[T]he Court, recognizing that modern government must address a formidable agenda of complex policy issues, countenanced the delegation of extensive legislative authority to Executive and independent agencies.” The scope of Delegation escalated as initial restrictions began disappearing: “Theoretically, agencies and officials were asked only to ‘fill up the details,’ . . . [i]n practice however, restrictions on the scope of the power that could be delegated diminished and all but disappeared. In only two instances did the Court find an unconstitutional delegation.” Delegation mushroomed. Over time, Congress not only forfeited its constitutional role as the exclusive Legislative body, but also the primary Legislative body. As Justice White observed,

The wisdom and the constitutionality of these broad delegations are matters that still have not been put to rest. But . . . by virtue of congressional delegation, legislative power can be exercised by independent agencies and Executive departments without the passage of new legislation. For some time, the sheer amount of law — the substantive rules that regulate private conduct and direct the operation of government — made by the agencies has far outnumbered the lawmaking engaged in by Congress through the traditional process.

What are generally referred to as Administrative “regulations” or “rules” are, in fact, laws. As Hamilton stated, the “essence” of the Legislative authority was “to enact laws, or, in other words, to prescribe rules for the regulation of the society . . . .” Justice White wrote that

There is no question but that agency rulemaking is lawmaking in any functional or realistic sense of the term. The Administrative Procedure Act, 5 U.S.C. § 551(4), provides that a ‘rule’ is an agency statement ‘designed to implement, interpret, or prescribe law or policy.’ When agencies are authorized to prescribe law through substantive rulemaking, the administrator’s regulation is not only [given] due deference, but is accorded ‘legislative effect’ . . . These regulations bind courts and officers of the Federal Government, may pre-empt state law . . . and grant rights to and impose obligations on the public. In sum, they have the force of law.

Over time, a new Branch of Government was created without the benefit of formal approval by the States or the People as required by the Constitution in Article Five. According to Justice Jackson, “The rise of the administrative
bodies probably has been the most significant legal trend of the last century. . . . They have become a veritable fourth branch of the government, which has deranged our three-branch legal theories." On this road there was no terminus. Justice Sutherland, in *United States v. Curtiss-Wright Export Corporation*, 299 U.S. 304, 327 (1936), “used language implying that there is virtually no Constitutional limit to Congress’s power to delegate to the President authority which is ‘cognate’ to his own constitutional powers.’ . . In brief, the President’s duty ‘to take care that the laws be faithfully executed’ becomes often a power to make the laws.” And the Executive Branch did indeed exercise its newly granted power to make laws. As Senator James Abourezk described the situation in 1975, “[l]ast year the Congress enacted 647 public laws while approximately 6,000 administrative rules were adopted by 67 Federal agencies, departments, and bureaus. More law, in the sense of rules governing our society, is produced by the executive branch than is produced by the national legislature.”

According to Levitas and Brand (1984):

> [I]f Thomas Jefferson, James Madison, or any of the other Founding Fathers were to visit us today, they would be . . . shocked by the existence of administrative agencies and by the delegation of lawmaking power to this part of the executive. . . . As noted by Justice Jackson,

administrative agencies have been called quasi-legislative, quasi-executive, or quasi-judicial, as the occasion required in order to validate their functions within the Separation of Powers scheme of the Constitution. In effect, all recognized classifications have broken down and the qualifying prefix ‘quasi’ is a smooth cover that we draw over confusion as we might use a counterplane to conceal a disordered bed.

Tugwell (1976) viewed the existence of the “fourth branch” of Government as conclusive proof of the inadequacy of the Constitution, an inadequacy which made escape from the Constitution necessary:

> [B]ecause of its own incapacities . . . the Congress has created the regulatory agencies. They are justified by the implication that they are necessary to protect the public. They deny altogether the principle of separation. . . . they carry on highly complicated technical operations and are largely self-governing. Their immense bureaucracies constitute a large part of modern government. Their existence is a constant reminder that escape from the Constitution has been accomplished on a grand scale and without notable objection.
Because Congress had delegated its exclusive Legislative authority, a popular backlash arose against Government bureaucracy in the 70’s, which led to the increasing use of a device which would allow the People to regain control over the unconstitutional Fourth Branch, known as the one-house Legislative Veto. Utilizing this provision, Congress could delegate Legislative authority, but any law passed by one of the Administrative bodies could be vetoed by either House of Congress. Strictly speaking, the Legislative Veto was unconstitutional, but Delegation itself was unconstitutional, and the Veto attempted to restore some sort of balance. Unfortunately for the Democratic Congress, it decided exercise this power over a Republican Executive Branch. This attempt by the Legislature to check the Executive led the Executive Branch to look for a case it could sponsor for review by the Supreme Court, and hold the Legislative Veto unconstitutional. The Executive Branch found the case — I.N.S. v. Chadha. And, in one of its least shining hours, the Supreme Court held the Legislative Veto unconstitutional (voiding nearly 200 laws utilizing the Veto in one fell swoop), while at the same time allowing the unconstitutional Delegations to continue!

The Supreme Court rejected the Legislative Veto with this reasoning: “[T]he fact that a given law or procedure is efficient, convenient, and useful in facilitating functions of government, standing alone, will not save it if it is contrary to the Constitution. Convenience and efficiency are not the primary objectives — or the hallmarks — of democratic government . . .” The Court, after noting “the obvious flaws of delay, untidiness, and potential for abuse” in our constitutional structure, stated that

[T]he Framers ranked other values higher than efficiency . . . The choices we discern as having been made in the Constitutional Convention impose burdens of governmental processes that often seem clumsy, inefficient, even unworkable, but . . . [t]here is no support in the Constitution or decisions of this Court for the proposition that the cumbersomeness and delays often encountered in complying with explicit constitutional standards may be avoided . . .

Yet, in a textbook example of the Supreme Court’s selective attention, the Court failed to apply this same reasoning to the Delegation Doctrine! Justice White, dissenting, attacked this Judicial doublethink (reasoning which simultaneously held that agency rulemaking was lawmaking — and therefore a one-house Legislative Veto DID violate the Bicameral requirement — AND that agency rulemaking was not lawmaking — and therefore DID NOT violate the Bicameral requirement!), and pointed out the necessity of escaping from the Constitution:
Without the legislative veto, Congress is faced with a Hobson’s choice: either to refrain from delegating the necessary authority, leaving itself with a hopeless task of writing laws with the requisite specificity to cover endless special circumstances across the entire policy landscape, or in the alternative, to abdicate its law-making function to the Executive Branch and independent agencies. To choose the former leaves major national problems unresolved; to opt for the latter risks unaccountable policymaking by those not elected to fill that role.98

The battle over the Legislative Veto and the general acceptance of the Delegation Doctrine by the Supreme Court reveal that the nature of our Government has changed dramatically. The Delegation Doctrine is only one example of the phenomenon of escalation, which as Eliot Aronson described, is “self-perpetuating. Once a small commitment is made, it sets the stage for ever-increasing commitments. The behavior needs to be justified, so attitudes are changed; this change in attitudes influences future decisions and behavior.”99 And escalation has indeed occurred in the political arena. According to Justice White, “From the summer of 1787 to the present the Government of the United States has become an endeavor far beyond the contemplation of the Framers.”100 Aronson’s “self-perpetuating” insight explains this — people are likely to accept the political status quo simply because they accepted the status quo before. The tendency to accept the accepted is accompanied by the quiescent emergence of rules. New laws are formed. New interpretations are made. New actions are taken. In this manner, where a Government is allowed to “evolve,” a Government entirely different from the one first conceived can be established.

The Framers of our Constitution were well aware of this Escalation Principle. As Edmund Randolph wrote to the Speaker of the Virginia House of Delegates on October 10, 1787, “. . . a bad feature in government, becomes more and more fixed every day.”101 Madison stated in The Federalist that “abuses . . . of long standing, would [take] deep root, and would not easily be extirpated,”102 and warned that these abuses would provide precedents, each one of which would be “a germ of unnecessary and multiplied repetitions.”103 Thus, these abuses or “usurpations of power”104 would be “but the first link of a long chain of repetitions, every subsequent interference being naturally produced by the effects of the preceding.”105 Hamilton warned that if “an improper spirit of any kind should happen to prevail” in society, “that spirit would be apt to infuse itself into the new members, as they come forward in succession. The mass would be likely to remain nearly the same, assimilating constantly to itself its gradual accretions.”106 Hamilton reiterated the “germ”
metaphor of Madison: “[t]here is a contagion in example which few men have sufficient force of mind to resist.”

This ability to surreptitiously change the nature of Government through escalation meant that Government would not only shift the allocation of powers through Delegation, but would also gradually assume new powers, powers not accounted for when the terms of office of our representatives and our system of Checks and Balances was established. Due to the Principle of Escalation, people have grown used to usurpations of power by the Government. Whether the issue is PAC money, the shift of Legislative power from Congress to the Presidency and the Supreme Court, the Incumbency Effect, or even unpalatable societal developments like the ever-increasing National Debt, we have become inured to regression. And each acceptance of a small digression from the norm has laid the foundation for our acceptance of future digressions, leading to the emergence of new rules and, ultimately, a new form of Government.
I consider the foundation of the Constitution as laid on this ground: that ‘all powers not delegated to the U.S. by the Constitution, not prohibited by it to the states, are reserved to the states or to the people’ . . . To take a single step beyond the boundaries thus specially drawn around the powers of Congress, is to take possession of a boundless field of power, no longer susceptible of any definition.\textsuperscript{108}

— Thomas Jefferson, 1791

It exceeds the possibility of belief, that the known advocates in the Convention for a jealous grant & cautious definition of federal powers, should have silently permitted the introduction of words or phrases in a sense rendering fruitless the restrictions & definitions elaborated by them.

Consider . . . the immeasurable difference between the Constitution limited in its powers to the enumerated objects; and expanded as it would by the import claimed for the phraseology in question. The difference is equivalent to two Constitutions, of characters essentially contrasted with each other; the one possessing powers confined to certain specified cases; the other extended to all cases whatsoever . . . .\textsuperscript{109}

— James Madison, 1830

The Constitution was evaded not only because of institutional inefficiency, but because a strict reading of the Constitution would have crippled the Government. Jefferson’s view of a limited Constitution (i.e., a Constitution that allowed the Federal Government to pass laws in a particular area only if the power was explicitly granted) was shattered by Chief Justice John Marshall in \textit{McCulloch v. Maryland}, 4 Wheat 316 (1819). As Marshall stated in that famous opinion:

\begin{quote}
We admit, as all must admit, that the powers of the government are limited, and that its limits are not to be transcended. But we think the sound construction of the constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be
within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.\textsuperscript{110}

Marshall later stated in \textit{Gibbons v. Ogden}, 9 Wheat. 1 (1824) that “\textit{narrow construction . . . would cripple the government, and render it unequal to the object for which it is declared to be instituted . . . .}”\textsuperscript{111} This view was extremely controversial. As James Madison stated (with reference to the “Necessary and Proper” Clause in Article One, Section Eight), the Government could only be given new powers through \textit{amendment}, not through Judicial interpretation: “\textit{Whatever meaning this clause may have, none can be admitted, that would give an unlimited discretion to Congress . . . . Had the power of making treaties . . . been omitted, however necessary it might have been, the defect could only have been . . . supplied by an amendment to the constitution.}”\textsuperscript{112} But Hamilton, Madison’s contemporary and a fellow Federalist, argued against narrow interpretation, and introduced the concept of “\textit{implied}” powers, which opened a veritable Pandora’s Box of potential “interpretations”:

\begin{quote}
\textit{[T]here are implied, as well as express powers, and . . . the former are as effectually delegated as the latter . . . .}

\textit{The whole turn of the [necessary and proper] clause . . . indicates that it was the intent of the convention by that clause to give a liberal latitude to the exercise of the specified powers . . . .}

\textit{[A]n adherence to the letter of its powers would at once arrest the motions of the government.}\textsuperscript{113}
\end{quote}

But Andrew Jackson stated (many years later) that there were natural limits to the Necessary and Proper Clause — for example, Delegation: “\textit{It can not be ‘necessary’ or ‘proper’ for Congress to barter away or divest themselves of any of the powers vested in them by the Constitution to be exercised for the public good.}”\textsuperscript{114} Jackson’s view, as we have seen, was ignored.

James Madison, writing in 1819, could see the handwriting on the wall, and argued vehemently that if such a broad interpretation were given, the Constitution would not have been \textit{ratified}:

\begin{quote}
\textit{[W]hat is of most importance is the high sanction given to a latitude in expounding the Constitution which seems to break down the landmarks intended by a specification of the Powers of Congress . . . .}

\textit{[I]t was anticipated I believe by few if any of the friends of the Constitution, that a rule of construction would be introduced as}
\end{quote}
broad & as pliant as what has occurred. And those who recollect, and still more those who shared in what passed in the State Conventions, thro’ which the people ratified the Constitution, with respect to the extent of the powers vested in Congress, cannot easily be persuaded that the avowal of such a rule would not have prevented its ratification.115

According to Madison, broad interpretation would eviscerate the concept of a written constitution:

It has been the misfortune, if not the reproach, of other nations, that their Govt’s have not been freely and deliberately established by themselves. It is the boast of ours that such has been its source and that it can be altered by the same authority only which established it. It is a further boast that a regular mode of making proper alterations has been providently inserted in the Constitution itself. It is anxiously to be wished, therefore, that no innovations may take place in other modes, one of which would be a constructive assumption of powers never meant to be granted. If the powers be deficient, the legitimate source of additional ones is always open, and ought to be resorted to. . . .116

This opinion was in line with the views of Jefferson, who had rejected the road of broad construction, on similar grounds:

When an instrument admits of two constructions, the one safe, the other dangerous, the one precise, the other indefinite, I prefer that which is safe and precise. I had rather ask an enlargement of power from the nation where it is found necessary, than to assume it by a construction which would make our powers boundless. Our peculiar security is in possession of a written constitution. Let us not make it a blank paper by construction.117

It was not to be, however. As Marshall and Hamilton saw, Government could not govern in a growing society under a narrowly construed Constitution. Consequently, as Tugwell (1976) noted,

[A]t the very beginning of the government’s operations the Constitution began to unfold . . . it was in these earliest years that the compromising began and the Constitution began to soften and lose its sharp outlines. . . .
Once strict construction was abandoned, the limits of implication depended on what powers could be seized and kept.\textsuperscript{118}

And this continued over time:

The Constitution, as a product of [Supreme] Court interpretation, became more and more ambiguous. What had begun in the nation’s very administration was relied on more as the years passed and extrapolations became more numerous. Because they were never certainly permanent, the nation found itself living with a basic law it revered but could neither understand nor depend on.\textsuperscript{119}

Over time, the Supreme Court developed a body of “law” through the doctrine of \textit{stare decisis}. Under the policy of \textit{stare decisis} (“the decision stands”), law was established by the Judiciary through the observation of their prior decisions as \textit{precedents} — Judicial determinations that had to be obeyed as if they were laws. This, of course, directly contradicted the provision in Article Six that the Constitution (and not the opinions of the Supreme Court) was the “supreme Law of the Land.” But, as with the expansion of Congressional power, there were pragmatic reasons for accepting the doctrine of \textit{stare decisis} (and thus expanding the power of the Judiciary). According to Chief Justice Stone, “the rule of \textit{stare decisis} embodies a wise policy because it is often more important that a rule of law be settled than that it be settled right.”\textsuperscript{120} A grim truth. Nature abhors a vacuum, and so does society. The Supreme Court filled the vacuum created by ambiguity and the exceedingly difficult process of constitutional amendment contained in Article Five by recognizing its prior decisions as precedents, even though those precedents may themselves not have been in line with the written text of the Constitution. This phenomenon, however, was not intended by the Framers of our Constitution:

What [the Framers] did not foresee is that because of this provision [Article Three, Section One: “The judicial power of the United States shall be vested in one supreme court . . .”], in conjunction with the extremely difficult arrangements they set up for amending the Constitution, the federal courts would sometimes pervert and abuse this power and would in effect write legislation of their own. What they foresaw still less was that because the members of the Supreme Court as well as of other federal courts owed their appointments to the President and the Senate, they would be creatures of the central government; and therefore their ‘interpretations,’ over the years, would steadily tend toward the aggrandizement of centralized federal power at the expense
of states’ rights. The Tenth Amendment, in fact, has long been treated by the Supreme Court as if it did not exist.121

Brennan (1982) rejected the notion that the Supreme Court could legitimately either implement or ratify constitutional revisions:

If indeed, courts may appropriately ‘apply values not articulated in the constitutional text’; if they are to act as ‘expounders of basic national ideals of individual liberty and fair treatment, even when the context of those ideas is not expressed . . . in the written Constitution,’ . . . then it is literally true . . . that the Supreme Court exercises veto power over the actions of state legislatures, executives, and judiciaries, and that the Court is ‘a continuing constitutional convention, updating the meaning of the Constitution as new times and new situations demand . . . .’122

Indeed, the Supreme Court, in ratifying the usurpations of power by all Branches of Government, has functioned as a “continuing constitutional convention”:

There are those who hold that the American Constitution is not a written law at all, but is rather the sum total of all those customs, traditions, institutions and practices which have grown up over the years, and which influence or control the workings of our national government. In this view, the Constitution is considered coextensive with the governing Establishment. It is the way things are. It is the distribution of power, as it actually exists and is effectively exercised in modern American society. This might be termed the empirical constitution. . . .

It may be that every written code or constitution is eventually eroded by conflicting customs. It is, however, peculiar to the American experience that disregard and diminishment of our written Constitution has been a work of great sophistry, combined with an incongruous deference to the original text. We have paid lip service to the immutable words of the Constitution. We have demonstrated great resistance to constitutional amendments proposed through the processes established by Article V. At the same time, our courts have shown blithe disregard for the intent of the authors of the Constitution and the obvious purposes and understanding of those who ratified the Constitution, whenever it has seemed practical or expedient to do so.123

As Former Chief Justice Hughes stated, “We are under a Constitution, but the Constitution is what the judges say it is.”124 This was confirmed by the
authors of *The Constitution and What It Means Today*, who noted that there has been an “enormous change in the meaning of the Constitution over the last twenty years. One does not fully appreciate the full impact of that change until he goes over the Constitution provision by provision.”125 This would not have surprised Robert Yates, one of the Framers of our Constitution who later wrote essays against its ratification. According to historian Jackson Turner Main, Yates observed in 1788 that

[M]ost of the powers [of the Constitution] were granted ‘in general and indefinite terms, which are either equivocal, ambiguous, or which require long definitions to unfold the extent of their meaning.’ The meaning of the Constitution would be decided by the Supreme Court, and therefore the judges could ‘mould the government, into almost any shape they please.’126

Vague language gave the green light for Judicial constitutional revision, a phenomenon which appeared early on in our Republic, as predicted by Yates. The Supreme Court, the final link in the constitutional chain, granted itself the power of exclusive constitutional “interpretation,” even though Jefferson had vehemently argued against the power of the Supreme Court to exclusively interpret the Constitution — a power which goes far beyond our traditional conception of *Judicial Review* as the power to declare laws unconstitutional. As Jefferson wrote,

In denying the right they [the Judiciary] usurp of exclusively explaining the constitution, I go further than you do, if I understand rightly your quotation from the *Federalist*, of an opinion that ‘the Judiciary is the last resort in relation to the other departments of the government [*] . . . if this opinion be sound, then indeed is our constitution a complete *felo de se* [a suicide]. For intending to establish three departments, co-ordinate and independent, that they might check and balance one another, it has given, according to this opinion, to one of them alone, the right to prescribe rules for the government of the others, and to that one too, which is unelected by, and independent of the nation. . . . The constitution, on this hypothesis, is a mere thing of wax in the hands of the Judiciary, which they may twist, and shape into any form they please.127

In point of fact, the Constitution has indeed become a “mere thing of wax in the hands of the Judiciary,” as the Supreme Court has actually *rewritten* provisions of the Constitution by construction, and created an Empirical Constitution — that is, the constitution we actually live under, as opposed to the
one contained in that glass case in Washington, D.C.. To take one of hundreds of examples, the Court has stated on different occasions that the provision “The trial of all crimes . . . shall be by jury” in Article Three of the Constitution (and a similar provision in the Sixth Amendment) really means “The trial of all serious crimes . . . shall be by jury.” The Judicial Branch, of course, is to be the arbiter of what distinguishes “serious” from “petty” crimes. In one of the rare acknowledgments by the Court of the extent to which they have revised the Constitution by construction, Justices Black and Douglas stated in their concurrence in Baldwin v. New York, 399 U.S. 66 (1969) that

Many years ago this Court, without the necessity of an amendment pursuant to Article V, decided that ‘all crimes’ did not mean ‘all crimes,’ but meant only ‘all serious crimes.’ Today three members of the Court would judicially amend that judicial amendment and substitute the phrase ‘all crimes in which punishment for more than six months is authorized.’ This definition of ‘serious’ would be enacted even though those members themselves recognize that imprisonment for less than six months may still have serious consequences. This decision is reached by weighing the advantages to the defendant against the administrative inconvenience to the State inherent in a jury trial and magically concluding that the scale tips at six months’ imprisonment. Such constitutional adjudication, whether framed in terms of ‘fundamental fairness,’ ‘balancing,’ or ‘shocking the conscience,’ amounts in every case to little more than judicial mutilation of our written Constitution. Those who wrote and adopted our Constitution engaged in all the balancing necessary. They decided that the value of a jury trial far outweighed its costs for ‘all crimes’ and ‘[i]n all criminal prosecutions.’ Until that language is changed by the constitutionally prescribed method of amendment, I cannot agree that this Court can reassess the balance and substitute its own judgment for that embodied in the Constitution.128

A rare admission. But every term of the Court brings new changes to our Constitution.129/130 In a remarkable piece of scholarship, Dr. Thomas Ladanyi bravely attempted to reduce to writing the Supreme Court’s constitutional rewrites in his book The 1987 Constitution. The Baldwin decision explains in part Ladanyi’s version of the Sixth Amendment of the Empirical Constitution, which begins as follows: “In all prosecution of serious crimes, subject to sentences exceeding six months . . .”, replacing the original, which simply states “In all criminal prosecutions . . . .” We have previously noted the Delegation Doctrine. The 1787 Constitution reads as follows:
All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Short, sweet, and to the point. But the Empirical Constitution reads somewhat differently, after the various Delegations of power have been factored in:

**The Congress of the United States, which consists of a Senate and a House of Representatives, possesses all legislative power herein granted, with the exception of the following, all of which may have the same force and effect as a law directly adopted by the Congress:**

- international treaties initiated by the President, subject to approval by the Senate and executive agreements with other sovereign states entered into by the President without Congressional approval, both relating solely to the external concerns of the Union;
- executive orders and regulations issued by the administrative bodies and regulatory agencies validly created, and the scope of which is properly within the Congress’s authority to delegate;
- the exercise of war powers by the President as Commander-in-Chief;
- final judgments of courts of law concerning the interpretation of all laws, treaties, agreements, orders, rules, regulations and other acts dealt with in this section; and
- the Supreme Court’s final determinations, in the light of the dictates and the spirit of this Constitution, as to the validity of all of the foregoing, as well as its interpretations thereof.

While the Congress may neither delegate its legislative powers to the Executive and Judicial Branches, nor invest itself with their powers, being one of the three co-ordinate Branches of the National Government, in carrying out its legislative functions it shall, where proper and necessary, cooperate with, and, on a mutual basis, provide assistance to the other two Branches. Such cooperation and mutual assistance may include narrowly defined, essential, convenient and fully revocable delegation of some of its legislative powers.

Note one of the main failings of Supreme Court re-writes. While some Court decisions have held that Congress may not delegate its powers, the majority have. This inconsistency is reflected in Ladanyi’s reduction of the Empirical Constitution on the Delegation issue (may not vs. may). The Supreme Court is not only poorly equipped to redraft the Constitution, but their method of operation guarantees an inconsistency which renders their re-writes permanently ambiguous.
Of course, it is not only Congress which has had its powers revised. As Hazlitt (1942) noted,

An American President, it is now generally agreed, has too many powers, some of them grossly excessive. He has them principally because the federal government itself has assumed excessive powers, and because Congress, unable or unwilling to issue thousands of regulations and make a million detailed decisions, delegates its powers to the President to set up hundreds of regulatory agencies and appoint the bureaucrats to fill them.132

The new powers of the President are dramatically revealed when we contrast the 1787 Constitution with the Empirical Constitution. Article Two, Section Two, Clause Two of the 1787 Constitution reads as follows:

**He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.**

But Article Two, Section Two, Clause Two of the Empirical Constitution is an animal of an entirely different stripe:

**He shall have the power, by and with the advice and consent, or consent with reservations and amendments, of two-thirds of a quorum present in the Senate, to make bilateral or multilateral international treaties negotiated by him on proper subjects not violative of fundamental individual rights granted herein, but other Constitutional and States rights may be affected in the national interest if no feasible alternative solution is available. He may optionally effect treaty aims by entering into executive agreements without the Senate’s consent, exercising his own power over foreign affairs and as Commander-in-Chief, or seek subsequent Senate ratification thereof, thus turning them into treaties, but shall in all cases promptly advise the Congress of the contents of such agreements. Non-selfexecuting treaties and executive agreements**
requiring implementation by legislation shall be effectuated at the
discretion of the Congress. Claims of foreign sovereigns, individuals
or other entities arising under the terms of treaties and executive
agreements shall be resolved, as their nature require, by the
President, the courts, or, where legislative implementation or funds
are required, by the Congress. The President shall exercise broad
powers under treaties with the Indian Nations, and to enter into
executive agreements with them over the disposition of public lands.
Treaties and executive agreements shall terminate by their terms,
renegotiation or denunciation by the President, or alteration or
repeal by the Congress, all subject to judicial review concerning
compliance with the Law of Nations, but the Congress shall not be
compelled to legislate in order to give effect, where required, to any
resulting judicial determination. The President shall nominate, and
by and with the advice and consent of a majority of a quorum in the
Senate, shall appoint ambassadors, other public ministers and
consuls, justices of the Supreme Court, secretaries, undersecretaries
and assistant secretaries of executive departments, and heads of
major quasi-departmental offices established within the Executive
Branch. He shall appoint without such consent, or delegate the
power to appoint, members of his staff, and those of his executive
office, his personal agents, including his diplomatic representatives
abroad, and all members of the civil service in the Executive and
Judicial Branches, consisting of inferior officers subordinate to
heads of executive departments and offices, chiefs of federal courts,
and judges of federal courts inferior to the Supreme Court, but the
Congress may by law modify this power, and assign parts or all of it
to the courts of law, or the heads of executive departments as well.
All his non-judicial appointees, including those approved by the
Senate, or whose dismissal is expressly constrained by it, may be
removed by the President at will, but non-judicial members of the
civil service can only be dismissed for good cause, while judicial
appointees must be terminated by impeachment. . . . In matters
concerning presidential communications relating to the exercise of
executive authority, an incumbent President shall not be compelled
by the co-equal Branches of the National Government to testify
before them or to reveal the contents of his or his executive office’s
papers and other documents, and this privilege of executive
confidentiality extends to his subordinates, if requested by the
President, who may be required to testify about their conversations
and all other forms of communication with the President, and about
presidential papers and other documents, but, except in vital
national security, diplomatic and military matters, the presumption in favor of protecting the privilege may challenged, and, considered in camera in court, be rebutted, in order to obtain essential evidence in a criminal investigation or trial. An incumbent or former President shall be immune from tort claims for damages arising from his exercise of executive powers.\textsuperscript{133}

The Judicial Branch, needless to say, has also greatly expanded its own powers. Article Three, Section Two, Clause One, originally twelve lines, occupies three pages in Ladanyi’s book, and is too long to reprint here. But some of the flavor of the changes to that provision may be seen in the changes to the Preamble found in the Empirical Constitution:

\textit{We the Justices of the Supreme Court of the United States, in order to maintain and strengthen the Union, redraw the jurisdictional lines among the legislative, executive and judicial Branches of the National Government, redefine the Rights of the States, determine the areas of final authority between various State constitutions and this Constitution, establish greater, more uniform and equal Justice, preserve and assure the maintenance of Domestic Tranquility, facilitate the Common Defense, promote and expand the General Welfare, broaden and secure the Blessings of Liberty, and provide for affirmative judicial action to secure and assist in the implementation of these Aims, and in line with the present needs, necessities, hopes and desires of the People, including citizens and all other persons within the United States and its Territories, living in drastically changed material circumstances, possessed of altered and more varied ideological, social, political and cultural values, and their Union being part of a vastly different world, do ordain that the 1787 Constitution of the United States and Amendments thereto, and as implemented by appropriate Congressional legislation and the proper exercise of Presidential powers, be interpreted as reflected in the Articles that follow, and that such interpretations be recognized as the Supreme Law of the Land and be applied with the same authority, force and effect as the 1787 Constitution, as amended, has come to have in the years since its adoption.\textsuperscript{134}}

Amend the Constitution? \textit{What} Constitution? \textit{Which} Constitution? As Tugwell (1976) stated, “The pretense that a body of agreed higher law exists is a kind of national conspiracy, maintained because of need. A Constitution is necessary to the American system. That it no longer exists is an intolerable thought.”\textsuperscript{135}
THE OBSOLESCENCE OF THE 1787 CONSTITUTION

To have anticipated the country’s condition in the 1880’s from the situation in the 1780’s would have required something more than foresight. The Framers would have had to be seers.\textsuperscript{136}

— Rexford Tugwell, \textit{The Compromising of the Constitution}

The existence of the Empirical Constitution is irrefutable evidence that the Constitution as framed in 1787 is no longer relevant for modern times:

The Constitution . . . has, to put it plainly, become in many respects obsolete. The succeeding generations still living within its directives are confronted with conditions radically different from those known to the original framers. The arguments it emerged from are no longer relevant and its governance of the nation has become more mystical than real. . . .

Does anyone believe that if the Constitution in its entirety should be submitted to referendum now, and relieved somehow of its traditional sanctity, it would be ratified? If it would not, and if constitutional government is desirable, then it follows that an acceptable one ought to be devised. This simple logic seems irrefutable; actually it is universally evaded. It is even widely regarded as reprehensible to make such a suggestion.\textsuperscript{137}

But reason must prevail. Brennan (1982), quoting Chief Justice Warren Burger, observed that

‘[W]e should examine the changes which have occurred over two centuries and ask ourselves whether they are faithful to the spirit and the letter of the Constitution, or whether with some, we have gone off on the wrong tracks.’

Justice Burger points out that . . . [c]ongressional staffs have expanded to the size of George Washington’s army. . . . Constituent services, committee work, and management of administrative staff have all grown in importance, dwarfing the parliamentary function of congressmen and senators. At the same time, because of the growth of our population from three million to nearly a quarter billion, each congressman and senator must represent vastly more citizens than originally intended. The corollary of that proposition, of course, is that each citizen is vastly more remote from the national legislature than Madison and Hamilton assumed would be the case. The volume of congressional business is so
great that members are physically unable to read all the bills they are expected to vote upon.138

Brennan pointed out further inadequacies, such as the obsolescence of the $20 guidepost in the civil jury trial provision:

Jury trials are assured in suits at common law, but there are no suits at common law within the Federal Judicial System anymore. Jury trials are assured where the value in controversy exceeds $20.00. The jurisdictional minimum in diversity cases in Federal courts is now $10,000. Modern state constitutions have substantially altered the common law concept of civil jury trials. In England, jury trial in civil cases has all but disappeared. With civil litigation mounting, dockets burgeoning, delay piling upon exasperating delay, modern court systems seek new methods of dispute resolution which can more adequately serve the needs of 20th and 21st century society. . . .139

One of the more dangerous obsolescences is the inability of the Constitution to prevent the existence of the military-industrial complex President Eisenhower had warned against in his Farewell Address. The Framers feared standing armies, and for good reason:

Whatever the two year limit on army appropriations may be understood to mean in Washington, D.C. in 1982, it does not seem to have any restraining force with respect either to appropriations or the raising and supporting of armies. Certainly the Pentagon would be stunned to hear that congressional expenditures for land forces were circumscribed by a term limitation which did not apply to naval forces.

With the technological advancements which have changed the entire concept of national defense, the necessity of long range planning, and the commitment of resources over substantial periods of time are commonly accepted. But the argument from modern necessity does not change the plain language of the Constitution. The most ingenious semantic machinations cannot change the meaning of that restrictive phrase. . . .

What a far cry from the focus and concern of the framers are the words of 10 U.S.C.A 2301 et seq. describing the process of military procurement. ‘The head of an agency may enter into contracts for periods of not more than five years. . . .’ Detailed citation should not be necessary to support the proposition that American military expenditures are substantial; that vast standing armies are maintained; that
appropriations are made for the purpose of raising and supporting armies for longer periods than two years. . . .

The point need not be belabored further. The founders had a real distrust of standing armies. As Madison said: ‘as armies in time of peace are allowed on all hands to be an evil, it is well to discountenance them by the Constitution.’ Since the second world war, the United States has continuously maintained a military establishment consisting of more than three million persons, of which, in 1978, 757,000 were members of the United States army on active duty. The air force accounted for an additional 567,000. It is clear that forces of this magnitude cannot be maintained, equipped, and supplied with short term appropriations.

Obviously, the language which Madison and his colleagues inserted in the Constitution is no longer operating. It is simply being ignored by the government in Washington. Doubtless, no one now would argue with much enthusiasm for the enforcement of the two year limitation. But a limitation ignored is no limitation at all. We permit our only constitutional protection against standing armies to be ignored. At the same time, we fret about an international arms race that imposes enormous economic burdens on the American people. The founding fathers thought the matter a proper subject for constitutional legislation. If we do not think ourselves competent to such a task at this time in history, we ought to say so in clear terms. If we think the two year appropriation limit too stringent, we ought to remove it, before some elected officials come along and endanger our security by the innocent act of obeying the Constitution.140

Brennan then cited some of the many areas requiring revision, and called for action.

Jury trials; standing armies; disqualifications for office; these are but a few areas sorely in need of constitutional attention. Much of our basic charter has grown pathetically out of date because we have focused upon a few popular phrases which have been seen as flexible. . . .

The Constitution contains many narrow, rigid, outdated terms. It omits many things which could easily be included, if the document is to serve our generation and those to come as aptly as it was conceived to serve those who went before us. There is no call to be shy or timid. Surely after 200 years, we are not premature to consider amendments. If anything, we may be too late.141

Brennan’s final question is a very important one — are we too late?
THE END OF THE LINE

The most visible example of our constitutional inadequacy is the burgeoning National Debt, which threatens to obliterite our economy either by “bang” (crash) or “whimper” (foreign ownership). As The Wall Street Journal reported, since 1980

All debt outstanding — governmental, business, and individual — has swelled to nearly $11 trillion from less than $4 trillion. Today’s total — close to $43,000 for each man, woman, and child in the U.S. — exceeds 1.9 times the gross national product, up from 1.7 in the mid 1980s. In the 1950s, 1960s and 1970s, debt ranged only from 1.2 to 1.4 times GNP. Just since 1989, the debt load has mounted nearly $2 trillion.

The federal budget ‘is out of control’ says Charles B. Reeder, an economic consultant in Wilmington, Del., who isn’t given to hyperbole. The deficits ‘will be a drag on the economy,’ he predicts, since ‘they preclude the possibility of either tax cuts to stimulate demand or new spending programs to deal with serious social and economic programs.’

H. Erich Henemann, economist of Ladenburg, Thalmann & Co., worries especially about the deficit’s impact on saving and investment. ‘The more Washington borrows, the lower national saving will be,’ he warns. ‘Low saving equals low investment. In turn, low investment will lead to slow growth and a decline in the U.S. standard of living relative to other nations, particularly Japan and Germany.’

As recently as 1984, state and local governments, taken as a whole, sported an operating-budget surplus of about $20 billion. Last year, in sorry contrast, they sustained a record operating deficit of $34 billion, and many forecasters anticipate still deeper state and local deficits in the year ahead.

To help make up the shortfall, 20 to 30 states plan ‘major’ tax increases in the year ahead, according to the National Center for Policy Analysis. This would tend to worsen the federal deficit, since state and local taxes are largely deductible from federal taxes. The upshot will be ‘leaner and meaner — not gentler and kinder — times,’ forecasts Laurence B. Rossbach Jr., and analyst at Smith Barney, Harris Upham & Co.

This crisis has been brewing for three decades. In fact, 32 States had petitioned Congress for a Constitutional Convention for a Balanced Budget Amendment by 1987. As the Grace Commission reported in 1984, the problem of inefficiency in Government required “immediate attention. [Opportunities to make Government more efficient] are dependent on institutional changes to
bring about long-term improvement. If the problems identified are left uncorrected, they can only deteriorate and result in ‘opportunities lost,’ leading to the loss of national vitality and the erosion of freedoms.”

But in the face of this pressing concern, all Congress could manage to do was pass the ineffectual Gramm-Rudman bill, the most significant portion of which was found unconstitutional by the Supreme Court, and thus eviscerated (the Separation of Powers Principle in action). Deprived of even this abortive band-aid remedy, deficits swelled to new heights: a record $360 billion in 1992 alone. Freed of any form of structural restraint, Congress was free to be collectively irresponsible, an irresponsibility which “is most evident when members express concern over mounting deficits and growth of government but insist on funding programs that benefit their individual constituencies . . . .” Vivid evidence of this irresponsibility was displayed on the floor of the House of Representatives on October 3, 1991, as Representative Dan Burton (R-IN) argued vainly for fiscal restraint:

In this bill we have a ton of pork barrel projects, and I am going to have other amendments to cut them out. The fact of the matter is that I know as I stand here, I say to my colleagues, that I do not have a chance of a snowball in Hades of getting any of these amendments passed, and that is why I get so frustrated. Members know it is pork, and I know it is pork, but nobody is doing anything about it. The reason that happens is that so many of us in this body, and in the other body, continue to ask for special pork barrel projects. One subcommittee of the Appropriations Committee in this body had 385 Members ask for over 3,000 special projects. Where is it going to end?

As I said before, I know that I am now jousting with windmills, and I know I am just a voice in the wilderness here, but I am telling the Members that we had better do something about it. We are mortgaging the future of our kinds, and we are headed for financial disaster at some point in the future. I do not know where that is, but it is going to happen. We cannot continue to spend $300 billion, $400 billion, or $500 billion more per year than we take in and incur the kind of debt we have, a $4 trillion national debt, without some kind of disaster occurring in the future. And we are all going to be responsible.

Individually responsible, perhaps, but collectively irresponsible. The vote was 252 to 162 in favor of the Appropriations — once again, a failure to act in the face of a necessity for action, but a mere detail in a tragic Shakespearian determinism parading before our eyes — the working-out of this self-defeating Clockwork Orange known as the United States Government.
This failure of our Government to act in the face of a necessity for action engenders a feeling of helplessness within the populace — even more incredibly, some people simply become bored with these important issues. How many times can a person request action on an issue and get no result without either giving up or losing interest? As The New York Times reported,

This time last year the budget was front page news. . . . On Monday, Mr. Darman is to release this year’s mid-year review. It will show a deficit of perhaps $315 billion or $320 billion for the next fiscal year, nearly $100 billion above the figure last July, $35 billion or $40 billion above what was forecast as recently as February and far and way the biggest deficit ever. But nobody seems to care. . . .

The economists and political scientists who filled the nation’s Op-Ed pages last year with doomsday columns about dangers of the deficit have turned their attention elsewhere. . . .

“Turned their attention elsewhere.” Not surprising. This effect was known to De Tocqueville over a century ago, who described in his book Democracy in America that

Subjection in minor affairs breaks out every day, and is felt by the whole community indiscriminately. It does not drive men to resistance, but it crosses them at every turn, till they are led to surrender the exercise of their own will. . . . The will of man is not shattered, but softened, bent, and guided; men are seldom forced by it to act, but they are constantly restrained from acting: such a power does not destroy, but it prevents existence; it does not tyrannize, but it compresses, enervates, extinguishes, and stupefies a people, till each nation is reduced to be nothing better than a flock of timid and industrious animals, of which government is the shepherd.

Even Harvard professors are reduced by this phenomenon to the role of “timid” animals. The Times article continued:

Benjamin M. Friedman, a professor of political economy at Harvard, said he believed just as strongly as he did last year, when he was writing regularly about the subject, that the deficit was ‘ruining the country.’ But he said he felt like someone who had tried unsuccessfully to persuade an alcoholic friend to stop drinking. ‘You’ve done absolutely everything you can do, and now it’s not at all clear it will do any good to continue harping.’ . . .
Now, the President’s budget director puts forth the biggest deficit in
history. How can the Democrats be silent? . . .

They signed the deal that put off further debate on the budget until
after the 1992 election. . . . They forfeited their right to criticize
President with a stratospheric popularity rating on the one issue on
which he seems vulnerable.149

Indeed, the political parties, accomplices in the budgetary debacle, colluded
on a deal to prevent discussion of the critical issue before elections. According
to Virginia governor L. Douglas Wilder,

Washington has so mismanaged the nation’s finances that in order to
save their own skins, the elders of both parties met behind closed doors
for weeks and then emerged to join hands in the Rose Garden to support
the most regressive tax package in history, and a set of budget priorities
that lock us into the status quo for several years — all so everyone can
get re-elected.150

It is, or ought to be, apparent that the National Debt problem will not, and
cannot, be solved under the present Constitutional structure, a structure run by
entrepreneurial Incumbents and their special-interest clientele: “the deficit,
properly understood, is a surface symptom of more fundamental problems in
our political institutions. . . . we cannot expect incumbents in Congress to
change the present system.”151 Richard Snelling, the former governor of
Vermont, summarized:

Four years ago, as chairmen of the National Governors Association, I
met with Congressional leaders to discuss the nation’s economic
problems. At one session, within a few minutes’ time, I heard both Pete
V. Domenici, Republican of New Mexico, the chairman of the Senate
Budget Committee, and James R. Jones, Democrat of Oklahoma, then
chairman of the House Budget Committee, declare that the budget and
the debt were wheeling out of control. But they said Congress could not
act in the face of the combined onslaught of the hundreds of big,
powerful special-interest groups based in Washington.

What was true four years ago remains true today. Each of these
special-interest groups endorses the notion that the deficit must be
shrunk. Some are willing to agree that spending must be cut, others that
revenue must be increased. But each group expects the cuts to be ways
that do not affect its own tax obligations. Mayors, for example, oppose
cuts in urban programs, and the Chamber of Commerce is opposed to
any tax increases its members would have to pay.
In 1981, Jones summed up the situation: ‘There is a constituency for national defense. There is a constituency for every item of the domestic budget. There is a loud constituency for tax cuts. But there really is no constituency for a balanced budget.’

For structural reasons, the predicament our officials have placed us into will not be defused by them. Deficits are created by the inordinate influence of special interests on Incumbents, and attempts to cure the defect are fought off by those same special interests:

Members of Congress are rational actors who pursue the self-interested goal of re-election. . . . a rational politician interested in maximizing the chances of re-election will not pay equal attention to the preferences of all the district’s voters. . . . a rational, self-interested politician will pay particular attention to the desires of those citizens who have managed to form themselves into coherent groups organized around particular issues. . . . organized citizens have a greater influence on the behavior of politicians, who must continually seek re-election, than citizens who are not organized. . . .

Citizens are rational and self-seeking. . . . if a large group of citizens all share a common interest that can be promoted by forming an organization, but the additional benefits to each member of the group from joining the organization will be small, it will be virtually impossible to form such an organization. This is because it will be rational for each member of the group to ‘let George do it.’ But if everyone depends on someone else to do the dirty work, it never gets done. Through a series of decisions that are individually rational, a result is reached that is collectively irrational: the group will not be formed, even though all of its potential members would be better off if it were formed than if it were not. . . .

A small group of firms, each one of which is affected in a relatively significant way by what the government does, is more likely to organize and expend time, effort, and money to procure and influence government policy than is a diffuse and disorganized public. . . .

Most government spending programs provide significant benefits to relatively concentrated, and, therefore, relatively well-organized and politically effective constituencies. On the other hand, the costs of government spending are spread over a large and diffuse group — taxpayers. Because the incremental cost of each government spending decision is relatively insignificant to individual taxpayers, and because the benefits from organizing to oppose government spending are speculative and difficult to appropriate, public choice theory predicts that
it will be difficult, if not impossible, to organize the broad mass of taxpayers, as such, into an effective counterweight to spending that benefits ‘special interest groups’ with more narrowly focused interests. Thus, public choice theory implies that there is an inherent bias built into the political system in favor of spending to benefit organized constituencies, even when the total costs of a program exceed its benefits. . . .

Groups of taxpayers frequently do lobby and engage in political activities to obtain changes in the tax code that will benefit them. It is worth noting, however, that most of the tax code issues that generate robust political activity tend to benefit relatively narrow groups, such as the oil industry or real estate investors. It is much rarer that groups are organized successfully to lobby to reduce general tax rates, as opposed to supporting particular deductions.153

A second central problem is that those who are really opposed to the deficits we are running haven’t been born yet!

But that alone, if true, would not explain the deficit, which is the joint product of government decisions as to revenue as well as spending. . . . politicians ‘enjoy’ appropriating money to benefit their constituents, but they do not ‘enjoy’ taxing them. . . . the causes are structural — that is, they inhere in the system of incentives facing politicians, regardless of personal preferences. . . .

By creating a deficit and borrowing to finance it, politicians are able to confer benefits on current voters while imposing a portion of the costs on future generations who will have to pay the bill. . . . the interest group that is the weakest politically is one that is even more difficult to organize than taxpayers — the unborn. Future generations are truly subject to ‘taxation without representation,’ because today’s politicians can vote to implement programs to benefit today’s voters but to be paid for in part by tomorrow’s taxpayers.

When someone who cannot vote can nonetheless be made to pay the costs for something that benefits someone who can vote, a powerful incentive is created for politicians to follow what Bruce Ackerman, John Millian, and I have called the ‘cost-externalization’ strategy, the politician’s ‘equivalent of a free lunch.’ Cost-externalization arises most frequently in a geographic context, when politicians in one state seek to obtain benefits for the voters in their state while imposing disproportionate costs on the citizens of another state. One of the functions of the commerce clause of the Constitution is to restrain politicians from pursuing this tempting type of cost-externalization.
strategy. Deficit spending provides functionally similar opportunities for politicians to engage in cost-externalization, but across temporal, rather than geographic, boundaries. . . .

[Powerful incentives are inherent in the existing political structure for politicians to engage in inter-temporal cost-externalization. Unlike the commerce clause, which protects (albeit imperfectly) citizens in other states from geographic cost-externalization, our Constitution provides no restraints or defenses against inter-temporal cost-externalization.]

The final nail in the coffin is the desire of these Incumbents to stay in office:

The essential reason why we cannot expect Congress to initiate the kinds of changes that will be necessary to deal with the deficit is that incumbents are among the prime beneficiaries of the present system. The present system allows incumbents to enhance their prospects for reelection by catering to well-organized interest groups and imposing costs on future generations. There is no reason to assume that Congress will volunteer to be part of the solution, because Congress is part of the problem.

After the meticulous cataloguing of these insights by Eliot and others, it is not surprising that political scientist Laurence Dodd would observe that “the Madisonian system is self-destructing.” Even if an individual member of Congress did want to solve the problem, s/he would have to bypass the impassable Constitutional hurdles:

As a Congress composed of members who are concerned about public policy becomes increasingly and necessarily enmeshed in institutional immobilism . . . Congress faces the external checks and balances built in the Constitution. Ironically, since the Founding Fathers thought that Congress was the most dangerous branch, the really powerful checks, such as veto and judicial review, were given to the president and the Court to use against Congress. The inability of the legislature to know its will thus is exacerbated by the ability of the president and the Court, separately or in alliance, to debilitate any congressional will that may exist by throwing in front of Congress the requirement that it make legislative policy not by majority vote but by two-thirds vote.

In light of all the foregoing, there is only one final question — whether or not people can or will be able to organize quickly enough to head off financial disaster.
THE NEED FOR A NEW CONSTITUTION

Why is the experiment of an extended republic to be rejected, merely because it may comprise what is new? Is it not the glory of the people of America, that, whilst they have paid a decent regard to the opinions of former times and other nations, they have not suffered a blind veneration for antiquity, for custom, or for names, to overrule the suggestions of their own good sense, the knowledge of their own situation, and the lessons of their own experience?\textsuperscript{158}

— James Madison, 1787

Laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy, as civilized society to remain ever under the regimen of their barbarous ancestors.\textsuperscript{159}

— Thomas Jefferson, 1816

The words of the Constitution as it stands at any given moment of time, may not . . . suffice to solve the problems of the day. But to whatever extent our people are competent to solve their problems, faithfulness to a scheme of government founded upon a written constitution, and changeable only by deliberate amendment offers the surest hope for solving them.

The growth of our population; advances in high technology; poverty in the cities; racism; pollution; the threat of nuclear annihilation; these and all the other urgent concerns of today and tomorrow can only be addressed by a government which functions consistently, efficiently, and legitimately.\textsuperscript{160}

— Thomas Brennan, 1982

Due to the Debt Crisis, as previously noted, 32 States have requested a Constitutional Convention to consider a Balanced Budget Amendment. But, as Pascall (1985) wrote, a Balanced Budget Amendment alone would simply be “an admission in the Constitution that the form of government designed by the Constitution no longer worked on budgetary matters.”\textsuperscript{161} As we have seen, the
source of our infirmities is deep — very deep: “the causes of the deficit lie in the structure of our modern political institutions. Until we resolve the underlying institutional issues, no stop-gap measure can truly resolve the problem of the deficit.” 162 Unaccompanied “band-aid” fixes such as Balanced Budget Amendments and Line-Item Vetoes for the President are “solutions” to fundamental structural inadequacies that are too little, too late. Our maladies can only be cured by creating a constitution appropriate for our time, and appropriate for the 21st Century, in line with the dictum in the Preamble that we should “secure the Blessings of Liberty to ourselves and our Posterity . . . .” Dodd stated the obvious:

In light of these considerations, a successful end to the debilitating cycles of the twentieth century requires that we direct attention not to internal congressional reform but to fundamental alterations of the constitutional system itself. We must create an incentive system within the Constitution that, while sustaining a degree of congressional decentralization that will allow for innovation and expertise, will lead members of Congress naturally to support centralizing mechanisms that can sustain institutional integrity. We also must reconsider the nature of the checks-and-balances system with the intent of strengthening the position of Congress. Simultaneously, we can redirect the values by which we wish institutional politics to be conducted, shifting from a politics of minority veto and policy inaction toward majority government and social justice.163

Needless to say, devising a proper constitutional form involves much careful thinking — it is important, however, to design a Constitution in line with 21st Century ideals, ideals which are considerably more progressive than those used by the Framers in a time when an African-American was considered three-fifths of a person:

As we consider movement toward alternative constitutions we must realize that constitution making is serious and difficult business. It requires realistic and hard-headed assessment of human nature, of the implications of different institutional arrangements, of the social conditions within which politics is to be conducted, and of the consequences that will derive from the interaction of these three elements of political life. In many ways Madison’s performance in the Federalist Papers is still the best guide to this type of undertaking. A proper respect for his intellect is always advisable. Yet we also must unlock ourselves from the infatuating clarity and logic of Madison’s arguments that continue to exert a seductive hold on our imaginations.
long after the supporting conditions assumed by them have passed. The transformations of our society in the last century undercut the accuracy of his forecasts. The changes in our values, and hopefully the growth of a greater commitment to majoritarian government and popular justice, alter the goals to which anew or modified constitutional arrangement should be committed.164

At a time when we are moving towards crisis scenarios in many segments of our society, it is imperative that we take this necessary first step:

Our Constitution, at the time it was adopted, was a document far in advance of its age. Even today there could be no nobler statement . . . than one particular part of that Constitution, the Bill of Rights. But that part of our Constitution which deals with the mere machinery of government must now be candidly reexamined . . .

The Constitution exists for the country, not the country for the Constitution. We must not make a fetish of a rigid legal document. . . . We must be at least as ready to make progressive changes in government as our forefathers were when they framed our basic law. No one today thinks that the proper way to show our admiration for the Wright brothers’ original biplane would have been never to design anything better. Nor is this the way to show our admiration for the enterprise of the men who framed the Constitution.165

Here, then, is a Constitution for the 21st Century.
Chapter Two

The 21st Century Constitution

In THE 21ST CENTURY CONSTITUTION, language which originally appeared in the 1787 Constitution as amended by the Bill of Rights, is indicated in plain-face type as follows:

The Congress of the United States

In THE 21ST CENTURY CONSTITUTION, language removed from the 1787 Constitution as amended by the Bill of Rights, is indicated in strike-thru type as follows:

The Congress of the United States

In THE 21ST CENTURY CONSTITUTION, language which has been added to the 1787 Constitution as amended by the Bill of Rights, either by Constitutional Amendment subsequent to 1791, by the Supreme Court, or by the Author, is indicated in bold-face type as follows:

The Congress of the United States

Example

1787 CONSTITUTION

All legislative Powers herein granted shall be vested in a Congress of the United States . . .

REVISION

All legislative Powers as herein granted herein shall be vested in a Congress of the United States . . .

THE 21ST CENTURY CONSTITUTION

All legislative Powers as granted herein shall be vested in a Congress of the United States . . .
We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

“We the People.” Simple words. Elegant words. And what important words they have proven to be. In just eleven letters the basic political philosophy of our country is summarized; a political philosophy that, in 1776, rocked the world.

The importance of retaining a Preamble that so elegantly states the purposes of Government (while articulating the People’s critical right of self-determination) in a Constitution for any century is, or ought to be, obvious. Nonetheless, some have maintained that the “Preamble” — which, incidentally, is not labeled as a “Preamble” in the Constitution — should not be considered as part of the Constitution, and thus “has no importance.” This rather curious belief was not held by the Framers of our Constitution, who recognized its critical importance in getting the Constitution ratified, in declaring the Objectives of Government, and even in its role as a substitute for the Bill of Rights, which was not present in the 1787 Constitution. Hamilton proclaimed the importance of the Preamble in *Federalist 84*. In that essay, he stated his belief that a Bill of Rights was unnecessary, because all the rights of the People of the United States were granted in the Preamble!

Here, in strictness, the people surrender nothing, and as they retain every thing, they have no need of particular reservation. “WE THE PEOPLE of the United States, to secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.” Here is a better recognition of popular rights than volumes of those aphorisms which make the principal figure in several of our state bills of rights, and which would sound much better in a treatise of ethics than in a constitution of government.

And James Wilson, a delegate from Pennsylvania, declared in the Pennsylvania Ratifying Convention on December 11, 1787 that:

[T]his system is not a compact or contract; the system itself tells you what it is; it is an ordinance and establishment of the people . . . the force
of the introduction to the work, must by this time have been felt. It is not an unmeaning flourish. The expressions declare, in a practical manner, the principle of this constitution. It is ordained and established by the people themselves . . . .168

But what “principle” is declared by the Preamble? In interpreting the Preamble, it is important to note that certain words were not used: for example, the introductory words are “We the People,” not “We the People of the States.”

Our Framers rejected an initial draft of the Preamble which read as follows:

We the People of the States of New-Hampshire, Massachusetts, Rhode-Island and Providence Plantations, Connecticut, New-York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina, and Georgia, do ordain, declare and establish the following Constitution for the Government of Ourselves and our Posterity.169

With their rejection of this initial draft, the Framers declared that the Constitution was a National Constitution, ordained by the People, and not the product of the State Legislatures. Note also the replacement of the words “the following Constitution” for “this Constitution,” which clearly indicates that the Preamble is no mere preface to the Constitution, but rather, an intrinsic part of it.

An equally important clue to the meaning of the Preamble is found in the use of the word “do,” in “do ordain and establish,” and not “did.” As Jefferson stated in a letter to Madison written on September 6, 1789, “no society can make a perpetual constitution, or even a perpetual law. The earth belongs always to the living generation.”170 In this regard, note that the Constitution is written in the first person (“WE the People,” not merely “The People”), and that “We the People” is not qualified with “of 1787,” but “of the United States,” giving spatial and political location precedence over temporal location. In light of the foregoing, we can see clearly that the Constitution is written in the first person and the present tense, and that its authors are THE PEOPLE OF THE UNITED STATES.

This insight, that people have an inalienable right to establish the Government under which they live (no matter what century), and which is today part and parcel of the American political fabric, was not a new insight; rather, it was a view directly sprung from those revolutionary times. Many political writers, including Locke, Montesquieu, and Thomas Gordon, had avowed their belief in the supremacy of the People, a view best stated by James Burgh in his Political Disquisitions, written in 1774, two years before the American Revolution:
All lawful authority, legislative, and executive, originates from the people. Power in the people is like light in the sun, native, original, inherent and unlimited by any thing human. In governors, it may be compared to the reflected light of the moon; for it is only borrowed, delegated, and limited by the intention of the people, whose it is, and to whom governors are to consider themselves as responsible, while the people are answerable only to God, themselves being the losers, if they pursue a false scheme of politics. . . .

As the people are the fountain of power, so are they the object of government, in such manner, that where the people are safe, the ends of government are answered, and where the people are sufferers by their governors, those governors have failed of the main design of the institution, and it is of no importance what other ends they may have answered . . . happy is that people, who have originally so principled their constitution, that they themselves can without violence to it, lay hold of its power, wield it as they please, and turn it, when necessary, against those to whom it was entrusted . . . .

This Principle was affirmed by George Mason, one of the Virginia delegates to the Federal Convention, who insisted, in his Remarks to the Fairfax Independent Company in 1775, that a Government must constantly be evaluated with reference to the Principles under which it was established: “no institution can be long preserved, but by frequent recurrence to those maxims on which it was formed. . . .” Mason went on to state the primary maxims underlying a Government of the People:

We came equals into this world, and equals shall we go out of it. All men are by nature born equally free and independent. To protect the weaker from the injuries and insults of the stronger were societies first formed; when men entered into compacts to give up some of their natural rights, that by union and mutual assistance they might secure the rest; but they gave up no more than the nature of the thing required. Every society, all government, and every kind of civil compact therefore, is or ought to be, calculated for the general good and safety of the community. Every power, every authority vested in particular men is, or ought to be, ultimately directed to this sole end; and whenever any power or authority whatever extends further, or is of longer duration than is in its nature necessary for these purposes, it may be called government, but it is in fact oppression.

In this view, people were not only the raison detre of Government (i.e., the sole reason for the existence of Government), but the checks on Government.
The politicians elected by the People could not be relied upon to secure the Government, and to constantly evaluate it with reference to those Principles under which it was instituted. According to Jefferson, “[e]very government degenerates when trusted to the rulers of the people alone. The people themselves are its only safe depositories. . . . The influence over government must be shared among all the people. If every individual which composes their mass participates of the ultimate authority, the government will be safe.”174

Under this fundamental proposition, expressed by Thomas Gordon in 1721, it was impossible to assert that the opinion of the representatives of the People was superior to the judgment of the People themselves:

Every Ploughman knows a good Government from a bad one, from the Effects of it: he knows whether the Fruits of his Labour be his own, and whether he enjoy them in Peace and Security: And if he do not know the Principles of Government, it is for want of Thinking and Enquiry, for they lie open to common Sense: but People are generally taught not to think of them at all, or to think wrong of them. . . .

[O]ur whole worldly Happiness and Misery (abating for Accidents and Diseases) are owing to the Order or Mismanagement of Government; and he who says that private Men have no Concern with Government, does wisely and modestly tell us, that Men have no Concern in that which concerns them most; it is saying that People ought not to concern themselves whether they be naked or clothed, fed or starved, deceived or instructed, and whether they be protected or destroyed: What Nonsense and Servitude in a free and wise Nation!175

The veracity of these Principles hardly in dispute to the Americans of the 1770’s, it was inevitable that they would be contained in the charters of American Government. Indeed, on June 12, 1776, the Virginia Declaration of Rights (drafted by Mason) codified these political maxims for the first time. In that document, the then-colony of Virginia proclaimed that “. . . all power is vested in, and consequently derived from, the People . . . magistrates are their trustees and servants, and at all times amenable to them,”176 and set forth the First Principle of Government:

**Government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community; — of all the various modes and forms of Government that is best which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of mal-administration; — and that, whenever any Government shall be found inadequate or contrary to these purposes, a majority of the community hath an**
indubitable, unalienable, and indefeasible right, to reform, alter, or abolish it, in such manner as shall be judged most conducive to the publick weal.\textsuperscript{177}

Three weeks later, this conviction was re-asserted in the second paragraph of the primary American document, the Declaration of Independence, which proclaimed its validity to the world on July 4, 1776, in words dear to all Americans:

\begin{quote}
We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. That whenever any Form of Government becomes destructive of these ends, it is the Right of the people to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.\textsuperscript{178}
\end{quote}

Having secured America’s independence after winning the Revolutionary War, the States which comprised America began to codify these precepts in their own constitutions, including one of the chief inspirations for our own Constitution, the Massachusetts Constitution of 1780. The Massachusetts document codified the Legislative, Executive, and Judicial powers, and declared that they be forever separated, the Preamble held that “[t]he end of the institution, maintenance and administration of government, is to secure the existence of the body-politic . . . and to furnish the individuals who compose it, with the power of enjoying, in safety and tranquillity, their natural rights, and the blessings of life; And whenever these great objects are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, prosperity and happiness.”\textsuperscript{179} Articles Five and Seven of the Massachusetts Constitution of 1780 further held that the power given to these separate departments was a grant of authority which could be retracted at any time:

\begin{quote}
All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them. . . .
\end{quote}
Government is instituted for the common good; for the protection, safety, prosperity and happiness of the people; and not for the profit, honor, or private interest of any one man, family, or class of men; Therefore the people alone have an incontestible, unalienable, and indefeasible right to institute government, and to reform alter or totally change the same, when their protection, safety, prosperity and happiness require it.\textsuperscript{180}

These beliefs were not lost on the Framers, who modeled the Federal Constitution in large part on the Massachusetts Constitution of 1780. Indeed, in their view, the approval of the People via the act of Ratification was essential to good Government. A Government formed in any other way was inherently defective, as proven by the history of all world Governments, and even by our own Articles of Confederation. This tenet was recognized by Hamilton in \textit{Federalist 22}: “It has not a little contributed to the infirmities of the existing federal system, that it never had a ratification by the people. . . . The possibility of a question of this nature proves the necessity of laying the foundations of our national government deeper than in the mere sanction of delegated authority. The fabric of American empire ought to rest on the solid basis of THE CONSENT OF THE PEOPLE. The streams of national power ought to flow immediately from that pure, original fountain of all legitimate authority.”\textsuperscript{181}

Note: consent of the \textit{People}, not consent of the \textit{States}, which were not superior to the People. Consent of the People was required, since under the original Articles of Confederation, all thirteen States had to ratify a new Constitution — a stricture which, if obeyed, would practically guarantee the preservation of the Articles. Strictly speaking, the Framers at the Convention were proposing a document that was \textit{unconstitutional}. But in the view of Madison, this was not only necessary, but an ethical obligation, in light of the overriding concern of the well-being of the People, who were living under a defective Constitution that promised to live in perpetuity unless action was taken:

\textit{[I]f they [the Framers at the Convention] had exceeded their powers, they were not only warranted, but required, as the confidential servants of their country, by the circumstances in which they were placed, to exercise the liberty which they assumed; and that finally, if they had violated both their powers and their obligations, in proposing a Constitution, this ought nevertheless to be embraced, if it be calculated to accomplish the views and happiness of the people of America.}\textsuperscript{182}
Of course, the People were the “fountains of authority” underlying their Constitution, and securing their well-being was the primary object of Government. But, unfortunately, though republican constitutions were “ordained and established” by the People, they were and are not administered by the People, but by their representatives. This was problematic: as Madison said in *Federalist 63*, “The people can never wilfully betray their own interests; but they may possibly be betrayed by [their] representatives . . . .” This had long been identified as a problem. John Trenchard, writing in 1721, maintained that “the great Point of Nicety and Care in forming [a] Constitution,” was that “the Persons entrusted and representing, [should] either never have any Interest detached from the Persons entrusting and represented, or never the Means to pursue it.” And Mason noted in 1775 that wise Principles were necessary for the formation of a worthy Constitution, but not sufficient, since all Governments were administered by men, who, as Madison stated, were no “angels”:

> Upon these natural just and simple positions were civil laws and obligations framed, and from this source do even the most arbitrary and despotic powers this day upon earth derive their origin. Strange indeed that such superstructures should be raised upon such a foundation! But when we reflect upon the insidious arts of wicked and designing men, the various and plausible pretences for continuing and increasing authority, the incautious nature of the many, and the inordinate lust of power in the few, we shall no longer be surprised that free-born man hath been enslaved, and that those very means which were contrived for his preservation have been perverted to his ruin; or, to borrow a metaphor from Holy Writ, that the kid hath been seethed in his mother’s milk.

That this problem needed to be solved was reiterated over and over by our Framers, who knew that the measure of the strength of a constitution was the extent to which it was able to prevent the inevitable attempts to corrupt it. In *Federalist 62*, Madison held that “[i]t is a misfortune incident to republican government . . . that those who administer it may forget their obligations to their constituents, and prove unfaithful to their important trust.” This reflected his views of an earlier essay, in which he stated that “Men of . . . sinister designs, may, by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interests, of the people.” But, as Hamilton wrote, it was naive to think that this corruption or encroaching despotism would be sudden or obvious. Though many saw the use of military force as the engine of constitutional destruction, Hamilton knew that appropriators of the People’s political power were far more cunning:
Is this the way in which usurpers stride to dominion over a numerous and enlightened nation? Do they begin by exciting the detestation of the very instruments of their intended usurpations? Do they usually commence their career by wanton and disgustful acts of power, calculated to answer no end, but to draw upon themselves universal hatred and execration? If we were even to suppose the national rulers actuated by the most ungovernable ambition, it is impossible to believe that they would employ such preposterous means to accomplish their designs.189

One way to measure the extent of this subtle encroachment on the rights of the People by the “usurpers” is to measure the extent to which the laws passed do not reflect the Will of the People. According to Hamilton, “[i]t is not . . . to be supposed that the constitution could intend to enable the representatives of the people to substitute their will to that of their constituents.”190 But, as we saw in Chapter One, history repeated itself, and the will of the People’s representatives was substituted for the Will of the People, the existence of the Constitution notwithstanding. The asymmetry of this reality in the Constitutional scheme of things was noted by Senator Paul Wellstone (D-MI), in a magnificent and chilling speech on the floor of the Senate on May 21, 1991:

When I came to Washington, D.C. as a candidate I met the gatekeepers. Those who very early on decide whether or not you as a candidate will be able to get the money. These are the people with the purse strings. These are the people who have the big money.

They are not your next-door neighbors. Who is kidding whom? We know where the money comes from. . . .

There is a deep sense of skepticism about politics and politicians in our country, and the people feel that this Capitol, that the U.S. Senate and the U.S. House of Representatives, does not belong to them; it belongs to people with big bucks.

Let me repeat that. Let us be honest about it. If we want to talk about low levels of participation and we want to talk about what people are saying back in cafes and at the grassroots, we can say that people do not believe any longer that this Capitol, the Senate or the House, belongs to them. They think it belongs to the people with the big bucks. They do not think that we any longer have a system where each person counts as one, and no more than one. They do not think that democracy is really functioning in our country. And that is not just a perception. I have heard
that word over and over again in the debates. It is not just people. They are right and that is a reality. . . . 191

Senator Wellstone was not alone in his fervent criticism of a system gone radically wrong. His views were seconded by Senator David Boren (D-OK), who demanded a return to the Principles on which this country was based, and action on those Principles by the people paid a salary to uphold those Principles, and who, indeed, were sworn under oath to uphold those Principles:

Can we really honestly sit here and say it is a good thing that it now costs an average of $4 million to run for reelection to the United States Senate; that it is a good thing, and all the time and attention that it takes to raise that kind of money is being spent by Members of Congress instead of doing our duty to solve the problems of this Nation? . . . As long as elections are decided on the basis of who can raise the most money, it will always favor incumbents, so we do not have any competition in American politics.

As long as that goes on we are going to have a deeper and deeper disillusionment of our own people, especially with more and more of that money coming from special interests that have no connection with the home States of those involved. How long are we going to wait, Mr. President? Are we just going to talk about it? Are we going to get up on the floor of the Senate and wave our arms, and pound the desk, and talk about it over and over in sound bites on the nightly news, or are we going to do something about it? . . .

We are the trustees of the political process. The American people have sent us here. And . . . this should be their chamber of Government. This should be their Capitol building. This should be their Congress, not the Congress that gives access to those who contribute more and more of the money to finance political campaigns. It ought to belong to every American.

Every American counts and every American should count equally in the political process, including those who cannot afford to make large political contributions. That is what this is all about, Mr. President. It is about a struggle for the soul of this democracy itself . . . 192

Unfortunately, this struggle was conducted not by the People, but by the representatives of the People, the politicians of Congress. As Senator Wellstone revealed, “The people outside of the Senate and the House, the people who live in the country, want the change, but they do not have the power. And too many
people, I am afraid, in the U.S. Senate — or at least some Senators — have the power but they do not want the change.”

Indeed, this proved to be the case. Notwithstanding the overwhelming public opinion in favor of this most important proposal, and notwithstanding the corrupting and debilitating effect on our political process without its implementation, no Congressional Public Financing Bill was passed by the United States Congress in 1900, 1910, 1920, 1930, 1940, 1950, 1960, 1970, 1980, 1990, or any year before, in-between, or since!

In the 17th and 18th centuries, the political writers of the time knew how to evaluate and handle betrayals of this nature, which strike at the heart of a supposedly “democratic” process. As Locke stated, “[I]f a long train of Abuses, Prevarications, and Artifices, all tending the same way, make the design visible to the People, and they cannot but feel, what they lie under, and see, whither are they going; ‘tis not be be wonder’d, that they should then rouze themselves, and endeavour to put the rule into such hands, which may secure to them the ends for which Government was at first erected. . . .” And Hamilton realized that the People would have no choice but to regain the form of Government they were promised: “If the representatives of the people betray their constituents, there is then no resource left but in the exertion of that original right of self-defence which is paramount to all positive forms of government . . . .”

The form of “self-defence,” of course, was to change the nature of the political system, to prevent this and similar occurrences from happening. This philosophy was the “safety-valve” which secured the First Principle of Government. Indeed, Madison in Federalist 51 referred to the power of the People as the “primary controul.” The fact that the representatives of the People, or the system under which they performed their duties, could not be relied upon to achieve the ends of Government, meant that the power of the People had to be resorted to. The fact that the People would alter their system was no betrayal of the system; to the contrary, it was evidence that the system, which was to serve the People, had itself betrayed its fundamental precepts. As Locke wrote in his Second Treatise, holding that the People had to support a defective Government was a notion 180° from the truth:

[T]hey have a very wrong Notion of Government, who say, that the People have incroach'd upon the Prerogative, [of the Government], when they have got any part of it to be defined by positive Laws. For in so doing, they have not pulled from the Prince any thing, that of right belong'd to him, but only declared, that that Power which they indefinitely left in his, or his Ancestors, hands, to be exercised for their good, was not a thing, which they intended him, when he used it otherwise. For the end of government being the good of the
Community, whatsoever alterations are made in it, tending to that end, cannot be an incroachment upon any body: since no body in government can have a right tending to any other end. . . . Those who say otherwise, speak as if the Prince had a distinct and separate Interest from the good of the Community, and was not made for it, the Root and Source, from which spring almost all those Evils, and Disorders, which happen in Kingly Governments. And indeed if that be so, the People under his Government are not a Society of Rational Creatures entered into a Community for their mutual good; they are not such as have set Rulers over themselves, to guard, and promote that good; but are to be looked on as an Herd of inferior Creatures, under the Dominion of a Master, who keeps them, and works them for his own Pleasure or Profit. If men were so void of Reason, and brutish, as to enter into Society upon such Terms, Prerogative might indeed be, what some Men would have it, an Arbitrary Power to do things hurtful to the People.197

The Framers, who were fighting a defective Government, had to address the erroneous major premise that the People were bound to support an obsolescent and/or poorly conceived political structure. In December 11, 1787, at the Pennsylvania Ratifying Convention, Wilson questioned any notion that Governments were superior to the People they were supposed to serve: “We hear it every time the gentlemen are up, ‘Shall we violate the confederation, which directs every alteration that is thought necessary to be established by the State legislatures only’? Sir, those gentlemen must ascend to a higher source; the people fetter themselves by no contract. If your State legislatures have cramped themselves by compact, it was done without the authority of the people, who alone possess the supreme power.”198 To Hamilton, questioning the Principle of the People’s Supremacy was unthinkable: “. . . I trust the friends of the proposed Constitution will never concur with its enemies in questioning that fundamental principle of republican government, which admits the right of the people to alter or abolish the established Constitution, whenever they find it inconsistent with their happiness . . . .”199

Thus the view expressed in our Preamble, that “We the People . . . do ordain and establish” constitutions. In the Pennsylvania Ratifying Convention, Wilson indicated that the essential function of the Preamble was to anchor down this central truth for all time:

[T]he leading principle in the politics, and that which pervades the American [state] constitutions, is, that the supreme power resides in the people. This Constitution, Mr. President, opens with a solemn
and practical recognition of that principle: — “We, the people of the United States,” in order to form a more perfect union, establish justice, &c. do ordain and establish the Constitution for the United States of America.” It is announced in their name—it receives its political existence from their authority: they ordain and establish. What is the necessary consequence? Those who ordain and establish have the power, if they think proper, to repeal and annul. . . . the people have a right to do what they please with regard to the government. . . . the fee-simple remains in the people at large, and by this Constitution they do not part with it. . . . in a government like the proposed one, there can be no necessity for a bill of rights, for, on my principle, the people never part with their power. . . .

That the supreme power, therefore, should be vested in the people, is in my judgment the great panacea of human politics. It is a power paramount to every constitution, inalienable in its nature, and indefinite in its extent. . . . if there are errors in government, the people have the right not only to correct and amend them, but likewise totally to change and reject its form; and under the operation of that right, the citizens of the United States can never be wretched beyond reprieve, unless they are wanting to themselves. 

With this dictum in mind, let us revise the Constitution.
Article I, Section 1

All legislative Powers as herein granted herein shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives, and the People of the United States.

Notwithstanding the retention of a Senate and House of Representatives, the requirement of Bicameral passage of legislation as it exists under the 1787 Constitution has been done away with, with the addition of the new procedure for the passage of Bills in Section Eight of this Article. While the Senate retains in part its power to vote on legislation, its primary function under THE 21ST CENTURY CONSTITUTION is Oversight of the Government.

As we saw in the previous chapter, Congress is unable to pass every law and regulation that must be passed in modern industrial society. Consequently, they have had to delegate authority. Indeed, Delegation is inevitable. The answer is not to prevent all Delegations, but to alter the (existing) system of Checks and Balances that makes Delegation unwise. The newly drafted Article One, Section Nine legitimizes the practice of Delegation (“as granted herein”), since new Checks and Balances have been instituted; in addition, Section One declares that the People, the source of all power, have retained certain Legislative powers (one of the new checks on Delegation). Because a key aspect of the new system of Checks and Balances is the Senate’s exclusive Oversight function, the Senate may not delegate its powers.

The Legislative powers the People reserve for themselves (the “direct democracy” provisions) are enumerated in Section Fifteen.
Article I, Section 2, Clause 1

The House of Representatives shall be composed of Members chosen every secondYear by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature. The term of the Representative may be extended by the People to two years, as provided under Section Fifteen of this Article.

In last year’s reconciliation bill, the consummation of months of budget negotiations, Congress departed from habit and authorized a comparatively huge, $1 trillion-plus increase in the limit, from $3.123 trillion to $4.145 trillion. Lawmakers thought that would be plenty to carry things well into 1993, safely past the 1992 elections. 201

— Congressional Quarterly

Members of national legislatures should be held accountable. The national legislature ought to be reviewed regularly by the citizenry. Legislators should feel anxious about their reelection chances and should feel insecure about possibly deteriorating home-base support from their constituents. . . .

If the voters find their representatives lacking, they can ‘turn the rascals out.’ If the national legislature fails to act or makes poor policy choices, or if the electorate perceives that members are acting unethically by placing self-interest above the general public welfare, then the public should use the ballot box to elect wiser and more honest representatives. . . . 202

— The Constitution Under Pressure

Inherent in our political system is the idea that “the People are supreme.” Because they are supreme, they decide who will represent them, in a process analogous to that of corporation stockholders choosing their board of directors. Since the People are supreme, the concept of voting necessarily follows when the political power of the People is delegated to their representatives. Inherent in the concept of voting, of course, is the length of the term. Note that the vote
would be worthless if the length of the term were, say, twelve years. Such a
term length, would, indeed, defeat the very purpose of voting. In that span of
time, an incompetent representative could do irreparable damage to the country,
and s/he would also be empowered to ignore the Will of the people s/he
supposedly represents. All other factors being equal, the shorter the term, the
greater the probability that the will of the voters will be considered, and the
greater the check on the authority to whom the power has been delegated. The
worth of the vote is inversely proportional to the length of the term — the
longer the term, the less the vote is worth; the shorter the term, the more the
vote is worth. This is why many stockholders, eminently interested in
preserving their investment, elect their boards of directors for Annual Terms.

The concept of voting includes not only the idea of voting in, but voting out,
for reasons of retribution. Long terms make this exceedingly difficult, due to
the recency effect; people tend to remember what the politician most recently
did (voted for new jobs in the District), versus what the politician did at the
beginning of the term (voted for a higher salary). With longer terms, the
framing of reality through political advertisements has a greater influence on
the voters than reality itself. And, if the term is too long, a politician can say,
with some authority, “I’m different now — that was the old me.” The
combination of forgetting the old and remembering the new works to the
advantage of strategic politicians, and to the disadvantage of voters held captive
by the biological limitation of short-term memory.

Voting has many purposes, including the opportunity to inject new ideas
into Government. But the fundamental reason for voting is accountability. As a
Senate Select Committee stated in 1826, “This return to the people, and
accountability to them, constitutes the responsibility of the Representative, and
affords the only check and control over his conduct, which the constituent can
possess.”

To secure this responsibility, annual elections were the norm in the 18th
Century. In fact, at the time of the formation of our Constitution, only South
Carolina had elections every two years. The other States had elections annually,
and two States, Connecticut and Rhode Island, even had elections for State
office every six months! This was a reflection of an old maxim, unfortunately
since forgotten, that “where annual elections end, tyranny begins,” which
Madison quoted at the beginning of Federalist 53. George Mason, the author of
the Virginia Declaration of Rights (from which much of our Bill of Rights was
derived), stated in his remarks on annual elections to the Fairfax Independent
Company in 1775 that

[T]o restore mankind to its native rights hath been the study of some of
the best men that this world ever produced; and the most effectual
means that human wisdom that ever been able to devise, is
frequently appealing to the body of the people, to those constituent members from whom authority originated, for their approbation or dissent. Whenever this is neglected or evaded, or the free voice of the People is suppressed or corrupted . . . inevitable destruction to the state follows. . . . North America is the only great nursery of freemen now left upon the face of the earth. Let us cherish the sacred deposit. Let us strive to merit this greatest encomium that ever was bestowed upon any country. In all our associations; in all our agreements let us never lose sight of this fundamental maxim — that all power was originally lodged in, and consequently is derived from, the people. We should wear it as a breastplate, and buckle it on as our armour. . . . The proposed interval of a year will defeat undue influence or cabals; and the capacity of being rechosen afterwards, opens a door to the return of officers of approved merit, and will always be a means of excluding unworthy men . . . .

 Benjamin Rush, writing in 1777, foresaw the end of annual elections, and realized that their demise was the demise of justice: “[T]he rich have always been an over-match for the poor in all contests for power . . . The consequence of a majority of rich men getting into the legislature is plain. Their wealth will administer fuel to the love of arbitrary power that is common to all men. . . . Farewell now to annual elections!” 206  John Adams, who later became the Second President of the United States, was amazed that people throughout history would surrender their liberties to powerful Government officials who would not always represent the interests of the general population:

 Is it not amazing, that nations should have thus tamely surrendered themselves, like so many flocks of sheep, into the hands of shepherds, whose great solicitude to devour the lambs, the wool, and the flesh, scarcely leave them time to provide water or pasture for the animals, or even shelter against the weather and the wolves? . . . Is it is often said, too, that farmers, merchants, and mechanics, are too inattentive to public affairs, and too patient under oppression. This is undoubtedly true, and will forever be so; and, what is worse, the most sober, industrious, and peaceable of them, will forever be the least attentive, and the least disposed to exert themselves in hazardous and disagreeable efforts of resistance. The only practicable method, therefore, of giving to farmers, &c. the equal right of citizens, and their proper weight and influence in society, is by elections, frequently repeated . . . .

 For Adams, and for many other writers, the rights of the common people, who work long and difficult hours, and who consequently do not have the time
or energy to devote to an understanding of day-to-day Government operations, were not secure without free and frequent elections. As Mercy Warren wrote in 1788,

All writers on government agree, and the feelings of the human mind witness the truth of these political axioms, that man is born free and possessed of certain unalienable rights — that government is instituted for the protection, safety, and happiness of the people, and not for the profit, honour, or private interest of any man, family, or class of men — That the origin of all power is in the people, and that they have an incontestible right to check the creatures of their own creation . . . .

Annual election is the basis of responsibility. — Man is not immediately corrupted, but power without limitation, or amenability, may endanger the brightest virtue — whereas a frequent return to the bar of their Constituents is the strongest check against the corruptions to which men are liable, either from the intrigues of others of more subtle genius, or the propensities of their own hearts . . . 208

These insights were not lost on the Framers of our Constitution. As Hamilton observed in Federalist 21, “Where the whole power of the government is in the hands of the people, there is the less pretence for the use of violent remedies in partial or occasional distempers of the State. The natural cure for an ill-administration, in a popular or representative constitution, is a change of men.” 209 Madison well understood that paper securities such as an ostensible Checks and Balances System were useless without first securing the Principle of Accountability:

The means relied on in this form of government for preventing their degeneracy are numerous and various. The most effectual one is . . . a limitation of the term of appointments, as will maintain a proper responsibility to the people. . . . [S]ecurities . . . would be . . . very insufficient without the restraint of frequent elections. . . . the House of Representatives is so constituted as to support in the members an habitual recollection of their dependence on the people. Before the sentiments impressed on their minds by the mode of their elevation can be effaced by the exercise of power, they will be compelled to anticipate the moment when their power is to cease, when their exercise of it is to be reviewed . . . . 210

For Hamilton, the power of the People over Government was “essential” for maintaining the rights of the People: “[T]he whole power of the proposed
government is to be in the hands of the representatives of the people. This is the essential, and, after all, the only efficacious security for the rights and privileges of the people which is attainable in civil society.” To Hamilton, frequent elections would help prevent corruption, due to “the slender interest a man is apt to take in a short-lived advantage, and the little inducement it affords him to expose himself, on account of it, to any considerable inconvenience or hazard.” Since “it [was] not . . . to be supposed, that the constitution could intend to enable the representatives of the people to substitute their will to that of their constituents”, frequent elections were necessary to insure not only that rights would be secured, and not only that Government would remain corruption-free, but that the representatives of the People actually represented the People, and voted the collective Will of the People as the National Interest required. The final rationale for frequency of elections was to furnish a security that the Constitution would be obeyed. As Madison wrote in Federalist 63, “the house of representatives, with the people on their side, will at all times be able to bring back the Constitution to its primitive form and principles.”

When the Constitution was drafted, the Framers were well aware that the People were fond of annual elections. Edmund Randolph, the Governor and one of the Delegates from Virginia (who gave the opening speech at the Convention), noted on June 21 that “The people were attached to the frequency of elections. All the Constitutions of the States except that of S. Carolina, had established annual elections,” and Nathaniel Gorham, a delegate from Massachusetts, stated that “[t]he great bulwark of our liberty is the frequency of elections . . . .” For these reasons, several of the Framers argued for the Annual Term at the Federal Convention. Wilson said he was “for making the 1st branch an effectual representation of the people at large, [and] preferred an annual election of it. This frequency was most familiar & pleasing to the people.” Oliver Ellsworth, a delegate from Connecticut, argued for the Annual Term and against a motion that had been made to set the term for Representative at three years. Ellsworth said that “even one year was preferable to two years,” and that “[t]he people were fond of frequent elections and might be safely indulged in one branch of the legislature.” Ellsworth moved for one year, and was seconded by Caleb Strong, another delegate from Massachusetts. And finally, Roger Sherman, another delegate from Connecticut, stated that “I am for one year. Our people are accustomed to annual elections. Should the members have a longer duration of service, and remain at the seat of the government, they may forget their constituents, and perhaps imbibe the interest of the state in which they reside . . . .”

However, it is an unfortunate political reality that term lengths, like taxes, creep ever upward. On June 21, the Federal Convention voted for the biennial term. The primary reason for not going to one year was expense. As Strong stated in the Massachusetts Ratifying Convention on January 15, 1788, in
response to an inquiry of why two years was substituted for one year, “it was . . . urged by the Southern States, which are not so populous as the Eastern, that the expense of more frequent elections would be great. . . .”

There were other reasons for the rejection of the Annual Term, stated by Madison in Federalist 37, 52, 53, and 55 as follows:

1. **There would not be enough time to investigate the returns of elections.**

   “[S]purious elections cannot be investigated and annulled in time for the decision to have its due effect. If a return can be obtained, no matter by what unlawful means, the irregular member, who takes his seat of course, is sure of holding it a sufficient time to answer his purposes. . . . so great a portion of a year would unavoidably elapse, before an illegitimate member could be dispossessed of his seat, that the prospect of such an event would be little check to unfair and illicit means of obtaining a seat.”

2. **The distance Representatives would have to travel was too far for Annual Terms.**

   “The distance which many of the representatives will be obliged to travel, and the arrangements rendered necessary by that circumstance, might be much more serious objections with fit men to this service, if limited to a single year, than if extended to two years.”

3. **Annual elections would lead to frequent turnover, and a resulting frequent change of laws.**

   “A frequent change of men will result from a frequent return of electors, and a frequent change of measures, from a frequent change of men . . . .”

4. **Senior members would set “snares” for new members.**

   “A few of the members, as happens in all such assemblies, will possess superior talents; will, by frequent re-elections, become members of long standing; will be thoroughly masters of the public business, and perhaps not unwilling to avail themselves of those advantages. The greater the proportion of new members, and the less the information of the bulk of
the members, the more apt will they be to fall into the snares that may be laid for them.”  

5. **Knowledge for the job is important, and the one-year term was insufficient for acquiring the necessary knowledge.**

“No man can be a competent legislator who does not add to an upright intention and a sound judgment a certain degree of knowledge of the subjects on which he is to legislate. . . . The period of service, ought, therefore, in all such cases, to bear some proportion to the extent of practical knowledge requisite to the due performance of the service.”

6. **The powers of Government were to be limited, so terms could be longer.**

“It is a received and well-founded maxim, that where no other circumstances affect the case, the greater the power is, the shorter ought to be its duration; and, conversely, the smaller the power, the more safely may its duration be protracted.”

7. **Constitutional safeguards existed that made the biennial term less dangerous.**

“[T]he limited powers of the Congress, and the control of the State legislatures, justify less frequent elections than the public safety might otherwise require . . . .”

When Madison’s reasons for rejecting the Annual Term are analyzed in light of 20th and 21st Century reality, they are found wanting. The First and Second reasons are obviously obsolete. And, while the aberrational coincidence of Reapportionment, a Recession, and a Check-Bouncing Scandal in 1992 will in all probability reduce the Incumbent return ratio to its lowest percentage in over twenty years, the historical fact remains that 93 percent of Incumbent Representatives were, on average, re-elected every term in the 1964 to 1988 time period — thus, the Third reason no longer obtains. The Fourth reason is not really an argument against the one-year term, but against an effect that would be present with terms of any length if there were no limitations set forth in the Constitution on the number of terms that could be served by Representatives and Senators.

Thus, we are left with the reason of **expense** cited by Caleb Strong (this 18th Century concern has a contemporary spin: the advent of television has made political campaigning more expensive, and more frequent elections would, if
left unregulated, lead to greater campaign costs), and reasons Five, Six, and Seven. Reason Five, and the reason of expense, was reiterated (and supplemented) by Henry Hazlitt in his argument for a four-year term for Representatives in *A New Constitution Now*: “A four-year term would give congressmen more time to learn their job and to acquaint themselves with issues. They would have to devote less time and expense to getting themselves reelected.” For Hazlitt, the need for a proper education was a compelling reason for longer terms, along with an additional reason — politicians were devoting more and more time to getting re-elected; thus, the shorter the term, the more campaigning for office, and the less time the politician could devote to fulfilling his or her duties. To the latter reason of waste of time of the Legislator in attempting to a) privately finance and b) campaign for his or her election (and Reasons Six and Seven) may be added an additional reason, not noted by Hazlitt or Madison: that a short term length would potentially make Representatives more susceptible to local interests, such as jobs for defense plants, etc. An undue attention to the concerns of local interests would lead to violations of the National Interest.

The net result of this analysis is six plausible arguments against the Annual Term:

1. *Annual elections are more expensive.*
2. *The limited powers of Government make Annual Terms unnecessary.*
3. *Constitutional safeguards make Annual Terms unnecessary.*
4. *There is a greater susceptibility to local interests with Annual Terms.*
5. *More frequent privately-financed elections (and the concomitant need to devote more time to fund-raising and campaigning) means less time spent on the job by elected officials.*
6. *The need for additional legislative knowledge makes the longer term necessary.*

While these arguments are plausible, they are found wanting under closer scrutiny. The First argument, expense, is spurious. When people refer to the expense of elections, they are generally referring to the cost of publicizing elections (with private expenditures for political advertisements). But elections can, should, and will be financed publicly under THE 21ST CENTURY CONSTITUTION (see Article One, Section Ten, Clause Five), and expenditures and the length of campaigns will be drastically limited, resulting
in savings that will more than pay for the minimal additional expense of holding elections (setting up voting booths, etc.) every year instead of every other year (although all States have off-year elections). More importantly, when we factor in the savings that will accrue from the avoidance of financial disasters like the National Debt, the Savings and Loan scandal, $700 screws, the B-2 program, and Star Wars, to name but a few of the literally hundreds of examples of wasteful Government expenditures our current political system cranks out on a yearly basis, the additional cost of annual elections, if present at all, will turn out to be one of the greatest investments in American History.

When we examine the next two arguments in light of our recent history, we find compelling reasons for the Annual Term. Why? Because the nature of Government has radically changed. Recall that Madison stated that the Government was one of “limited powers.” Madison made that statement before John Marshall’s decision in *McCulloch v. Maryland* in 1819, a decision Madison and many others argued fervently against, as we saw in the earlier chapter. In that decision, John Marshall argued that the “Necessary and Proper” Clause in Article One, Section Eight, was a license to the Government to go beyond the strictly enumerated powers in Section Eight, and to make additional laws that were “necessary and proper.” As Marshall stated,

[W]e think the sound construction of the Constitution must allow to the national legislature that discretion . . . which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are Constitutional.  

Thus, the Constitution was radically transformed. The powers were no longer limited to those explicitly stated in Article One, Section Eight, but were expanded to any powers consistent with “the letter and spirit of the Constitution.” Over time, the Federal Government gradually began to acquire more and more powers, and not only by escalation. Ratified in 1913, the Sixteenth Amendment eliminated the concept of apportionment in taxation, the constitutional safeguard against higher taxes, and the Federal Government could boldly tax what no Government had taxed before. The Seventeenth Amendment, ratified the same year, eliminated the constitutional safeguard of control by the State Legislatures mentioned by Madison in his Seventh Reason. Recall again that statement: “[T]he limited powers of the Congress, and the control of the State legislatures, justify less frequent election than the public safety might otherwise require . . . .” According to Madison, if the powers of Congress were not limited (and they were greatly broadened by the *McCulloch*
decision and the addition of the Sixteenth Amendment), and if the State Legislatures would lose control of the Senate (as they did with the Seventeenth Amendment), then “the public safety” could require more frequent elections. Thus, two of Madison’s most compelling reasons against Annual Terms become, in light of subsequent historical developments, two of the most compelling reasons for Annual Terms. Government now has vast new powers, and, as Madison stated, “the greater the power is, the shorter ought to be its duration.”

Some have argued that a shorter term might lead to an undue susceptibility to local interests. Indeed it might, but there are better ways to solve that problem constitutionally than by increasing the length of the term. Apart from its inherent danger, the longer term has shown itself to a very poor check against the influence of local interests, as revealed by our experience with Senators, who serve for six-year terms. As Glenn Pascall noted in his book *The Trillion Dollar Budget,*

If the services don’t get what they want from the Secretary of Defense, they can turn to Congress, pointing out to members the benefits for their districts if projects appear in the budget. Congress often responds. Senator Barry Goldwater has said, ‘I don’t care what the piece of equipment is, or how bad it is, if it’s done in his state, the Senator has to get up and scream for it.’ . . . Examples abound, but perhaps none is more striking that that of Senator Cranston’s support for the B-1B bomber, whose prime contractor is California-based Rockwell International.231

An article in *The New York Times* on September 6, 1991 vividly revealed the inadequacy of the six-year term as a solution for the local interest problem. Titled “Senator Who Brings Home the Bacon,” the article read as follows:

Two years after Senator Robert C. Byrd was named chairman of the Senate Appropriations Committee, he declared that he intended to become a ‘billion-dollar industry.’ What he planned to do, he explained in June 1990, was use his new power to funnel a billion dollars’ worth of Federal projects and agencies into his impoverished state. ‘I hope to become West Virginia’s billion-dollar industry,’ the Senator told a crowd in Clarksburg. ‘I expect during my term to bring at least a billion dollars to West Virginia in projects that I put into the bill.’ . . .

In less than three years as appropriations chairman, Mr. Byrd has steered more than $750 million worth of Federal projects and agencies and more than 3,000 Federal jobs out of Washington and toward his constituents. The Federal Bureau of Investigation’s new $185 million fingerprint center will soon be built in Clarksburg, bringing in 2,600 new
jobs. His latest target is the Central Intelligence Agency. He wants to shift 3,000 of its jobs to West Virginia. . . . Mr. Byrd, who is 73 years old, is demonstrating anew that he can play the Congressional power game as well as anyone around, especially when it comes to ‘pork barrel’ politics. ‘This nation is made up of local interests,’ he is fond of saying. . . .

[N]o one else can claim to have attracted $140 million in new highway projects this year — a third of the new highway money put up by Congress for the entire country. ‘What helps West Virginia helps the nation,’ the Senator often says. . . .

‘Byrd has shown himself to be one of the great masters at making the appropriations process work for himself and for others by trading favors and building loyalty,’ said Joseph White, a scholar at the Brookings Institution who is writing a book on Congressional appropriations. ‘You don’t necessarily make great history doing this, but it’s an inescapable part of the system.’232

Obviously, the six-year term does not prevent an undue attention to local interests. The six-year term does, however, supply the danger of long terms, without providing its supposed benefits. The local-interest problem, however, is a serious one, and must be dealt with. THE 21ST CENTURY CONSTITUTION contains structural solutions for the problem of local interests unduly influencing National Representatives in Sections Three, Six, Seven, and Eight of Article One.

The final two arguments against one-year terms are that politicians will always be “running for office,” and that politicians need more time to “learn on the job.” These final two arguments, however, are not compelling reasons against one-year terms. If politicians are always “running for office,” that is only because there is a constitutional structure that permits them to do so, a problem that can be easily solved constitutionally without resorting to the dubious remedy of long terms, which have not solved the problem of “too much time running for office.” In fact, the length of the terms has indirectly increased the time politicians spend “running for office,” by preventing the legitimate cure for the problem of too much “running for office,” legislation providing for Public Financing (i.e., long terms have allowed Senators to ignore the wishes of 80 percent of the People, who would like to see Public Financing); consequently, Senators and Representatives spend much of their time fund-raising — in fact, the average Senator must raise $10,000 dollars a week to run for re-election, and indirectly runs for office on a weekly basis by “dialing for dollars.”233 As Senator Kerry of Massachusetts stated on the floor of the Senate on May 22, 1991,
The growing fundraising burden is something we have all talked about. I was just sitting here a moment ago making a list from my own memory. I could not remember all of them but here is where I raised money in 1990, the Senator from Massachusetts.

I went to California a number of times. I went to New York, Connecticut, Rhode Island, New Jersey, Ohio, Illinois, Georgia, Louisiana, Florida, Texas, Washington, Colorado, Nevada, Alabama, Missouri, New Hampshire, North Carolina—and I am sure there are some I have left out. What is a U.S. Senator from Massachusetts doing having to go to all those States? How many weekends did that take away from my being in Massachusetts? How many weekends and how many days did that take away from my ability to meet with the best minds in this country on health care, on education, on ocean policy, on environment, on the issues we ought to be voting on here? Instead I was chasing dollars, living some night in a motel.234

But the collective power Incumbent Senators with six-year terms have to prevent the passage of Public Financing legislation ultimately keeps even Representatives beholden to the money chase, since the passage of legislation requires the consent of both houses. As one ex-Representative stated, “I heard of some guys who call their closest supporters, their key contributors, on Christmas Day. You never know when to stop.”235

The final argument, the “need for knowledge” is valid, but it too is hardly a persuasive one against one-year terms. After a year in office, any competent Representative should have “learned the ropes,” and so this argument could only be valid for the first year. If people felt this argument was legitimate, they could re-elect their congressman because s/he hadn’t time to “learn the job.” More disturbing, however, is that this argument justifies a status quo where people who “don’t know what they’re doing” are running for office. This would provide a powerful disincentive for people to remove Incumbents, and would partially account for the fact that Incumbents are so difficult to unseat. Why do we have people who “don’t know what they’re doing” running for office? To some individuals, the first year of the Representative is lost due to the need to “learn on the job,” and the second year is lost because the Representative is “running for office.” By this analysis, the first term of a freshman congressman, under our system, is a complete waste of time! It would be far better to have either experienced or trained people seeking election — people who don’t need to “learn on the job,” because they’ve learned what they need to learn before taking office. If indeed a lack of knowledge is a problem (and it is), then the far better solution for this problem is preliminary training for politicians, not a longer term. This problem is dealt with in Section Ten of this Article.
When people contemplate the Annual Term, they frequently create an inaccurate mental model of reality. They assume that a “revolving door” effect will take place, and that Representatives will serve for one year and no longer. Nothing could be further from the truth. Extensive experience with the House of Representatives and the two-year term shows that just the opposite is the case; year after year, the People re-elect their Representatives. With the one-year term, however, the People will not have to remember as long, and as much. A power greater in the threat than the execution, the Congress will be more directly controlled by the People, and new benefits will accrue as the effect of learned helplessness becomes less pronounced. As Hazlitt wrote, in favor of staggered annual elections, “Annual elections would keep both Congress and the President in constant touch with and more responsive to public opinion. It would keep constantly alive the people’s interest in the policies of their government. It would give them a sense of constant control of these policies.”

A benefit realized by corporations would be realized by Government. “[W]e sit everybody down in the dark once a year,” said Dan Burke (the CEO of Capital Cities/ABC), “and show them what they said they were going to do for the year and what they actually did. Then we look at what they say they’re going to do next year. It’s sort of compelling to know that a year from now you’re going to be back in that same slot.”

Where something as important as term lengths are concerned, there will always be disputes as to the proper terms. Knowing what the proper lengths are is not easy, and depends on many variables. As Madison stated in Federalist 52, “Frequent elections are unquestionably the only policy by which this dependence and sympathy can be effectually secured. But what particular degree of frequency may be absolutely necessary for the purpose, does not appear to be susceptible of any precise calculation, and must depend on a variety of circumstances with which it may be connected.” Because the proper term length is uncertain, and, indeed, may require change over time, THE 21ST CENTURY CONSTITUTION gives the People the power to change the term lengths of Senators and Representatives without requiring a Constitutional Amendment. The procedure for this is provided in Section Fifteen of this Article.
Article I, Section 2, Clause 2

Every person shall be eligible to the office of Representative who shall have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall, when elected upon and subsequent to taking the oath of office, be an Inhabitant of that State in which he or she shall be chosen, a graduate of the Federal Academy, and without formal affiliation with any political party; but no person shall serve more than eight years as Representative.

This Clause, as rewritten, achieves nine ends:

1. Establishes qualifications for Representatives.

2. Establishes age as a qualification, and provides a minimum of 25 years.

3. Establishes citizenship as a qualification, and provides a minimum citizenship requirement of seven years.

4. Establishes inhabitancy as a qualification, and provides that the Representative be an inhabitant of his or her State (not his or her District) upon and subsequent to taking the oath of office.

5. In establishing qualifications, removes power from the States to establish more or less stringent qualifications.

6. Acknowledges and formalizes the increasing role of women in Government.

7. Establishes education as a qualification, and provides as an educational minimum graduation from the Federal Academy.

8. Prohibits political party affiliation while serving as a Representative.
9. Introduces the concept of *Term Limitations* for the Legislative Branch.

Which qualifications for office will be implemented is one of the most important issues confronting those drafting a New Constitution. In addition to acknowledging the increasing role of women in future Governments, THE 21ST CENTURY CONSTITUTION adds three absolutely critical new qualifications for office — the requirement for Federal Academy graduation, the prohibition against political party membership, and a limitation on the number of terms a person may serve as Representative.

*The Federal Academy*

Not all of the poor legislation or absence of adequate legislation in our political system can be ascribed to our Bicameral System as it is checked and balanced by the Executive and Judiciary. Many of our problems can be traced to the fact that *our Legislators have simply not been adequately trained*. If we only elected freshmen to Congress, we would be flown to new destinations by pilots who had never been in a cockpit. Naturally, this provides a powerful disincentive to toss out Incumbents, and has helped to maintain the status quo. Yet even Incumbents are frequently poorly trained, and, in the scramble of everyday legislative life, lack the time to attain the professional education necessary for the competent execution of their tasks.

This is not a new problem. Noah Webster wrote in 1788 that

*There are some acts of the American legislatures which astonish men of information; and blunders in legislation are frequently ascribed to bad intentions. But if we examine the men who compose these legislatures, we shall find that wrong measures generally proceed from ignorance either in the men themselves, or in their constituents. They often mistake their own interest, because they do not foresee the remote consequences of a measure.239*

Madison recognized this problem, and saw that its solution must be constitutional — as he stated in *Federalist 57*, “*The aim of every political Constitution is, or ought to be, first to obtain for rulers men who possess most wisdom to discern, and most virtue to pursue, the common good of the society . . . .”*240 According to Madison,

*A good government implies two things; first, fidelity to the object of government, which is the happiness of the people; secondly, a knowledge of the means by which that object can be best attained.*
Some governments are deficient in both these qualities: most governments are deficient in the first. I scruple not to assert that in American governments, too little attention has been paid to the last.\textsuperscript{241}

For example, one of the many areas where knowledge was required was \textit{commerce}: as Madison wrote, “\textbf{A proper regulation of commerce requires much information . . . .}”\textsuperscript{242} But Legislators must vote on many Bills, not just commerce Bills, and not just on those issues upon which they have formed expertise (generally from serving on a committee). In \textit{Federalist 53}, Madison took cognizance of the need for additional knowledge: “\textbf{No man can be a competent legislator who does not add to an upright intention and a sound judgment, a certain degree of knowledge of the subjects on which he is to legislate.}”\textsuperscript{243}

If this was true for the 18th Century Legislator, then the 21st Century Legislator has a far more difficult task. Even at the State level, the issues are complicated. Miewald (1984) observed with reference to Nebraska legislators that

\begin{quote}
[L]egislators today are expected to form an intelligent opinion on groundwater control . . . the educational needs of the mentally retarded, abortion, [and] minority rights . . . Even a secluded scholar would be exhausted by the very range of questions now demanding a legislative answer, and [legislators] are far from seclusion, since citizens are more vocal than ever in demanding to be heard on issues or to complain about the action of government . . . [t]he demands of the job are too much for any single individual.\textsuperscript{244}
\end{quote}

The truth of this cannot be disputed at the State level; how much more true it is at the Federal level, which entails an intimate familiarity with far more complex and far-reaching substantive issues, such as the environment, defense, taxation, antitrust, patent law, agriculture, economics, transportation, trade, animal research, international issues, insurance, crime, labor and management, energy, the Judiciary, social security, community and regional development, computers, education, telecommunications, finance, and civil rights, to name a few. Let’s examine some of these topics in depth, to see just how complicated they are.

Take, for example, the area of the \textit{environment}. Just a few of the many issues in that field which may appear in future legislation on which the Representative must vote are air and water quality, waste disposal, noise pollution, radiation, hazardous substances (toxic materials, food additives, and pesticides), land use planning, Federal land management, coastal areas,
community development, historic resources, weather modification, watershed protection, fish and wildlife resources, and natural resources conservation. And these are just broad categories. Some of the more specific areas that may be affected by legislation are oil, gas, and sulphur operations on the continental shelf; visibility and other effects of air pollution on National Parks and historic sites; control of wind erosion at surface coal mines; airborne hazards in the workplace; fuel venting and exhaust emission requirements for turbine-engine powered airplanes; air quality conformity of transit projects; toxic emissions for consumer products; discharges of dredged or fill materials into the waters of the United States; contamination of shellfish with toxics; water pollution from ships; effluent limitations; sludge application on cropland; the proper criteria for classification of solid waste disposal facilities; transportation of hazardous materials; easements or permits for transmission line rights-of-way across the National Wildlife Refuge; and underground storage fields leaching into various aquifers, for starters. And of course, the Representative needs to have a basic familiarity with the Environmental alphabet, including CERCLA, RCRA, SARA, POTW, TSCA, HMTA, FIFRA, NEPA, NAAQS, PSD, SPDES, and the FDF.

The area of defense, of course, is one filled with a veritable minefield of foreign concepts. The Representative must have a working familiarity with various issues including, but not limited to, long-range bomber forces, Multiple Independently targetable Reentry Vehicle (MIRV) warheads, carrier-based nuclear capable aircraft, ICBM’s, SLBM’s, ALCM’s, BLU’s, SUU’s, CBU’s, deliverable strategic warheads, SRAM missiles, mortars, howitzers, grenades, mines, and various other “antipersonnel” weapons, a list which only scratches the surface of procurement, and omits strategy, history, international relations, and the economics of military investment, etc. etc.

The issue of procurement alone is extremely critical in a Nation which sees an enormous percentage of its budget expended on military Appropriations. Suppose the issue is Fragmentation Bombs. Which bombs should be procured? The M83 4-lb Fragmentation Bomb, or the M28A2 100-lb Fragmentation Bomb? Or will it be the MS9A1 500-lb Fragmentation Cluster, or the AN-M81 260-lb Fragmentation Bomb? And there’s always the AN-M262A2 500-lb. Fragmentation Cluster and the AN-M41A1 20-lb. Fragmentation Cluster. Of course, we haven’t even begun to discuss the MK 44 MOD O 550-lb. Lazy Dog Missile Cluster, the BLU-26/B Sadeye 1-lb Fragmentation Bomb, the BLU-66/B Pineapple 1-lb. Fragmentation Bomb, the MK 118 2-lb Antitank Fragmentation Bomb, nor the CBU-59/B 750-lb. APAM Cluster Bomb Unit. It really is tough to decide! How about one of each? Or will it be five of each?

How about tanks and armored vehicles? Well, there’s the M-48 Patton II, and the M-41 Walker Bulldog. There’s also the M-26 Pershing, the M-3A1 Stuart/M-5A1, the M-4 Sherman, the XM-1 Abrams, and the M-113A1
Armored Personnel Carrier, not to mention the M-59 Armored Personnel Carrier, the M-75, the M-114 Command and Reconnaissance Carrier, the M-2 IFV/M-3 CFV Bradley Fighting Vehicle, and the M-2A1 Armored Half-Track/M16. So many tanks — so little time!

Then there’s the combat aircraft. Do we order 10 of the Fairchild Republic A-101A Thunderbolt II and 15 of the General Dynamics F-16, or 5 of the Grumman A-6E Intruder Attack Bomber, and 30 of the Grumman F-14A Tomcat Fighter Interceptor? How about one of the B-2, and none of the above? Or will it be 50 of the McDonnell-Douglas F-15 Eagle Fighter Interceptor, and 20 of the Rockwell International B-1B strategic bomber? And don’t forget the combat support and special mission aircraft, like the Boeing E-3A AWACS, or the Grumman E-2C Hawkeye, the Lockheed P-3C Orion, or the Fairchild T-46A Trainer, nor various aircraft modification programs such as the Boeing B-2-52G/H Stratofortress long-range strategic bomber avionics modernization program, the Boeing B-52G Stratofortress modifications to carry the ALCM, the Grumman/General Dynamics EF-111A electronic counter measures aircraft conversion program, and the Lockheed C-141A Starlifter fuselage stretch and aerial refueling modification to the C-141B standard. And what about helicopters? Well, there’s . . . forget it — we’re running out of space!

Knowledge of all these is important, and a lack of knowledge can be very costly, in an area where knowledge is power, and power translates into expenditures for Pentagon “wish lists.” As General David Jones said, if “you don’t have the knowledge of all the war plans, the fundamentals of strategy and weapons and so forth, the services can just chew you up.”245 Paul Feldman of the Center for Naval Analysis echoed this concern: “The pros can always beat down critiques by non-specialists. They just keep tossing technical objections at you.”246

And what about the issue of taxation? According to Hamilton,

There is no part of the administration of government that requires extensive information and a thorough knowledge of the principles of political economy so much as the business of taxation. The man who understands those principles best will be least likely to resort to oppressive expedients, or to sacrifice any particular class of citizens to the procurement of revenue.247

It’s unlikely that even Hamilton could legislate competently in a conceptual world of “ABC” transactions, ADR’s, “bunched income,” “ordinary income,” “gross income,” “net income,” “one-way street” provisions, corporate spin-offs, deductions, Subchapter S corporations, “contemplation of death” rules, “phantom stock” bonuses, depletion allowances, excess foreign tax credits, gift taxation, dividend credits, “transfer” payments, “intangible drilling expenses,”
“minimum” taxes, domestic international states corporations, tax-free bonds, “sick pay” exclusions, depreciation, capital gains, stock options, “perks,” “double-dip” tax advantages, tax subsidies, and unearned income, without some knowledge of what these terms meant and their impact on society.

And what about antitrust? Without background knowledge of price fixing, division of markets, group boycotts and concerted refusals to deal, joint ventures by competitors, “self-regulation” by trade associations, the legal definitions of “agreement,” “combination,” and “conspiracy,” resale price maintenance by sellers, “requirements” contracts, customer and territorial restrictions, “tying” arrangements, horizontal, vertical, and conglomerate mergers, the economic analysis of price discrimination, the various exemptions from antitrust laws, the Sherman, Clayton, and Robinson-Patman Acts, the “rule of reason” test, conscious parallelism, interlocking directorates, “consignment” arrangements, product substitutability, the Herfindahl-Hirshman Index, minimal unintegrated capacity, cost differentials, cross-elasticity of demand, opportunity and variable costs, “average revenue” curves, cartels, monopsony, bilateral monopoly, “kinked” demand curves, and marginal revenue products, the passage of legislation would be difficult, if not impossible. The same is true of patent law. Could anyone legislate in that area without knowledge of issues and concepts such as mechanical, process, combination, improvement, and design patents, compositions of matter, improvements, “first inventorship,” diligence, novelty, anticipation, “continuation-in-part” applications, copending applications, the Milburn rule, utility, nonobviousness, genus-species, design-design, and design-utility cases, the Muncie Gear doctrine, abandonment, secrecy orders, examination, codependency requirements, Rule 131 Affidavits, revival of abandoned applications, enlarging claims, the doctrine of intervening rights, standing to sue, assignee’s rights against third parties, royalties, divisional assignments, sublicenseing, the doctrine of equivalents, and contributory infringement?

And these are just some of the issues on which our Legislators will be called upon to pass laws. But it is not only issues regarding which our Federal officials need to have background knowledge. They also need training in decisionmaking and cost-benefit analysis, how to write legislation without “loopholes” which is not vague and/or overbroad, the long-term impact of legislation, and a basic grounding in critical areas, including but not limited to economics, civil liberties, law, social problems and their causes, and American and International History. There also needs to be training for specialized positions under THE 21ST CENTURY CONSTITUTION, such as the Legislative Review Board (e.g., how to evaluate and give Timetables to Bills).

It is preposterous to assume that in a world where the objects of legislation have multiplied beyond all comprehension, a world where there are so many “rippling effects” of legislation, that Legislators can have time to “learn on the
job” all that they need to know. We are paying, and will continue to pay, a very heavy price for this ignorance. Madison referred to as a “defect” a “want of due acquaintance with the objects and principles of legislation.”248 As he stated,

It is not possible that an assembly of men called for the most part from pursuits of a private nature, continued in appointment for a short time, and led by no permanent motive to devote the intervals of public occupation to a study of the laws, the affairs, and the comprehensive interests of their country, should, if left wholly to themselves, escape a variety of important errors in the exercise of their legislative trust. . . . [N]o small share of the present embarrassments of America is to be charged on the blunders of our governments; and . . . these have proceeded from the heads rather than the hearts of most of the authors of them.249

A Constitution should take, as Jay wrote, the “utmost care” that Legislators be people of “talents and integrity.”250 Thus, THE 21ST CENTURY CONSTITUTION requires that all elected Federal Officials (other than the President and Vice President, who are not empowered to draft legislation) be graduates of the Federal Academy, where they will be formally trained. The Federal Academy is further discussed in Section Ten.

Prohibition Against Political Party Membership

One of the most significant changes in THE 21ST CENTURY CONSTITUTION is the prohibition against formal political party membership for our highest Federal officials.

The two-party system which has evolved in America has proven to be a dismal failure. Both parties — the “low-taxing” Republicans and the “free-spending” Democrats — have given us a $4,000,000,000,000 National Debt, a debt which siphons money away from the poor and middle-classes in interest payments to the upper class. Yet year after year, the people of all classes vote in the parties that gave us this National Debt. This is a structural effect of the Constitution. In a letter to Roger Sherman written in July of 1789, John Adams predicted the inevitable: “We shall very soon have parties formed . . . these parties will study with all their arts, perhaps with intrigue, perhaps with corruption, at every election to increase their own friends and diminish their opposers.”251 As we shall soon see, once in, the parties consolidated their power and precluded meaningful choice.

It didn’t take long after the Ratification of the Constitution, as Adams predicted, for the debilitating effects of party dominance to reveal themselves.
In one of the most prescient statements in political history, President George Washington warned us in 1796 of the “baneful effects” of political parties in his famous Farewell Address, a warning which has gone unheeded to this day:

However combinations or associations . . . may now and then answer popular ends, they are likely in the course of time and things to become potent engines by which cunning, ambitious, and unprincipled men will be enabled to subvert the power of the people, and to usurp for themselves the reins of government, destroying afterwards the very engines which have lifted them to unjust dominion. . . .

I have already intimated to you the danger of parties in the State, with particular reference to the founding of them on geographical discriminations. Let me now take a more comprehensive view, and warn you in the most solemn manner against the baneful effects of the spirit of party generally. . . .

[T]he common and continual mischiefs of the spirit of party are sufficient to make it the interest and duty of a wise People to discourage and restrain it.

It serves always to distract the public councils and enfeeble the public administration. It agitates the community with ill-founded jealousies and false alarms; kindles the animosity of one part against another . . . .

There is an opinion that parties in free countries are useful checks upon the administration of the government, and serve to keep alive the spirit of liberty. This within certain limits is probably true; and in governments of a monarchical cast patriotism may look with indulgence, if not with favor, upon the spirit of party. But in those of the popular character, in governments purely elective, it is a spirit not to be encouraged.

With this statement, Washington was echoing the remarks of the authors of The Federalist, who despised political parties. As Hamilton had written in Federalist 1, “. . . nothing could be more ill-judged than that intolerant spirit which has, at all times, characterized political parties.” To Hamilton, party membership led to a fundamental Government irrationality: “To judge from the conduct of . . . opposite parties, we shall be led to conclude that they will mutually hope to evince the justness of their opinions, and to increase the number of their converts by the loudness of their declamations and the bitterness of their invectives.” At a certain point, party division in the Legislature would lead to injustice: “. . . on account of the natural propensity of [legislative] bodies to party divisions, there will be . . . reason to fear that
the pestilential breath of faction may poison the fountains of justice. The habit of being continually marshalled on opposite sides will be too apt to stifle the voice both of law and of equity.”255 Critical decisions such as Impeachment would “be regulated more by the comparative strength of parties than by the real demonstrations of innocence or guilt.”256

To Jay and Madison, the two other authors of The Federalist, there were other problems with political parties. According to Jay, the existence of political parties would lead to bizarre results such as Presidents elected by only 27 percent of the voting age population (e.g., George Bush in 1988257): “. . . the activity of party zeal, taking advantage of the supineness, the ignorance, and the hopes and fears of the unwary and interested, often places men in office by the votes of a small proportion of the electors.”258

Jay, like Hamilton, recognized a Prisoner’s Dilemma effect259 to which political parties were liable: “. . . the prospect of present loss or advantage may often tempt the governing party . . . to swerve from good faith and justice . . . .”260

This fundamental tilt towards irrationality was noted by Madison in his discussion of the Pennsylvania Council of Censors: “. . . it was split into two fixed and violent parties. . . . passion, not reason, must have presided over their decisions.”261 The most sinister outcome of party control was that the People would be subject to Minority Tyranny: “Men of factious tempers . . . may by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interests, of the people.”262

At the Federal Convention, Mason noted that “. . . those who have power in their hands will not give it up while they can retain it. On the contrary we know they will always when they can rather increase it.”263 Power corrupts, and absolute power corrupts absolutely. But there was a necessary lack of corrupting political party membership at the Convention. Without this absence, we might still be living under the Articles of Confederation. As Madison wrote, “. . . the Convention must have enjoyed, in a very singular degree, an exemption from the pestilential influence of party animosities; the diseases most incident to deliberative bodies, and most apt to contaminate their proceedings.”264 Hamilton thought that the fact that Representatives were elected uniformly would help to prevent this disease: “It is more than possible that this uniformity may be found . . . to be . . . a security against the perpetuation of the same spirit in the body, and as a cure for the diseases of faction.”265 If this disease was not cured, it could prove to be fatal: “. . . the diseases of faction . . . have proved fatal to other popular governments . . . alarming symptoms have been betrayed by our own.”266

Unfortunately, uniformity in the time of elections for the House of Representatives proved to be a very inadequate cure for this potentially fatal disease. And, as historical developments have subsequently demonstrated, the structure of the Constitution led inexorably to the worst nightmares of the
Framers. Whicker (1987) reported that the effects were discovered not long after the Constitution was ratified, and the Twelfth Amendment was added to compensate for the effect:

The rising strength of political parties and the political maneuvering surrounding the election of 1800 triggered the process of Constitutional change which resulted in the Twelfth Amendment. The framers of the Constitution had . . . assumed that control of the federal government would be entrusted to nonpartisan elites. No mention of political parties was made in the Constitution itself and no recognition of political parties was given in voting procedures for president and vice-president.267

But the structure of the Constitution, perversely, had insured the reign of the debilitating political parties. According to Domhoff (1983),

Two fundamental features of American government lead to a two-party system. The first is the election of a president, and the second is the election of senators and representatives from states and districts. The fact that only one person can win the presidency or be elected from a given state or district, which seems trivial and is taken for granted by most Americans, creates a series of ‘winner-take-all’ elections in which a vote for a third candidate of the right or left is in effect support for the voter’s least-favored candidate on the other side of the political spectrum. Because a vote for a third candidate is a vote for ‘your worst enemy,’ the most sensible strategy for those who want to avoid this fate is to form the largest possible preelection coalition, even if numerous policy preferences must be abandoned . . . The inevitable result is two coalitional parties that attempt to blur their differences in order to win the voters in the middle.268

In addition, “. . . the electoral college, along with the single-member district method of electing members of Congress, promotes a two-party system to the detriment of smaller third parties. Under the unit rule winner-take-all system, third parties have virtually no chance of securing an electoral college victory.”269 In “winner-take-all” systems, there is a built-in bias against third parties. As Justice Stewart noted in a footnote to his dissent in Williams v. Rhodes, 393 U.S. 23 (1968),

Assume a State in which a dissident faction of one of the two major parties — party A — becomes dissatisfied with that party’s nominees and sets itself up as a ‘third party’ — party C — putting forward candidates more to its liking. . . . A situation is possible in which party B’s candidates poll, for example, 46% of the vote, party A’s candidates
44%, and party C’s candidates 10%. Party B’s candidates would in such a situation be elected by plurality vote.\textsuperscript{270}

Because of this effect, voters tend to vote for one of the two main parties, since a vote for the \textit{most-preferred} candidate may result in the election of the \textit{least-preferred} candidate! Assume a three-party Presidential election consisting of Republicans, Democrats, and conservative-oriented Libertarians. Assume that 55 percent of the People support the Republican candidate, but that 15 percent of this support is “soft.” This 15 percent prefers the \textit{Libertarian} candidate. If, however, the entire 15 percent defect, the Republican will get 40 percent of the vote, the Libertarian will get 15 percent, and the Democrat will get 45 percent of the vote. Thus, by defecting, Republicans sacrifice a won election and gain nothing, and, adding injury to injury, assure the ascendancy of the party they despise the most! Because of this structural effect, third-parties are virtually ignored.\textsuperscript{271}

Domhoff acknowledged that this effect was an unintended consequence:

Although the system of presidential elections and single-member congressional districts generates the strong tendency toward a two-party system, it was not designed with this fact in mind. The Founding Fathers wished to create a system of checks and balances that would keep power within bounds . . . However, the creation of a two-party system was not among their plans. Indeed, the Founding Fathers disliked the idea of parties, which they condemned as ‘factions’ that were highly divisive. Parties were a major unintended consequence of their deliberations . . .\textsuperscript{272}

As it happened, a circularity effect developed. Once in, the parties were able to secure campaign contributions from the wealthy. According to Whicker (1987), “U.S. parties are heavily dependent upon contributions from wealthy members . . . .”\textsuperscript{273} As Senator Bill Bradley (D-NJ) reported on the floor of the Senate on May 21, 1991, out of 240 million Americans, only 179,000 people (less than one-tenth of one percent) donated over $200 to Federal candidates, and fewer than 9000 individuals contributed more than $95 million to the 1990 congressional campaign.\textsuperscript{274} With financial backing of this nature, the parties have been able to sustain their hegemony, a hegemony which has lasted over 130 years. Their mere presence on the political scene for that length of time has legitimized their existence, a legitimacy reinforced by the media and education:

The portrayal of elections by the media, education systems and by parents as contests between Democrats and Republicans reinforces the voter’s perception of the two-party norm. Voter access to information
about third parties may be limited and voters may find the process of acquiring information costly . . . Since third parties rarely get more than five percent of the total vote in presidential elections, they usually do not qualify for public financing in the next presidential race.\textsuperscript{275}

Matters have gotten so out of hand that the taxpayers are even financing the \textit{conventions} of the dominant political parties, which are nothing more or less than a week of prime-time commercials for these parties, broadcast over “public” airwaves. Senator John Kerry (D-MA) revealed on the floor of the Senate on May 22, 1991 that “[e]ach of the parties’ conventions is financed by taxpayers. The Republican Party has accepted $32.2 million in public money for its conventions since 1976 — $32.2 million.”\textsuperscript{276} Since there were four Republican conventions in that time span, this advertising \textit{given} to the political parties cost the taxpayers $8 \textit{million} for each convention!\textsuperscript{277}

It is hardly surprising that once in power, the parties pass legislation consolidating their power, to the detriment of third parties. As Supreme Court Justice Rhenquist noted in his dissent in \textit{Buckley v. Valeo}, 424 U.S. 1 (1976) with reference to the Federal Election Campaign Act,\textsuperscript{278}

Congress in this legislation . . . has enshrined the Republican and Democratic parties in a permanently preferred position, and has established requirements for funding minor party and independent candidates to which the two major parties are not subject . . . I find it impossible to subscribe to the Court’s reasoning that because no third party has posed a credible threat to the two major parties in Presidential elections since 1860, Congress may by law attempt to assure that this pattern will endure forever.\textsuperscript{279}

In power, the parties prevent measures that threaten their power, no matter how worthy the proposal. According to Cronin (1989),

One reason the national initiative and referendum failed to win widespread support . . . is that . . . [t]he established national parties, the Republicans and Democrats . . . opposed the idea of a national initiative and referendum, viewing it not only as unnecessary but also as a threat to traditional representative principles and to their own role as policy agenda-setting organizations.\textsuperscript{280}

Yet another consequence of party domination is that the balances of the Constitution are altered by this dominance. Political parties can prevent the obvious Constitutional necessity of veto overrides. As \textit{The New York Times} reported,
Thomas Mann, director of Governmental Studies at the Brookings Institution, observed that the Democrats may ‘probably be better off not overriding.’ In defeat, they can claim that Mr. Bush prevented a problem from being solved. In victory, the public gets to judge whether their solution has actually solved anything.

‘Sometimes the worst thing you can do is get your bill passed,’ Mr. Mann said.281

Party membership also alters the voting pattern of Legislators: “It is well known that many legislators vote a relatively straight party line or are sometimes unduly influenced by their peers or senior members. Some legislators are compelled by binding party caucus procedures to vote contrary to their consciences.”282 The existence of parties also prevents the passage of legislation, creating even more inefficiency in the Legislative Branch than was intended by the Framers — contributing to the transfer of Legislative power to an unelected Administrative Branch. And, the passage of legislation is impeded as endless irrelevancies are introduced into public debate. As the Times reported, “. . . badly outnumbered House Republicans use meaningless roll-calls as their stock in trade to get the Democrats’ attention and slow down the majority.” Regarding debate on a Civil Rights Bill in 1991, the Times noted that “[h]ardly anybody took the floor to say what the problem was and why one approach was better than another. Instead the other side’s motives were almost the only issue.”283

Another critical effect of party domination is control over the public political agenda, and a consequential lack of Accountability:

Critics have often described the two major parties as ‘Tweedledee’ and Tweedledum’ to emphasize the centralist, middle-of-the-road positions they take on most issues. The voter is provided with limited choices when the two viable candidates take similar and sometimes almost identical positions. . . . the lack of cohesion within U.S. political parties contributes to an absence of party discipline and to failure to deliver the promised platforms. Party platforms are often ten to fifteen times the length of the Declaration of Independence. Frequently they are not read, and they are often ignored by the congressional party. . . . [this] diminishes accountability to the voter, since any individual politician may not be able to deliver on campaign promises to approve, modify, or cut programs. Even if elected officials attempt to their campaign promises, they may be blocked by other politicians in their own party, as well as by members of the opposing party.284
The issues seen as significant by the political parties are not necessarily those favored by a Majority of Americans, and this is reflected by the “membership” of the people in the parties. The combined results of eleven polls taken in 1991 revealed that 31 percent of Americans referred to themselves as “Republicans,” 34 percent called themselves “Democrats,” and 29 percent said they were “Independents.” 6 percent answered “Don’t know.” There are two interesting points about this poll. The first is that 34 percent of Americans refer to themselves as “Democrats.” Many of these people call themselves “Democrats” because if they didn’t, they would lose their right to vote in one of the primary elections! This trick of the political parties gets people to form the conception “I am a Democrat,” even though that person has never contributed a dime to the Democrats, nor has read their campaign platforms. Thus, people are forced to identify psychologically with the political parties to retain their right to vote. Ultimately, Americans may see attacks on parties, who do not represent their long-term interests, as attacks on themselves.

The second interesting aspect of this poll is that even though a plurality of those polled (35 percent) do not identify with either party, this 35 percent is virtually unrepresented in Congress. In the 102d Congress, 100 percent of the Senate was affiliated with the two major parties, and 99.8 percent of the House of the Representatives was affiliated with these parties. What happened to the representation of the 35 percent of those people, a plurality, who were (and are) not affiliated with either party? Their representation was obliterated by the “winner-take-all” effect (leaving aside the regulatory barriers to third party competition passed into legislation by the major parties). The existence of this plurality indicates significant dissatisfaction with the views of the parties (and doesn’t even factor in the number of people who have not bothered to register to vote at all). In fact, there is dissatisfaction even among people who claim to identify with the parties. As the Times reported, a black Democrat, Gloria Hackman, said “They’re doing terrible jobs, Democrats and Republicans.” A white Republican, Joseph Carp, said “Neither party looks after my interests. They just don’t get anything accomplished.”

One of the sources of this dissatisfaction may be that, as with any cartel, there is collusion instead of competition, and this collusion may lead to effects such as personality voting and/or voter apathy, to mention only the most minor problems. Domhoff (1983) catalogued the techniques of collusion:

[T]here is evidence that the parties sometimes collude rather than compete . . . collusion between the two parties often makes better sense for them than competition if they are interested in rewards other than winning, as indeed they often are:
The parties may find many ways of restricting competition with each other: bipartisanship, promotion of mutually acceptable ideologies, marginal changes in the previous administration’s policies, and recruitment of those who are not antagonistic to the other party. Even the belief in the impossibility of certain platforms being able to win the election may be a form of implicit collusion if there is more fiction than substance to the belief. Thus the parties compete more with the voters than for the voters or with each other.

There is no a priori theoretical reason to believe that political parties and their candidates will reflect out of necessity the policy preferences of the majority of the voters. Candidates and parties are relatively free to say one thing and do another.

It even may be that a two-party system discourages policy discussion, political education, and an attempt to satisfy majority preference. The need for a majority vote where the stakes are high, such as the presidency, may lead to campaigns in which there are no issues but personality, even when voters are extremely issue conscious.

There is evidence that a two-party system discourages voting, for those in a minority of even 49 percent receive nothing for their efforts.

Collusion leads to the development of a “cult of personality,” where people become the focus instead of issues — and the only people upon whom the public spotlight shines are those financed by special interests:

In a system where policy preferences become blurred, the emphasis on the images of individual candidates becomes very great. Individual personalities become more important than the policies of the parties. The same people who direct corporations and take part in policy groups play a central role in the careers of most politicians who advance beyond the local level in states of any size and consequence.

Perhaps the worst effect of collusion (leaving aside the effects of log-rolling, to be discussed in a later section), is that it aborts ex post facto criticism in scandals where both parties were involved (virtually all of them), resulting in losses of billions, even trillions, to the taxpayers: “In 1987 and 1988, hundreds of S & L’s across the country began losing money. As the situation worsened, Washington pretended there was nothing wrong. A bipartisan conspiracy of silence kept the scandal off the front pages and out of the presidential race.”
Another familiar and socially debilitating effect of political parties is the phenomenon of *patronage*, which the Supreme Court defined as “the right to select key personnel and to reward the party ‘faithful.’” This concept of patronage is the very antithesis of a *merit system*, as Hamilton observed in 1788:

> In every exercise of the power of appointing to offices by an assembly of men, we must expect to see a full display of all the private and party likings and dislikes, partialities and antipathies, attachments and animosities, which are felt by those who compose the assembly. The choice which may at any time happen to be made under such circumstances, will of course be the result either of a victory gained by one party over the other, or of a compromise between the parties. In either case, the intrinsic merit of the candidate will be too often out of sight. In the first, the qualifications best adapted to uniting the suffrages of the party, will be more considered than those which fit the person for the station. In the last, the coalition will commonly turn upon some interested equivalent — ‘Give us the man we wish for this office, and you shall have the one you wish for that.’ This will be the usual condition of the bargain. And it will rarely happen that the advancement of the public service will be the primary object either of party victories or of party negotiations.

In *Federalist 77*, Hamilton indicated that patronage might lead to *oligarchy*, or rule by the few:

> Every mere council of appointment, however constituted, will be a conclave, in which cabal and intrigue will have their full scope. Their number, without an unwarrantable increase of expense, cannot be large enough to preclude a facility of combination. And as each member will have his friends and connections to provide for, the desire of mutual gratification will beget a scandalous bartering of votes and bargaining for places. The private attachments of one man might easily be satisfied; but to satisfy the private attachments of a dozen, or of twenty men, would occasion a monopoly of all the principal employments of the government in a few families, and would lead more directly to an aristocracy or an oligarchy than any measure that could be contrived.
Hamilton was not alone in noting this effect. Supreme Court Justice Joseph Story, in his *Commentaries on the Constitution*, observed the effect of parties on political appointments:

> [I]n a public body appointments will be materially influenced by party attachments and dislikes . . . and will be generally founded in compromises, having little to do with the merit of candidates, and much to do with the selfish interests of individuals and cabals. They will be too much governed by local, or sectional, or party arrangements.293

But, the structure of the Constitution insured that parties would continue, and therefore that the practice of *patronage* would continue. As Justice Powell observed in *Branti v. Finkel*, 445 U.S. 507 (1980),

> Patronage is a long-accepted practice . . . Patronage appointments help build stable political parties by offering rewards to persons who assume the tasks necessary to the continued functioning of political organizations. ‘As all parties are concerned with power they naturally operate by placing members and supporters into positions of power . . .’ . . . The use of patronage to fill . . . positions builds party loyalty . . . The failure to sustain party discipline, at least at the national level, has been traced to the inability of successful political parties to offer patronage positions to their members or to the supporters of elected officials.294

> Over the course of time, patronage became the “way of the world” in the United States, and blurred the Separation of Powers by transferring power to the Executive Branch:

> While the Constitution forbids congressmen to hold other federal jobs, it doesn’t forbid appointment of his friends, family and supporters. With the emergence of political parties in the first decade of government under the Constitution, party loyalists started demanding federal jobs . . .

> Franklin Roosevelt . . . made effective use of his patronage power. His patronage chief, Postmaster General James A. Farley, asked patronage seekers such questions as ‘What was your pre-convention position on the Roosevelt candidacy?’ and ‘How did you vote on the economy bill?’ If a member was asked to vote for a presidential measure against local pressures, the matter was put ‘on the frank basis of quid pro quo.’295
It goes without saying that patronage (and the party system fueling patronage) leads inevitably to the most egregious forms of corruption. Consider this report from *The New York Times* on September 11, 1991:

In theory, voters are supposed to choose the successor to Louis Laurino, who stepped down last month from the powerful post of Queens County Surrogate. But with millions of dollars of court patronage at stake, the Queens Democratic organization isn’t taking any chances.

Presiding over the probating of wills and estates, the Surrogate has the power to award lucrative fees to lawyers acting as conservators, guardians and trustees. Mr. Laurino, not known for his ethical sensitivity, made his resignation effective Aug. 3 — just past the deadline for filing petitions for tomorrow’s primary election.

In cases where it’s too late to choose nominees through primaries, party leaders select the candidates. As a result, the Democratic nominee for Surrogate in this overwhelmingly Democratic borough will be chosen not by voters but by Representative Thomas Manton, the Queens Democratic leader. His choice may not even face token Republican opposition in the general election.

Mr. Laurino became Surrogate by a similar act of timing that avoided any primary challenge 20 years ago. But that hardly excuses this farce of democracy — a farce that ought to give pause to even the most ardent supporters of New York’s system of judicial elections.

In absolutely essential reading for students of the American political system, George Washington Plunkitt in *Plunkitt of Tammany Hall* gave dozens of examples of the myriad ways in which political corruption is manifested by the existence of parties in our society:

There’s an honest graft, and I’m an example of how it works. I might sum up the whole thing by sayin’: ‘I seen my opportunities and I took ‘em.’

Just let me explain by examples. My party’s in power in the city, and it’s goin’ to undertake a lot of public improvements. Well, I’m tipped off, say, that they’re going to lay out a new park at a certain place.

I see my opportunity and I take it. I go to that place and I buy up all the land I can in the neighborhood. Then the board of this or that makes its plan public, and there is a rush to get my land, which nobody cared particular for before.

Ain’t it perfectly honest to charge a good price and make a profit on my investment and foresight? Of course, it is. Well, that’s honest graft.
As Plunkitt noted, “. . . parties can’t hold together if their workers don’t get the offices when they win . . . ” Under the party system, workers who receive jobs have to “pony up” in support of the party:

Even candidates for the Supreme Court have to fall in line. A Supreme Court Judge in New York County gets $17,500 a year, and he’s expected, when nominated, to help along the good cause with a year’s salary. Why not? He has fourteen years on the bench ahead of him, and ten thousand other lawyers would be willin’ to put up twice as much to be in his shoes. Now, I ain’t sayin’ that we sell nominations. That’s a different thing altogether. There’s no auction and no regular biddin’. The man is picked out and somehow he gets to understand what’s expected of him in the way of a contribution, and he ponies up — all from gratitude to the organization that honored him, see?

Let me tell you an instance that shows the difference between sellin’ nominations and arrangin’ them in the way I described. A few years ago a Republican district leader controlled the nomination for Congress in his Congressional district. Four men wanted it. At first the leader asked for bids privately, but decided at last that the best thing to do was to get the four men together in the back room of a certain saloon and have an open auction. When he had his men lined up, he got on a chair, told about the value of the goods for sale, and asked for bids in regular auctioneer style. The highest bidder got the nomination for $5000. Now, that wasn’t right at all. These things ought to be always fixed up nice and quiet.

At the lower levels of political life, and perhaps beyond, these practices continue. As Waldman (1990) reported with regards to the Nassau County (New York) Republican political machine, “the party raised funds through a ‘one-percent’ system, in which county employees gave one percent of their salaries to the GOP . . . .”

The final, and perhaps worst effect of the party system is that it destroys the concept of Separation of Powers, a Principle which, as implemented in the Constitution, made Government unworkable, as we saw in the earlier Chapter. A truly divided Government could not govern; consequently, the parties filled in a gap existing under the present Constitution, and fostered cooperation between the Branches — in so doing, however, obliterating a fundamental constitutional Principle. As Justice Powell noted,

Although the Executive and Legislative Branches of Government are independent as a matter of Constitutional law, effective government is impossible unless the two Branches cooperate to make and enforce laws.
Over the decades of our national history, political parties have furthered — if not assured — a measure of cooperation between the Executive and Legislative Branches.\textsuperscript{301}

The Framers, however, did not intend for there to be any “common interest” between the Branches. In fact, as Hamilton asserted in \textit{Federalist 60}, the system of Checks and Balances was designed under the assumption that there would be no such common bond:

The House of Representatives being to be elected immediately by the people, the Senate by the State legislatures, the President by electors chosen for that purpose by the people, there would be \textbf{little probability of a common interest} to cement these different branches in a predilection for any particular class of electors.\textsuperscript{302}

The answer to this problem is clear. As Madison observed in \textit{Federalist 10}, because “the \textit{causes} of faction cannot be removed . . . relief is only to be sought in the means of controlling its \textit{effects}.” Since political parties will be formed under any Constitution which recognizes the People’s right to associate, the only way to insure that political parties do not dominate Government and obliterate the new system of Checks and Balances instituted in THE 21ST CENTURY CONSTITUTION is to mandate that \textit{our elected officials may not belong to any political party while they are holding office}. The Supreme Court recognized the logic of this position in upholding the Hatch Act:

It seems fundamental . . . that employees in the Executive Branch of the Government, or those working for any of its agencies, should administer the law in accordance with the will of Congress, rather than in accordance with their own or the will of a political party. They are expected to enforce the law and execute the programs of the Government without bias or favoritism for or against any political party or group or the members thereof . . . it is essential that federal employees . . . not take formal positions in political parties . . . and not run for office on partisan political tickets. Forbidding activities like these will reduce the hazards to fair and effective government.\textsuperscript{303}

As the Court noted, “Neither the right to associate nor the right to participate in political activities is absolute . . . .”\textsuperscript{304} The right of politicians to belong to political parties has been conclusively demonstrated to interfere with the right of Americans to an efficient and fair Government. When rights clash, the common good must take precedence, in line with the stricture of the Preamble that the primary role of Government is to “promote the \textit{general} Welfare.” As
Madison wrote, “[n]o axiom is more clearly established in law, or in reason, than that wherever the end is required, the means are authorized . . . .” If an individual who seeks to run for office values his or her right to belong to a political party more than the common good, that person is free to join a political party; however, s/he will not be allowed to serve as an elected Federal official. Senator Joseph Biden (D-DE), in speaking on the issue of Public Financing, spoke of the need for dramatic reform — mild reform was no reform at all:

[W]e should stop kidding the American People and answer two basic questions: Do we want to both in fact and in appearance free any candidate . . . from the appearance of being beholden to anyone? . . . There was an English writer and cleric, I believe, in the 17th century, who said, ‘Moderate reform is like moderate justice or moderate chastity.’ There ain’t no such thing. Either reform the system or be quiet.

Term Limitations

As a final check on the powers of Incumbents to secure an invincible political base by using the political power they have consolidated over the years to pander to local interests, THE 21ST CENTURY CONSTITUTION introduces the concept of Term Limitation to the Federal Legislative Branch. Certain politicians and establishment organizations have referred to Term Limitations as “undemocratic.” But, from a long-term perspective, nothing can be more democratic than Term Limitations. Incumbents use their political power to secure private contributions, and use these funds to stay in office. Challengers are handicapped, and, consequently, the People have no substantive choice. Without substantive choice, there can be no such thing as a democratic election. The Term Limitation requirement, like the other qualifications for office, has as its final goal the attainment of more choice for the People, and, in addition, is institutional insurance that new ideas will be presented in Congress over the decades. According to Cronin (1989), “. . . the advantages of incumbency may thwart an infusion of new blood and fresh ideas.” The Term Limitation provision is the ultimate insurance that the Government will not be run by public officials whose primary goal is to secure a power base built up over many years.

And, in light of the earlier remarks by Senator Byrd, West Virginia’s self-proclaimed “billion-dollar industry,” Term Limitations may be essential for the survival of the country.
Article I, Section 2, Clause 3

Representatives and direct taxes—shall be apportioned by the Senate within equivalent and contiguous Districts among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by enumeration in a National Census, adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three-fifths of all other Persons. The actual Enumeration shall be made within three five Years after the first Meeting of the Congress of the United States, Ratification of this Constitution, and within every subsequent Term of five or ten Years, in such Manner as they shall by the Law shall direct. The number of Representatives shall be not exceed less than one for every thirty three hundred and fifty thousand Citizens, and the initial number of Representatives shall be one thousand. Each State shall have at least one Representative. and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three; Massachusetts, eight, Rhode Island and Providence Plantations one; Connecticut five; New York six; New Jersey four; Pennsylvania, eight; Delaware one; Maryland six; Virginia ten; North Carolina five; South Carolina five; and Georgia three.

This Clause contained the infamous “three-fifths” compromise, which mandated that African-American slaves be counted as three-fifths a person for the purposes of apportioning Representatives and direct taxes. This compromise was made necessary by the conflicting interests of the North and South: the North, recognizing that slaves in the South were treated as property and had no rights, didn’t want the South to increase its power by getting additional Representatives in Congress by being allowed to count slaves as “persons”: the Northern view was that Slaves shouldn’t count as people at all! The South, on the other hand, which in other respects gave slaves no legal rights, wanted to increase its influence, and have the slaves counted as what they actually were, people, solely for the purposes of allocating representation. One of the ironies of history. Yet the taint of that astonishing compromise remains today, in language which is still part of our Written Constitution. Quite properly, THE 21ST CENTURY CONSTITUTION will strike out this offensive language.

The representation in the House under this Clause is proportional; that is, each State is allocated a number of Representatives (as controlled by the
Senate, to prevent the effect of *gerrymandering*, where House Incumbents attempt to have Districts re-drawn to secure their re-election) based on its percentage of the population of the United States, assuring that the concept of “one person, one vote” is maintained in at least one Branch of Government.

THE 21ST CENTURY CONSTITUTION increases the number of Representatives to 1000, since the workload of Congress has greatly expanded. According to Whicker (1987),

The expansion of the work load of Congress, especially in recent decades, has further undermined the accountability of representatives to citizens. The work of Congress has grown dramatically, but the number of representatives elected to do the work has not. . . . The number of constituents served by each member has also increased with national population growth, increasing the demands for constituent service.³⁰⁸

The new provisions also insure that the Representative/Constituent ratio will never drop below one Representative for every 350,000 Constituents:

In order to enhance accountability, increased numbers of representatives would prevent distance between constituents and important decision-makers. In an extreme scenario, without an increase in the number of representatives, national policies would most likely be established more frequently by anonymous staffers who never appear on the ballot. A concomitant increase in the number of representatives would prevent this undercutting of democratic principles. Lines of accountability would be shorter and more obvious.³⁰⁹

Under this Clause of THE 21ST CENTURY CONSTITUTION, the Representative/Constituent ratio is permanently established, and not subject to the will of elected officials.
Article I, Section 2, Clause 4

Every Representative shall appoint an Alternate, who shall serve for a single one-year term. Every person shall be eligible to the office of Alternate who shall have attained to the age of twenty-one years, and been seven years a Citizen of the United States, and who shall, upon and subsequent to being appointed, be either in attendance at or a graduate of the Federal Academy, and without formal affiliation with any political party. The Alternate shall serve in the District of the Representative as the intermediary between the Constituents of the District and the Representative, and shall have responsibility over services for Constituents. The Alternate shall refer Constituent requests for particular Legislation to the appropriate Legislative Committee. If no Legislative Committee exists, the Alternate shall refer the Constituent to the Federal Committee. No Alternate shall be eligible to the office of Representative until one year has elapsed from the end of his or her term, subject to the exception of vacancy. When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies. The age requirement for Representative shall, if necessary, be suspended, and the Alternate shall assume the vacancy. The Alternate shall be eligible for re-election.

Vacancies may happen from various causes; resignation, disability, death, or expulsion. The power to provide for vacancies is an obvious one, and this Clause formerly assigned the power to the Governors of the States. Unspecified in the Clause of the 1787 Constitution are the necessary temporal parameters regarding the issuance of “writs of election” — will a vacancy be filled if there are only six months left in the term? Ten? Twelve? Generally, Governors did not call elections unless the unexpired term was over twelve months, due to the expense of a special election. Consequently, under this Clause, a District could conceivably be without representation for as long as one year.

The addition of the Alternate supersedes this passage. In this regard, the Alternate functions for the Representative in the same manner as the Vice-President functions for the President — vacancies will be filled immediately. However, the Alternate has additional obligations: the responsibility for constituent services, while serving as the intermediary between the constituents
of the District and the Representative, who is based in Washington, D.C. Thus, constituents will have direct contact with a Federal official. Additionally, it gives the Alternate, who will either be a graduate of the Federal Academy or a third-year student, and who will in all likelihood be a future candidate for Representative, the opportunity to see first-hand the impact of Federal policies on the lives of everyday people. With this opportunity, the future candidate is out of the world of abstractions and raw data and in the world of living, breathing human beings. Along with this valuable “reality check,” the Alternate is exposed to the concerns of the people who live in the District, the people s/he will one day serve.

Because the Alternate will be performing constituent services (freeing the Representative from this time-consuming and potentially corrupting task), the Alternate will become well-known in the District, and be able to build a “political base” from which to run for office. Thus, a potential animosity may arise between the Representative and the Alternate. To ameliorate this potentially unhealthy situation, the Alternate is limited to a single one-year term (this also allows for more nominees to be exposed to the problems of the District). As an additional precaution, the Alternate is not allowed to run for election until one year after his or her term has expired, putting temporal distance between the services performed for constituents and the Alternate’s views on National Policy. Thus, the Alternate is more likely to be elected for his or her views, and not for services rendered to certain influential residents of the District.

In addition to performing constituent services, the Alternate will refer constituents who are either concerned with social problems, or who have proposals for future legislation, to the Legislative Committees set up for the purpose. For example, a constituent concerned with the literacy problem will be referred to the Committee on the Monthly Book Program for Elementary School Children, or any one of the other Committees established to deal with the problem. If the constituent is not satisfied with any or all of these existing approaches, the constituent is invited to submit his or her proposal for legislation dealing with the problem to the Federal Committee, which is responsible for the establishment of new Committees, subject to the rules established in Section Fifteen of this Article. Under these Clauses, every taxpaying Citizen has the same freedom and authority granted to today’s lobbyists and special interests: the opportunity to place a proposal on the Public Agenda.
Article I, Section 2, Clause 5

The House of Representatives shall choose their Speaker and other Officers; and shall have the sole Power of Impeachment, and the Nominees for Senatorial elections under the guidelines enumerated in § A-100, provided that there shall be not less than three and no more than six Nominees for each seat in the Senate, and that Nominations for the office of Senator shall be representative of the population to the greatest extent possible with regard to sex, race, national origin, and other factors the Congress shall designate as the National Interest requires.

Under the current system, nominations for key political offices are in the hands of a) the media, who decide to recognize candidate A over candidate B, and give that particular candidate air time, and thus brand him or her as “legitimate,” and b) political parties. In essence, approval by the media and the parties is necessary to attain office: without this approval, private and PAC financing is virtually impossible to obtain, and a political campaign cannot be conducted. The net consequence of this unholy alliance is that if the media and the two political parties do not discuss the issues which are most critical for the long-term interests of the American people, or recognize the candidates who discuss these issues, an essential political power has been impermissibly granted to private — not public — concerns.

This Clause pulls the nominating process out of the hands of the media (which collectively receives hundreds of millions of dollars in revenue from political advertisements, and which is thus more likely to legitimize the candidates who attract the most financing), and puts the nominating process exclusively in the hands of elected officials who are not allowed formal party membership, who owe no allegiance to private concerns, who must make their nominations from the pool of the best and brightest individuals in the country (trained for their positions at one of the Country’s finest academic institutions), and who may be removed from office if the quality of the nominees does not reflect the wishes of the People. In addition, the Clause helps to insure diversity and representation in Government, by providing that nominations be representative of the population with regard to the designated factors. In his essay Thoughts on American Government, John Adams had written that a representative assembly “should be in miniature an exact portrait of the people at large. It should think, feel, reason, and act like them.”

On June 6 at the
Federal Convention, Wilson said that “[t]he Govt. ought to possess not only 1st the force but 2ndly. the mind or sense of the people at large. The Legislature ought to be the most exact transcript of the whole Society.” In light of this consideration, Hamilton stated in Federalist 35 that

It is said to be necessary, that all classes of citizens should have some of their own number in the representative body, in order that their feelings and interests may be the better understood and attended to. . . . But . . . [t]he idea of an actual representation of all classes of the people . . . is altogether visionary. Unless it were expressly provided in the Constitution . . . the thing would never take place in practice.

Taking Hamilton’s advice, THE 21ST CENTURY CONSTITUTION expressly provides for an increase in the probability of equal representation, a hallmark of every Government that wishes to call itself democratic.

The Constitutional Supplement

The Constitutional Supplement (“§A-100” means Constitutional Supplement Section A-100) is one of the most important new additions to the Constitution. Under the concept of the Constitutional Supplement, certain critical provisions, such as the guidelines discussed in this Clause, are easier to amend than other provisions of the Constitution. There are three Sections of the Constitutional Supplement: those in Section A are the most difficult to amend, and require the consent of a Majority of the People — the provisions in Section C are the easiest to amend, and do not require the consent of the People. The Constitutional Supplement is discussed further in Article Seven.

Interestingly enough, an ersatz Constitutional Supplement exists today: the decisions of the Supreme Court. One of our Government’s “dirty little secrets” is that there are two Constitutions in America today: the Written Constitution (the one we all studied in 8th grade), and the Empirical Constitution discussed in the previous chapter. They are not the same. For example, under the Written Constitution, Congress shall pass no law abridging the Freedom of Speech. Yet under the Empirical Constitution, Congress is empowered to pass laws abridging the Freedom of Speech whenever it feels such laws are “necessary and proper.” For details, see the Hatch Political Activity Act (5 U.S.C.A. 7324 et seq.) and the Communications Act of 1934 (47 U.S.C.A. 151 et seq.). There are hundreds of examples of other Constitutional rewrites, too many to list here. Interested readers should consult Dr. Ladanyi’s book, The 1987 Constitution (the First Amendment, which typically occupies 4 lines of written text, occupies 10 pages of his book!).
Under THE 21ST CENTURY CONSTITUTION, the power to rewrite the Constitution by historical practice (i.e., if the Government ignores the Constitution long enough, historical practice becomes law) is terminated. Unquestionably, a Constitution must evolve with the times, but this “evolution” must itself occur constitutionally. The concept of the Constitutional Supplement is that the provision supplemented needs to change with the times; but the change must occur on a formal, and not ad hoc, basis.

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### Article I, Section 3, Clause 1

The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature—elected by the People—thereof, for six-two Years; and each Senator shall have one Vote. The term of the Senator may be extended to four years, as provided under Section Fifteen of this Article.

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The Senate’s role is vastly changed under THE 21ST CENTURY CONSTITUTION. Because it has been given more power, the length of the term for each Senator must be reduced to reflect the new power. This term length is initially set at two years, but may be changed to four years by the People as provided under Section Fifteen.

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### Article I, Section 3, Clause 2

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make
temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

When vacancies happen in the representation of any State in the Senate, the age requirement for Senator shall, if necessary, be suspended, and the Executive Authority of such State shall appoint an Alternate to fill such vacancies from one of the Federal Districts. The Alternate shall be eligible for re-election.

The deletion of the Second Clause from Article One, Section Three of the 1787 Constitution eliminates the concept of staggered terms for Senators. If the People find that the Senate has gone beyond its Constitutional powers, a Majority of the Senate (or the entire Senate) may be removed in any one election. The Governor of each State still has the power to make vacancy appointments, but the Governor must make his or her choice from the pool of Alternates serving in the Federal Districts.

Article I, Section 3, Clause 3

Every Person shall be eligible to the office of a Senator who shall not have attained to the Age of thirty-two-five Years, and been nine-seventy Years a Citizen of the United States, and who shall not, when elected, upon and subsequent to taking the oath of office, be an Inhabitant of that State for which he or she shall be chosen, a graduate of the Federal Academy, and without formal affiliation with any political party; but no person shall serve more than eight years as Senator.

These are essentially the same qualifications for office as required for Representatives, and are instituted for the same reasons.
Article I, Section 3, Clauses 4-5

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall choose their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he or she shall exercise the Office of President of the United States.

The Fourth and Fifth Clauses preserve the power of the Vice President to break tie votes in the Senate, and the power of the Senate to choose its own Officers.

Article I, Section 3, Clause 6

Subclauses 1-3

The Senate shall have the exclusive power and obligation to oversee the operations of Government, and insure compliance with this Constitution; and to

Appoint an Auditor to serve for four years or until a successor has been appointed. Each year the Auditor shall conduct a thorough audit of all Federal Government accounts and operations, and shall submit these audit reports to the Senate, which shall make these reports available to the public; and to

Publish a regular Quarterly Statement and Account of all public money Receipts and Expenditures by the Federal Government shall be published from time to time, and Quarterly reports of Congressional progress and Government functions; and to
The First Subclause of the Sixth Clause introduces the first fundamental structural differences between the 1787 Constitution and THE 21ST CENTURY CONSTITUTION. Under this Subclause the Senate has exclusive Legislative powers and obligations. Thus, the New Constitution mandates that certain critical laws be passed. If the laws are not passed, the People know who are responsible, and may vote out the lawbreakers at their discretion (if they haven’t been impeached first).

The Second and Third Subclauses insure that the People, who pay taxes to support the Government, know where their money is going and how it is spent. (The Third Subclause was formerly Section Nine of Article One). If money is being spent unwisely, or is otherwise unaccounted for, the People will be informed, and thus be able to take action to correct the problem.

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**Article I, Section 3, Clause 6**

**Subclauses 4-5**

Establish a Federal Committee, consisting of one Senator from each State, which shall create and disband the Legislative Committees described under Section Fifteen of this Article; and to

Administer and Regulate the National Database, the National Poll, the National Objectives, the National Initiative, the National Referendum, and the National Recall; and to

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These Subclauses establish the power of the Senate to provide regulations for the “direct democracy” provisions in THE 21ST CENTURY CONSTITUTION. The Federal Committee has Oversight of the Legislative Committees, groups of Citizens who propose, research, and draft legislation (discussed further in Section Fifteen).
Article I, Section 3, Clause 6
Subclauses 6-8

Nominate candidates for the Office of President and Vice President and the House of Representatives, under the procedures outlined in § A-105, provided that there shall be not less than three and no more than six Nominees for each seat in the House of Representatives, and not less than ten and no more than twenty Nominees each for President and Vice President; and provided that one-half the Nominees for the Presidency and Vice Presidency shall be graduates of the Federal Academy, and that Nominations for all offices shall be representative of the population to the greatest extent possible with regard to sex, race, national origin, and other factors the Congress shall designate as the National Interest requires; and to

Supervise and provide guidelines for the Federal Elections Commission, to be enumerated in § C-100, which is authorized to and shall enact electoral Legislation securing the Objectives set forth in Section Ten of this Article; and to

Compile, prior to Elections, a Performance Rating for each Representative determined by dividing the sum of the Evaluations of votes cast by the Representative by the number of votes cast by the Representative, provided that a Representative is given Zero points for “nay” votes; a Performance Rating comprised of the average of the Evaluations of “yea” votes cast by the Representative; and a Performance Rating comprised of the sum of the Evaluations of “yea” votes cast by the Representative. The Senate shall publish the voting record of each Representative and his or her Performance Ratings on the National Database, and shall utilize these Performance Ratings in any subsequent Legislation to which they may apply; and to
The Sixth Subclause provides for nominations of important officers of Government by elected officials, and for the same reasons given earlier. The nomination process insures that half the nominees for President be graduates of the Federal Academy, even though there is no Federal Academy graduation requirement for that office. Nominations for the office of President must be representative of the population to the greatest extent possible.

The Seventh Subclause allocates to the Senate the exclusive power of supervision over the Federal Elections Commission, which is charged with the responsibility of insuring fair elections.

The Eighth Subclause gives the voters three objective appraisals of the performance of their Representative. Under Section Six of this Article, the primary Legislative responsibility of Representatives is to vote for Bills in the National Interest. How is this to be determined? Section Seven of this Article establishes a Legislative Review Board, which provides Evaluations for Bills based on the extent to which they serve the National Interest — and provides those Evaluations before the Representatives vote on the Bills. A Bill given an Evaluation of 85 would be much better, from this standpoint, than a Bill with an Evaluation of 10.

As an example, assume that the Representative has cast 4 votes, as follows:

<table>
<thead>
<tr>
<th>Vote by Representative</th>
<th>Evaluation of Bill</th>
<th>Net Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vote 1</td>
<td>For</td>
<td>40</td>
</tr>
<tr>
<td>Vote 2</td>
<td>For</td>
<td>-30</td>
</tr>
<tr>
<td>Vote 3</td>
<td>Against</td>
<td>60</td>
</tr>
<tr>
<td>Vote 4</td>
<td>Against</td>
<td>-15</td>
</tr>
</tbody>
</table>

Total Points for Representative 10

The first time s/he voted for a Bill with an Evaluation of 40, and was given 40 points; the second time s/he voted for a Bill with an Evaluation of -30, and was given -30 points (i.e., 30 points was subtracted from his or her total); the third time s/he voted against a Bill with an Evaluation of 60, and was given no points (no points are given or subtracted for “nay” votes — see Subclause Eight); and the fourth time s/he voted against a Bill with an Evaluation of -15, and was given no points.

When his or her four votes are totaled, the Representative has 10 points. Under the First Performance Rating, this number is divided by 4 (the number of votes cast). Thus, this Rating of the Representative would be 2.5. Not very good, considering that under this Constitution a Zero Rating may be considered evidence of unconstitutionality. When it comes time to face the voters, the
Representative will have to explain why this Performance Rating is so low. His or her opponent may also have some questions.

The Representative did not have to have such a low Rating, however. Had the Representative wanted to improve his or her Performance Rating, s/he would have voted for the Bills with positive Evaluations, and against the Bills with negative Evaluations, as follows:

<table>
<thead>
<tr>
<th>Vote by Representative</th>
<th>Evaluation of Bill</th>
<th>Net Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vote 1</td>
<td>For</td>
<td>40</td>
</tr>
<tr>
<td>Vote 2</td>
<td>Against</td>
<td>-30</td>
</tr>
<tr>
<td>Vote 3</td>
<td>For</td>
<td>60</td>
</tr>
<tr>
<td>Vote 4</td>
<td>Against</td>
<td>-15</td>
</tr>
</tbody>
</table>

Total Points for Representative 100

Had s/he voted in this manner, s/he would have received points as follows: 40, 0, 60, and 0. The total would have been 100, and the First Performance Rating would have been 25, a Rating ten times better than the one s/he actually received!

Thus, the Representative has a very powerful incentive to vote for Bills in the National Interest, and against Bills which are not in the National Interest. The First Performance Rating alone greatly increases the probability that the Representative will consider the National Interest when voting, and not local interests, which lead to high deficits, poorly drafted legislation, and undesirable social consequences that result from the misallocation of funds. Because the Senate has the power to rank Representatives by their Performance Ratings, Representatives who consistently disregard the Evaluations of the Legislative Review Board will find themselves at the “bottom of the class”: not only embarrassing, and not only penalizable by the Senate, but also a potentially fatal obstacle to re-election hopes.

Under this Subclause, the Representative retains his or her power to vote to keep a military base in his or her District, even though the base is unnecessary, or to vote for a weapons program that provides jobs for the Lockheed workers in his or her District, even though the weapons program is obsolete. However, the Representative must pay a price for the exercise of this power. In voting to keep his or her constituents happy from the point of view of their short-term self-interest, the Representative makes it less and less probable that s/he will be re-elected, instituting a necessary balance our current Constitution does not provide. It goes without saying that it will be the rare Representative who will vote for a Bill with a negative Evaluation that does not benefit his or her constituents directly. The Performance Rating System thus insures that
Representatives who vote for Bills against the National Interest will be in the minority, and that such legislation will either not be, or rarely be, passed.

The next two Performance Ratings are designed to prevent “strategic” voting by Representatives to achieve high Evaluations without regard to their own personal political convictions and/or the convictions of their constituents. If only the First Performance Rating were used, it is possible (however unlikely) that a Representative would vote for every Bill with a Rating higher than Zero, and against every Bill with an Evaluation of Zero (or less than Zero). The Representative (voting strategically) would do this to prevent Zero points (or less) from being averaged into his or her Performance Rating. Thus, a Representative would vote for a Bill with an Evaluation of 5, because to vote against the Bill would mean having Zero points averaged into his or her Rating. This would obviously be counterproductive; in this case, the Representative would be penalized for a potential exercise of good judgment.

The Second Performance Rating provides a different criterion for the evaluation of performance. Under the Second Performance Rating, “nay” votes are not considered. So, were a Representative to vote for a Bill with an Evaluation of 5, and had his or her other two positive votes been 20 and 50, the Representative would lower his or her Second Performance Rating from 35 to 25. Thus, the Second Performance Rating discourages the Representative from voting for Bills with low Evaluations.

Another potential (though equally improbable) strategy would be to vote for a Bill with an Evaluation of 100, and then refuse to vote on any other legislation. Under this strategy, a Representative would achieve a Rating of 100 on his or her First and Second Performance Rating, but only because no other votes had been averaged in! To prevent this final form of strategic voting, the Third Performance Rating is simply the sum total of all the votes by the Representatives. Thus, a vote total of 100 in a Legislative world where the vote totals are in the tens of thousands would be potentially disastrous for the Representative.

The three Ratings together are greater than the sum of their parts. Imagine five Representatives A, B, C, D, and E, and their voting records, as follows (“0” signifies a “nay” vote):

<table>
<thead>
<tr>
<th></th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vote 1</td>
<td>25</td>
<td>0</td>
<td>0</td>
<td>25</td>
<td>0</td>
</tr>
<tr>
<td>Vote 2</td>
<td>-10</td>
<td>0</td>
<td>0</td>
<td>no vote</td>
<td>-10</td>
</tr>
<tr>
<td>Vote 3</td>
<td>50</td>
<td>50</td>
<td>0</td>
<td>no vote</td>
<td>0</td>
</tr>
<tr>
<td>Vote 4</td>
<td>5</td>
<td>0</td>
<td>0</td>
<td>no vote</td>
<td>0</td>
</tr>
<tr>
<td>Vote 5</td>
<td>95</td>
<td>95</td>
<td>95</td>
<td>95</td>
<td>0</td>
</tr>
<tr>
<td>Vote 6</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>-10</td>
<td>-10</td>
</tr>
</tbody>
</table>
Their Performance Ratings are as follows:

<table>
<thead>
<tr>
<th>Performance Rating 1</th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
</tr>
</thead>
<tbody>
<tr>
<td>21.5</td>
<td>24.5</td>
<td>17</td>
<td>28</td>
<td>-7</td>
<td></td>
</tr>
<tr>
<td>Performance Rating 2</td>
<td>24</td>
<td>49</td>
<td>85</td>
<td>41</td>
<td>-23</td>
</tr>
<tr>
<td>Performance Rating 3</td>
<td>215</td>
<td>245</td>
<td>170</td>
<td>195</td>
<td>-70</td>
</tr>
</tbody>
</table>

When all the Performance Ratings are taken into account, we see that Representative B may marginally be considered the finest, from the standpoint of votes for the National Interest. B was at the top of Rating 3, and second in Ratings 1 and 2. The worst Representative was “nightmare Representative” E, who was last in all the Ratings. The job of the Representative is to vote for Bills in the National Interest, and by every measurement E was derelict in that duty. A Representative who is at the bottom of all three Performance Ratings will have a lot of explaining to do, and may even be liable to Impeachment.

With three Ratings, each voter can decide for him or herself which ranking is the most important, in those situations where a Representative is in the highest percentile on one Rating, the middle on another, and the lowest on a third. At the same time, Representatives who are highest on all three will be seen as objectively good Representatives, and Representatives who are lowest on all three will be seen as what they are — objectively bad Representatives.

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**Article I, Section 3, Clause 6**

**Subclauses 9-12**

Enact conflict-of-interest and ethics Legislation which shall apply to all elected and appointed Federal officials or staff members in the Legislative, Executive, and Judicial Branches of Government. The conflict-of-interest and ethics Legislation shall include, but not be limited to, requirements for mandatory annual disclosure by public officials of economic interests and sources of income, and shall be designated in § C-105; and to
Regulate or forbid all lobbying other than impersonal contact through the presentation of letters, memoranda, studies, or other written or electronically transmitted materials; and to

Pass regulations against vote-trading and caucus membership by Representatives, Senators, and Delegates; and to

Conduct investigations into the misconduct or potential misconduct of any Representative, Senator, Alternate, Delegate, President, or Officer of Government; and to

Another factor leading to outrageously high deficits and poorly drafted legislation is institutionalized corruption, otherwise known as the private financing of elections. Under this system of quasi-bribery which our current Constitution obviously lacks the power to prevent, the National Association of Auto Dealers can give $5,000 for the re-election of Representative X, who just happens to head the committee which has jurisdiction over “lemon law” legislation. As Chairman of that committee, this Representative could conceivably work to make sure that the Bill is not “reported out,” (which means that it would not be voted upon). Thus, hundreds of thousands of purchasers of automobiles would have to endure needless frustration and wholly unjust and potentially debilitating repair bills, and all because one Representative wanted to place a half-page ad in the local paper!313

The four Subclauses of this Section are the first part of the solution to this problem. Under these Subclauses, conflicts-of-interest will not be tolerated (and receiving private funds from a concern while voting on legislation affecting that concern is an inherent conflict-of interest). The Senate has the power to prevent personal lobbying, which can include, among other things, “wining and dining” Federal officials.

The Eleventh Subclause declares that the practice of logrolling, or trading votes, is an unconstitutional practice. “Logrolling” is a political phenomenon wherein Representative X votes for Representative Y’s pork-barrel project, or Representative Y’s special-interest legislation, if Y will do the same for X. As a consequence it will frequently happen that two laws favored by a Majority of the People are rejected in favor of two Bills that favor a Minority of the People. Consider the following report of a swap of “corn for porn” from The New York Times:

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135
A provision to prohibit government financing of ‘patently offensive’ sexual exhibits was removed from an Appropriations bill, as part of a deal with Western senators to preserve low grazing fees on Federal land in 16 states. Representative William Dannemeyer (R-CA) called the deal a ‘swap of corn for porn.’

‘Grazing fees can buy anything,’ complained Representative Mike Synar, Democrat of Oklahoma, the author of a provision passed by the House that would have increased the charges by more than 400 percent. ‘This year the Senate traded anti-pornography language for no increase,’ he said. ‘Last year it was the Outer Continental Shelf oil and gas program. Maybe I should put grazing fees on the defense bill and eliminate the B-2 bomber.’314

The worst aspect of “logrolling” is that it is the engine behind deficit spending, since the only incentive a Representative from Kansas has to vote for a pork-barrel project favoring a Representative from Wisconsin is that the “favor” will be returned. This results in a reversal of Bernard Mandeville’s doctrine (rationalizing laissez-faire economics) of “Private vices, Public benefits” — logrolling insures that America will have private benefits at the cost of public vices (like deficit spending). Needless to say, this phenomenon must be stopped. The Performance Rating System makes this practice improbable, and Subclause Eleven makes this practice illegal. If a Representative even attempts to “logroll,” his or her job will be on the line. Since caucus membership can exacerbate the “logrolling” effect by unifying Representatives along the lines of special interests, it too is forbidden.

The Twelfth Subclause grants to the Senate the necessary power to conduct investigations into all such infractions (or potential infractions).

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Article I, Section 3, Clause 6

Subclauses 13-14

Establish Timetables to be applied by the Legislative Review Board, provided that no Timetable other than an indefinite Timetable be shorter than thirty days nor longer than one hundred and eighty days, that there be not less than four categories of Timetables, and that all Bills must be voted upon by the House of Representatives prior to expiration of the Timetable;
Assign penalties for those members of Congress responsible when Legislative Review Board Timetables are not met, and penalties for those officials of the Executive Branch responsible in the event laws are not executed by that Branch; and to

The Senate has extensive regulatory powers over the Legislative Review Board, and the Thirteenth Subclause regulates the power of the Legislative Review Board to put Timetables on legislation. Under the current Constitution, good legislation can, and does, “die in committee”: that is, it never gets reported out to the floor of the House, where it would be voted upon. To take one of thousands of examples (as reported in Congress and the Nation),

Legislation (HR2382) sponsored by 232 members of the House, never got out of the House Energy and Commerce Subcommittee on Telecommunications in 1984 because some members demanded public interest guidelines for programming that the industry would not accept. After nearly a year of on-and-off negotiations, subcommittee members gave up their efforts to reach agreement on a deregulation bill.315

From a Judicial standpoint, this is akin to unjustly empowering a court to hear certain cases to the exclusion of others. Yet this is the current Legislative System — a system which is, however, changed under the Timetable concept. Under this concept, the Legislative Review Board gives each Bill a time frame. At the expiration of the time frame (for example, three months) the Bill must be voted upon. With Timetables in place, the vast majority of Bills will be voted upon, preserving the right of all Americans (and the issues with which they are concerned) to have their day in the Legislative court.

The Timetable concept also solves the problem of undue delay. One of the tactics of Congress is to delay voting on important Bills until the “heat is off.” For example, after a particularly horrific case of police brutality reported in the media, a Representative might introduce a Bill providing funding for some form of solution for the problem. Because the allocation of funds is a zero-sum game, however, and because money for project A (the program regulating police brutality) is less money for project B, the supporters of project B will oppose spending for project A, no matter how worthwhile the project. The Representatives and Senators, funded by these special interests, act accordingly. A simple tactic is to wait until the People “cool off,” and simply refuse to act on the Bill — in this case, an obviously intolerable situation.
Because there may be times, however, when the temporary passions of the People do not conform to the National Interest, the Legislative Review Board can give a Timetable of 180 days to legislation, providing a six-month “cooling-off” period for those cases where a cooling-off period is desirable. The Legislative Review Board is also empowered to give indefinite Timetables to one-fifth the legislation it considers. If a Bill is given an indefinite Timetable, it may, at the discretion of the committee to which the Bill has been assigned, “die in committee.” Generally Bills given indefinite Timetables for this reason will also be given low Evaluations, making the passage of such legislation even more improbable.

Article I, Section 3, Clause 6
Subclause 15

Provide penalties for those Delegates whose Evaluations are discrepant with the average of the Evaluations given by the other Delegates on the same Legislation, provided that the minimal discrepancy is not less than twenty-five points, and that discrepancies by two hundred points and over must be considered impeachable offenses, if and only if the aforesaid discrepancies occur as a specified percentage deviation within any group of one hundred contiguous votes, and that the unacceptable deviation is not less than ten percent and no greater than fifty percent for any penalty; and to

The Fifteenth Subclause insures that individual members of the Legislative Review Board (called “Delegates”) cannot disrupt the integrity of the Bill Evaluation process. Under the procedure as outlined in Section Seven, the Evaluation is derived from the individual votes of Delegates, who are authorized to give a Rating of anywhere from 100 to -1000 to any individual piece of legislation. To insure that no one Delegate can skew the Evaluation dramatically upward or downward, the highest and lowest Ratings of Legislative Review Board members are discarded. As an additional precaution, Subclause Fifteen authorizes the Senate to provide penalties for those Delegates whose voting habitually deviates from the norm.
Here’s how it works. Under this Subclause, the Senate can penalize a Delegate only when both of two factors are present: first, the discrepancy of an individual vote by the Delegate must be more than 25 points away from the average of the votes cast by the other members. Thus, if Delegate X votes to give a Bill an Evaluation of 60, and the average vote of the other members is 80, the vote is only 20 points away from the average, and therefore does not and cannot count against the Delegate. If, on the other hand, the Delegate has voted to give the Bill an Evaluation of 50, the vote is 30 points away from the average, and the Senate may provide a penalty (“average vote” = the average of the vote by the other Delegates):

<table>
<thead>
<tr>
<th>Delegate Vote</th>
<th>Average Vote</th>
<th>Prohibited Discrepancy?</th>
</tr>
</thead>
<tbody>
<tr>
<td>60</td>
<td>80</td>
<td>No (under 25 points)</td>
</tr>
<tr>
<td>50</td>
<td>80</td>
<td>Possibly (over 25 points)</td>
</tr>
</tbody>
</table>

But the extent of discrepancy is only one factor. The Senate can penalize the Delegate only when the second factor is also met — that the Delegate has voted against the grain too many times. Under this Subclause, discrepancy is expressed as a percentage, and ten percent is the minimum percentage required for penalizable discrepancy. So, if a Delegate has voted 100 times, then the Delegate must be discrepant by over 25 points at least ten times for any penalty to be levied.316 If the Delegate has voted over 100 times (e.g., 350 times), the Delegate must be discrepant ten times or over in any contiguous grouping of 100 votes for a penalty to be levied: for example, the Delegate may not be sufficiently discrepant in votes 126 to 225 (eight prohibited discrepancies), but might be sufficiently discrepant in votes 166 to 265 (twelve prohibited discrepancies).

Assume that the following are the results of the first four votes in a Legislative session by a discrepant Delegate and the other Members of the Legislative Review Board:

<table>
<thead>
<tr>
<th>Delegate Vote</th>
<th>Average Vote</th>
<th>Prohibited Discrepancy?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vote 1</td>
<td>30</td>
<td>Possibly (over 25 points)</td>
</tr>
<tr>
<td>Vote 2</td>
<td>-100</td>
<td>No (less than 25 points)</td>
</tr>
<tr>
<td>Vote 3</td>
<td>50</td>
<td>Yes (over 200 points)</td>
</tr>
<tr>
<td>Vote 4</td>
<td>75</td>
<td>No (less than 25 points)</td>
</tr>
</tbody>
</table>

In this example, the individual voting of the wayward Delegate is discrepant with the average vote of the other Delegates by greater than 25 points two of four times. The Delegate has been (possibly) discrepant fifty percent of the time (depending on the regulations passed by the Senate), and even discrepant by over 200 points one time, but since only four votes have been taken into
account, no penalty can be levied. So, until eight more votes have taken place, the Delegate cannot possibly be penalized.

The Fifteenth Subclause also states that discrepancies over 200 points must be considered impeachable offenses if they occur between ten and fifty percent of the time (not more, not less). So, if any Delegate is discrepant by 200 points or over at least ten, but not greater than fifty times in any grouping of 100 contiguous votes, that Delegate must be impeached under this Constitution (and discrepancies less than 200 points and greater than 25 points may be declared impeachable offenses by the Senate).

Thus, the Fifteenth Subclause gives the Senate a great deal of flexibility in insuring that Delegates cannot impose their own personal political philosophies on the Nation as a whole, while preventing the Senate from granting the Legislative Review Board too much leeway, or from unduly restricting the disparity of opinions of Delegates, a disparity essential for preserving the integrity of the process.

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Article I, Section 3, Clause 6
Subclauses 16-17

Provide Appropriations for the faithful execution of the above provisions; and to

Designate the regulations affecting the above powers and any other powers granted exclusively to the Senate under this Constitution in § C-100 through § C-199. Legislation to be designated in § C-100 through § C-199 shall be signed into law by the President within thirty days after passage by a full Majority vote of the Senate.

The Sixteenth Subclause, in adherence to the Accountability Principle, gives the power to the Senate to provide the funds necessary for insuring that the provisions of this Section are given effect. Because neither the President nor the House of Representatives are entitled to veto the provisions passed by the Senate, the Senate has total responsibility for Oversight of Government, without the danger that the Branches of Government they are overseeing can prevent investigations into and regulations of their conduct. The Senate itself is responsible to the ultimate authority: the People.
Article I, Section 3, Clause 7

The Senate shall have the sole Power of Impeachment and the trial of all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside; no Person shall be charged without the Concurrence of a Majority of the Members present, and no Person shall be convicted without the Concurrence of two thirds of the Members present. The Vice President shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors—significant violations of the law, as enumerated in § B-105. Representatives and Senators may be removed for the foregoing reasons, for violation of conflict-of-interest and ethics Legislation passed by the Senate, for failure to fulfill their responsibilities as defined in this Constitution, and for failure to report violations by other elected or appointed Officials of their Constitutional responsibilities. Delegates may be removed for the foregoing reasons, and for violation of Legislative Review Board Regulations passed by the Senate. All civil Officers of the United States, including the Judiciary, may be removed for good cause. Inferior Officers, as defined and regulated in § B-100, may be removed by the Senate from office by full Majority vote, without Impeachment. Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law. The right to trial by jury shall not extend to cases of Impeachment.

The Seventh Clause consolidates the Impeachment powers provided for in our Constitution, which currently does not allow for the Impeachment of Representatives and Senators. Consequently, Senators like the “Keating 5,” who helped to create financial debacles like the Savings and Loan scandal which will end up costing the taxpayers $500 billion, are reprimanded (if they
are punished at all) for what should be impeachable offenses. As James Iredell stated in debate at the North Carolina Ratifying Convention on July 24, 1788, “A man in public office who knows that there is no tribunal to punish him, may be ready to deviate from his duty; but if he knows there is a tribunal for that purpose, although he may be a man of no principle, the very terror of punishment will perhaps deter him.”\textsuperscript{317}

Consistent with its exclusive power of Oversight, the Senate is charged with this responsibility. Under the Seventh Clause the Senate can not only remove Officers of Government by the formal process of Impeachment, but can also remove “inferior Officers” by full Majority vote, without Impeachment, allocating the Senate a larger measure of control over an unelected bureaucracy.

This Clause also mandates that impeachable offenses be defined in the Constitutional Supplement. The current Constitution allows Impeachment for “high Crimes and Misdemeanors,” too vague a formulation for such a serious matter. If a Judge commits a crime, and the Congress doesn’t want to impeach, it need only say that the crime \textit{was not} a “high” crime. Or, if a Judge commits a minor crime, and Congress wants to impeach, Congress need only say that the minor crime \textit{was} a “high” crime. We can do better.

One notable change in the new Impeachment Clause is that the President of the United States is no longer impeachable (though s/he is still removable from office by reason of incapacity — see Article Two, Section One, Clauses Three through Nine). The power to remove the President of the United States directly has been given to the People of the United States, in Section Fifteen of this Article, for the reasons outlined there.

\underline{Article I, Section 4, Clause 1}

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators, \textit{provided that no Law or Regulation may be passed which violates any rights granted under this Constitution}. The Primary Election shall be held the Saturday and Sunday Next after the first Monday in September. The General Election shall be held the Saturday and Sunday Next after the first Monday in November.
The New Constitution preserves the power of the States and Congress to regulate elections, as long as no rights granted under the Constitution are violated. For example, a State cannot pass a law requiring passage of a literacy test for the right to vote.

The First Clause also formally establishes the days when the Federal Primary and General Elections will be held. Elections are held on weekends in several countries in Europe, a practice which thus allows the average working person to more easily vote, a practice which thus increases the probability of voter participation, and a practice which is thus mandated under THE 21ST CENTURY CONSTITUTION. Since Saturdays are a religious holiday for many Americans, Elections will also be held on Sundays.

**Article I, Section 4, Clause 2**

The Congress shall assemble at least once in every Year, and such meeting shall be on the first Monday in December—begin at noon on the third day of January, unless they shall by Law appoint a different Day. The terms of Senators and Representatives shall end at noon on the third day of January.

This Clause formally incorporates a portion of the Twentieth Amendment into the New Constitution.

**Article I, Section 5, Clause 1**

The Senate shall be the Judge of the Elections, Returns and Qualifications of its own the Members of Congress. The Senate is not empowered to exclude any person, duly elected by his or her Constituents, who meets all the requirements for Office expressly prescribed under Sections Two and Three of this Article. A Majority of each House of Congress shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such
Manner, and under such Penalties as each House— the Senate may provide.

The First Clause in this Section gives the Senate the sole power to judge the elections, returns, and qualifications of the members of Congress, consistent with its general Oversight function. However, the Senate is not empowered to exclude anyone from office who meets the Constitutional requirements.

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**Article I, Section 5, Clause 2**

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

The Federal Academy shall propose the Rules for the Proceedings of Congress, which shall be valid upon ratification by a full Majority of the Senate, and which shall be designated in § C-110. The procedure by which the Federal Academy promulgates and proposes the Rules shall be established by a Majority of the Senate, and shall be set forth in § C-110.

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The House and Senate Rules are extremely important — the Rules can be used to speed or slow down the passage of legislation; to make the passage of “pork barrel” legislation more or less inevitable; to increase the chances of Incumbent’s re-election, and so forth. In fact, they are so important that they will become a part of the Constitution proper (in the Constitutional Supplement). Letting either House of Congress propose their own Rules has been shown to be an exceedingly poor policy, the most obvious example being the Senate’s power to *filibuster* (i.e., stall for time by talking endlessly, or until “cloture” is invoked). Another congressional disaster is the *Committee System* as it is presently constituted. Woodrow Wilson attacked the Committee System in 1886 in his classic text, *Congressional Government*, and Alexander Hehmeyer stated in 1943 that
No part of our governmental machinery is in greater need of reform than
the Congressional committee system as it now functions. In the first
place, there are far too many standing committees . . . The chairmen of
these committees, who dominate them, receive their position because of
the rule that the chairmanship automatically goes to the senior committee
member of the majority party. In the Senate this has been the case
without exception since 1846. Thus, in practice, the committee chairmen
are drawn exclusively from those members coming from safe districts or
States who are also adept at keeping their home political fences mended.
. . . Senators from pivotal States and Representatives from districts
where the vote is usually close hardly ever reach the coveted and
important chairmanship, for they rarely acquire the necessary seniority.
Ability, capacity or political stature go for naught. Congress is probably
alone among all private or governmental bodies charged with any kind
of responsibility which lets leadership depend exclusively on the
accident of tenure.\textsuperscript{318}

The Committee System as it is presently constituted exacerbates an already
parochial orientation in Congress, and the \textit{Seniority System} created by the Rules
of Congress contributes to Parochialism, as well as the Incumbency Effect.
According to Whicker (1987),

Several factors have exacerbated the parochial orientation of Congress,
including the internal congressional committee structure, the
maintenance of the seniority system and the power of special interest
groups in the national political process. . . . In the mid-1980s, the House
had twenty-two standing committees and about 135 subcommittees,
while the Senate had sixteen standing committees and about ninety
subcommittees. Typically, members attempt to secure positions on
committees of the greatest importance to their constituents, making
committees a vehicle for the expression of particularized rather than
generalized or national views. Congressional subcommittees and
committees join with the bureaucratic agencies they authorize, oversee
and fund. Along with the clients of the bureaucracies and
congressionally funded programs, they form the classic ‘iron triangle’ of
special interests.

The seniority system in Congress (the means used to select committee
and subcommittee chairs) contributes to the particularized and parochial
rather than national and generalized views of Congress. Through the
seniority system, members from noncompetitive and relatively
homogenous districts rise to power within Congress. Not only do the
district characteristics of senior members often distinguish them from
members from more competitive districts, but the seniority system itself diminishes leadership turnover, assuring the long-term and meaningful representation of some parochial interests at the expense of others.

The speed with which legislation is passed, or more accurately, the lack of speed, is a major problem with congressional performance. In addition to the difficulty of obtaining rapid agreement in a pluralistic environment, structurally rooted phenomena have also contributed to delays in legislative outcomes. Internal specialization within each house of Congress has led to a lengthy sequential process, with hearings, investigations and debates occurring at the subcommittee, committee and full house levels. In the House of Representatives, the House Rules Committee which functions as a traffic regulator through which all committee-originated legislation must pass, serves as an additional level between full committee hearings and full debates. Spending measures must sometimes pass through authorizing subcommittees and committees as well as a network of appropriations subcommittees and committees in each house.

Another problem with the implementation of citizen preferences under the current congressional system is the internal committee specialization within Congress. Not only does such specialization lengthen the time frame for legislation, but it also serves to effectively disenfranchise most constituents from legislation initiation in most policy areas. Even constituents who are fortunate enough to have a congressional representative whose policy positions are similar to their own preferences on a particular issue are not guaranteed a meaningful legislative expression of those preferences.

Members of Congress are primarily limited to effectively initiating legislation in the policy areas covered by the subcommittees and committees on which they serve. Recognizing this political reality, most members of Congress strive to acquire memberships on committees dealing with legislation of particular salience to their own constituencies. The consequence of this functional specialization is that constituents cannot effectively initiate new policies in issue areas where their own legislative representative has no committee membership and therefore little clout.

While the internally specialized committee structure is the primary culprit in the inability of Congress to meet the criterion of approximating citizen preferences, the seniority system contributes to the flaw. Under the seniority system, the most important and desirable committee assignments have traditionally been acquired by older congressional members from noncompetitive districts whose views are frequently out of step with national sentiment and trends.
Note that the Seniority System is a self-sustaining system. Such a system would not only be proposed and supported by the most senior members of Congress, but once enacted it would be difficult, if not impossible, to change.

Under this Clause, the Federal Academy proposes the Rules of Congress, under regulations written by the Senate. This provides an excellent opportunity for students of the Federal Academy to receive first-hand experience with the composition of legislation, frees the Senators and Representatives from the task, and greatly increases the probability that the Rules will not be to the exclusive benefit of any particular class of Legislators, such as senior members, and members of States who represent powerful special interests. The Senate approves the Rules, again consistent with its Oversight function, retaining a measure of control by the Citizens over the creation of Congressional Rules.

Article I, Section 5, Clauses 3-4

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

A Verbatim Report of the Proceedings of Congress shall be printed in the Congressional Record and made available on the National Database on a daily basis, subject to the exceptions enumerated in § A-110. The votes of both Houses, and the names of those voting or abstaining, shall be recorded on all Legislation, Nominations, Orders, and Resolutions. Voice votes are prohibited.

Neither House, during the session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

One of the “tricks of the trade” in Congress is avoiding roll call votes on important legislation. As Whicker (1987) wrote,
Many voters are not aware of the most visible acts — roll call votes — or of how their own representatives perform on recorded votes. Nor are members of Congress supportive of the standard of accountability. To avoid accountability, members often exploit the decentralized nature of the institution, acting incongruently by denouncing a bill in committee and later supporting it in a roll call vote. . . .

This Clause subdues the Congressional tendency to avoid Accountability by insisting that every vote be recorded.

Article I, Section 6, Clause 1

The Representatives, Senators, and Representatives— Alternates, and Delegates shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace— those violations of the law as provided for in § B-105, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place— be immune from criminal or civil prosecution or litigation.

This Clause states that our most important Officers of Government will be paid for their services. It further states that these Officers may be arrested only for committing certain offenses (which are more specific than “breach of the peace”). To prevent a “chilling effect” on their speech in Congress through litigation from private or State interests, they are given immunity from prosecution or other forms of litigation for anything they say in Congress. Because “any other place” may be construed to be a newspaper or other media, this Clause is stricken.
Article I, Section 6, Clause 2

No Representative, Senator, or Representative—Alternate, nor Delegate shall, during their term, be appointed to any civil Office—position under the Authority of the United States, with the exception of those enumerated in § B-110, which shall have been created, or the Emoluments whereof shall have been increased during such time—until the expiration of the Presidential term in which such person shall have been designated to serve; and no Person holding any Office under the United States, shall be a Member of either House during his or her Continuance in Office.

To prevent an unhealthy intermixture of the Legislative and Executive powers, the additional language does not allow our highest officials to serve as Officers of Government in any other capacity unless 1) exceptions have been enumerated in Constitutional Supplement Section B-110, AND 2) the President’s term has expired. So, if Ms. X, a Senator, Representative, Delegate, or Alternate, is appointed by the President to serve as Secretary of Treasury in the year 2018, Ms. X cannot serve until 2020, when a new President will be elected. Thus, the Executive’s power to influence the Legislative Branch is greatly curtailed.

Article I, Section 6, Clauses 3-4

The primary Legislative Responsibility of Representatives and Senators shall be to vote for those Bills in the National Interest, as determined by the Evaluations of the Legislative Review Board, and to propose or pass all Legislation necessary or proper for carrying into execution the Objectives set forth in this Constitution; and their secondary responsibility shall be to vote for those Bills which reflect the particular concerns of the District or State they represent.
A Representative, Senator, or Delegate who has personal or private interests, as defined in § C-115, in any proposed or pending Bill, shall disclose this fact to the Speaker of the House or President Pro Tempore, and shall not vote on that Bill; and shall abide by all conflict-of-interest and ethics Legislation passed by the Senate, under penalty of law.

Representative Richard Gephardt, the House Majority Leader of the 102d Congress, stated that “[w]e were elected to do what we think is in the highest and best interests of the country . . . .” Indeed. However, under the 1787 Constitution, there is no such job requirement set forth in writing, nor any means of enforcing any such job requirement. Thus, Senator Byrd’s remark that he would become West Virginia’s “billion-dollar industry.” If all Representatives and Senators made similar remarks, and voted along similar lines, the country would sink (and is, in fact, sinking) under the weight of its deficit spending, as each Representative and Senator strives to “bring the pork home,” without levying taxes to pay for this spending. Consequently, over a quarter of a trillion dollars is paid by taxpayers every year on interest on the National Debt. By the year 2000, if current trends continue, well over half of our individual income tax dollars will go towards the payment of this interest.

The Third Clause makes language such as Byrd’s a highly suspect activity, and voting like Byrd’s a potentially impeachable offense.

The Fourth Clause of this Section is a conflict-of-interest provision, which prohibits Representatives, Senators, and Delegates from voting on Bills in which they have “personal or private” economic interests.

Article I, Section 7, Clauses 1-4

The Legislative Review Board shall be composed of nine Delegates chosen by a full Majority of the Senate. The Legislative Review Board must be representative of the population to the greatest extent possible with regard to sex, race, national origin, and geographical dispersion.

Each Delegate shall serve for a single three-year term, and shall receive for his or her services a Compensation, the value of which shall neither be increased nor diminished during his or her
continuance in office, other than for violations of regulations passed by the Senate under Section Three, Clause Six, Subclause Fifteen of this Article.

Immediately after the Delegates shall be assembled in consequence after the first appointment, they shall be divided into three classes. The Seats of the Delegates of the first Class shall be vacated at the Expiration of the first Year, of the second Class at the Expiration of the second Year, and of the third Class at the Expiration of the third Year, so that one third may be chosen every Year; and if Vacancies happen by Resignation, or otherwise, the Senate may make temporary Appointments until the next Meeting of the Congress, when they shall fill such Vacancies.

Every person shall be eligible to the office of Delegate who shall have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall, upon and subsequent to taking the oath of office, be a graduate of the Federal Academy, and without formal affiliation with any political party.

One of the most important additions made by THE 21ST CENTURY CONSTITUTION is the Legislative Review Board, which, along with the Federal Academy, prevents undue influence by local interests, and thus makes the critical Annual Term for Representatives possible.

As mentioned earlier, no Bill will be passed without a prior Evaluation by the Legislative Review Board, and an assignment of a Timetable to that Bill. Clauses One through Four indicate the makeup of the Legislative Review Board. They will be appointed for single three year terms, making them accountable to National, and not local, interests. The short term prevents any one Delegate from dominating via Incumbency, and the one-third rotation in membership allows the Senate to maintain balance on the Legislative Review Board every year. Fixed compensation prevents an undue control of the Delegates by salary hikes or cuts; however, the Senate is empowered to fine Delegates on an individual basis if they violate their mandated duty to obey Senatorial (and Constitutional) regulations. To prevent undue attachment to any particular demographic category, the composition of the Legislative Review Board must be as representative of the population as possible. Thus, if 51 percent of the population are women, then one year there will be five female delegates and four male delegates, and the next year four female and five male
delegates, to approximate the 50 percent representation as much as possible over time. Since African-Americans make up 14 percent of the population, and one-ninth is roughly equivalent to 11 percent, there will be at least one African-American delegate every year.

The Third Clause mandates staggered terms. Because there are Fifty States, each year the new Delegates will be from States which were not represented the previous year, and each Delegate will represent a particular region of the country (e.g., the Southwest, Northeast, etc.).

Because the Legislative Review Board plays a critical role in the New Government, and because there are many issues that must be understood before a person will be qualified to serve on the Legislative Review Board, Federal Academy graduation is required of Delegates.

**Article I, Section 7, Clauses 5-7**

The Legislative Review Board shall provide a Timetable for the consideration and passage of each Bill under the regulations set forth in § C-120, provided that no more than one-fifth of the Bills submitted be given an indefinite Timetable; and

Evaluate the quality of a Bill regarding the extent to which it serves the National Interest by either implementing the goals in the Preamble or the Will of the People of the United States, or both, while preserving those individual liberties enumerated in this Constitution, by providing a numerical Rating for each Bill under the guidelines set forth in § C-125, with one hundred being the highest possible Rating, and minus one thousand being the lowest possible Rating. All Ratings between minus one hundred and minus one thousand are to be reserved for objectively unconstitutional Bills, or Bills excessively or completely detrimental to the National Interest. Every Delegate must vote greater than twenty-five on any law required by this Constitution, and greater than Zero on any Bill which serves to implement a National Objective. No Delegate can give a Rating higher than Zero to any Bill that, in his or her judgment, is unconstitutional. The highest and lowest Ratings given by the Delegates shall be eliminated, and the average Rating of the seven remaining Delegates shall constitute the Evaluation.
Every Delegate shall abide by the regulations restricting their behavior set forth in § C-130.

The Fifth Clause mandates that every Bill be given a Timetable. This reduces the power of committees in Congress to “bottle up” legislation, which makes vote-trading a more probable occurrence (i.e., X agrees to report or not report out a Bill from his or her committee if Y will reciprocate). The ability of committees to abort the consideration of necessary legislation violates the Accountability Principle, and gives a great deal of power to special interests (violating the Fourteenth Amendment requirement that the People receive the equal protection of the laws). Under Section Three of this Article, there must be at least four categories of Timetables, and no Timetable can be shorter than 30 days or longer than 180 days. An indefinite Timetable is also permitted. Longer or indefinite Timetables will be given for more complicated legislation, and/or legislation the Legislative Review Board views as undesirable.

The Sixth Clause is without question one of the five most important Clauses in THE 21ST CENTURY CONSTITUTION. This Clause accomplishes many goals, and it is important to analyze them in some depth.

Because Representatives come from Districts of less than 350,000 people, and because they are elected for Annual Terms, there is a danger of an undue attachment to local interests: for example, people may vote for their Representative because s/he has voted to keep an unnecessary military base in the District. What is the check against this sort of voting? The Evaluation of the Legislative Review Board. The mandate of the Legislative Review Board is to give high Evaluations to Bills which either serve the National Interest, or implement the National Will of the People. At the same time, the Legislative Review Board must give low Evaluations to Bills that unconstitutionally infringe on individual liberties. Thus, there is a protection for individual rights, while at the same time there is a proper attention to the Will of the People of the United States. Because the Evaluation is given before the Bill is considered by the House of Representatives, the passage of unconstitutional legislation will be made extremely difficult, if not impossible. Under the current system, unconstitutional laws are passed, and a person can fight the law in court only if wealthy enough to afford the legal fees (and if the person can cross the Judiciary’s jurisdictional thresholds [such as “non-frivolity”]). If one is not wealthy enough to mount a legal battle of this nature, and if one’s cause does not fit into the political agenda or limited budget of the ACLU and similar organizations, that person must obey an unconstitutional law. The Evaluation requirement prohibits this unjust and unconstitutional situation.
An Evaluation is derived from the individual votes of Delegates. Assume
the following votes on a Bill:

<table>
<thead>
<tr>
<th>Delegate</th>
<th>Rating Given to Bill by Delegate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>85</td>
</tr>
<tr>
<td>2</td>
<td>45</td>
</tr>
<tr>
<td>3</td>
<td>98</td>
</tr>
<tr>
<td>4</td>
<td>-30</td>
</tr>
<tr>
<td>5</td>
<td>20</td>
</tr>
<tr>
<td>6</td>
<td>55</td>
</tr>
<tr>
<td>7</td>
<td>31</td>
</tr>
<tr>
<td>8</td>
<td>5</td>
</tr>
<tr>
<td>9</td>
<td>60</td>
</tr>
</tbody>
</table>

Under the procedure outlined in Clause Six, the highest and lowest Ratings
are discarded. In this case, the high vote (Delegate 3) is 98, and the low vote
(Delegate 4) is -30. These votes are not used, and the seven remaining votes are
totaled. The sum is 301. This result is divided by seven, and the resulting
Evaluation is 43. What does this mean? It means that under Section Eight of
Article One, the Bill must not only pass the House, but also the Senate. If the
Senate also approves, the Bill must be signed into law by the President. The
collective determination of the Legislative Review Board is that though this Bill
is too important to risk a veto by the President, it nonetheless warrants review
by the Senate.

Thus, the first important role of the Evaluation is to streamline the passage
of worthy and important Bills, while placing constitutional barriers to Bills of
questionable necessity or desirability. Bills with Evaluations over 50 that are
passed by a Quorum Majority of the House of Representatives must be signed
into law by the President. Bills with Evaluations less than 25 have to pass not
only the House of Representatives and the Senate, but can even be vetoed by
the President. In addition, Bills with Evaluations of less than Zero that happen
to pass the constitutional barriers do not have to be enforced by either the
Executive or Judicial Branches.

The second role of the Evaluation is to provide a basis for the Performance
Ratings of Representatives. Imagine that you are a Representative. Here’s a Bill
that will bring jobs to your District, but which has an Evaluation of -50. How
will you vote? If you vote for the legislation, fifty points will be subtracted
from your total, and your Performance Ratings will be lowered. You know that
few, if any other Representatives have any reason to vote for the Bill, since
vote-trading has been prohibited, and there is no party membership creating a
collegial atmosphere encouraging such vote-trading. In addition, the Third
Clause of this Section has made voting for the National Interest a job
requirement. Other Representatives are constitutionally required to vote against this legislation, and will undoubtedly do so, given that they can improve their Ratings by fulfilling their constitutional duty. You also know that even if passed by the House, the Bill will have to pass the Senate, and is even liable to veto by the President. Furthermore, if you vote for the Bill, you know your opponent in the next election will point out that you have violated your responsibility by voting for legislation which is not in the National Interest. All the above will be taken into account by all the other Representatives, and you realize that if you vote for the Bill, there is an excellent chance that, if all vote, the vote will be 1 in favor, 999 against. You will look extremely foolish, and even unpatriotic.

How would you vote?

Because the Legislative Review Board has a great deal of power, this power must be checked. The Discrepancy requirement of Section Three is one check, and the other is provided by the Seventh Clause. The Senate is empowered to author regulations governing Delegate behavior, and empowered to enforce those regulations.
Article I, Section 8, Clauses 1-4

All Bills for raising Revenue—other than those originating in Legislative Committees and in the National Initiative shall originate in the House of Representatives, but the Senate may propose or concur with Amendments as on other Bills—and no law shall be enacted except by Bill, subject to the exceptions enumerated under this Constitution. Nominations by the House of Representatives or Senate for any Office, Orders or Resolutions, and regulations promulgated by agencies created under Congressional authority shall not be considered Bills. The subject of every Bill shall be clearly expressed in its title. Each Bill shall have an enacting Clause as follows: “Be it enacted by the People of the United States of America.” No Bill embracing more than one subject shall be passed, except Appropriations Bills. Bills originating in the House of Representatives and Legislative Committees shall be submitted for Evaluation to the Legislative Review Board prior to consideration by the House of Representatives. Whenever a law or section of law or the Constitutional Supplement is amended, it shall be re-enacted and republished on the National Database, and in bound form or as a pocket part, with the amended or repealed laws annexed in an Appendix. Every Bill shall be plainly worded, shall be published with its Evaluation, and shall set forth hypothetical examples for illustrative purposes in all cases other than those designated in § B-115. The Timetables for consideration of Bills established by the Legislative Review Board must be faithfully observed by the House of Representatives unless the Senate, in extraordinary circumstances, grants an exemption by a full two-thirds Majority. Bills which shall have passed the National Initiative or which are to be enumerated in Constitutional Supplement Sections A and B, and Sections C-100 to 200, are to be given Evaluations by the Legislative Review Board, but otherwise shall be signed into law by the President within thirty days if passed under the Rules as provided in this Constitution, and are exempt from the following requirements:

Every Bill which receives an Evaluation by the Legislative Review Board which is greater than fifty, and which shall have passed the
House of Representatives, shall be signed into law by the President within thirty days after passage by that House.

Every Bill which receives an Evaluation by the Legislative Review Board which is greater than or equal to twenty-five and less than or equal to fifty, and which shall have passed the House of Representatives, shall be presented to the Senate within ten days, and the Senate shall consider it within thirty days. If the Senate shall pass the Bill, it shall be signed into law by the President within thirty days after passage by the Senate.

Every Bill which receives an Evaluation by the Legislative Review Board which is less than twenty-five, and which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States; If he or she approve he or she shall sign it, but if not he or she shall return it, with his or her Objections to that House in which it shall have originated the House of Representatives, who shall enter the Objections at large on their Journal, and proceed to reconsider it within ten days. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House Senate, by which it shall likewise be reconsidered, and if approved by two thirds of the Senate, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him or her, the Same shall be a Law, in like Manner as if he or she had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Another of the most important new provisions is the re-writing of the procedure by which proposed legislation becomes actual legislation. The First Clause of this Section establishes the ground rules: all laws originate in the House of Representatives or Legislative Committees (or through the National Initiative process), not with the Senate or the President. If a Bill is to be considered, one of the members of the House or one of the Legislative Committees must propose it, or it must make its way through the aforementioned Initiative Process.
This Clause also eliminates the concept of “Riders,” the practice of attaching one completely different and unpopular Bill to a popular Bill, in the hopes that it will be passed. The Rider concept violates the Accountability Principle, since a Representative can always argue to his or her constituents, “I had to vote for that unpopular Bill”; in addition, Riders would wreak havoc on the new system of Evaluations for Bills. Laws will be published with their Evaluations, so that Judges will know whether the law is enforceable or not. Laws must be plainly worded (for obvious reasons), must be published on the National Database, and must contain hypothetical examples to anchor the meaning of the legislation to some external referent. For example, if the law states “Arson is the crime of burning materials within the confines of an edifice,” a hypothetical might be “Mr. X pours gasoline inside a house and lights a match. The house burns for one minute, and the fire is put out. Mr. X is guilty of Arson,” or “Mr. X lights a cigarette inside a building. A is not guilty of Arson.” This requirement increases the probability that vague laws, constitutionally prohibited, will not be passed.

This Clause also allows the Senate to grant exceptions to Timetables, since there may be occasions when the House is unable, for one reason or another, to vote on the legislation within the stated time period. In addition, it states that provisions to be enumerated in specified Sections of the Constitutional Supplement are exempt from the requirements in the following three Clauses. Without this exemption, the concept of varying amendability as instituted in the Constitutional Supplement would be negated.

The Second through Fourth Clauses establish the parameters for the Legislative Review Board. Bills with Evaluations higher than 50 need not be approved by the Senate or the President to be passed into law. Consequently, the Bill must truly be necessary or desirable and in the National Interest to get such a high Evaluation. If Delegates have qualms about the legislation, they can give the Bill a Rating between 25 and 50, which means that Senate approval is also required. If Delegates have serious doubts about the legislation, they can give it a Rating of less than 25, and the President’s approval will then also be necessary. The Delegates, as provided under Section Seven of this Article, may give a Rating as low as -1000 to the absolutely worst legislation.

If the President vetoes a piece of legislation, it goes back to the House and Senate, where, if it is re-passed by a two-thirds Majority of both Houses, it will become law. This isn’t very likely. In 203 years of our Republic, there have been 2497 vetoes, and only 100 overrides.324 Thus, in the history of our country, only 4 percent of vetoes have been overridden. (This effect has been remarkably consistent over time. For example, in the period of 1801 to 1901, .04004577 of the President’s vetoes were overridden, and in the period of 1901-1991, .04009870 of the President’s vetoes were overridden, a difference of only
It’s difficult to imagine more compelling evidence of an institutional effect.

Article I, Section 8, Clause 5

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

All constitutional Orders and Resolutions by the House of Representatives shall become law upon approval by a full Majority of the Senate. If disapproved by the Senate, the House of Representatives shall style the Resolution as a Bill and submit it to the Legislative Review Board. If the Senate approves the Resolution, the President’s signature is not required.

This Clause allows the Senate to prevent the House from passing legislation by styling the legislation as an “Order” or “Resolution” to evade the above requirements (consistent with the existing Constitutional provisions).

Article I, Section 9, Clause 1

The Congress shall have Power To lay and collect Taxes, Duties, Imposts, and Excises, provided that all Duties, Imposts and Excises shall be uniform throughout the United States, and to lay and collect Taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration, provided that personal income taxes are levied on not less than three-fourths of the Citizens with the
highest net income; that the rate of the highest tax bracket shall be no more than twice that of the lowest tax bracket; and that the lowest bracket shall be no lower than one-tenth of net income, and the highest bracket shall be no higher than one-third of net income; and to pay the Debts and Provide for the common Defense and general Welfare of the United States;

This Section was formerly Section Eight of the 1787 Constitution, and lists the powers of Congress. The First Clause of this Section establishes Congress’ power to tax and spend, with more severe limitations on this power than currently exist. For example, the Clause allowing Congress to borrow money on the credit of the United States has been extensively modified (see the next Clause) to greatly increase the probability that future revenue will come from taxes (and not borrowing). With this modification, the Annual Term for Representatives insures that a free-spending (i.e., free-taxing) Congress will not meet with public approval.

The Clause also links Americans together on the issue of taxation. If an income tax is to be levied, it must be levied on at least three-fourths of the population. In addition, the highest tax bracket cannot be higher than 33 percent, which guarantees that as long as the Constitution is in place, the Federal Government can never take more than one-third a person’s income in taxes. In addition, the lowest tax bracket must be at least half that of the highest. So, for example, if the highest tax bracket is 30 percent, the lowest bracket must be at least 15 percent (and can be higher). This Clause, by linking the fate of Americans on the issue of taxation, and by radically decreasing the power to borrow, thus provides a structural limitation on spending by foreclosing the source of revenue.

To insure that a substantial percentage of revenue is derived within this limitation, and not from other sources, the one-tenth minimum requirement has been instituted.

**Article I, Section 9, Clauses 2-4**

To borrow Money on the credit of the United States solely upon the assent of two-thirds of the members of both Houses of Congress, and a two-thirds Majority of Voters in the General or a Special Election;
To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

The power to borrow money is the power to sink the United States into an ever greater debt, a debt upon which interest must be paid. Yet the 1787 Constitution contained a general and virtually unlimited power to borrow money, the only check being a requirement that direct taxes be apportioned among the States — a check that, in 1913, was removed by the Sixteenth Amendment. This virtually unlimited power to borrow was criticized in 1788 by Robert Yates, one of the New York delegates to the Federal Convention, in a prediction of uncanny accuracy:

The power to borrow money is general and unlimited . . . . Under this authority, the Congress may mortgage any or all the revenues of the union, as a fund to loan money upon, and it is probably, in this way, they may borrow of foreign nations, a principal sum, the interest of which will be equal to the annual revenues of the country. — **By this means, they may create a national debt, so large, as to exceed the ability of the country ever to sink. I can scarcely contemplate a greater calamity that could befall this country, than to be loaded with a debt exceeding their ability ever to discharge.** If this be a just remark, it is unwise and improvident to vest in the general government a power to borrow at discretion, without any limitation or restriction.

It may possibly happen that the safety and welfare of the country may require, that money be borrowed, and it is proper when such a necessity arises that the power should be exercised by the general government. — But it certainly ought never to be exercised, but on the most urgent occasions, and then we should not borrow of foreigners if we could possibly avoid it. . . . **it would certainly have been a wise provision in this constitution, to have made it necessary that two-thirds of the members should assent to borrowing money** — when the necessity was indispensable, this assent would always be given, and in no other cause ought it to be.³²⁶

Yates’ suggested amendment was also proposed by New York and Rhode Island³²⁷, but was not sent by Congress to the other States for ratification — and, as Yates correctly forecast, America began to amass a huge National Debt,
a debt that in the latter half of this century reached colossal proportions — so large, in fact, that in 1988, 45 percent of each person’s individual income taxes went not to health care, not to education not to the arts, and not to research and development, but interest: or rather, to individuals and institutional investors predominantly located in America, but over time more likely to be located overseas. And how is this interest to be paid? In one of two ways: either through taxes or through inflation, a hidden tax, and a tax which hurts poor people and middle-income people disproportionately. The power to lavish money on local interests by locally elected officials, coupled with the power to borrow, is a structural formula for disaster. Establishing in the Constitution that if you spend, you must tax (with a moderate safety-valve for the rare circumstances when borrowing may be necessary that are significant enough to build both a two-thirds Congressional and National coalition), and that no less than three-fourths of the Americans must pay this tax, is the best way to insure that Government spending is kept to a minimum, and that such spending only goes for the most worthy proposals. It’s one thing to support “Star Wars” knowing that you won’t have to pay for it this year in taxes; it’s another to know that you will have to pay for it this year. Under the new system, the $640 dollar toilet seat will become a dinosaur. Will the People continue to support unnecessary animal research knowing that this year they will have to foot the bill, and that there is no need whatsoever for this spending? This scenario is highly unlikely. On the other hand, legitimate expenditures such as spending for education or necessary research and development will be seen in a different light. Every dollar spent will be evaluated in light of its necessity and desirability. But the days of outrageous waste and pork barrel spending, and spending on the unnecessary pet programs of special interests, will be gone for good under THE 21ST CENTURY CONSTITUTION.

Due to the structural limitation on spending through what will functionally amount to a prohibition on borrowing, we will cut interest payments entirely out of the budget, thus freeing more than 250 billion dollars a year in 1991 dollars for worthy Government programs and operations, or a reduction in taxes.

The Third and Fourth Clauses are unchanged, and continue Congress’ power to regulate commerce (i.e., environmental legislation, food and drug laws, etc.), and to regulate Naturalization and Bankruptcy.

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Article I, Section 9, Clauses 5-6
To coin Money, issue Currency in Paper or Coins or through electronic means, regulate the Value thereof, the domestic purchasing power thereof, and of foreign Coin, set the rates of exchange of foreign currency, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

The Fifth Clause acknowledges and certifies our present monetary system, and allows for the creation of a checkless and cashless society, a system which is technologically possible, and which is being partially implemented in certain areas of the United States. Of course, counterfeiting remains illegal.

**Article I, Section 9, Clause 7**

To establish and maintain a Postal Offices and post Roads; Service, whether conventional, electronic, or both, which is authorized to promulgate all those regulations consonant with its authority; however, no Postal Service Regulation may violate rights granted under this Constitution, including those rights designated in § A-115.

Under the Seventh Clause, Congress is empowered to create an Electronic Post Office. Under this system, each person will have an electronic address, and mail will be sent over telephone wires, thus reducing the hazards to the environment through the use of fossil fuels to transmit hard-copy mail (a/k/a “snail mail”), and the paper on which hard-copy mail is printed. Under the new system, letters will be transmitted instantly. Furthermore, one letter may be sent to thousands of people. For example, an organization of coin collectors could mail its newsletter to all of its members in one instant, and at a fraction of the cost of current postal rates. Or, a stereo manufacturer could send materials to all people who requested information on the topic the week before. Obviously, there must be certain restrictions on this right, and the People of the United States must be consulted and will be consulted when such restrictions are to be
made (since the restrictions are to be enumerated in Constitutional Supplement Section A). For example, there may be restrictions on electronic “junk mail” (e.g., a particular business may be entitled to send a generalized mailing only once per year to a designated number of people, and subsequent mailings only to those persons who have requested additional mailings).

This Clause alone will greatly increase the flow of information in an Information Society, by radically reducing the cost of transmitting that information, and will reduce the hazards to the environment which come from transporting information by truck or plane, when a telephone wire, fiber-optic cable or satellite can do the job far more quickly and efficiently. At the same time, the quality and integrity of the information transmitted will be maintained by reasonable regulations against the transmission of certain kinds of information (see Section Eleven of this Article).

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**Article I, Section 9, Clause 8**

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries designated in § B-120. Notwithstanding the provisions in § B-120, those authors and publishers who request copyright protection from the United States Government, shall, as a condition for the granting of copyright protection, consent to the distribution of their non-fiction material on the National Database as described under Section Eleven of this Article, provided that reasonable compensation is made therefore as mandated in § C-135;

The Eighth Clause re-establishes the right of copyright, patent, and trademark, but with a twist: publishers who request copyright protection from the Government must simultaneously grant the Government the right to post their non-fiction publications on the National Database, a National source of information. These publishers and authors must be compensated when Citizens “download” the information (i.e., transmit the information from the Government’s mainframe computers into the computers in their home), as provided under Section Eleven of this Article.
Article I, Section 9, Clauses 9-11

To implement Transportation, Energy, Health, Education, and Arts and Sciences policies, and other policies in the National Interest;

To regulate the right of the People to keep and bear arms;

To constitute Tribunals inferior to the supreme Court;

The Ninth Clause re-establishes Congress’ current power to set National Policies in important areas. The Tenth Clause is a revision of the Second Amendment, and indicates that the right of the People to keep and bear arms is a right that can be regulated by Congress. For example, Congress can declare that no convicted felons are allowed to own weapons after serving their prison terms, or that there must be a waiting-period before purchasing a handgun, or that the possession of certain weapons, such as AK-47s, bazookas, or hand grenades, may be outlawed entirely. The Eleventh Clause maintains the Congressional power to create various courts, such as Courts of Appeal, District Courts, Workman’s Compensation courts, and various bodies of arbitration.

Article I, Section 9

Clauses 12-13

To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

To declare War, pursuant to the guidelines in § A-120 grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water, which shall be designated in § A-125;
Under the Thirteenth Clause, Congress can declare war only under a set of circumstances approved by the People. Taken in conjunction with Article Two, Section Two, Clause One, the power of the President to commit American troops to military action is greatly curtailed, and the existence of debacles like Vietnam is thus made much less probable.

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**Article I, Section 9, Clause 14**

To raise and support Armies—**an Army, Navy, and Air Force**, but no Appropriation of Money to that Use shall be for a longer Term than two Years;—the number of years indicated in § A-130, and no military expenditures shall exceed one-twentieth of the Gross National Product, subject to the exceptions enumerated in § A-135;

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The Fourteenth Clause insures that the People of the United States will be able to control the military through Appropriations. Currently weapons systems are funded far in excess of the two years mandated by the Constitution, which takes control away from the Constitution and gives it to the military; because Congress *must* disobey the Constitution, the military can draw up its own “wish lists,” and the constitutional guidelines are forgotten. The Fourteenth Clause also limits military expenditures to no more than five percent of the Gross National Product, unless the People have approved exceptions (such as the inception of war, etc.).

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**Article I, Section 9 Clauses 15-18**

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;
To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; And

These Clauses extend the power of Congress to provide for military expenditures and author regulations, and provide for a seat of Government.

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Article I, Section 9
Clauses 19-20

To delegate its authority to legislate to the Executive Branch under the guidelines enumerated in § B-125, and to utilize the Legislative Veto, in whatever form, when the National Interest so requires;

To delegate its authority to legislate to the People in the National Initiative; and

In an extensive and complicated society, it is and will be impossible for Congress to pass each and every necessary law and regulation. Go to your local library and read through the Code of Federal Regulations, and ask yourself how a 1000 person Congress could ever have the time or expertise to pass the volume of legislation found in eight library-shelves worth of books. The fact of the matter is that Congress will not have the expertise, nor the time to pass such
regulations. Consequently, some Legislative power will have to be delegated to agencies such as the Federal Aviation Administration, the Food and Drug Administration, and the Federal Communications Commission, etc. Because of this Necessity Principle, Congress has unconstitutionally delegated their exclusive Legislative power (granted in Article One, Section One of the 1787 Constitution), without the alteration of the system of Checks and Balances required to lend legitimacy to this ratification. The Nineteenth Clause legitimizes the Delegation Doctrine, since new Checks and Balances have been placed into THE 21ST CENTURY CONSTITUTION, and reverses the Chadha decision by the Supreme Court, which held that while Congress could unconstitutionally delegate authority to legislate to the Executive Branch, it could not retain some measure of control over these agencies by empowering itself to veto regulations passed by them.329 The Nineteenth Clause gives a greater measure of control over an unelected bureaucracy to the People.

The Twentieth Clause gives Congress the power to allow the People to vote directly on certain critical issues, as provided under Section Ten of this Article.

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**Article I, Section 9, Clause 21**

To make all Constitutional Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof, and for securing the Objectives in the Preamble, the National Objectives specified in § C-1, and any rights granted under this Constitution.

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In the decision of *McCulloch v. Maryland*, 4 L. Ed. 579 (1819), Chief Justice John Marshall greatly expanded the power of Congress to legislate through his interpretation of the “Necessary and Proper” Clause. This Clause formalizes that interpretation.

The National Objectives are further discussed in Section Fifteen of this Section.
Article I, Section 10, Clauses 1-3

The Congress shall have the obligation to:

Establish and provide for a Federal Academy to educate future officials and Officers of Government in the curriculum that the People deem necessary or proper for securing the National Interest. Congress shall determine and set forth the curriculum of the Federal Academy in § C-205, and provide complete Academic Freedom for all tenured professors, who shall consist of one-fourth the Federal Academy faculty after the seven years immediately following Ratification of this Constitution, and every year thereafter, provided that tenure is limited to seven years;

Regulate admissions and all other requirements of the Federal Academy, which shall be designated in § C-210, provided that appointments to the Federal Academy be made on predominantly objective criteria such as grades and entrance examinations; that when nominees to the Federal Academy are being considered, their names shall be withheld from the Committee on Admissions, and that no Officer of Government shall be empowered to make personal recommendations for admissions to the Federal Academy; that the time required to serve in the Federal Academy be three years, and that the last year be clinical in nature, including, but not limited to, appointment as an Alternate; that the tuition for the Federal Academy be publicly funded, provided that the initial salaries of Federal Academy graduates who assume offices are reduced until parity for tuition received is achieved, and that two years of Government service be required for every year of attendance; and that the student body be proportionally represented with regard to sex, race, national origin, geographical dispersion, and other factors the Congress shall designate as the National Interest requires. The Federal Academy shall be located in the Capitol and shall be open to the Public, provided that courses are subject to no more than minimal disruption;
The Tenth Section lists the *obligations*, as opposed to the *powers* of Congress. Under this Section, the exercise of power by Congress is not discretionary — Congress *must* pass the legislation in this Section.

The Second and Third Clauses give the Congress as a whole the power to establish the Federal Academy and to provide regulations for the Federal Academy. Because the curriculum of the Federal Academy is designated in Section C-205, (see Section Fifteen, Clause One of this Article), the People of the United States retain the power to create the curriculum of the Federal Academy, if they desire to supplant Congress’ power to create this curriculum.

Some of the many courses that may be contained in this curriculum are *The Legislative Process* (exposure to the pitfalls of writing good legislation, correctly defining the problem to be solved, solving problems in the most cost-effective way, constructing alternative solutions, educating constituents as to the legitimacy of legislation, the art of compromise, calculating the cost of legislation, avoiding ambiguity, proper legislative form, etc.); *Negotiation* (learning basic negotiating techniques, such as separating the people from the problem, delineating issues, forging creative alternatives, etc.); *The Constitution* (analysis of the differences in the past and present Constitutions with an eye towards understanding how future improvements may be realized); *American History* (analyzing the key issues in American history, such as the American Revolution, the promulgation and ratification of the 1787 Constitution and the Civil War, as well as recurring themes throughout that history with a focus on the historical circumstances necessary for the full comprehension of future Legislative initiatives, such as revision of the tax code, environmental legislation, reduction of waste in Government, etc.); *International History* (with particular attention to the historical background of “hot areas” such as the Middle East, Russia and South America); *The Legislative Review Board* (learning how to calculate Ratings and determine proper Timetables, with extensive empirical experience); *The Judicial Process* (studying the civil and criminal justice system, and analyzing statistical data with an eye towards reforming injustices); *Social Problems* (learning about the causes of and potential solutions for contemporary horrors such as “crack babies,” child abuse, illiteracy, pollution, crime, violence, drug abuse, homelessness, etc.); and other important courses, such as economics and decisionmaking, and specialty areas like patent law, telecommunications, environmental law, research and development, education, and so forth.

Academic freedom is provided for tenured professors; however, tenured professors cannot consist of more or less than 25 percent of the faculty, and tenure can last only for seven years. This provision insures a measure of stability and freedom, while allowing evolution in the composition of the
faculty over time. The student must attend the Federal Academy for three years to graduate, and the last year will consist of hands-on experience in Government. To insure that poor people have the same chance to get into the Federal Academy as the wealthy, tuition will be publicly funded. This is not a “freebie,” however, since the tuition owed will be repaid to the Government in the form of lower salaries. So, for example, if the tuition owed to the Government after three years was $45,000, and if the salary of the Representative was to be $125,000 annually, that Representative would only receive $110,000 for the first three years, until the tuition was repaid.

The Federal Academy will consist of students who statistically represent a cross-section of the American people, insuring that no one demographic category will dominate, and will be open to the public.

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**Article I, Section 10, Clause 4**

Establish a Department of Rights Enforcement, which shall investigate and prosecute all violations of civil liberties granted under this Constitution by any individual, group of individuals, association, legal entity, or any official of any Government entity in the United States. The Department of Rights Enforcement shall be vested with all the powers necessary for securing its mandate, and shall be allocated all funds necessary for the faithful execution of its charter. The judgments of the Department shall be appealable to any State or Federal Court;

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Under the Empirical Constitution, the Government not only has the power to pass an unconstitutional law, but if it does pass such a law, and if you are convicted under that law, you must expend funds to attempt to get that law, and your conviction, overturned. This is an obvious violation of the Clause in the Fourteenth Amendment that each person receive the equal protection of the laws, since only the wealthy can afford to expend the time, money, and energy to fight laws of this nature, and endure prolonged legal battles of three years or more. The poor and middle-classes must submit, unless they are lucky enough to have their issue fit into the political agenda and budget of the ACLU or similar organizations.

Even worse, if the Government passes an unconstitutional law and enforces it, neither the Legislators nor enforcers are liable to any penalties under the
present Constitution(s), increasing the probability that unconstitutional legislation will pass. Under the Eighth Clause of this Section, Congress is obligated to provide penalties for violations, providing a necessary disincentive for the passage and enforcement of unconstitutional laws.

The Department of Rights Enforcement will enforce the penalties provided under the Eighth Clause. If, for example, a person is arrested for passing out leaflets in a park, that person need only report the arrest to the Department of Rights Enforcement. The Department will examine the arrest record and testimony of witnesses, and, if it decides that the arrest was unjustified, will fine the parties responsible. Police brutality, such as that which happened to Rodney King in Los Angeles, will become an extremely rare occurrence. Under THE 21ST CENTURY CONSTITUTION, violators of rights are violators of the law; in other words, criminals. As such, they will be treated as criminals.

Under THE 21ST CENTURY CONSTITUTION, rights will be enforced, and rights will be taken seriously.

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**Article I, Section 10, Clause 5**

Establish a Federal Elections Commission, which shall secure the integrity of the electoral process by passing those regulations necessary to secure limited, efficient, and impartial campaigns, and to insure discussion of all issues significant to the public interest; and to insure that all costs of electoral procedures shall be paid from public funds, and that there shall be no private contributions to candidates; nor any private expenditures on behalf of candidates; nor any private labor invested in behalf of candidates, unless the candidate is wholly unaware of the labor expended. No candidate for office may make any personal expenditures in behalf of his or her campaign. All communications franchises licensed by the Federal Government shall abide by the electoral regulations set forth in § C-140. All media shall make available advertising space for candidates at the lowest unit rate made available to commercial customers, as determined by the Senate, and shall observe all equal access regulations set forth in § C-145;
The Federal Elections Commission established under this Clause will insure that elections are fair, and the Commission will supplement and enforce the regulations established by the Senate. Private financing of elections is eliminated; no money from special interests (institutionalized bribery) is permitted. Because people sometimes work for political candidates in the hopes of getting a job later on, which allows for patronage or a “spoils system,” they are not allowed to inform the candidate they are working for his or her candidacy. If people want to work for candidates, they should work for the candidate because they believe in him or her, not because they want to be rewarded with a job if the candidate wins.

This Clause incorporates the Majority view that Representatives and Senators should have their campaigns paid for by the public. Private financing leads to enormous advantages for Incumbents, and prevents worthy challengers from competing on the same playing field. As former Senator Barry Goldwater asked in 1986,

> What are we doing? Are we saying that . . . only the people who have influential friends who have money can be in the Senate? We’re excluding a lot of young people that I think would make damn good additions to this body by not giving them access to money . . . .

As Senator Paul Wellstone (D-MI) stated on the floor of the Senate on May 22, 1991,

> There is no question in my mind that the people in this country would give public financing overwhelming support. . . . Money determines who gets to run. . . . Money determines who the gatekeepers are. . . . The system is wired for incumbents. I do not know why in the world, except for the fact there are so many incumbents here, why anybody would not want to have a level playing field to give challengers a chance. . . . All too many Senators and Representatives are accountable to not real constituencies, not the vast majority of people — that is, democracy — but to cash constituencies. That is an unpleasant truth.

The polls supported Senator Wellstone. Senator John Kerry (D-MA) reported on the same day that

Since 1973 through 1990, this was the question:

> It has been suggested that the Federal Government provide a fixed amount of money for the election campaigns of candidates for...
Congress and that all private contributions be prohibited. Do you think this is a good idea or a poor idea?’

From 1973 until 1990, the American people have never been less than 60 percent in affirmative answer to that question. Today the American people, 88 percent, say there is too much money influence in politics and they would like to have some kind of public funding involvement.332

Under this Clause, the media must sell advertising space to political candidates at the lowest rate they give to their best customers. Each candidate will get equal time. Elections will no longer be decided on the basis of which campaign is the best-financed, a system which puts complete political power in the hands of those most capable of financing political campaigns.

To prevent political campaigns of inordinate length, the Commission is also empowered to regulate their time frames (e.g., all campaigns for the office of Representative must be conducted within four weeks).

Article I, Section 10, Clauses 6-8

Pass Legislation implementing the National Objectives;

Pass Legislation regarding the Justiciability of Cases and Controversies under the Supreme Court’s jurisdiction;

Enact penalties for the violation of rights, and to pass those Laws necessary or proper for securing the rights granted under this Constitution, or by Law.

The National Objectives, established in Section Fifteen of this Article, are Objectives established by the People that must be implemented by Congress. If, for example, one of the National Objectives is “Reduce the illiteracy rate in the population to less than one percent by the year 2040,” Congress must pass legislation implementing that Objective. Congress has a whole arsenal of Legislative weapons at its disposal necessary for achieving the Objective, including tax credits for the purchase of books, distribution of books to children in elementary schools, remedial learning programs for adults, educational programs over the National Channel, etc.
The Seventh Clause of this Section eliminates the power of the Supreme Court to create the rules that determine the cases it hears. The current Constitution gives Congress the power to create these rules, but the Congress has been derelict in its duty. Consequently, a vast and unintended power has been transferred to the Supreme Court. This Clause restores the former balance to the Constitution.

The Eighth Clause obligates Congress to provide penalties for the infraction of rights to be levied by the Department of Rights Enforcement, and to pass laws necessary or proper for securing the rights granted under the Constitution, or by law. Without penalties for the violations of rights, the concept of a “right” is a meaningless one. According to Madison, “... a right implies a remedy...”\(^{333}\), and Hamilton stated in *Federalist 15* that

> It is essential to the idea of a law, that it be attended with a sanction; or, in other words, a penalty or punishment for disobedience. If there be no penalty annexed to disobedience, the resolutions or commands which pretend to be laws will, in fact, amount to nothing more than advice or recommendation.\(^{334}\)

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### Article I, Section 11, Clauses 1-2

The Right to an Education, and equality of educational opportunity to the greatest extent possible, is guaranteed to all Persons regardless of sex, race, national origin, religion, citizenship, financial status, and condition of disability. The United States may be sued for default of this guarantee, and the Department of Rights Enforcement is authorized to pass all regulations necessary or proper for securing this right. Notwithstanding the foregoing, the right of parents to provide for education of children in their homes shall not be infringed, provided such education meets the minimum standards required by law. Statistical data and results of cognitive tests, including tests of reading, writing, and reasoning skills, shall be utilized as evidence of the implementation of this right.

The Right to an Education shall consist, at minimum, of the following rights: the right to learn to read; the right to learn to write; the right to learn to reason; the right to development of the imagination; the right of access to bookstores and libraries; the

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right to hear others who wish to communicate their opinions, or communicate those facts which do not distort or deny objectively verifiable reality; the right of access to all unclassified information compiled by the Government not protected by the right of privacy; the right of access to the National Database; and the right to view the National Channel and reproduce its programming.

The portion of the First Amendment referring to the freedoms of speech and press reads as follows: “Congress shall make no law . . . abridging the freedom of speech, or of the press . . .” (emphasis supplied). While the simplicity of this Amendment is a virtue, it has proven to be unworkable. The First Amendment is framed in absolute terms; yet if observed, would lead to such absurdities as the abolition of laws against libel, slander, plagiarism, “snuff films,” the advocacy of Presidential assassination, child pornography, advertisements in the local paper for “hit men,” (since the Supreme Court has held that the First Amendment applies to State and Local Governments through the Fourteenth Amendment), and laws regulating commercial speech and broadcasting. Because these absurdities would result, the Supreme Court has re-written the First Amendment, and stated that it is “not absolute.” The problem is that it is absolute! Section Eleven incorporates many of the Supreme Court’s exceptions to the First Amendment, while at the same time overturning many rulings of the Court which have turned the First Amendment into a property right: freedom of the press, but freedom for those who own the press, to the exclusion of everybody else.335

The First and Second Clauses of this Section establish the framework for what is basically a new First Amendment in the area of Freedom of Speech. The First Clause declares that the Right to an Education is a right guaranteed to all persons residing in the United States. Before speech can take place, education must take place. Without education, a person can neither listen nor speak coherently. Since the foundation of speech is education, the Right to an Education comes first. The new approach centers the right on the receiver of information as opposed to the communicator of information, by indicating that the right of access to information is at least as important as the right to communicate that information.

The Right to an Education includes, but is not limited to, the right to learn how to read, write, reason, and think imaginatively. Without the ability to think logically, creatively, and/or analytically, a person can be captured by illogical and unsubstantiated conceptions. Logical fallacies are used today because they persuade. Once people have learned to ferret out logical fallacies, however, a very heavy risk will entail if the fallacies are used — namely, that the
credibility of the speaker will be severely damaged. Because people are currently untrained, there is currently no credibility penalty for the use of these fallacies. Education will alter the balance. The integrity of the information communicated will be preserved.

Under the Second Clause, people have the right of access to information compiled by the Government, which is only proper, since they have paid for the gathering of this information. There is an exception for classified information, but this exception, given the greater control by the People over the Government, will be less likely to be used in the future as is presently the case. In addition, people have the right of access to bookstores and libraries, which means that Congress is obligated to pass legislation insuring the existence of these two critical sources of information in local communities.

To preserve the free flow of worthwhile information, a right of access to the opinions of others is protected, as well as the right to hear others communicate facts, provided that the facts do not “distort or deny objectively verifiable reality.” For example, an oil company will be allowed to communicate that nuclear power is an option for our future energy requirements, provided that the oil company does not exclude the viability of solar power, if in fact solar power is also a viable option.

Article I, Section 11, Clauses 3-5

To secure the Right to an Education, the Senate shall maintain a National Database, which shall contain in electronic form the following: State and Federal Legislative history and enactments; State and Federal compilations of information, including, but not limited to, statistical data, census reports, charts, and reports of Administrative Agencies; State and Federal Judicial opinions; public domain material; all non-fiction copyrighted books, subject to the exceptions enumerated in § C-150; the full text of all the magazines and newspapers designated in § C-150; transcripts of specified television news programs; telephone directories; and results of the National Poll, voting records of Congress, all reports prepared by the Senate, certain materials submitted by the public at large, and any other materials designated in § C-150. Access to this database shall be provided via modems or other electronic retrieval or data-storage devices. Boolean logic or superior data-retrieval algorithms shall be established by Congress, and research
assistance shall be provided, if necessary or proper for securing the implementation of this right.

The rates for access to and downloads from the National Database shall be contained in § C-155, but these rates shall under no circumstances result in a net profit to publishers and authors less than that available to them through their primary markets. Congress may provide financial incentives to economically disadvantaged groups who wish to access the database, and may set separate rates for day, night, and weekend service. The National Database shall be financed exclusively from revenues accrued from services provided, provided that those revenues are sufficient to provide the level of service guaranteed in this Section.

The National Database shall operate twenty-four hours a day, and access is guaranteed to all Citizens of the United States.

A popular government, without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy; or perhaps both. Knowledge will forever govern ignorance; and a people who mean to be their own governors, must arm themselves with the power which knowledge gives.336

— James Madison, 1782

The right of access to information is worthless unless there is a means of accessing that information. In hundreds, if not thousands of towns across the Country, there are no bookstores. And of those towns with bookstores, few of these bookstores are of the quality and scope of those found in Boston, New York, San Francisco, Los Angeles, and Chicago. These bookstores, if found at all, are typically one to a town and generally stock bestsellers; but only a small percentage can afford to carry an extensive non-fiction back catalog, due to the lack of a substantive market. Many towns have libraries, but unless the town is a large one, the size of the library is necessarily limited. Consequently, the majority of the Citizens of the United States are cut off from substantive access to important sources of information.

The National Database dramatically solves this problem. To receive copyright protection, publishers must consent to the distribution of their nonfiction materials over the Database, which will operate as follows:
You are a person researching the Constitution. You access the database from your computer, and type (or say) the word “Constitution.” You are then given a list of books and articles with either the word “constitution” in the title, or in the text of the document, as you choose. Each book and article has a number. Suppose you want to read The Federalist. You type number 6 (the number that appeared by The Federalist), and within seconds the first page of The Federalist comes up on your screen. You then have three options: to restrict the search to only those paragraphs or pages of The Federalist which have a specific set of terms (for example, “bill of rights”), to read The Federalist screen by screen (“browsing”), or to download The Federalist into your computer for later study and printout. Boolean logic algorithms will allow the user to combine search terms using various connectors such as “and” and “or” (e.g., “find all paragraphs with the words ‘constitution’ AND ‘rights’”).

If you decide to read The Federalist while connected to the mainframe over 800 numbers or local interfaces (reading “online”), you will pay an hourly rate, which will vary depending on the day and/or time. Assume that the rate for access is $6.00 an hour. If you are interested in reading the entire book, you are better off downloading the book. Because the book is in the public domain, you will be billed only for the time it takes to download (i.e., bring the text of the book into your computer for later study or printout). The Federalist is a 1.3 megabyte file (1,300,000 bytes). If you can download information at 120K per minute, it will take a little over 10 minutes to bring the book into your computer. But the best is yet to come: upcoming technologies will shrink this time to mere seconds. Consequently, you will be able to purchase books of the size of The Federalist (that are in the public domain) for less than 10 cents. If a book is not in the public domain, the publishers and authors will need to be compensated for their efforts. However, the cost will still be substantially less than purchasing the book new, since the cost of printing the book has been eliminated.

Here the National Database solves many important problems at once. It allows for what will be a truly unbelievable Knowledge Explosion, since research will no longer be a tedious, and in some cases, impossible task. Businesses will be able to perform various research tasks at a fraction of the cost; schools will be able to give their students access to the world’s largest library, a library that is searchable by term; writers can write incredibly well-documented books; and the average Citizen will have instant access to a world of knowledge. At the same time, publishers and authors will receive compensation for their labors. Today people make photocopies of materials, and the money goes not to publishers and authors, but to the makers and owners of photocopying machines. Under the new system, money will flow to the producers of information. Greater reward means greater incentive to produce more information. Books that will never be written under the current system.
will flourish when the National Database is instituted, as information is compiled and organized in thousands of different ways. The National Database will have profound and far-reaching effects in our society, and will substantively change its nature for the better, since the average Citizen will be exposed to the level of knowledge, and beyond, accessible to any college student or professor in the United States. And, as a final bonus, it will enable the average Citizen to get a grasp on Government, since the whole world of information assembled by Government is literally at his or her fingertips. This lack of knowledge has handicapped the average Citizens in their interactions with Government. The failure of people to understand the working of Government and its laws has contributed to inequality. As Brennan (1982) put it:

This disparity between the words of the Constitution and the actually enforceable rights of the citizens contributes to the mystification of law. Those who know what the law is become the oracles of those who don’t know. There is a merger of law and authority. Instead of obedience to the law, people learn to obey the policemen, obey the judge, obey the computer-printed official-looking notice which comes in the mail.\textsuperscript{337}

And getting knowledge as to what one’s actual legal rights are is today financially prohibitive. As Whicker (1987) observed, “[b]eing informed is not cost-effective for voters without special political connections or personal links to politicians.”\textsuperscript{338} The National Database, by reducing the cost of acquiring information, greatly increases the probability that being informed will be cost-effective for voters — all voters.

The beauty of the National Database is that, in all likelihood, it will be a financially self-sustaining system, with the revenues required for operation received from the rates of access. If 1,000,000 people access the Database one hour a day (not unlikely, given the number of students, law firms, Government agencies, and businesses in the United States), and the rate averages $10.00 an hour (the daily rate will be higher than the evening rate), this will be $10,000,000 a day, or $3,600,000,000 a year to fund the Database, an amount which should be in excess of that required. Because the materials that will actually be contained on the Database are under the control of the Senate, the actual size of the Database will be as large or as small (within the limits of the Third Clause) as the American people want it to be.

As Thomas Jefferson wrote in 1786, “I think by far the most important bill in [the Virginia] code is that for the diffusion of knowledge among the people. No other sure foundation can be devised for the preservation of freedom, and happiness.”\textsuperscript{339} In the 21st Century, this foundation for progress will be more
necessary than it ever was. The National Database is the ultimate assurance that this critical goal will be achieved.

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**Article I, Section 11, Clause 6**

To secure the Right to an Education, Congress shall provide non-repetitive programming for the National Channel, which shall be archived after initial broadcast. Nine-tenths of the programming must be non-fictional, and all programming must serve a legitimate educational purpose. Programming shall include, but not be limited to, courses on reasoning skills, American History, legal research, parenting, social problems, traditional academic subjects, and matters of practical interest to the American People. One-half of the programming must reflect the Will of the People as determined by the June National Poll. The Senate may, at its discretion, use the National Channel between the hours of eight and eleven p.m. to disseminate newsworthy information, and to allow Citizens of the United States to communicate alternative points of view.

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The National Channel is the visual version of the National Database, and will become America’s National Video University. The National Channel will contain courses on various areas of interest, including: how to raise children; background history on certain problem regions in the world, such as the Middle East; social problems such as unnecessary animal research, pollution, and the Greenhouse effect; and courses in art appreciation, literacy, music, computer programming; health care, how to build a solar house, and many, many other topics, including traditional academic subjects. For less than $1 a month per person (an amount much less than the $200 a year most people pay for basic cable service), the People of the United States will have access to 8760 hours of varied and non-repetitive programming a year — *without commercials*! If a person videotapes only two hours of these programs, he or she will have received more than his or her money’s worth. For those who missed the programs the first time around, all broadcasts over the National Channel will be archived for future purchase.
The National Channel will also give Citizens of the United States the opportunity to sound off on a variety of topics important to them and which are not already extensively covered in the media, producing a very wide spectrum of communicated points of view.

Article I, Section 11, Clause 7

The Federal Government has a positive obligation to secure the right to communicate information, and to defend protected speakers against hostile audiences, and against the actions of individuals, groups of individuals, or legal entities; to insure that all points of view are allowed public expression, and to insure that all points of view critical to the public interest are provided equal time to the greatest extent possible; to provide Citizens with access to non-classified Government documents which do not violate the legitimate privacy rights of individuals; to discern the opinions of the Citizenry through use of the National Poll; and to take those actions necessary or proper for securing protected speech.

The Seventh Clause mandates that the Federal Government has an obligation to secure protected speech. With this obligation must come enforcement. Without enforcement, a right is not a right.

This Clause turns a negative responsibility (do no harm) into a positive responsibility (prevent others from doing harm). It obliterates the false distinction between acts and omissions, a distinction which has proved fatal to the preservation of our rights.

Article I, Section 11, Clauses 8-9

The Right to an Education being of paramount importance, the right to communicate information and have that information received shall be infringed only if necessary to secure the public
interest, and only under such regulations as set forth in this Constitution.

Government, in securing the right to communicate information and to have that information received, and while securing the public interest against the communication of any information violative of that interest, may not impose any prior restraint on any communication by institutionalized or informal censorship or coercion, with the exception of child pornography; nor abridge the freedom to publish books, other than for excessive obscenity and excessive violence as described in this Section; nor abrogate the right to distribute handbills on streets, nor picket, nor boycott; nor abridge the content of speech that is or can be objectively verified as true which serves to highlight or remediate undesirable social consequences or circumstances; nor abridge the right of individuals to determine who may send communications to their mailboxes, whether conventional or electronic; nor impose any other restriction designated in § A-140.

The Eighth Clause is the recognition in the Constitution that, since no right is absolute, the right to communicate information is not absolute. Managing the extent to which Government can manage the communication of information is one of the most important, delicate, and difficult areas of constitutional draftsmanship.

The Ninth Clause provides express limits on the manner in which Government may regulate unprotected speech. For example, the Government is not allowed to use the remedy of prior restraint. It cannot forbid the publishing of material (unless that material is child pornography). It can, however, punish publication after the fact. Governments can regulate the right to distribute handbills, picket, and boycott, but cannot ban those activities; nor are they empowered to regulate the content of true speech which serves to highlight or remediate undesirable social consequences or circumstances.

Under the Supreme Court’s ruling in U.S. v. Greenburgh Civic Assns., 453 U.S. 114 (1981), a Citizen is not empowered to allow other people to put materials in his or her mailbox without going through the U.S. Postal Service. This Clause reverses that decision, and gives control of the mailbox back to the Citizens.
Article I, Section 11, Clause 10

Governments are permitted to use against unprotected speech only the least restrictive, most efficient, and most appropriate remedies of the following listed, and in the following order, and only where necessary or proper for securing the foregoing rights or public interest: competing publication; equal access regulations; time, place, and manner restrictions, including licensing, if the foregoing restrictions are content-neutral and narrowly tailored to secure a compelling public interest; fines, if necessary or proper for preventing unprotected speech; taxes, if necessary or proper for preventing unprotected speech; and arrest, but only if absolutely necessary to prevent unprotected speech. Both public and private property typically open to the public shall be made available for the exercise of freedoms herein granted, subject to regulations serving a significant public interest, on the basis of unambiguous, non-discretionary, and reasonable time, place, and manner regulations.

The Eleventh Clause enumerates the kinds of speech that can be regulated, and the Tenth Clause indicates the means by which Government is empowered to regulate. First, the Government can regulate only unprotected speech, and must use the least restrictive method of regulating speech; for example, if the Government wishes to reduce the use of cigarettes, and decides that regulating cigarette advertisements is one way to achieve that goal, it must use the least restrictive remedy necessary for achieving the target. Banning cigarette advertisements entirely is prohibited; therefore, the Government must consider the use of competing publication as its first remedy. Under the remedy of competing publication, the Government would place a counter-ad saying “don’t smoke” for every ad the cigarette company placed. But this would be extremely expensive, obviously, and would therefore not be efficient. The next remedy would be to use equal access regulations; in every ad the cigarette company placed, a warning label would have to appear. If this did not work, Government could move to the next remedy: time, place, and manner restrictions. For example, only two cigarette ads per magazine, or one if necessary. If this did not work, Government could fine or tax the cigarette companies, to reduce the
quantity of the placement of ads. As a final remedy, the Government could arrest tobacco company executives if the executives did not comply with the prior remedies. In all probability, the remedies would not go beyond the time, place, and manner stage.

Thus, the Government may regulate certain kinds of speech, but how it achieves this regulation is itself highly regulated.

The final sentence in this Clause states that persons who own property that is typically open to the public may be asked to provide space for speech purposes. For example, individuals may pass out leaflets in malls, or in mall parking lots (this Clause thus reverses the Supreme Court’s decision to the contrary in *Lechmere v. National Labor Relations Board*, No. 90-970 (1992)). Again, the Government must use the least restrictive remedy necessary for achieving the goal of communication of information.

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**Article I, Section 11, Clause 11**

The right to communicate information is not an absolute right, and therefore Governments are entitled to regulate the following when the public interest so requires: malicious or defamatory speech which harms individuals and lacks significant redeeming social value; speech which knowingly or negligently omits, distorts, denies, or misstates, to the significant detriment of the public interest, those aspects of reality which have been or can be objectively verified as true; advocacy of unlawful conduct when significantly disruptive of the public interest; speech by political candidates or Citizens which, by denying or seriously distorting objective reality, disrupts the integrity of the electoral process; the right of the media to refuse the acceptance of political advertisements, where such refusal operates to the detriment of the public interest; speech which has a fundamental commercial purpose; speech transmitted at decibel levels higher than necessary for effective communication, and which breaches the public peace; broadcast media licensed to use public airwaves by the Federal Communications Commission; and sexual or violent conduct described or depicted in a patently offensive manner, and which lacks significant redeeming social value, as determined by the application of contemporary standards. The corruption of minors, by exposure to obscenity or excessive violence, shall be an
aggravating factor supporting the denial of freedoms granted under this Constitution. But no law proscribing pornography or violence, with the exception of child pornography or the excessive description or depiction of violence, shall be made that invades the personal right of privacy exercised in non-public places and by those who are not domiciling minors, other than regulation of television and other electronic media, whether transmitted by antenna, cable, satellite, or any other means. To maintain the integrity of the Judicial process, curtailments on those communications necessary to preserve fair trials may be authorized by law. Additional restrictions on and clarifications of the right to communicate information shall be enumerated in § A-145, provided that the provisions serve a compelling public interest.

The Eleventh Clause incorporates several of the exceptions the Supreme Court has written into the First Amendment. Under Clause Eleven, the right to communicate information does not include the right to lie, the right to deceive, the right to defame reputations, the right to tell others to break certain laws, the right to blare a message over loudspeakers that unreasonably infringes on the rights of others, nor the absolute and unfettered right to broadcast commercials, violence, or pornographic images over the airwaves. While the Supreme Court has ruled that the media has the right to refuse political advertisements, this Clause reverses those decisions, to secure the goal of providing access of the People to all legitimate points of view.

Article I, Section 11, Clause 12

To secure the right to communicate information, the Senate shall poll a statistically representative sample of not less than twelve hundred and no greater than thirty-six hundred People monthly on their opinions on various topics, including, but not limited to, their satisfaction with Governmental institutions and policies on a specific or general basis, or both. The results of the National Poll shall be considered evidence of the Will of the People of the United States. In June, the National Poll shall be conducted three times within a twenty-four hour period, once by the Government, and
twice by private concerns, and shall poll a total of ten thousand Citizens. If the result of any poll is discrepant by more than ten percentage points from the average of the other two polls on any question, the Senate shall conduct an investigation to determine the source of the discrepancy. The results of the foregoing three polls shall be averaged, and shall constitute the final result of the June National Poll. The June National Poll shall contain the following questions: “Should the President be recalled?” “Are you satisfied with the term for Representatives?” “Are you satisfied with the term for Senators?”, with “Yes,” “No,” or “Not Sure” being the only three responses. The June National Poll shall also be used to determine the National Objectives to be voted on in the General Election, nominations for the National Initiative and National Referendum, and programming for the National Channel.

The Twelfth Clause includes within the right to communicate information the right of the People to transmit their opinions to their politicians. Every month a statistically representative sample of the People will be asked their opinion on various topics; for example, which are the most significant problems facing the country, what event of the last month has disturbed you the most, how do you feel about the performance of the Legislative Review Board and the Federal Academy, what matters would you like the Senate to investigate, etc. The results of the National Poll will be considered evidence of the Will of the People.

The June National Poll is the most significant. In that Poll will be asked the three very critical questions enumerated. Because these questions are of the utmost importance, it will be necessary to insure that the results of the Poll are as accurate as possible. If only the Government conducted the Poll, and 67 percent of the People replied that the President should be recalled, there would be statistical room for doubt, and the credibility of the Poll would suffer with regard to this very critical issue. To insure the integrity of the polling process, the results will be averaged with the results of private concerns. In the event of discrepancies that are not statistically explainable, the Senate will conduct an investigation into the source of the discrepancies.
Article I, Section 12
Clauses 1-2

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are Citizens of the United States and of the State wherein they reside.

No State—Government shall make or enforce any law which shall abridge the privileges, or immunities, or rights of Citizens of the United States granted under this Constitution, or rights granted by the Laws of the United States, nor make or enforce any Law which is so imprecise or overbroad in its terms that it provides a pretext for arbitrary or discriminatory law enforcement, or uncertainty in the minds of persons of common intelligence as to the meaning of the Law and nature of the conduct prohibited, and which would have a chilling effect on the exercise of conduct not clearly proscribed; nor deny to any person within its jurisdiction the equal protection of the laws.

Section Twelve is the second part of the Bill of Rights incorporated into the Constitution.

The First and Second Clauses contain the essence of the very important Fourteenth Amendment, especially the very important Equal Protection Clause, with the addition of language against the use of vague terms in statutes (a violation which will inevitably lead to Equal Protection violations).
Article I, Section 12, Clauses 3-4

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

The *writ of habeas corpus* is a formal order requiring a person to be brought before a Judge or court to investigate the restraint of a person’s liberty.

A *bill of attainder* is a law which inflicts punishment without a Judicial trial. An *ex post facto law* is a retroactive law which punishes past behavior which was legal at the time it was performed. These Clauses formerly appeared in Article One, Section Nine, and have been transferred to this Section.
Article I, Section 12, Clause 5

No Congress shall make no law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The term “establishment” shall not be construed to prohibit those traditional prayers at the opening of Legislative sessions, which do not amount to religious endorsement or indoctrination; nor the authorization by State or Local Governments of a “moment of silence” in elementary school homerooms, provided that the moment of silence is not identified with any religion or religious concept; nor the voluntary recitation of the Pledge of Allegiance; nor the use of the phrase “In God We Trust” on money; nor those public displays and official proclamations recognizing the existence of certain religious or secular holidays falling in November and December, provided that those public displays promote religion only in an indirect and limited manner, and are confined to those traditional holidays. In time of war, conscientious objectors may substitute public service for military service. The grant of tax exemption to religious property shall be upheld, subject to those exemptions enumerated in § A-150, and provided those exemptions affect all religions equally. Income tax deductions for religious or secular educational institution tuition, and other education expenses available to all taxpayers, shall be allowable.

This Clause, formerly contained in the First Amendment, incorporates modifications to the Written Constitution subsequently made by the Supreme Court.

There are two issues that can sabotage a New Constitution, and religion is one of them. Consequently, the most controversial section of THE 21ST CENTURY CONSTITUTION will be the “moment of silence” provision. This provision has been added as a compromise between two opposing factions in the U.S. The “moment of silence” provision attempts to meet each of these groups halfway, and head off a potentially divisive struggle at the pass. The abstract nature of the Moment of Silence is its strength. While no religious
concept is allowed to be attached to this moment of silence, it nonetheless allows State Legislatures, if they desire, to pass it (for elementary school homerooms only). Given that students utter every day (when reciting the Pledge of Allegiance) the state-enforced belief that America is a Nation “under God,” the Moment of Silence is certainly a great deal more secular, and certainly more tolerable from the standpoint of an establishment of religion.

### Article I, Section 12, Clauses 6-7

The right of the People to peaceably assemble or associate shall be protected; however, membership in or collaboration with associations engaged in illegal advocacy or activity may carry the presumption of sharing in the association’s culpability where a member or collaborator possesses specific knowledge of such advocacy or activity, and a clear intent that the aims be reached or the activities be carried out. Associations engaged in unlawful advocacy or activity may be compelled to disclose the names of their members if such disclosure is essential to serve a substantial public interest.

The right of individuals to politically organize shall be protected, provided that no time or money expenditures, of individuals or groups, shall be made which violate any law or regulation pertaining to the integrity of the electoral process.

The Sixth Clause was formerly contained in the First Amendment, and protects legitimate law-abiding organizations, while allowing the law to break up unlawful organizations like mobs or gangs.  

Under the Seventh Clause, the People retain the right to organize politically. But no expenditures by private groups may be made in behalf of particular candidates running for Federal Office. The advertisements funded by these private expenditures have been demonstrated to be woefully lacking in informational integrity, partly due to the cost of transmitting information (there is not enough money to present every side of the story), and partly due to the inherent bias in human beings. To allow distorted information to be disseminated among the population is to circulate a cancer through the body politic, and reduce the probability that well-informed decisions will be made.
The net result is a society held hostage by ignorance and disinformation, a society doomed to pursue a wrong course of action throughout perpetuity.

### Article I, Section 12
#### Clauses 8-13

No nor shall any State deprive any person shall be deprived of life, liberty, or property, without due process of law.

The right of the People to be secure in their persons, houses, papers, and effects, against unreasonable searches, and seizures, electronic interception or recording of private communications, or other actions of Government designated in § A-155, 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, or the private communications and parties to be recorded. No search other than those enumerated in § B-130 shall ensue except under the authority of a valid warrant issued by a Judicial Officer, or unless there is informed consent of the individual who is the subject of the search and seizure, and provided that the individual has been fully informed of the right to withhold consent. The official conducting the search bears the burden of proving fully informed consent. Inadvertent discovery of illegal materials pursuant to the execution of a valid search warrant shall be held admissible in court, provided there are no other compelling reasons for the inadmissibility of such evidence, and subject to the exceptions enumerated in § B-135. Evidence derived from any unlawful intrusion shall be inadmissible in any Legislative, Executive, or Judicial proceeding.

In all criminal matters, all persons have the right to assistance by competent counsel from commencement of a custodial interrogation, during trial and appeal, and whenever they are subject to a deprivation of liberty. When arrested they shall be read the instruction of their rights as designated in § B-140, which shall include being informed of the right to consult with counsel.
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. In all criminal prosecutions, the accused shall enjoy the right to a speedy, fair, and public trial. The accused shall enjoy the right to a trial by an impartial jury, unless exceptions to the jury trial requirement have been enumerated in § A-160. All juries shall be impartial, shall consist of the number of persons designated in § A-165, and shall be derived from of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law. and to be. The accused has the right to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him or her; to the discovery of all the evidence possessed by the state; and to have compulsory process for obtaining witnesses in his or her favor. All accused persons shall be presumed innocent until proven guilty. Nor shall any– No person shall 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 him or herself. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and nor unusual nor disproportionate punishments inflicted, as defined in § B-145. The Congress shall have Power to declare the Punishment of Treason , but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

In Suits at common law -civil lawsuits, where the value in controversy shall exceed twenty dollars the amount designated in § B-150, or where the subject-matter of the controversy is that designated in § B-155, 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. The right of access to courts and arbitration proceedings is guaranteed to every person, and Congress shall assure access to courts and arbitration proceedings for financially disadvantaged litigants. Neither Court
nor transcript costs shall be required of those litigants unable to afford them.

Every crime shall be defined by statute; no person shall be arrested, tried, or convicted for violation of common law criminal offenses. Every civil wrong shall be defined by statute, and no person shall sue, be sued, or be suable for violations of the common law. This Clause shall become effective within seven years after Ratification.

Clauses Eight through Thirteen incorporate the remaining provisions of the Bill of Rights, with several important additions (some from Ladanyi’s codification of the Empirical Constitution).

The Ninth Clause gives the People the power to provide restrictions on the extent and kind of Government searches.

The Tenth Clause incorporates the right to counsel and Miranda rule into the Constitution. The Eleventh Clause adds the “innocent until proven guilty” language to our Constitution that does not currently appear there. It also prohibits disproportionate punishments (e.g., eight years for child abuse resulting in death, and a life sentence for possession of one and one-half pounds of cocaine). The National Poll may be used to determine disproportionality.

Since jury trials delay the process of justice, and can thus interfere with the “speedy trial” requirement, the Twelfth Clause gives the power to the People to decide which criminal and civil cases will be tried by jury, within limits. All Citizens are guaranteed access to the courts.

The Thirteenth Clause is extremely important. The current Judicial system allows for what is known as the “common law,” or Judge-made law. Under this system, law is made by Judges who render decisions in individual cases. These decisions then become what is known as precedent, or decisions that must be followed by future Judges. Because Judges are obliged to follow precedent, laws grow out of these decisions reached by Judges.

The important question is, why are Judges allowed to make law? Isn’t this a violation of the Principle of Separation of Powers? Simply put, yes. A Legislature certainly has the ability to pass a law allowing minors to void their contracts (a law written by Judges), and there is no evidence that “Judges” are inherently wiser than “Legislators.” Many, many factors have to be considered when writing a law, and Judges are poorly equipped for the task — Judges don’t conduct hearings, haven’t been educated for the responsibility, haven’t been supplied with the necessary staff and resources, and can only author “laws” on the basis of those individual cases which happen to come before
them. Due to the circumstances under which they are compelled to “legislate,”
y they are unable to consider the total picture — the interests of society as a
whole. This is not the way to write law.

Another onerous feature of the common law is that it is frequently difficult, if
not impossible, to determine what the law is! When laws are codified in
statutes, you simply go to the statute book, where you read that “contractual
clauses limiting the liability of landlords for their negligent acts are prohibited.”

With the common law, on the other hand, to find out what the law is you must
read cases. When you go to the casebooks, you often find two conflicting
“lines” of cases; one line which holds that such clauses are prohibited, and
another which allows their use. If you are about to sign a contract with a
clause like this, how do you know that the court will enforce your contract?
You don’t. According to Madison, “[l]aw is defined to be a rule of action;
but how can that be a rule, which is little known and less fixed?”

The common-law approach, needless to say, provides a never-ending source
of revenue for attorneys who are hired to write “briefs” (frequently anything
but), the essential purpose of which is to convince a Judge what the law is on a
particular issue. Unfortunately, sauce for the goose is a cost for the gander —
an unnecessary and unjust expense, since only those who can afford attorneys
can afford to convince a Judge that the law is on his or her side. The common
law system is a system which dovetails perfectly into a system which, yet again,
gives influence to the wealthy at the expense of the rest of society — and is
prohibited under THE 21ST CENTURY CONSTITUTION.

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**Article I, Section 12**

**Clauses 14 -17**

No nor shall private property shall be taken for public use without just
compensation, as defined in § B-145.

The right to travel shall not be infringed, subject to the exceptions
enumerated in § A-170.

The right to privacy shall not be abrogated. The rights to privacy
recognizable by the Government may be designated in § A-175.

Neither slavery nor involuntary servitude, except as a punishment for
crime whereof the party shall have been duly convicted, shall exist
within the United States, or any place subject to their jurisdiction.
Since the term “just compensation” is vague, provision for its definition is made in the Constitutional Supplement.

The Fifteenth and Sixteenth Clauses formally include rights that have been recognized by the Supreme Court, but which are not explicitly enumerated in the present Constitution. Under the Fifteenth Clause, the right to travel may only be infringed as Congress and the People may concur (for example, you cannot travel unless you first secure a passport).

The Sixteenth Clause recognizes a right of privacy. The extent to which this right of privacy is recognizable may be determined by Congress or established by the People and Congress in Constitutional Supplement Section A. It is under this Clause that any future legislation regarding that most divisive issue of all, abortion, will be decided. In all likelihood, the legislation passed by the Congress and/or the People will attempt to find some middle ground between the hard-line positions on both sides that a Majority of the People can live with. Note that the Clause is written in such a way as to favor neither the “pro-life” nor “pro-choice” position. Abortion is the second issue which can sabotage a New Constitution, and for that reason the chances of the word “abortion” appearing in any future Constitution are virtually nil.

Of course, slavery is prohibited.

Article I, Section 12
Clauses 18-19

Every Citizen of the United States is eligible to vote, provided that the Citizen does not claim the right to vote in any other state, territory, or country; is at least 18 years old on the date of the Election; is registered to vote at the time of the Election; and is not made ineligible due to mental incapacity or criminal activity, as regulated in § B-160.

Every person has the right to petition the government for a redress of grievances. Persons directly affected by any claimed breaches of this Section, or persons directly or indirectly affected with regard to those issues deemed of significant National Interest by a three-fifths Majority of the Citizens as determined in the National Poll, shall have standing to complain to the Department of Rights
Enforcement, or to request Judicial remedies in any State or Federal court.

Everyone in the United States who meets the qualifications in the Eighteenth Clause is eligible to vote; consequently, literacy tests, poll taxes and the like are unconstitutional. Congress retains its current power to regulate the voting rights of individuals confined in institutions and prisons.

The Nineteenth Clause addresses the issue of standing, which is addressed in our present Written Constitution. Under the First Amendment, the People have the right to “petition the government for a redress of grievances” (that is, they have “standing” to adjudicate their claim in court). Perhaps because of this language, Justice William O. Douglas stated in 1970 that

We have never ruled, I believe, that when the Federal Government takes a person by the neck and submits him to punishment, imprisonment, taxation, or to some ordeal, the complaining person may not be heard in court. The rationale . . . is that government cannot take life, liberty, or property of the individual and escape adjudication by the courts of the legality of its action.344

Perhaps, on these narrow facts (taking a person by the neck), Douglas is correct. This does not mean, however, that the Court has always taken seriously the right of the People in the First Amendment to “petition the government for a redress of grievances.” According to the Supreme Court, a person does not have standing to sue unless there is a direct and immediate personal injury to the person in question; that is, a person must have a requisite personal stake in the outcome of the case.345 But while on the surface this requirement may seem reasonable, it has led to dozens, if not hundreds, of extremely questionable decisions by the Supreme Court and lower courts. For example, in United States v. Richardson, 418 U.S. 166 (1974), the Court held that an average Citizen does not have standing to compel Congress to obey the Constitution! In that case, William B. Richardson, suing as a Federal taxpayer, claimed that Congress’ statutory refusal to disclose the expenditures of the CIA violated the requirement of Article One, Section Nine that “a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.” But the Court held that Richardson’s grievance was merely a “generalized grievance,” and not a specific injury to him.346 In other words, since every Citizen was hurt by the decision, no Citizen, including Richardson, would have the power to sue! The Court stated this even though in an earlier case, United States v. Scrap, 412 U.S. 669 (1973), it held that “[t]o deny
standing to persons who are in fact injured simply because many others are also
injured, would mean that the most injurious and widespread Government
actions could be questioned by nobody. We cannot accept that conclusion.”347
But the Court did accept that conclusion, as it continued to issue similarly
flawed decisions. Along the same lines of reasoning, the Court held that
Citizens did not have the standing to compel Congressmen to obey the
Incompatibility Clause in Article One, Section Six of the Constitution.348 But
the “direct and personal interest” requirement utilized by the Court was a
smokescreen, since it later refused to hear a case involving persons who most
definitely had a “direct and personal interest” in an outcome, Vietnam draftees
who sought to prevent their shipment overseas.349 The most obvious example
that the standing requirement has been used by the Court to evade deciding
significant issues (and thus letting the status quo stand) was reached in
Massachusetts v. Laird, 400 U.S. 886 (1970), where the court refused to allow
the State of Massachusetts to get a ruling on the constitutional ability or
inability of the Executive Power to send Massachusetts Citizens overseas to
engage in armed hostilities, without a congressional (and constitutional)
declaration of war. When even a State cannot be heard in our highest court, it
becomes clear, as Justice Douglas stated in his dissent to Schlesinger, that the
standing requirement “protects the status quo by reducing the challenges that
may be made to it and to its institutions. It greatly restricts the classes of
persons who may challenge administrative action.”350 Therefore, as long as the
Empirical Constitution (and the standing requirement contained within it) is
allowed to stand, there can be no liberty and justice for all in America.

Notwithstanding the above decisions, the Court has relaxed the requirement
when it has so desired. For example, in Craig v. Boren, 429 U.S. 190 (1976),
the Court held that a vendor of beer had standing to assert the constitutional
rights of males under the age of twenty-one against the laws prohibiting the sale
of beer to them.351 And in the area of the environment, the Court held in Sierra
Club v. Morton, 405 U.S. 727 (1972) that injury to “aesthetic and
environmental well-being” could constitute an injury in fact, so that persons
who use national forests would have standing. As the Court stated, “[a]esthetic
and environmental well-being, like economic well-being, are important
ingredients of the quality of life in our society, and the fact that particular
environmental interests are shared by the many rather than the few does not
make them less deserving of legal protection through the judicial process.”352 It
is this latter line of reasoning that is adopted in THE 21ST CENTURY
CONSTITUTION.

The relaxed standing requirement in the Nineteenth Clause gives private
Citizens the power to enforce the edicts of Government in those areas of
significant National Interest (not just the environment), in a variant of the
concept of “citizen arrest.” This is a right currently available to major law firms,
who will act as private “attorney’s general” in lucrative securities cases (in these cases law firms will seek out stockholders to get the standing requirement).

But securities law, as we have seen, is not the only area that requires enforcement of the law by private Citizens. A relaxed standing requirement is the People’s safeguard against runaway Government action, and a powerful means of insuring that the Constitution will be enforced. All persons directly affected by breaches of their constitutional rights will have standing to complain to the Department of Rights Enforcement. Citizens will not have to hire an attorney to enforce their rights. In addition, those persons indirectly affected by Section violations will also have standing, if that issue (or any other issue) is deemed of significant National Interest by a three-fifths Majority of the Citizens as determined in the National Poll. So, if sixty percent of the People (or over) believe that dumping toxic wastes into the river without a permit is of significant National Interest, any Citizen is empowered to sue that company on behalf of him or herself, and all other Citizens who are directly or indirectly affected.

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**Article I, Section 12**

**Clauses 20-21**

The enumeration in this Constitution of certain rights shall not be construed to deny or disparage others—other rights retained by the people—. The People of the United States may supplement this Section with additional rights, to be enumerated in § A-115, and to be duly incorporated in this Section as if set forth herein, provided that no right substantially diminishes any of the powers explicitly granted to the Federal, State, and Local Governments under this Constitution, or any rights explicitly granted to any person under this Constitution. 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.

**No right under this Constitution or under the laws of the United States may be violated by any individual or group of individuals.**
The Twentieth Clause incorporates the Ninth and Tenth Amendments of the Bill of Rights. The revision of this Clause insures that entities other than people may legitimately be seen as having rights (for example, deceased persons who make requests after their death, small businesses, political organizations, etc.). The People are free to add additional rights to the Constitution, provided that no right is articulated which substantially diminishes any of the powers explicitly granted to the Federal, State, and Local Governments under the Constitution, or violates any of the rights explicitly granted to any person under the Constitution.

The Twenty-First Clause is an important addition. Under the existing Bill of Rights, only the Government may not (in theory) deprive you of your rights; but there is no restriction on acts by individuals. Under THE 21ST CENTURY CONSTITUTION, a right is a right. No one may deprive you of your legitimate rights, regardless of their legal status. From the standpoint of THE 21ST CENTURY CONSTITUTION, a policeman or private Citizen who prevent you from passing out leaflets in a park are one and the same. Anyone who violates those rights explicitly enumerated in the Twelfth Section will have to pay a penalty if found guilty by the Department of Rights Enforcement.

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**Article I, Section 13, Clauses 1-2**

The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

No Tax or Duty shall be laid on Articles exported from any State, subject to the exceptions enumerated in § B-165.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.
Section Thirteen contains additional restrictions on the powers of the United States Government, formerly contained in Section Nine of the Written Constitution. The slavery clause is stricken, and the addition in the First Clause formally recognizes Supreme Court rewrites found in the Empirical Constitution.  

Article I, Section 13, Clause 3

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

The modifications to this Clause, found in Section Three, Clause Six of this Article, mandate that the People of the United States be given a Quarterly report of the financial status of the Nation, essential for preserving the Principle of Accountability.

Article I, Section 13, Clause 4

No Title of Nobility shall be granted by the United States or any State: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince or foreign State—individual, association of individuals, or Government, whether Domestic or Foreign.

The “title of nobility” Clause is essentially obsolete, but since one reason for this obsolescence is the existence of this Clause, it is retained. The second part of this Clause prevents the acceptance of gifts, and is an important foundation for future ethics legislation.
Article I, Section 14, Clauses 1-3

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; or emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Section Fourteen restricts the power of the States. The language is essentially the same as that appearing in the Written Constitution, although the language in the First Clause that is obsolete or repetitious has been stricken.

Article I, Section 15, Clauses 1-2

The People of the United States reserve to themselves the power to change the terms of Representatives and Senators, to designate public policy, and to propose, adopt, and repeal laws, including those provisions in Section C of the Constitutional Supplement subsequent to 200, as provided by this Article. The People also
reserve to themselves the power to remove from office the President of the United States.

The People have an inalienable right to change the terms of the Representatives and Senators as provided under this Constitution. If three-fifths of the participants in the June National Poll answer “No” to the questions regarding the term lengths of Representatives and Senators, the question or questions “Shall the term of the [Representatives/Senators] be [extended/reduced] to [one/two/four] years?” shall be placed on the ballot of the General Election, with the only two responses being “Yes” or “No.” If a three-fifths Majority of the Voters answer “Yes,” the new term shall be effective with that Election.

Section Fifteen contains the “direct democracy” provisions of THE 21ST CENTURY CONSTITUTION, and stipulates the precise nature of the Legislative Power of the People referred to in Article One, Section One. Over 25 States utilize one or more of these provisions in their State Constitutions, and THE 21ST CENTURY CONSTITUTION brings these to the Federal level, while creating three democracy provisions new to constitutional draftsmanship: Variable Term Lengths, the National Objective, and the Legislative Committee.

The Second Clause institutes the procedure for changing the term length of Representatives and Senators. Term length is one of the critical variables in a constitution, perhaps the most critical, and this Clause gives the People the opportunity to change the term lengths if they feel a change is necessary and/or desirable.

Under THE 21ST CENTURY CONSTITUTION, there are four combinations of term lengths:

Combination 1 (total 3 years)  
Representative One Year  
Senator Two Years

Combination 2 (total 4 years)  
Representative Two Years  
Senator Two Years

Combination 3 (total 5 years)  
Representative One Year  
Senator Four Years

Combination 4 (total 6 years)  
Representative Two Years  
Senator Four Years

The People are empowered to choose the term length combination that, in their opinion, is best for the country.
Note from BK, 8/21/98: Several passages in this Constitution could use some re-working, but this is among the most doubtful. Allowing the people to change the terms from 1 and 2 years to 2 and 4 years, when so much in the Constitution depends on the shorter term lengths as a check, I see now as a mistake.

If only a simple Majority were required to decide this issue, a 51 percent Majority could change the terms, and due to the variability of opinions in the population, the terms could conceivably alternate every two to four years, without any chance to gauge the effects of the term length on the operation of the Government. The three-fifths requirement insures that each term gets its day in the court of public opinion.

Article I, Section 15, Clause 3

The right of the People to designate public policy when the policy designated is in the National Interest is a preeminent right. To secure this right, the People shall determine not less than two and no more than five National Objectives annually, which may be expressed in specific or general terms, and which shall be nominated by Plurality vote in the National Poll, seconded by Plurality vote in the Primary Election, and determined by Majority vote in the General Election. No proposal shall be placed on the National Poll or ballot which relates to the appointment, qualifications, tenure, removal, or compensation of Judges; to the powers, jurisdiction, creation, or abolition of courts or any rules thereof; to the appropriation of money or the rates and form of taxes; or to the passage of unconstitutional Legislation. The National Objectives may be carried forth from year to year.

The Third Clause solves a critical problem. The People will have certain goals they would like to have implemented; however, there are times when it might be impractical for the People to propose specific legislation. For example, they may be united in their desire to see illiteracy eliminated, yet divided as to the method for attaining this goal. The National Objective allows People to specify a goal without requiring agreement on the means. Under the concept of the National Objective, the People determine the destination, and the Legislature takes them there.
The National Objective(s) may be framed in specific or general terms: “reduce unemployment,” “reduce unemployment by five percent,” “achieve a twenty-five percent reduction in heroin use by 2022,” “develop alternative fuels.” There is a very wide range of options open. The check on the power of the People is, of course, the Constitution itself.

Article I, Section 15, Clauses 4-7

The People of the United States have the right to propose Legislation to the House of Representatives, and to have that Legislation voted upon, provided that the proposed Legislation is not given an indefinite Timetable by the Legislative Review Board.

The Senate shall appoint a Federal Committee as provided under Section Three of this Article, which is empowered to annually recognize between one hundred and one thousand Legislative Committees, as provided by law in § C-160.

A Legislative Committee shall be established when not less than one thousand and no greater than ten thousand Citizens petition the Federal Committee, as provided by law in § C-165. Legislative Committees shall consist of all Citizens who have petitioned the Federal Committee for passage of a particular Bill, and the Legislative Committee shall research, discuss, and draft the proposed Legislation. Upon completion, the proposed Bill and all materials used to consider the Bill, including research and drafts, shall be submitted to the Legislative Review Board, which shall transmit the materials to the House of Representatives with their Evaluations. No Legislative Committee may be authorized which advocates the passage of any Bills which relate to the appointment, qualifications, tenure, removal, or compensation of Judges; to the powers, jurisdiction, creation, or abolition of courts or any rules thereof; to the appropriation of money or the rates and kind of taxes; or to the passage of unconstitutional Legislation.

If the Bill is voted upon, the Legislative Committee shall be dissolved by the Federal Committee. If the Bill is not voted upon, the Legislative Committee shall be dissolved at the discretion of the Federal Committee.
The third new democracy provision involves the proposal of legislation. Under the present Constitution, anyone may submit a draft of a particular piece of legislation to their Representative. The power to submit a piece of legislation, however, is not the power to have hearings held on that legislation, nor the power to have that legislation voted upon. Requests such as these are generally ignored (unless the constituent has an “in” other constituents don’t have). If a Representative does decide to sponsor the legislation it is sent to a committee, where it is either (generally) amended beyond all recognition, or simply contained. If the Bill does pass the House and Senate, it goes to a conference committee, where it is again subject to amendment. Note that there is nothing “democratic” about this process; to the contrary, the process is republican both in spirit and execution. The odds of a Citizen-proposed Bill emerging from this process unscathed are close to zero, even though the Bill were a model of prospective legislation.

The Legislative Committee System reduces the power of individual congresspeople and/or a Seniority System and/or a subcommittee chairman to “bottle up” legislation. Under THE 21ST CENTURY CONSTITUTION, any Bill that between 1,000 and 10,000 Citizens would like to have passed (and care enough to have passed that they will research and draft it) may be submitted to the Legislative Review Board, provided that the legislation does not advocate any legislation prohibited by the Constitution. The proposed Bill will be researched and drafted by these Citizens, and the initial judge of the quality of their legislation will be the Legislative Review Board — the ultimate judge, of course, will be the House of Representatives and possibly the Senate and President, who will either vote or not vote the legislation into law.

Here is one example of how this may work in the future. A group of parents are concerned with illiteracy, and begin to look for ways to solve the problem. Discussion takes place over a period of months over the Electronic Post Office. At some point, one person suggests a solution, called the Monthly Book Program for Elementary School Children. Under that proposal, each elementary school child would be given a book a month (for eight months). At an average cost of $1 per book (mass production will decrease manufacturing costs dramatically), and with 23 million elementary school children, the cost of the program would be less than $300,000,000 — an insignificant price to pay for the societal good it would do (if every person dropped a $1 bill into a hat, the program would be funded — to put it another way, if one B-2 bomber were scratched, the program would be funded for four years).

The initial group of parents decides that the idea is worth exploring. The message goes out over the Electronic Post Office, the National Database, the National Channel, or all three — “those people who are interested in forming a
committee to draft this particular legislation contact [the person designated the head of the committee].” 9,000 people reply that a) they think the proposal is an excellent idea, and b) they would be willing to work towards passage of the legislation. If the requisite number of people are interested, the Senate’s Federal Committee will form a Legislative Committee, provided that the maximum allowable number of Legislative Committees has not been exceeded.

The Citizens comprising the Legislative Committee on the Monthly Book Program for Elementary School Children will do their research over the National Database, gather testimony from experts, and discuss their proposals via the Electronic Post Office. After the Legislative Committee has researched the Bill, they will submit their final draft (along with all materials used to draft the legislation) to the Legislative Review Board, which will provide an Evaluation and a Timetable. Congress, at its option, may hold further hearings, but as with any piece of legislation they must vote on the Bill within the mandated time frame.

The Legislative Committee System can potentially save Congress a great deal of time and money, since much of the necessary legislative work of researching and draftsmanship will be done by volunteers, which will reduce the ultimate cost to Government (i.e., the taxpayers) of passing legislation.

Because there is an inherent limitation on the number of Legislative Committees that can be formed, the Senate has a perfectly legitimate reason to not allow the formulation of a committee whose Bill may not be in the National Interest. This structural limitation allows the Senate to legitimately filter out the inevitable poorly conceived proposals. Yet under no circumstances will less than 100 proposals be allowed, which deprives the Senate of total power to prevent the work of Legislative Committees, and the power of the People to propose legislation and to have that legislation voted upon.

If the Bill is voted upon, there is no reason to keep the Legislative Committee alive: in addition, there are other Legislative Committees which will have been waiting in line to form. If a Bill is given an indefinite Timetable, the Senate may, at its discretion, continue to recognize the Legislative Committee involved.
Article I, Section 15, Clause 8

The National Initiative establishes the power of the People of the United States to directly enact Legislation. The People shall determine not less than two and no more than five proposals for the National Initiative annually, which shall be nominated by Plurality vote in the National Poll, seconded by Plurality vote in the Primary Election, and determined by Majority vote in the General Election. No proposal shall be the subject of any Initiative if it relates to the appointment, qualifications, tenure, removal, or compensation of Judges; to the powers, jurisdiction, creation, or abolition of courts or any rules thereof; to the appropriation of money or the rates and form of taxes; or to the passage of unconstitutional Legislation. An Initiative approved by a Majority of the Voters shall be submitted to the Legislative Review Board for an Evaluation and signed into law by the President within thirty days after certification by the Senate.

Another way for the People to implement their Will is through a democratic device known as the Initiative. As of 1977, 21 States and the District of Columbia had adopted the Initiative, from South Dakota (1898) to Oklahoma (1907) to Massachusetts (1918) to Illinois (1970). This device provides for a direct vote by the People on a particular piece of legislation. Under the system of representative Government, only the men or women elected by voters determine the laws, and the only remedy for a voter who disapproved of his or her Representative’s vote on a particular piece of legislation is to vote for the opposition on Election Day. The problem with this method is that it forces the voter either to 1) become a single-issue voter or 2) to take the “bad” with the good. Under either of these scenarios, the voters must order their priorities. If the issue on which the voter disagrees is LESS SIGNIFICANT to that voter than other issues of greater significance on which the voter agrees, the voter is forced to cast his vote for a disliked candidate. Skillful politicians can hold society “hostage” by appealing to a Majority of the voters on certain “hot” sentiments like “being tough on crime” (and providing more funds for jails and stiffer penalties for crimes), while at the same time refusing to allocate funds that would obliterate crime at the source — not to mention the passage of more subtle and devious laws which are not in the interests of society, nor in the
interests of that person. In addition, it forces Legislators to take “safe” positions, or NO position at all, on potentially divisive issues. This has a potentially destabilizing effect on society, as Citizens are forced into vigilantist remedies when Government refuses to act. In matters such as these, where a Legislature has refused for political reasons to resolve the issue, the Judiciary has typically assumed jurisdiction.

Neither of these two alternatives are preferable. If the Legislators refuse to pass legislation, the status quo is maintained, and those upset with the status quo resort to extra-legal means to achieve their objectives, such as picketing, strikes, boycotts, and even bombings. The second alternative, legislation by the Judiciary, is slightly better, but because Supreme Court justices are (in effect) appointed for life, they aren’t obligated to be responsive to the constituents. Consequently, they can rule in favor of a proposal seen as valid by only forty percent, or for that matter, five percent, of the population. Sometimes this works for the better, and sometimes not, but the underlying problems are not solved. The net result is divisiveness, a divisiveness which can have a negative impact on the rights of others. Divisive issues are time-thieves, and time is a precious commodity in a society which moves as quickly as ours. Tangential to all discussions regarding rights is the collective right of the Citizenry to have every significant issue be placed on the public agenda. But this right is impossible when divisive issues dominate that agenda.

For example, imagine that in the decade of the 80’s not a day goes by without a Letter to the Editor, a news report, or some other manifestation of social unrest stemming from the issue of abortion. Imagine, impossible as it may seem, that Supreme Court candidates are selected or not selected predominantly with regard to their opinion on this, and only this, issue. All other issues have faded into the background, and a candidate who holds other opinions noxious to both abortion supporters and opponents may be selected; for example, this appointee may be against antitrust laws, against pollution laws, and against rights for victims. And both Mr. A and Ms. B, opponents on the abortion issue, may disagree with the appointee on all these other issues.

Thus, the Initiative is necessary not only for the obvious reason of helping to secure Majority preferences, but also because it helps to remove “wedge issues” from the Legislative process. Divisiveness is a potential tool in the hands of unscrupulous politicians, and by removing this tool from the politician’s arsenal, the Initiative helps to prevent this divisiveness.

The prevention of divisiveness is not the only reason to implement the process of initiative, however. Another of the chief arguments of proponents of the initiative is that it allows the People to circumvent corrupt or inept Legislatures, which not only improves the quality of legislation passed, but increases the speed with which legislation is passed. North Dakota farmer Lars
A. Ueland, a Republican disillusioned by the domination of his party by trusts and corporations, wrote that

When I first became familiar with the principles of the initiative and referendum I was impressed with a sense of their value. The more I study these principles the more I am convinced that they will furnish us the missing link — the means needed — to make popular self-government do its best. Programs and reforms will then come as fast as the people need them, as fast as these changes are safe — only when a majority of the people are behind them. I would rather have the complete initiative and referendum adopted in state and nation than the most ideal political party that could be made, put into power, if one or the other could be secured.355

An obvious objection presents itself, however. Couldn’t the Initiative be used by “the Majority” (or “the Minority,” for that matter) to achieve some sort of unconstitutional goal? The short answer is NO. Why not? Because the Eighth Clause is constituted to prevent the consideration of any unconstitutional Initiatives, which, by definition, are null and void. No unconstitutional Initiative will pass because no unconstitutional Initiatives will be allowed on the ballot by the Senate. The question then becomes, what Initiatives are unconstitutional? And the answer is, all those laws forbidden by Sections Eleven and Twelve of Article One, and the Constitutional Supplement. In addition, all Initiatives which are approved by the People shall receive an Evaluation by the Legislative Review Board; if the Evaluation is less than Zero, the Law need not be enforced by the Executive and Judicial Branches. This triple security (Senate approval, Constitutional restrictions, and Legislative Review Board Evaluation) virtually insures that no Initiatives will pass, or will be enforced, which do not have a proper respect for the rights of individuals.

But not everyone is for power to the People. Notwithstanding the foregoing, some will rehash the old arguments given against the Initiative (and democracy in general), and claim that it will be used as a tool by the poor and disenfranchised against the richest members of society. The facts, however, provide no evidence for this hypothesis. There have been hundreds of Initiatives considered by the States and Local municipalities, and such proposals have been virtually non-existent (unless tax reduction Bills are seen as “against the interests of the wealthy”). Other than the tax issue, few proposed Initiatives could be seen as infringing on private wealth. Here are some issues at the State level which have gone before the voters:

- taxing and spending limitations
- legalized gambling
• smoking in public places
• abolition of poll taxes
• establishment of the Nation’s first Presidential primary system
• campaign finance reform
• “sunshine” laws for Legislatures
• prohibition and antiprohibition measures
• drinking age
• nonbinding nuclear freeze resolutions
• land use
• environmental concerns (such as bottle deposits and regulation of toxic wastes)
• terms of office for State officials
• bans on leghold animal traps
• eliminating sales taxes on food purchases
• streamlining State Government practices
• passing “conflict-of-interest” statutes
• antipornography measures
• educational vouchers

Hardly the picture of a rabid, propertyless Majority seeking to confiscate the wealth of “the Minority.” Fears such as these have proven utterly groundless, and, in fact, sometimes the opposite is true: for example, in many of these Initiatives, such as California’s famous Proposition Thirteen, the wealth of “the” Minority (and “the” Majority) has been increased, through a reduction of property taxes.

That the above issues are the type which go before the voters is compelling evidence against one of the central premises arguing against a more democratic Constitution. And, in fact, anyone opposing a more democratic Constitution on the basis of confiscation of Minority wealth by “the Majority” must confront the reality of thousands of state-years of completely contrary experience, as well as one of the more curious ironies of our time — that much of the support for the democratic and progressive device of the Initiative comes from conservatives such as Jack Kemp, Barry Goldwater, Phil Gramm, Howard Jarvis, Patrick Buchanan, and Arthur Laffer, who in 1978 supported a movement to get a National Initiative adopted.

Once confronted with this strange reality (conservatives advocating progressive legislation) some critics of the Initiative then make the same argument from the opposite end of the political spectrum, which is that the Initiative will be used by “the Majority” to infringe on the rights of demographic Minorities, outside the realm of economic issues. Could this prediction be true? As it turns out, these fears are also groundless, as an examination of the above list shows. The issues cover a wide variety of
concerns, but few of them, if any, are aimed at the reduction of existing “Minority” rights (demographic or otherwise). Moreover, even in philosophically and/or demographically homogenous societies (an event which becomes increasingly less probable as the geographic area of legislation increases) it is difficult to predict how a predominantly conservative population, or a predominantly liberal population, will vote. As Cronin (1989) stated:

The initiative and referendum mechanisms are used by a variety of interest groups. Their diversity defies easy generalization, [and] it is ... nearly impossible to predict how voters in certain states and communities will vote. Voters in normally progressive California and Massachusetts have adopted major property tax reduction measures. Voters in normally conservative Alaska, Montana, and North Dakota voted to endorse the proposed mutual, verifiable nuclear freeze. Voters in normally progressive Oregon have approved the death penalty, while those in traditionally conservative Utah voted against banning pornographic programming on cable television. Liberal Oregon voted no on legalizing the growing of marijuana. Liberal California voted for the questionable “English only” initiative . . . . Voters have passed bottle bills in several states but defeated them elsewhere. Voters have streamlined and opened up the political process in a number of instances. Time and again they have endorsed a tougher criminal justice system and have given greater consideration to the rights of the victim. Voters in several states have defeated proposals to prohibit state-funded abortions, although this was approved by a slim majority in Colorado. Voters have approved state-run lotteries as a convenient means to raise revenues despite the view that it is apt to place a heavier burden on low- and moderate-income people. Voters have used the initiative to send a message to their national leaders that they want more arms control progress (although these measures failed in Arizona and South Dakota).358

In reality, the problem facing Minorities is not a directly democratic political system, nor in fact a representative one, but the lack of a strong bill of rights (framed as specifically as possible, with sanctions for violations) which prevents Legislators or constituents from passing anti-minority legislation in the areas of individual rights. In these cases, the “cure” (a purposefully inefficient and undemocratic Legislative System designed to ignore Majority Will) can not only be insufficient to cure the “disease,” but can even exacerbate existing problems by leading to “side effects” worse than “diseases” which never existed in the first place!
For those concerned with the most important right of all, the critical right of self-determination, it is important to note that there has traditionally been much public support for the Initiative. In 1977, Pollster Patrick Caddell’s survey firm, Cambridge Reports, Inc. found that America’s desire for a National Initiative was double that of the opposition:

Public Support for a National Initiative, 1977 (%) (n = 1500)

“Would you favor a Constitutional amendment, similar to the laws which 23 states already have, that would permit the citizens of the United States to place a proposed law on a national ballot by collecting a specified number of signatures on a petition and have that law take effect if approved by a majority of the nation’s voters at the next general election or not?”

<table>
<thead>
<tr>
<th>Yes</th>
<th>57</th>
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<tr>
<td>No</td>
<td>25</td>
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<tr>
<td>Not Sure</td>
<td>18</td>
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Of course, no National Initiative Amendment was forthcoming, since an amendment of that nature would not have served the interests of the people in charge of our Government. History has shown that an issue as important as this is too important to leave to the discretion of future Legislators. Thus, THE 21ST CENTURY CONSTITUTION includes this most critical amendment.

Article I, Section 15, Clause 9

The National Referendum establishes the power of the People of the United States to directly repeal or prevent the enactment of Legislation. The People shall determine not less than two and no more than five proposals for the National Referendum annually, which shall be nominated by Plurality vote in the National Poll, seconded by Plurality vote in the Primary Election, and determined by Majority vote in the General Election. No proposal shall be the subject of any Referendum if it relates to the appointment, qualifications, tenure, removal, or compensation of Judges; to the powers, jurisdiction, creation, or abolition of courts or any rules thereof; to the appropriation of money or any Legislation affecting taxes; or to the diminishment of the rights
and protections of any persons as enumerated in this Constitution, or provided by law. A Referendum approved by a Majority of the Voters shall be signed into law by the President within thirty days after certification by the Senate.

The Referendum instituted in THE 21ST CENTURY CONSTITUTION is essentially a “people’s veto,” and a final, limited check against the passage of Bills against the National Interest. If the Congress appropriates funds for a data network that only benefits large corporations, and not the general populace, the People can directly veto this legislation, if that measure is put on the ballot. The check on the People, besides the explicit prohibitions against various proposals that may legitimately be the subject of veto, is that the number of proposals for a Referendum may be limited to two annually, if the Senate so provides — a significant check, since hundreds of laws will be passed in any given year.

Article I, Section 15, Clause 10

The National Recall establishes the power of the People of the United States to remove the President of the United States from office. The Senate shall supervise the petition process, including certification of the required number of signatures, or other means as established in § C-170, and shall prepare a Recall petition in conventional or electronic form when two-thirds of the participants in the June National Poll answer “Yes” to the question regarding Presidential Recall. The issue of Recall shall be placed on the ballot of the General Election when the Recall petition contains not less than one-twentieth of the total number of all votes cast in the most recent Election, or not less than one-fourth of the total number of votes cast in the most recent Election if done by electronic means, as designated in § C-175. If the requirements are met, the question “Should the President be recalled?” shall be placed on the ballot of the next General Election, with “Yes” or “No” being the only two responses. If a Majority of the Voters answer “Yes,” the Vice President shall assume the position of President immediately upon verification of the returns of the General Election by the Senate, or no later than ten days after the General Election, as the law may provide. No Recall shall be
initiated within the first six months nor the last twelve months of the Presidential term, nor upon more than one occasion during that term.

As Jefferson observed in a letter to Judge Spencer Roane in 1819, the power of Impeachment provided in the 1787 Constitution was (and is) “not even a scarecrow.” Even during the Watergate episode (which nearly led to the Impeachment of President Nixon), an historical aberration made possible only because ex-President Nixon a) taped his conversations and b) was forced to make the tapes public, the House of Representatives refused to make Nixon’s secret bombing of Cambodia one of the Articles of Impeachment. The President’s vast Executive powers, and the need of individual Legislators to secure the President’s cooperation in running interference with the Executive Branch, makes his or her Impeachment and removal from office an extraordinarily unlikely eventuality.

The power of Recall, though a greater threat than Impeachment, will rarely be used, due to several safeguards against ill-considered Recall attempts:

- Two-thirds of the participants in the June National Poll must request a Recall petition.

- No less than one-twentieth or one-fourth of the voters (depending on the means utilized to fill out the Recall petition), as the Senate decides, must append their names to a written or electronic petition. The Senate has complete control over the Recall process, and will set the limit at a level that accords with the National Will and Interest.

- A Majority of the voters in the General Election must Recall the President.

- The time frame of Recall is limited to a two and one-half year window.

- Only one Recall attempt is allowed per term.

The Recall, not only a greater threat than the “scarecrow” of Impeachment, will also focus the attention of the President on public opinion, and not the opinions of the Legislative Branch, which of necessity will make him or her more responsive to the popular Will.
Article I, Section 15, Clause 11

The Senate shall publicize all Initiative, Referendum, or Recall measures referred to the Voters with statements for and against the measures so referred on the Electronic Post Office, the National Database, and over the National Channel.

This provision recognizes the obvious obligation of publicity for the foregoing measures.
Article II
The Executive Power

Article II, Section 1, Clause 1

The executive Powers as granted herein shall be vested in a President of the United States of America. He—The President and Vice President shall hold his—their Offices during the Term of four Years, and, together with the Vice President chosen for the same Term, be elected, as follows: shall be elected by Majority vote of the People of the United States in the General Election. The terms of the President and Vice President shall end at noon on the twentieth day of January.

Under the political theory of the Framers, the President was to have limited powers—in other words, the President was not to have the extensive powers of a Monarch. But the Presidency of today has changed dramatically. How dramatically may be seen when we compare the powers of the President described in Federalist 69 by Hamilton with the powers of the President today. For example, under the 1787 Constitution the President was not able to declare war:

The President is to be Commander in chief of the army and navy of the United States. In this respect his authority would be nominally the same with that of the King of Great-Britain, but in substance much inferior to it. It would amount to nothing more than the supreme command and direction of the military and naval forces, as first General and Admiral of the confederacy; while that of the British King extends to the declaring of war . . . .362

However, as history has demonstrated, the President has been able to take many actions leading to war, up to and including the ability to wage “covert operations” against foreign Governments. And there is no significant check in the Written (or Empirical) Constitution against this usurpation of power, as the failure of the House of Representatives to impeach President Nixon for the
secret bombing of Cambodia clearly shows. Theoretically the President was not above the law; according to Hamilton, “The President . . . would be amenable to personal punishment and disgrace: the [King] is sacred and inviolable.” But no President has been removed from office by the process of Impeachment, no matter how scandal-ridden his administration (in our own time, the Iran/Contra affair, the BCCI scandal, and the “October Surprise” situation have created potentially impeachable offenses, with no formal action against the President).

Supposedly, the President’s veto power was limited: “The [President] would have a qualified negative upon the acts of the legislative body: the [King] has an absolute negative.” The Framers of our Constitution were dead set against giving the Executive an absolute negative. Benjamin Franklin, one of the Delegates from Pennsylvania, had argued against the absolute veto, stating that “[n]o good law whatever could be passed without a private bargain with [the President].” Roger Sherman, the Connecticut Delegate who authored the “Great Compromise,” was “agst. enabling any one man to stop the will of the whole.” According to Sherman, “[n]o one man could be found so far above all the rest in wisdom.” Gunning Bedford, a delegate from Delaware, stated unequivocally that “[t]he Representatives of the People were the best judges of what was for their interest, and ought to be under no external controul whatever.” But it was Mason who made the most vociferous attack:

The probable abuses of a negative had been well explained by Dr. F as proved by experience, the best of all tests. Will not the same door be opened here. The Executive may refuse its assent to necessary measures till new appointments shall be referred to him . . . We are Mr. Chairman going very far in this business. We are not indeed constituting a British Government, but a more dangerous monarchy, an elective one.

Thus, when the Framers cast their June 4, 1787 vote on the issue, the vote was zero States for, ten against. Yet as history has developed, the present Monarch of England, the Queen, vetoes no act of the Legislature (she would dare not), while in our country the President has vetoed legislation 2497 times — with 96 percent of those vetoes upheld! Today, Presidential veto threats are an omnipresent part of the American political scene. The President’s veto is not “absolute,” but it is close enough. The threat of a veto which has so much “sticking power” is that the Executive can wield the veto as a club, and force changes in legislation by Congress, a power which Madison referred to on September 12 at the Federal Convention as a “danger,” and which South Carolina Delegate Charles Pinckney called “dangerous.” North Carolina Delegate Hugh Williamson, arguing against a three-fourths veto override
requirement, said it would put “too much in the power of the President,” since a three-fourths requirement would produce an absolute or near-absolute veto power. But the two-thirds requirement has also produced this effect, and the net result of the “sticking-power” of the veto, as predicted, has been a dangerous transfer of power from the Legislative to the Executive Branch.

The President was to have no power to make agreements with other Nations (“treaties”), without the consent of the Senate: “The [President] would have a concurrent power with a branch of the Legislature in the formation of treaties: the [King is] the sole possessor of the power of making treaties.” Yet under the Principle of the Executive Agreement, Presidents have evaded the constitutional requirement the old-fashioned way — via semantic subterfuge. Ostensibly, there are distinctions between the treaty and the Executive Agreement, and the State Department has even fashioned a set of guidelines to differentiate between the two, but as Pyle and Pious (1984) reported,

In practice, none of these textbook distinctions have withstood the demands of political expediency. Between 1789 and 1939, over 1,300 agreements were concluded with foreign countries without the consent of the Senate. Between 1946 and 1971, the United States entered into 361 treaties and 5,559 executive agreements. Of the 4,359 agreements in force in 1972 . . . 400 of these involved major commitments and de facto alliances with other nations. . . . Executive agreements have dealt with grave issues of national importance. For example, the Rush-Bagot Agreement of 1817 disarmed the Great Lakes. The Root-Takahira and Lansing-Ishii agreements established American policy toward the Far East for decades, while the ‘Gentleman’s Agreement’ of 1907 limited Japanese immigration into the United States. . . . McKinley contributed troops to protect Western legations in China from the Boxer Rebellion. In addition to the Lend-Lease Agreement, Roosevelt made executive agreements with Churchill and Stalin that helped to reshape world politics after the Second World War. Truman followed suit.

The President’s new monarchical power developed over the years as the creation of a party system led to patronage power, a power the President was not supposed to have: “The [President] would have a like concurrent authority in appointing to offices; the [King is] the sole author of all appointments.” Yet the constitutional safeguard supposedly existing against this power proved to be a toothless watchdog. Consider this excerpt from the Guide to Congress:

[President Eisenhower’s] patronage dispenser, Postmaster General Arthur Summerfield, frequently set up shop in the office of House
Minority Leader Charles A. Halleck, R-Ind. (1935-69), and berated Republican representatives who broke party ranks. Insurgents were warned that key jobs such as postmasterships might be cut back unless they got behind the president’s program . . . .

[C]lever use of patronage swayed votes on several key bills . . . .

According to Nelson W. Polsby, a president can use this power ‘to reward and punish congressional friends and foes quite vigorously. . . . Small Business Administration and Area Redevelopment Administration loans to certain areas may get more and more difficult to obtain, as applications fail to qualify. Pilot programs and demonstration projects may be funneled here rather than there. Defense contracts and public works may be accelerated in some areas, retarded in others.”375

Supposedly, the President was to have no power under the Constitution to confer privileges on anybody or anything. As Hamilton wrote, “The [President] can infer no privileges whatever . . . .”376 But as a Senate Select Committee reported in 1826,

It is no longer true that the President . . . will be limited, as supposed in the Federalist, to the inconsiderable number of places which may become vacant by the ordinary casualties of deaths and resignations; on the contrary, he may now draw, for that purpose, upon the entire fund of Executive patronage. Construction and legislation have accomplished this change. In the very first year of the constitution, a construction was put upon that instrument which enabled the President to create as many vacancies as he pleased, and at any moment that he thought proper. This was effected by yielding to him the kingly prerogative of dismissing officers without the formality of a trial. The authors of the Federalist had not foreseen this construction; so far from it, they had asserted the contrary, and arguing logically from the premises, “that the dismissing power was appurtenant to the appointing power,” they had maintained, in No. 77 of that standard work, that, as the consent of the Senate was necessary to the appointment of an officer, so the consent of the same body would be equally necessary to his dismissal from office. But this construction was overruled by the first Congress which was formed under the constitution; the power of dismissal from office was abandoned to the President alone, and, with the acquisition of this prerogative, the power and patronage of the Presidential office was instantly increased to an indefinite extent, and the argument of the Federalist against the capacity of the President to corrupt the members of Congress, founded upon the small number of places which he could use for that purpose, was totally overthrown. So
much for construction . . . this single act, by vacating almost the entire civil list once in every period of a Presidential term of service, places more offices at the command of the President than were known to the constitution at the time of its adoption, and is, of itself, again sufficient to overthrow the whole of the argument which was used in the Federalist.\textsuperscript{377}

The President, contrary to Hamilton’s assertion, \textit{has} been able to confer privileges through the use of this patronage power, and, in fact, has been able to make appointments to Branches of Government which were not even contemplated by the Framers, through the Delegation Doctrine.

This latter observation leads us to the next violation of the theory of the Framers: \textit{“The [President] can prescribe no rules concerning the commerce or currency of the nation: the [King] is in several respects the arbiter of commerce . . . .”}\textsuperscript{378} Yet the rise of the Administrative Branches, as we saw in Chapter One, has resulted in a huge transfer of power to the President, as rulemaking officials beholden to the President for their positions carry out his wishes (or the wishes of the special interests who have put the President in office). As Pyle and Pious (1984) reported,

In the ‘Constitutional Revolution of 1937’ the Supreme Court gave up its resistance to the creation of large bureaucracies with the power to make policy through the issuance of rules and regulations. These executive-made policies, which have the force of law, are published first in the \textit{Federal Register} and then collected and republished topically in the \textit{Code of Federal Regulations}. The \textit{Code of Federal Regulations} today is many times larger than the \textit{United States Code} of federal statutes.\textsuperscript{379}

In light of these developments, Hamilton’s summation is truly ironic:

\textbf{What answer shall we give to those who would persuade us that things so unlike resemble each other? The same that ought to be given to those who tell us that a government, the whole power of which would be in the hands of the elective and periodical servants of the people, is an aristocracy, a monarchy, and a despotism.}\textsuperscript{380}

An aristocracy — a monarchy — a despotism. These would be the consequences if the safeguards in the Constitution against excessive Executive power were ignored. As Mason stated on June 4 at the Federal Convention, “[i]f strong and extensive powers are vested in the Executive . . . the government will of course degenerate (for I will call it degeneracy) into a monarchy — a government so contrary to the genius of the people that they will reject even the
appearance of it." But degeneracy into a variant of monarchical power was inevitable, since there were no safeguards against this eventuality written into the Constitution. As Cooke (1983) noted,

Notice the difference in language between [Article Two, Section One, Clause One] and the first clause of the legislative Article. Compare ‘the executive power shall be vested in a President’ with ‘all legislative power herein granted shall be vested in a Congress.’ The executive power is not modified or confined to only those specific powers which follow. This means that the President possesses vast and general powers which have never been defined in the Constitution.  

Hamilton obviously disagreed with this interpretation, as the excerpts from Federalist 69 conclusively demonstrate, but there was no mechanism in the Constitution to prevent this interpretation from predominating. And that this interpretation has been given the greatest weight is a Separation of Powers violation that must be addressed.

The revised power of the Legislature in Article One of THE 21ST CENTURY CONSTITUTION addresses the imbalance of power that has resulted over the years. And, in subsequent Sections, some of the Presidential powers have been reduced. The addition of the “as granted herein” language binds the Executive power in the same way the Legislative power is bound.

This Clause abolishes the Electoral College, an unnecessary and undemocratic device (the archaic language describing the process [itself overruled by the Twelfth Amendment] may be found in copies of the Constitution, and is omitted here for reasons of brevity). Under the Electoral College System, it is theoretically possible that a future President would have a Majority of the popular vote, yet not be elected. This is undemocratic in spirit, as well as a violation of the central paradigms used to create THE 21ST CENTURY CONSTITUTION, and is thus eliminated.

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**Article II, Section 1, Clause 2**

*Every Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Offices of President and Vice President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Citizen and Resident within of the United States, and who shall be without formal affiliation with any political party; but no person shall be*
elected to the office of the President more than twice, and no person who has held the office of President, or acted as President for more than two years of a term to which some other person was elected President, shall be elected to the office of the President more than once.

The addition eliminates the “natural-born” requirement, which could conceivably be interpreted to mean that a child born of American parents overseas could not be President.

There is no Federal Academy graduation requirement to be President, although half the nominees for the office of President must be Federal Academy graduates.

The Second Clause also incorporates the Term Limitation provision of the Twenty-Second Amendment.

**Article II, Section 1, Clauses 3-9**

If, at the time fixed for the beginning of the term of the President, the President-elect shall have died, the Vice President-elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President-elect shall have failed to qualify, then the Vice President-elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President-elect nor a Vice President-elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.
In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

In case of the removal of the President from office or of his or her death or resignation, the Vice President shall become President.

Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a Majority vote of both Houses of Congress.

Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his or her written declaration that he or she is unable to discharge the powers and duties of his office, and until he or she transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

Whenever the Vice President and a Majority of either the principal Officers of the Executive departments or of such other body as Congress may by law provide in § C-215, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of the office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his or her written declaration that no inability exists, he or she shall resume the powers and duties of the office unless the Vice President and a Majority of either the principal Officers of the Executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is
unable to discharge the powers and duties of the office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of the office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of the office.

This Clause formally incorporates the Twentieth and Twenty-Fifth Amendments into the Constitution, with minor modifications.

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**Article II, Section 1**

**Clauses 10-11**

The President shall, at stated Times, receive for his or her Services, a Compensation, the value of which shall neither be increased nor diminished during the Period for which he or she shall have been elected, and he or she shall not receive within that Period any other Emolument from the United States, or any of them.

Before he or she enter on the Execution of his or her Office, he or she shall take the following Oath or Affirmation: — “I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.”

Many other countries have had female heads of state, to their credit. The People of America, however, have not had the opportunity to vote for a female Presidential candidate in the General Election. The additions to this Section acknowledge the reality that under THE 21ST CENTURY CONSTITUTION,
the election of a female President will (and should) become a far likelier eventuality than is presently the case.

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**Article II, Section 2, Clauses 1-3**

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States, **but shall have no power to declare war or to commit troops in any advisory or military capacity without the authorization of Congress, as regulated under the provisions set forth in § A-120. The President** may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and **he shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.**

**The President** shall have Power, by and with the Advice and Consent of the Senate, to make Treaties **and Executive Agreements**, provided two thirds a **Majority** of the Senators present concur; and **he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law, provided a Majority of the Senators concur: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.**

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

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The new language in THE 21ST CENTURY CONSTITUTION (mandating the creation of a War Powers Resolution ratified by the People) makes absolutely clear that the President has no power to declare war unless both
Congress and the People approve. By requiring the approval of the People, it decreases the probability that there will be military interventions in foreign countries, since it is the People at large who a) finance the wars and b) fight them.

The Second and Third Clauses retain the power of the President to make treaties and to nominate various officials, and to fill vacancies with temporary appointments. Executive Agreements must now be ratified by the Senate.

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**Article II, Section 3, Clauses 1-2**

*The President* shall from time to time give annually to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers. *The President* shall take Care that *faithfully execute* the Constitutional Laws be faithfully executed to the best of his or her ability, and shall Commission all the Officers of the United States.

Neither the President nor any officer of the Executive Branch is empowered to disregard any Clause of this Constitution, nor enforce any law he or she legitimately deems as unconstitutional. An Evaluation of Zero or less on any Legislation may be considered evidence of unconstitutionality.

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There are five substantive changes to the Clauses in the Third Section of Article Two. The first addition formalizes the annual State of the Union message. The second addition removes the power of the President to propose legislation to Congress, a provision which has blurred the Separation of Powers by, once again, transferring a substantial amount of Legislative power to the Executive Branch. Under THE 21ST CENTURY CONSTITUTION, the President has no power to propose the passage of *any* legislation to Congress.

The third addition provides that the President shall “faithfully execute Constitutional Laws to the best of his or her ability,” since the language “take
care” in the Written Constitution is obviously not strong enough (see Chapter One). The language “shall be responsible for the faithful execution of the laws” would possibly be desirable, but for the fact that a strictly observed constitution would hold the President responsible for every inaction of the Executive Branch, and might result in an endless series of Recall attempts.

The fourth addition strikes language that may reasonably be construed to be inconsistent with the Second Clause in the previous Section (“the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments . . .”, vs. “[The President] shall Commission all the Officers of the United States.”).

The fifth addition states that neither the President nor any officer of the Executive Branch has the power to enforce any laws he or she believes to be unconstitutional (and Evaluations of Zero or less may be considered evidence of unconstitutionality).
Article III
The Judicial Power

Article III, Section 1

The judicial Powers of the United States as granted herein shall be vested in one supreme Court, which shall consist of Nine Judges without formal affiliation with any political party who are representative of the population to the greatest extent possible with regard to sex, race, national origin, and age as established in § B-170, and in such inferior Courts as the Congress may from time to time ordain and shall establish, which shall consist of Judges without formal affiliation with any political party, and who are in their totality equally representative of the population to the greatest extent possible. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour for Nine Years, and shall at stated Times receive for their Services, a Compensation, the value of which shall not be diminished during their Continuance in Office. The terms of the Supreme Court shall be staggered such that one Judge is appointed and one Judge leaves the Court every year, subject to the exception of vacancy, as Congress shall by law direct.

The Supreme Court under THE 21ST CENTURY CONSTITUTION formally consists of nine Judges, preventing court-packing schemes. The Federal Judges must be representative of the population with regard to the enumerated demographic categories; if a person has a right to a “jury of his (or her) peers,” then that person should have a proportional opportunity to have a Judge of his (or her) peers.

The terms of the Supreme Court are staggered; every year one Judge leaves, and one Judge is appointed, unless there are vacancies, in which case more than one Judge would be appointed in a particular year. This allows for gradual change that insures balance over time, with a majority of the court changing every five years, preventing not only radical changes in Judicial philosophy, but also the power erroneous Judicial philosophies (such as the Lochner doctrine) have to persist for decades.
Article III, Section 2, Clauses 1-2

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; — to all Cases affecting Ambassadors, other public Ministers and Consuls; — to all Cases of admiralty and maritime Jurisdiction; — to Controversies to which the United States shall be a Party; — to Controversies between two or more States; — between a State and Citizens of another State — between Citizens of different States, — between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects, and all other cases designated in § B-175. The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or subjects of any foreign state.

In all certain Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned—, the supreme Court and inferior Courts shall have appellate and original Jurisdiction, both as to Law and Fact, with such Exceptions, and only under such Regulations as the Congress shall have the exclusive power and obligation to make.

The First Clause incorporates the Eleventh Amendment to the 1787 Constitution. The Second Clause contains one of the most important additions to the Written Constitution. Under the 1787 Constitution, Congress has the obligation to create rules for the Supreme Court’s appellate jurisdiction (that is, which cases on appeal from the lower courts the Supreme Court will be allowed to review). However, over the years the Supreme Court has created its own rules for hearing cases, and Congress has basically allowed the court free rein. Some of the rules are as follows:
1) the court will not issue “advisory opinions”;

2) the plaintiff must have “standing”;

3) the lawsuit must not be “moot” due to events which have occurred following institution of the action;

4) the suit must be “ripe,” (i.e., sufficiently well-developed and specific to merit adjudication);

5) the suit must not present a “political question”;

6) all remedies in the pertinent lower Federal and/or State courts must have been exhausted;

7) the Federal question at issue must be “substantial” rather than “trivial”;

8) if a “case or controversy” can be decided upon other than constitutional grounds, the Court will do so.\textsuperscript{384}

Going into the scope of these rules, and the exceptions to them carved out by the Court, is unfortunately far beyond the scope of this book. But these rules, and their exceptions, are very important. And real problems are obvious, as the substantial/trivial distinction makes clear. What is a “political question”? Does the Court apply these directives consistently? If so, why wasn’t the \textit{Roe v. Wade} situation moot?\textsuperscript{385} If the Court is allowed to a) create the rules under which it will decide which cases to hear, and b) actually decide cases using (or not using) the rules it has written, it has the power to transform the fundamental laws of the land — to carve them out as a sculptor carves stone. Consequently, the Supreme Court is a virtually unchecked body under the Empirical Constitution. The addition of the language mandates that \textit{if} the Supreme Court hears a case, it may do so \textit{only} if Congress has provided for jurisdiction; and conversely, if the Supreme Court refuses to hear a case, it may do so only under such regulations as \textit{Congress} (and not the Court) has provided.

In a system where the Supreme Court has a \textit{de facto} exclusive power to decide the cases it will hear, the Court has a virtually unrestricted freedom to “pick and choose,” and can ignore, quite unjustly, legitimate claims on its attention. Under the Second Clause, a set of rules will be provided regarding justiciability issues such as “standing,” “mootness,” “ripeness,” etc., and a necessary check on unrestricted Judicial power will be restored.
Article III, Section 3, Clauses 1-3

No Judge is empowered to disregard any Clause of this Constitution, nor enforce any law he or she legitimately deems as unconstitutional. An Evaluation of Zero or less on any Legislation may be considered evidence of unconstitutionality. In the event a Judge determines a law to be unconstitutional, or that provisions of this Constitution or the laws of the land are inconsistent, he or she must in writing notify the Department of Rights Enforcement and Congress. No Federal law can be declared void for reasons of unconstitutionality by any Court.

Congress may empower the Supreme Court and inferior Courts to issue injunctions when necessary or proper for securing the higher interests of Justice.

The Supreme Court, inferior Courts, and State Courts are empowered and obligated to add hypothetical examples or exceptions to statutes for purposes of clarification or when the interests of Justice require, and to notify in writing the Legislative body responsible when additions to statutes are made. Statutory additions by the Judiciary may be augmented, amended, or repealed at the discretion of the Legislative body responsible.

Section Three strips the Supreme Court of its power to void Federal laws for reasons of unconstitutionality, and to tailor the law as it sees fit, a power not granted to them by the Constitution, and a power which has radically altered the system of Checks and Balances as conceived by the Framers. However, while no Judge may void a Federal law for reasons of unconstitutionality, no Judge is empowered to enforce any unconstitutional law. It is within each Judge’s power, and at each Judge’s discretion, to recognize or not recognize a law which has received an Evaluation of less than Zero. If the Judge chooses to operate under the assumption that the law is invalid, that Judge must notify the proper authorities in writing. If Judges across the Nation refuse to enforce the law, a new law obviously needs to be drafted and passed.
The New Constitution preserves the power of Courts to issue injunctions against the behavior of private Citizens and Governments.

The Third Clause is a final security for the People. Not every law will be well-drafted, and the interests of Justice will require that some laws contain exceptions Legislators have not been able to foresee. The existence of the Third Clause is a recognition that the Legislative process is two-fold, the first step being the *creation* of a law, and the second step being the *testing* of the law in the real world. This Clause allows Judges to act as micro-Legislators when micro-legislation is required. If, for example, a statute says that arson is the crime of burning materials within a public building, and a person is arrested for cigarette smoking, a Judge will be empowered to define the statute with a hypothetical example (i.e., “lighting a cigarette inside a building is not to be considered a violation of the law against arson”). If this is done, the Judge must notify the appropriate Legislative body, whether State or Federal, which will consider the addition, and either let it stand, change the law, or repeal the addition.
Article IV
The Federal Article

Article IV, Section 1

Full Faith and Credit shall be given in each State to the Public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Under this Clause, if a judgment is reached against Mr. X by State A, that judgment will be accorded identical force and effect against the person summoned, or property attached, by State B. This Clause, an important part of Federalism, is retained.

Article IV, Section 2, Clauses 1-2

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States, as defined by Congress in § B-145.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labor, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.
The First Clause, referred to as the “Comity Clause,” is another important part of Federalism. Under the Comity Clause, a State must not discriminate against out-of-state Citizens in favor of its own Citizens. But the term “privileges and immunities” is vague, as Corwin (1978) noted:

Four theories have been offered as to its real intention and meaning. The first is that the clause is a guaranty to the citizens of the different States of equal treatment by Congress — is, in other words, a species of equal protection clause binding on the National Government. The second is that the clause is a guaranty to the citizens of each State of all the privileges and immunities of citizenship that are enjoyed in any State by the citizens thereof — a view which, if it had been accepted at the outset, might well have endowed the Supreme Court with a reviewing power over restrictive State legislation as broad as that which it later came to exercise under the Fourteenth Amendment. The third theory of the clause is that it guarantees to the citizen of any State the rights which he enjoys as such even when sojourning in another State, that is to say, enables him to carry with him his rights of State citizenship throughout the Union, without embarrassment by State lines. Finally, the clause is interpreted as merely forbidding any State to discriminate against citizens of other States in favor of its own. Though the first theory received some recognition in one of the opinions in the Dred Scott case, it is today obsolete. Theories 2 and 3 have been specifically rejected by the Court; the fourth has become a settled doctrine of Constitutional Law.386

What Corwin referred to as “theories” are in fact definitions. The necessarily vague language has created a need for definition — but what is the proper definition, and who is to do the defining? The Supreme Court? But the Supreme Court has not only not been allocated this important responsibility by the Written Constitution, but its decisions are made, of necessity, on an ad hoc basis, and are thus inadequate or inconsistent. For example, in Shapiro v. Thompson, 394 U.S. 618 (1969), the Court struck down State and District of Columbia laws which had denied welfare assistance to those persons who had not been State residents for a year. But in the same decision, the Court also stated:

We imply no view of the validity of waiting-period or residence requirements determining eligibility to vote, eligibility for tuition-free education, to obtain a license to practice a profession, to hunt or fish, and
so forth. Such requirements may promote compelling state interests on the one hand, or, on the other, may not be penalties upon the exercise of the constitutional right of interstate travel.\(^{387}\)

The reluctance of the Court to make decisions prospectively creates confusion, a confusion exacerbated by the inconsistency of existing decisions. For example, in *Toomer v. Witsell*, 334 U.S. 385 (1948) a statute requiring a $2,500 license fee from nonresident commercial fisherman seeking shrimp offshore, while residents paid $25, was held unconstitutional. But in *Baldwin v. Fish & Game Commission*, 436 U.S. 371 (1978) the court held constitutional a statute requiring nonresidents to pay $225 license fee (as opposed to a $9 resident fee) for recreational hunting. Was the distinction made because of the recreationality aspect in the latter case (even though recreationality may have been a spurious distinction)? Perhaps.\(^{388}\) But in *LaTourette v. McMaster*, 248 U.S. 465 (1919), the court held constitutional a statute requiring a 2-year in-state residency before a person could be licensed as an insurance broker. And in *Douglas v. New York*, 279 U.S. 377 (1929), the court held constitutional a statute permitting residents, but not nonresidents, to sue in State courts for damages under the Federal Employers Liability Act arising in other States. And there have been many other conflicting decisions.\(^{389}\)

Unfortunately, in the process of interpreting these decisions, State courts have at times done the predictable, and ruled in favor of their States. As Corwin (1978) reported, “[t]he Illinois Supreme Court held that a State law giving ‘preference for employment of Illinois residents on public works projects does not violate the privileges and immunities clause of the Federal Constitution.”\(^{390}\) And the Alaska Supreme Court held in 1977 “that it was not a violation of privileges and immunities to give residents a preference in jobs if durational residence requirements were stricken.”\(^{391}\) These latter decisions, and the failure of the Supreme Court to overrule them, indicates that the Comity Clause needs to be overhauled.

To correct these problems, the First Clause gives Congress (and not the Supreme Court, nor the State Courts) the power to define what are the privileges and immunities of the Citizens of the several States. By fixing the boundary-maintenance for State action at the Federal (Legislative) level, the First Clause brings the rule of law back into this important area.

The Second Clause provides for extradition of criminals back to the jurisdiction where they committed the crime, and is substantially unchanged.

Of course, the language providing for the return of slaves in the event of escape is stricken.
Article IV, Section 3, Clauses 1-2

New States may be admitted by the Congress into this Union but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States, and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section Three is fairly straightforward, and satisfactory as written.

Article IV, Section 4

The United States shall guarantee to every State in this Union a Republican or Democratic Form of Government, provided that no Government be formed which shall infringe on the rights, privileges, and immunities granted to every Citizen under this Constitution, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

The Guarantee Clause of the 1787 Constitution guaranteed a “Republican” form of Government. But if a State allows a democratic device such as the Initiative, Referendum, or Recall, has the State violated Article Four, Section Four? This murky area is too critical to remain unresolved. As Cronin (1989) wrote,
The precise meaning of the clause has never been wholly determined, in large part because the Supreme Court has consistently refused to decide questions that have arisen under it. . . .

The controversy arises when opponents of direct democracy devices contend that only a representative legislature acting as the sole lawmaking branch of a state can qualify the state as having a republican form. The gist of their argument is that voter initiatives violate the guarantee clause. In a landmark Oregon court case, they contended that the Constitution made no provision for overt action by the people in lawmaking, and further, that the ‘Republican Form of Government’ clause was meant to establish the states as republics, whereas the initiative process in the states in effect transferred power away from the representative legislature to the people at large and hence converted republics into pure or at least quasi-pure democracies. . . .

State supreme courts have responded to such contentions by denying that direct democracy devices such as the initiative violate the principle of a republican form of government. They have ruled that a republican government is one administered by representatives chosen or appointed by the people or by their authority. The initiative and referendum merely reserve to the people a certain share of the legislative power. Government is still divided into legislative, executive, and judicial departments, and their duties are still discharged by representatives selected by the people.392

The rewrite in THE 21ST CENTURY CONSTITUTION ratifies these latter decisions, and closes a dangerous loophole which could be used by non-progressive Judges to declare State Initiative, Referendum, and Recall legislation unconstitutional.
Article V
The Amending Power

Article V, Clauses 1-2

The Congress, whenever two thirds— **a full Majority** of both Houses shall deem it necessary, or **upon the request of a two-thirds Majority of the People voting in the General Election**, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, or **upon the request of a two-thirds Majority of the People voting in the General Election**, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution— when ratified by the Legislatures of three fourths— **two-thirds** of the several States, or by Conventions in three fourths— **two-thirds** thereof, or **by a three-fifths Majority of the People voting in the General Election**, as one or the other Modes of Ratification may be proposed by the Congress; provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate. **Amendments shall be incorporated in the text of the Constitution, and a New Constitution shall be published upon Ratification of the Amendments.**

Every twenty-five years following the Ratification of this Constitution, the following question shall be placed on the ballot in the General Election: “Should a Constitutional Convention be called?”, with the only two responses being “Yes” or “No.” If a Majority of the Voters answer “Yes,” Congress shall call a Constitutional Convention within six months after the General Election.

Every constitution must contain a process for amendment. No constitution has been, nor ever will be, perfect; as the times change, so must the form of
Government. The Framers of our own Constitution realized the importance of an amending clause. On June 5, Elbridge Gerry, a delegate from Massachusetts, stated at the Federal Convention that “[t]he novelty & difficulty of the experiment requires periodical revision.” Mason echoed this sentiment on June 11: “[t]he plan now to be formed will certainly be defective, as the Confederation has been found on trial to be. Amendments therefore will be necessary, and it will be better to provide for them, in an easy, regular and Constitutional way than to trust to chance and violence.”

But Article Five, as originally framed, is perhaps the most problematic section of the 1787 Constitution. The two-thirds requirement of both houses of Congress to send amendments to the States for ratification (applicable to all amendments, even simple amendments), and the two-thirds requirement by State Legislatures for the mandatory calling of a Constitutional Convention, have proven to be extremely rigid, and ultimately, deleterious. This rigidity was apparent less than 100 years after our Constitution was ratified. As British author Walter Bagehot wrote in 1867,

> Every alteration [to the Constitution], however urgent or however trifling, must be sanctioned by a complicated proportion of States or legislatures. The consequence is that the most obvious evils cannot be quickly remedied; that the most absurd fictions must be framed to evade the plain sense of mischievous clauses; that a clumsy working and curious technicality mark the politics of a rough-and-ready people.

This observation was quite ironic, given that an amendment process that was too difficult was one of the defects in the Articles of Confederation that the Framers were supposed to correct! As Hamilton stated at the Convention on September 10,

> It had been wished by many and was much to have been desired that an easier mode for introducing amendments had been provided by the articles of Confederation. It was equally desirable now that an easy mode should be established for supplying defects which will probably appear in the new System.

But an “easy mode” was not established at the Federal Convention. One problem was the two-thirds requirement for proposal of amendments by Congress; a second, related problem was that amendments made necessary by Congressional negligence or malfeasance (such as a Congressional Term Limitation Amendment or an Amendment mandating Public Financing for Congressional Elections) would be difficult to attain. As Mason had stated earlier at the Federal Convention on June 11, “[i]t would be improper to
require the consent of the Natl. Legislature [to proposed constitutional amendments], because they may abuse their power, and refuse their consent on that very account." Later, on September 15, two days before the Convention adjourned, Mason objected to Article Five, stating that he saw the plan of amending the Constitution as “exceptionable & dangerous,” since “the proposing of amendments is in both the modes to depend, in the first immediately, and in the second, ultimately, on Congress, no amendments of the proper kind would ever be obtained by the people, if the Government should become oppressive, as he verily believed would be the case.” In the margin of his copy of the draft of the Constitution, Mason wrote on September 12 that

**By this article Congress only have the power of proposing amendments at any future time to this constitution and should it prove ever so oppressive, the whole people of America can’t make, or even propose alterations to it; a doctrine utterly subversive of the fundamental principles of the rights and liberties of the people.**

And though history has proven Mason correct, this objection was dismissed by the Framers who signed the Constitution. Hamilton wrote in *Federalist 85* that

In opposition to the probability of subsequent amendments, it has been urged that the persons delegated to the administration of the national government will always be disinclined to yield up any portion of the authority of which they were once possessed. For my own part, I acknowledge a thorough conviction that any amendments which may, upon mature consideration, be thought useful, will be applicable to the organization of the government, not to the mass of its powers; and on this account alone, I think there is no weight in the observation just stated.

According to Hamilton, “[w]henever nine or rather ten states, were united in the desire of a particular amendment, that amendment must infallibly take place.” He also wrote that “[t]he national rulers, whenever nine States concur, will have no option upon the subject:

By the fifth article of the plan, the Congress will be obliged ‘on the application of the legislatures of two thirds of the States (which at present amount to nine), to call a convention for proposing amendments, which shall be valid, to all intents and purposes, as part of the Constitution, when ratified by the legislatures of three fourths of the States, or by conventions in three fourths thereof.’ **The words of this**
article are peremptory. The Congress ‘shall call a convention.’ Nothing in this particular is left to the discretion of that body. . . . Nor however difficult it may be supposed to unite two thirds or three fourths of the State legislatures, in amendments which may affect local interests, can there be any room to apprehend any such difficulty in a union on points which are merely relative to the general liberty or security of the people.

However, Hamilton’s prediction was erroneous, notwithstanding the explicit language of the Constitution. Perhaps Hamilton could not foresee that the Congress would consider the lifetime of applications for Constitutional Conventions to be limited. Because of this de facto constitutional amendment, Congress has been able to circumvent the strict Article Five language. By 1987, “more than 400 applications calling for a convention to propose constitutional amendments [had] been presented to Congress by state legislatures.” These 400 petitions included “supplications from all fifty states,” far in excess of the two-thirds requirement. Had this time-frame requirement not been implemented, at least two Constitutional Conventions would have been called in this century; one dealing with the repeal of the Sixteenth Amendment (the income tax), and the other with apportionment. 35 States have requested a Constitutional Convention on the tax issue, and 36 States have requested a Convention on the apportionment issue, in each case more than the two-thirds required. And yet the Congress has refused to call a Convention, in violation of the mandatory form of Article Five (“The Congress . . . on the Application of the Legislatures of two thirds of the several States, shall call a Convention . . .”).

The time-frame requirement, however, is only the first hurdle for State Convention applications, as demonstrated by the time period of 1976-1983 (which fell within the seven year limit typically given for ratification of constitutional amendments). In that time period, 36 States requested a Constitutional Convention: 30 to consider a Balanced Budget Amendment, and 6 to consider a constitutional amendment regarding abortion. This was two more than was necessary for calling a Constitutional Convention, but the Congress had promulgated another requirement not contained in Article Five, which is that the subject-matter of Constitutional Convention applications be identical!

These “requirements” (not stipulated in Article Five), taken together, makes it extremely unlikely that a Constitutional Convention will be called in this, or any other, century. To make matters worse, Convention applications are not a matter that Congress has taken as seriously as it should. As Caplan (1988) reported,
Congress has never kept regular track of incoming convention applications, and there exists no official catalogue of the applications adopted by the states since 1789. No federal official has ever been designated to receive and keep track of applications separately . . .

The application totals for convention campaigns is more often than not inexact; even the question whether there are thirty-two valid applications for a convention to propose a balanced budget amendment is disputed.\(^{408}\)

As if the above considerations weren’t enough, there is the intrinsic problem of the addition of new States to the Union, which has made the calling of a Convention a mathematically more difficult proposition. As Hamilton wrote, it is “one of those rare instances in which a political truth can be brought to the test of a mathematical demonstration.”\(^{409}\) Back when the United States consisted of 13 States, if one wanted to lobby the State Legislatures to call a Convention, and one had only enough funds to reach 9 of the 13 States (9 states only being receptive), the odds of picking the receptive States were roughly **one chance out of 1000**. Today, one has to reach 34 of 50 states, and if there are only 34 States that would be receptive (and there are only enough funds to reach 34 States), the odds of picking the 34 receptive States are roughly **one in 5,000,000,000,000** — a proposition that is over 5,000,000,000 times more difficult!\(^{410}\)

All told, Article Five (coupled with the *de facto* amendments by Congress and the Bicameral requirement of Article One) has demonstrated Mason’s point on the necessity of keeping the National Legislature, at least in part, “out of the loop.” Over 10,000 amendments were proposed in Congress from 1789 to 1981, but only 33 were sent to the States for ratification.\(^{411}\) Unfortunately, many more amendments have been needed, as the existence of the Empirical Constitution conclusively demonstrates. (As does the behavior of State Governments: in the same time period, there have been 146 different State constitutions and 5650 amendments to those constitutions!).\(^{412}\) The rigidity of the amendment process at the Federal level has resulted in an enormous transfer of power to the Judiciary (an *unelected* Branch of Government), and is even undemocratic in another way:

Chief Justice Marshall characterized the Constitution-amending machinery as ‘unwieldy and cumbersome.’ Undoubtedly it is, and the fact has had an important influence upon our institutions. Especially has it favored the growth of judicial review, since it has forced us to rely on the Court to keep the Constitution adapted to changing conditions. What is more, this machinery is, *prima facie* at least, highly undemocratic. A proposed amendment can be added to the Constitution by 38 States
containing considerably less than half of the population of the country, or can be defeated by 13 States containing less than one-twentieth of the population of the country.\textsuperscript{413}

Thus, in allowing a minuscule Minority (less than five percent of the population) to have such an enormous — and deleterious — effect on the public good, the language of Article Five acts to violate one of the chief Objectives of the Constitution established in the Preamble: that it promote the \textit{General}, and not the \textit{Local}, Welfare.

In light of the foregoing, it is obvious that Article Five needs to be rewritten. In fact, THE 21ST CENTURY CONSTITUTION contains extensive amendments to Article Five (the Constitutional Supplement is, in effect, an extensive rewrite of Article Five). The forty-eight Clauses of THE 21ST CENTURY CONSTITUTION referenced to the Constitutional Supplement may be amended far more easily than otherwise allowed by this Article, since they are the Clauses which require the most flexibility over time.

There are four other changes to Article Five. The first is that only a full Majority of both houses of Congress are needed to send an amendment to the States for ratification. This change is made necessary not only because of the increased need for amendments in a high-technology age, but also because the size of the House of Representatives has been increased to 1000 members. The second change is that the People can circumvent Congress on the proposal of amendments or the calling of a Constitutional Convention, via the National Initiative (with a two-thirds Majority).

The third change is that a constitutional amendment may be ratified by three-fifths of the People voting in the General Election, which is obviously consistent with the language in the Preamble that it is the People who “ordain and establish” Constitutions, and which removes the filter of Legislators from the ratification process.

The fourth change, the addition of the question at the General Election regarding the calling of a Constitutional Convention, is the final guarantee to the People that the calling of a Constitutional Convention will not be dependent on the whims of Legislators. In addition, this Clause recognizes that the right of self-determination is a right that belongs to every generation. It is a right which is not only the “supreme Law of the Land” as enumerated in the Preamble, but is also one of the \textit{inalienable} rights referred to in the Declaration of Independence — and therefore a right which cannot be taken away from the People under \textit{any} circumstances. In a letter to Madison dated September 6, 1789, Jefferson noted that

The question Whether one generation of men has a right to bind another, seems never to have been started either on this or our side of the water.
Yet it is a question of such consequences as not only to merit decision, but place also, among the fundamental principles of every government.414

In a letter to Major John Cartwright dated June 15, 1824, Jefferson answered the question in the negative:

[C]an [constitutions] be made unchangeable? Can one generation bind another, and all others, in succession forever? I think not. The Creator has made the earth for the living, not the dead. Rights and powers can only belong to persons, not to things, not to mere matter, unendowed with will. The dead are not even things. The particles of matter which composed their bodies, make part now of the bodies of other animals, vegetables, or minerals of a thousand forms. To what then are attached the rights and powers they held while in the form of men? A generation may bind itself as long as its majority continues in life; when that has disappeared, another majority is in place, holds all the rights their predecessors once held, and may change their laws and institutions to suit themselves. Nothing then is unchangeable but the inherent and unalienable rights of man.415

And Jefferson concluded in his letter to Madison that constitutional revitalization must occur with every new generation:

The earth always belongs to the living generation. They manage it then, and what proceeds from it, as they please . . . They are masters too of their own persons, and consequently may govern them as they please. But persons and property make the sum of the objects of government. The constitution and the laws of their predecessors extinguished then in their natural course with those who gave them being. This could preserve that being till it ceased to be itself, and no longer. Every constitution, then, and every law, naturally expires at the end of 19 years. If it be enforced longer, it is an act of force, not of right.416

Thus, under the Second Clause, every American who lives an average lifetime will have the chance to vote at least twice on this important issue, providing for a perpetual Ratification of the Constitution by the People.
Article VI

The Supremacy of the National Government

Article VI, Clauses 1-3

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation—prior Constitution.

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 Persons, Legislators, Executive Officers, and Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

The Constitution is the Supreme Law of the Land, and everyone is bound by it. No person is above the Law.

As under the 1787 Constitution, all public officials are required to take the oath of office to support the Constitution.
Article VII

The Constitutional Supplement

Article VII, Clauses 1-4

The Constitutional Supplement shall consist of Sections A, B, and C; shall be bound separately from this Constitution; and shall be duly incorporated in this Constitution as if set forth herein.

All provisions in Section A shall be augmented, amended, or repealed by a full Majority vote of the House of Representatives and the Senate, and the concurrence of a three-fifths Majority of the People voting in the General Election. There shall be no numbers in Section A other than those provided in this Constitution.

All provisions in Section B shall be augmented, amended, or repealed by a full Majority vote of the House of Representatives and the Senate. There shall be no numbers in Section B other than those provided in this Constitution.

All provisions in Section C shall be augmented, amended, or repealed by a full Majority vote of the House of Representatives, unless this Constitution shall otherwise provide.

Sections A-100, 105, 120, 125, 130, and 170, and Section C-110, shall be filled in provisionally by a full Majority vote of the House of Representatives and the Senate within ninety days after Ratification of this Constitution.

The addition of the Constitutional Supplement insures that THE 21ST CENTURY CONSTITUTION will remain current and responsive to changing times — but, since different provisions are more subject to change than others, a variable ease and/or difficulty of amendability needs to be instituted. Thus, the provisions contained in Section A are the most difficult to amend, and the provisions in Section C the easiest.
The Constitutional Supplement also serves another extremely important function, by formalizing the bodies responsible for constitutional amendment, and providing the appropriate Separation of Powers and Checks and Balances necessary for these widely disparate constitutional changes. For example, equal access regulations are annexed to Constitutional Supplement Section C-145, which means that the Senate, and only the Senate, is responsible for passing those regulations. This is important, because a) it is consistent with the Senate’s Oversight function, and therefore b) preserves the Principle of Accountability, by determining who is responsible for the passage of those regulations. If the regulations are in some way inadequate, the People know who is responsible, and can act accordingly. The other significant reason that one body is given this particular power is that, as previously indicated, certain regulations will need to be more flexible to keep up with the changes in technology and society; consequently, the provisions should be more readily amendable. This flexibility is provided by the Unicameral requirement of Sections C-100 through 200 (see Article One, Section Three, Clause Six).

In addition, the Constitutional Supplement insures that the People will be consulted regarding those constitutional amendments which have a profound impact on their rights or duties. Three notable examples are the limitations on Government restriction of speech, which crimes will be triable by jury (“serious” v. “petty”), and what power (if any) the President has to commit Americans to military action. Any such changes require the consent of the House and the Senate and a significant Majority of the People, insuring that any such changes are well-deliberated over (and well-filtered through the proper bodies) before being enacted.

Because of their importance, certain enumerated Clauses are to be filled in provisionally, since they will need to be in place for the operation of Government. Subsequent amendments to those Sections will be ratified as required under Article Seven.
Article VIII
Rules of Construction

Article VIII, Clauses 1-2

In this Constitution, affirmative provisions are limited by those provisions which circumscribe them. The terms “Order,” “Resolution,” “associate,” “establishment,” “due process,” “speedy,” “excessive,” “cruel,” “unusual,” “disproportionate,” and other terms in this Constitution deemed ambiguous by a Majority of the People as determined in the National Poll or by a Majority of the Senate, shall be defined in § B-145, but no definition may be promulgated which would provide less protection to Citizens than that existing at the time of Ratification of this Constitution, nor may any definition be promulgated which differs substantially from the sense predominating at the time of the Ratification of this Constitution. The term “average,” as used in this Constitution, shall refer to the mean obtained by adding several quantities together and dividing the sum by the number of quantities. The term “shall,” as used in this Constitution, shall be construed in its mandatory sense. The terms “law” and “legislation,” as used in this Constitution, shall refer to Legislation passed by Congress, or any regulatory activity, or any activity by any Branch of Government which may be considered Legislative or Quasi-Legislative in character. The term “Government,” as used in this Constitution, refers to all Governments in the United States, including State, Federal, and Local Governments and agencies. The term “speech,” as used in this Constitution, shall be considered as a generic term for the communication of any form or type of information in any mode or media, and the term “speaker” shall be considered as a generic term for any person who communicates information. The term “National Interest,” as used in this Constitution, shall be broadly construed to serve the highest standards of Justice.
Unless otherwise indicated in this Constitution, strict terms such as “no” or “all” shall be strictly construed, and broad terms such as “liberty” and “justice” shall be broadly construed to serve the higher ends of civil society.

One of the major omissions in the current Constitution is the failure to provide for Rules of Construction. How is the Constitution to be interpreted? Strictly? Broadly? With reference to the “original intent” of the Framers? This question is of critical importance, since the method of interpretation used can determine the content of the constitutional language! For example, if one adopts the “original intent” argument, it is conceivable that the right to bear arms would not exist on the State level (even though the express language of the Constitution is to the contrary), since there is some historical evidence to indicate that the Bill of Rights was not binding on the States (see Barron v. Baltimore, 8 L. Ed. 672 (1833)). But, if one adopts the “strict construction” line of interpretation, the right does exist at the State level, since the amendment does not expressly apply to the States or the Federal Government, as does the First Amendment. Over the years, the following “theories” of constitutional interpretation have been advanced, either explicitly or implicitly:

strict construction
broad construction
narrow construction
natural law (a/k/a the doctrine of “fundamental” rights)
original intent of the framers of the constitution
original intent of the ratifiers of the constitution
original understanding
stare decisis (applying applicable precedents)
anti-stare decisis (ignoring applicable precedents)
pragmatism/public policy (“balancing”)
evolution/historical precedent
refusal to interpret (“political questions,” “standing,” etc.)

The problem is that since no one Rule of Construction has been mandated, the Supreme Court has “interpreted” the Constitution in any way it sees fit! So, Article One, Section One is interpreted “pragmatically.” Article One, Section Three is “strictly construed,” and Article One, Section Eight is “broadly construed.” Article Three, Section Two is interpreted “historically,” and Article Five will not be construed at all (since its interpretation is a “political question” beyond the purview of the Court). Where certain other provisions are
concerned, the Constitution itself is not even consulted, and the rule of “stare
decisis” is used (prior Supreme Court rulings are seen as the law). Still other
times, the Supreme Court ignores (or “distinguishes”) applicable precedents
(formerly seen as “the law”) when it does not want to formally overrule them.

Given this extensive menu of “interpretive” options, none of which are
authorized, mandated, or regulated by the Constitution, the Supreme Court is
free to re-write the Constitution as it pleases. Functionally speaking, the
ultimate mode of interpretation of the Constitution by the Supreme Court is
“the way we want to interpret it.” As Tugwell stated, “. . . a student trying to
understand the Constitution is at times unable to conclude whether strict or
loose constructions remain the controlling theory. Perhaps this is one reason
why the Court has been able to remain the source of enlarged constructions
when specific directives are lacking in the document itself.”417

Article Eight brings order to the critical area of constitutional interpretation,
and recognizes that there are two broad categories of terms in the constitution.
Where a term is broad (or ambiguous), that term will either be defined in
Section B-145, or will be broadly construed. Strict terms such as “no,” “all,”
“supreme,” “sole,” and “exclusive” are to be strictly construed (the reason strict
language was chosen).
Article IX

The Ratification Article

The Ratification of this Constitution by the Conventions of nine People of the United States, as provided for in the Second Federal Convention Act, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same. Provisions of this Constitution requiring the passage of certain contingencies become operative only upon the fulfillment of those contingencies. Until such time as these contingencies are satisfied, previous operative clauses of the existing Constitution remain in effect.

The Second Federal Convention Act is the legislation that will provide the dates, times, rules, and funding for what will be only the Second Federal Constitutional Convention in our history — a Convention long overdue.

The Second Federal Convention Act will, at minimum, contain the following strictures:

1) There will be at least 1200 delegates to the Convention (the number of people necessary to insure that the delegates are, statistically, a mirror of the populace), to be chosen from the millions of people who will have applied with Congress to serve at the Convention. The selection process shall insure that there is demographical representation of the population with regard to the following factors: sex, race, national origin, regional representation, age, and financial status. In addition, the Congress shall insure that no single occupation, such as attorneys, comprises more than five percent of the delegates to the Convention. Once demographic representation is insured, the candidates for each seat at the Convention (Seat One will be a white male from Florida over the age of forty-five, Seat Two will be a black female from California under the age of thirty, etc.) will be tested on their knowledge of the Constitution, constitutional policy, and constitutional draftsmanship. The highest scoring candidates eligible for each seat will serve at the Convention.
2) Prior to attending the Convention, each delegate will be charged with studying various texts on the drafting of constitutions, including, but not limited to, *The Federalist, The Antifederalist Papers, Madison’s Notes on the Debates at the Federal Convention*, and *The 21st Century Constitution*.

3) The Convention will deliberate over dozens of draft constitutions (including *THE 21ST CENTURY CONSTITUTION*), and hundreds of proposals for amendments submitted by academics, politicians, and members of the public.

4) At the conclusion of their deliberations (between two and six months), the Convention will submit between three and five constitutions to the voting population. The only restriction on the constitutions to be issued will be that the same ratification Clause (direct ratification by the People in a General Election) be contained in every constitution, and that the States retain equal suffrage in the Senate. To preserve the Principle of Accountability, Congress shall be responsible for establishing and enforcing restrictions on delegate behavior, and no court shall have jurisdiction over any case arising out of, or in regards to, *The Second Federal Convention Act*.

5) *The Second Federal Convention Act* will contain equal-time regulations for the broadcast media, and insure that all constitutions are equally, fairly, and extensively discussed, compared, and contrasted. After a three month period of extensive public debate, the Federal Government will hold Primary and General Elections. The constitutions, including our present Written Constitution with the New Ratification Clause, will go to a vote. The two constitutions which receive the highest vote will go to the General Election. The winning Constitution will be considered ratified by the People of the United States — those who “ordain and establish” constitutions. Those provisions of *THE 21ST CONSTITUTION* requiring the satisfaction of certain contingencies (e.g., the Qualifications Clauses requiring a group of Federal Academy graduates), become effective only when the contingencies are satisfied. Until such time, clauses of the 1787 Constitution which are operative remain in effect.

THE 21ST CENTURY CONSTITUTION changes the requirement for Ratification from three-fourths of the States to Ratification by the People of the United States. This Clause pays homage to the Framers of our Constitution, obeying their major premise (as expressed by Madison in *Federalist 40*) that:
In all great changes of established governments, forms ought to give way to substance . . . a rigid adherence in such cases to the former, would render nominal and nugatory the transcendent and precious right of the people to ‘abolish or alter their governments as to them shall seem most likely to effect their safety and happiness,’ since it is impossible for the people spontaneously and universally to move in concert towards their object; and it is therefore essential that such changes be instituted by some informal and unauthorised propositions, made by some patriotic and respectable citizen or number of citizens. . . .

Had the convention . . . taken the cold and sullen resolution of disappointing its ardent hopes, of sacrificing substance to forms, of committing the dearest interests of their country to the uncertainties of delay and the hazard of events; let me ask the man who can raise his mind to one elevated conception, who can awaken in his bosom one patriotic emotion, what judgment ought to have been pronounced by the impartial world, by the friends of mankind, by every virtuous citizen, on the conduct and character of this assembly [?] . . .

If they had exceeded their powers, they were not only warranted, but required, as the confidential servants of their country, by the circumstances in which they were placed, to exercise the liberty which they assumed; and . . . finally, if they had violated both their powers and their obligations in proposing a Constitution, this ought nevertheless to be embraced, if it be calculated to accomplish the views and happiness of the people of America.418

As Madison stated later in Federalist 43, “[t]he safety and happiness of society are the objects at which all political institutions aim, and to which all such institutions must be sacrificed.”419 This was consistent with the view of Hamilton expressed in Federalist 22 that:

It has not a little contributed to the infirmities of the existing federal system, that it never had a ratification by the PEOPLE. . . . The possibility of a question of this nature proves the necessity of laying the foundations of our national government deeper than in the mere sanction of delegated authority. The fabric of American empire ought to rest on the solid basis of THE CONSENT OF THE PEOPLE. The streams of national power ought to flow immediately from that pure, original fountain of all legitimate authority.420
This right is formally stated in the Preamble to our Written Constitution. This is a right appropriate not only for our Century, but also the 21st Century — and for all Centuries.
Chapter Three

Epilogue

It is a matter both of wonder and regret, that those who raise so many objections against the new Constitution should never call to mind the defects of that which is to be exchanged for it. It is not necessary that the former should be perfect; it is sufficient that the latter is more imperfect. No man would refuse to give brass for silver or gold, because the latter had some alloy in it. No man would refuse to quit a shattered and tottering habitation for a firm and commodious building, because the latter had not a porch to it, or because some of the rooms might be a little larger or smaller, or the ceiling a little higher or lower than his fancy would have planned them.\(^\text{421}\)

— James Madison, Federalist 38

[T]he choice must always be made, if not of the lesser evil, at least of the GREATER, not the PERFECT good \ldots\(^\text{422}\)

— James Madison, Federalist 41

[T]he evils we experience do not proceed from minute or partial imperfections, but from fundamental errors in the structure of the building, which cannot be amended otherwise than by alteration in the first principles and main pillars of the fabric.\(^\text{423}\)

— Alexander Hamilton, Federalist 15

Happy will it be if our choice should be directed by a judicious estimate of our true interests, unperplexed and unbiased by considerations not connected with the public good. But this is a thing more ardently to be wished than seriously to be expected. The plan offered to our deliberations affects too many particular interests, innovates upon too many local institutions, not to involve in its discussion a variety of objects foreign to its merits, and of views, passions and prejudices little favorable to the discovery of truth.\(^\text{424}\)

— Alexander Hamilton, Federalist 1
Hearken not to the voice which petulantly tells you that the form of government recommended for your adoption is a novelty in the political world; that it has never yet had a place in the theories of the wildest projectors; that it rashly attempts what it is impossible to accomplish. No, my countrymen, shut your ears against this unhallowed language. Shut your hearts against the poison which it conveys . . . .

— James Madison, *Federalist 14*

The establishment of a Constitution, in time of profound peace, by the voluntary consent of a whole people, is a PRODIGY, to the completion of which I look forward with trembling anxiety.

— Alexander Hamilton, *Federalist 85*

**THE DIFFICULTY OF ESTABLISHING A NEW CONSTITUTION**

We have come a long way in the last two hundred and fifty pages. Over the course of this book, a great deal of evidence has been presented that indicates there are serious defects in our political system, and that substantive societal change for the better is impossible without remediating these defects. Without substantive political change, our past is our future. If Government wasted money in the past, it will waste it again. If Government refused to take action on critical problems in the past, it will continue the policy. If Government in the past raised our taxes and lowered our standard of living to finance its inefficiencies, you, the taxpayer, can expect more of the same in the years to come. The tragedy is that this insanity is completely unnecessary.

In the perfect world, every American would read this book, seriously evaluate the arguments contained within it, and then take action to convene a Constitutional Convention that would formally and rigorously investigate the issues raised here, and that would propose such amendments as it viewed necessary or efficacious. That’s the perfect world — the world we don’t live in. In the imperfect world, the world we do live in, only a few Americans would read this book. Of those who did read the book, only a few would have the will and wherewithal to act on the arguments and imperatives it espoused. But those who read the book and then attempted to act on what they knew would find that evidence, even piles of evidence, would prove a flimsy tool in the face of sociopolitical inertia.

Unfortunately, there are many obstacles to enacting a New Constitution. Even more formidable than the legal obstacles contained in Article Five are the
psychological and logical impediments that obscure rational thought. An earlier draft of this book contained a 150 page discussion of these obstacles. Here’s a brief listing of these psychological/cognitive impediments: the need to belong, cognitive dissonance, escalation, pluralistic ignorance, the frame, closed systems of thought, irrational individualism, the inability to conceive of rival hypotheses, availability biases, overconfidence, the inability to access latent knowledge, faulty mental models, fear of the unknown, phobias, projection, repression, avoidance, vertical thinking, the rubber band effect, innumeracy, genetic undertow, defeatism, societal apathy, the self-fulfilling prophecy, the one-node flow-chart, habit, the need to relax, confusion of happiness with “the good,” short-term thinking, the need to win, tunnel vision, minority vision, the QWERTY problem, reification, identification with the other, boredom, egocentrism, short-term memory, implausible what-if scenarios, and the need to believe.

Here is one way that these obstacles, working together, can create a conceptual network impervious to rational discourse:

Mr. X, due to irrational individualism, utilizes the framing technique to create a particular closed system of thought which serves to secure his short-term financial self-interest (in this case, a closed system which rationalizes the logically inconsistent co-existence of a 1787 Constitution with an Empirical Constitution). Though this is unethical, he rationalizes away his guilt, to reduce cognitive dissonance. Other individuals, unable to conceive of rival hypotheses, see the closed system as “legitimate,” in a striking case of overconfidence. Because they are unable to access latent knowledge, they cannot see the inconsistencies in their newly-acquired belief system. And, due to the need to belong, neither they nor anyone else objects to the system in public, so that everyone believes that everyone else believes its true. In a society beset with this pluralistic ignorance, people perpetually think that “someone else” will solve their problems, and, because they have faulty mental models of reality, these same people do not understand the true nature of the problems; furthermore, due to the tendency to blame the self, they see themselves as the cause of their problems. As escalation occurs, these problems get worse, but no one objects, because the people have previously accepted the status quo. The fear of the unknown created by an undue familiarity with the status quo makes people more susceptible to phobias, which abort the quest for fundamental solutions. Finally, because of availability biases, those initially interested, when confronted with the societal apathy produced by the preceding factors, put the issue on the “back burner” — where it evaporates.
Yet these psychological impediments, formidable as they are, are only the first hurdle, because these impediments also function as the engine of rationalization — that is, they provide the emotional motor powering the creation and acceptance of conceptions reducing cognitive dissonance, leading to the second hurdle — the rationalizations themselves.

Most people are familiar with this concept of cognitive dissonance through the concept of rationalization, and the old story illustrating it, “The Fox and the Grapes.” In that fable, the Fox attempted to jump for grapes, but could not reach them. After several “fruitless” attempts, the Fox stalked off, muttering “aah, those grapes were probably sour anyway.” But this hypothesis was a spurious one: if the grapes were “probably sour,” why did the Fox begin jumping for them in the first place? Faced with this question, the Fox might conceive of new rationalizations: “I wanted to get exercise.” Or, “I had nothing better to do.” Or, “I like jumping for grapes.”

What motivated the Fox to conceive his before and after-the-fact hypotheses? The answer is cognitive dissonance, a conflict between two opposing premises:

1. the desire for grapes; and

2. the desire to conserve energy.

Had both these desires not been mediated by the Fox through his power to rationalize, the Fox would have been in a state of terminal anxiety. His desire for grapes would have been opposed by his desire to remain inactive, and the Fox would have vacillated between the two until collapsing in a state of nervous exhaustion. Aronson (1980) gave the following description of cognitive dissonance:

[C]ognitive dissonance is a state of tension that occurs whenever an individual simultaneously holds two cognitions (ideas, attitudes, beliefs, opinions) that are psychologically inconsistent. . . . Because the occurrence of cognitive dissonance is unpleasant, people are motivated to reduce it . . . here, the driving force arises from cognitive discomfort rather than from physiological needs. To hold two ideas that contradict each other is to flirt with absurdity . . .

The upshot of this theory bodes ill for constitutional analysis in three ways. First, people are likely to support decisions made by Governmental bodies because they have a psychological need to do so, not because they feel that those decisions are legitimate. As Chemerinsky (1987) wrote:
Decisions that might otherwise be opposed, and thus threaten the stability of the government, gain support from the realization that the result is based on constitutional interpretation. People who disagree with the result, but support the Constitution and judicial review, face a situation labeled by social psychologists as cognitive dissonance. There is a tension between their negative beliefs about the outcome of a case and their positive attitudes about the institution and its basis for decision. Some people might resolve this dissonance by changing their mind and accepting the court’s decision. At the least, their support for the government’s structures and processes might lessen their opposition to the particular result.  

Secondly, an inability of people to affect social change due to a fundamentally unresponsive Government may lead to a “you can’t fight city hall” mentality, which reduces dissonance by relieving the Citizen of the need to devote time to changing a defective Government: if you “can’t” fight Government, then there is no point in fighting it. By this reasoning, some people’s worship of the 1787 Constitution may be a direct consequence of the fact that they don’t think that there is anything they can do about it! Taken to its extreme consequences, people may resort to the ego defense mechanism of denial: refusing to see reality for what it is. At a subconscious level, people may warp their own previously-formed value judgments. Hazlitt (1942) comprehended the ultimate consequence:

One result of this impotence of the people to make their opinions effective, as we have seen, is to pervert the nature of the opinions themselves. There is a pathology of masses as well as of individuals. When an individual feels powerless to correct a certain situation in his private life, he often refuses to face the situation realistically. He argues to himself that the situation is not so bad as it seems.

The third consequence of cognitive dissonance is that people can then form what is known as a schema, which Duke and Nowicki (1979) defined as a frame of mind that adversely affects a person’s “ability to see the world accurately.” One particular form of schema is known as attitudinal distortion; a frame of mind that lets in only the information confirming a pre-existing belief.

This psychological phenomenon means that the more a person is committed to a belief, the more resistant the person will be to information that threatens that belief. The effect this will have on constitutional analysis is that, in any public debate on the topic, whether discussions on TV, at social gatherings, letters to the editor, etc., a large number of people will be committed, for
various reasons, to the Old Constitution. Now, many arguments will be made for and against the proposition that alternatives to our present Constitution(s) be explored. However, if people have been committed to the status quo first, all the evidence for and against the idea will be filtered through this perception. Many people will do to a proposed New Constitution what the supporters of the Articles of Confederation did to the 1787 Constitution! As Madison stated in 1787, “they . . . scanned the proposed Constitution, not only with a predisposition to censure, but with a predetermination to condemn . . .”432, as opposed to implementing an objective, criteria-based, evidentiary and/or operational constitutional analysis.

Due to this “predetermination to condemn” (a predetermination that will be broadcast by the Establishment Media), various logical impediments will be created, and then disseminated among the populace. Here is a short list of the impediments we can expect to find: Begging the Question, Argument by Metaphor, Argument by Abstraction, the Las Vegas Fallacy, the loaded term, the double-bind, doublethink, distortion, the Straw Man, equivocation, analysis within a single frame, circular reasoning, illicit contrast, argument by innuendo, distinction without a reasonable difference, the Fallacy of Composition, the Fallacy of Division, wishful thinking, inference from a label, the contrary-to-fact hypothesis, causal oversimplification, post hoc ergo propter hoc, Poisoning the Well, ad hominem, tu quoque argument, distortion, unrepresentative statistics, the Red Herring, Von Domarus reasoning, the Is/Ought Fallacy, the Opinion/Fact Fallacy, the Language/Reality Fallacy, the Subjective/Objective Fallacy, the Relevant/Irrelevant Fallacy, the Essential Similarity/No Functional Identity Fallacy, the Act/Omission to Act Fallacy, faulty analogy, neglect of relevant evidence, special pleading, pseudoreasoning, false dichotomy, and the false dilemma.

The number of ill-conceived remarks that may be made in reply to the arguments for a New Constitution boggles the mind. The most popular fallacies employed are Begging the Question (e.g., “the Constitution is fine the way it is”), Argument by Abstraction (e.g., “the Constitution safeguards our precious rights and should not be tampered with”), the Red Herring (e.g., “you have not proposed a perfect Constitution”), and the Las Vegas Fallacy (e.g., “people can elect officials who will pass the necessary legislation without the need to amend the Constitution”). Consider the following question-begging “argument” made before a Congressional Subcommittee on the Constitution by Nobel Prize-winning economist Paul Samuelson:

[T]here is no inherent flaw in our checks and balances and division of responsibility among the legislative, executive, and judicial branches of government that makes inevitable a process of ‘logrolling’ designed to
swell the level of expenditures and taxes beyond that truly desired by the effective majority of the electorate.433

This comment is not even an argument (a claim buttressed by evidence), and therefore cannot possibly be a good argument. Nor can Samuelson’s observation regarding the inevitability of logrolling, which is only one of several causes underlying the deficits we have run for decades, be (in and of itself) a compelling argument against revising the form of Government. That an occurrence is “not inevitable” is no rationale for pursuing a course of action; if it were, we would all play the Lottery, because losing was “not inevitable”; jog in Central Park at midnight, because getting mugged was “not inevitable”; and smoke two packs of cigarettes a day, because dying of lung cancer — according to the Tobacco Institute, at any rate — was “not inevitable.”

In truth, “not inevitable” fails utterly to meet the standard of a useful barometer for action, and is, therefore, invalid as a tool for constitutional analysis. It may arguably, even plausibly, be argued of our constitutional form that under it, logrolling is “not inevitable.” But what is at issue is not the inevitability of X, but the probability of X. And under the 1787 Constitution, experience has amply demonstrated that logrolling is, and has been, a fact of life in our Nation’s Capitol, and shows no signs of abating. Indeed, in a situation where there are many incentives for a behavior, and no sanctions against, how could it be otherwise? If a Representative “logrolls,” he or she gets Federal dollars for his or her District, and therefore increases the chances of being re-elected. Is there any reason to believe that this system of incentives without punishments will produce a change in behavior in the near future contrary to 200 years experience? Samuelson offers no such evidence; instead, we are offered the trivial (and potentially inaccurate) observation that a phenomenon which has occurred for 200 years is “not inevitable.” But what occurrence is? For all we know, the sun, which has risen for billions of years, may not rise tomorrow. But that something may or may not occur cannot, in and of itself, operate as a guiding principle in life, except for hypochondriacs, chronic gamblers, and the xenophobic (those most susceptible to this line of “reasoning”).

Hopefully the eminent economist Samuelson will recognize that those of us footing the bill for this current Constitution may wish to disagree with his “analysis,” and institute measures that will decrease the probability of logrolling, if not eliminate it entirely.

Unfortunately, it is not only eminent economists who wish to purvey their sophistry on an unsuspecting public. Many other people will, quite readily, see their opinions as facts, oversimplify issues, verbally attack those who threaten their unsubstantiated pre-existing beliefs, and throw out all sorts of
smokescreens to divert discussion from the issues at hand. To intelligently discuss the need for a new form of Government, one needs to be not just a political scientist, but also a logician.

THE LEGAL IMPEDIMENTS TO ESTABLISHING A NEW CONSTITUTION

Of course, even if one can get past the psycho/logical impediments, the legal impediments to structural reform remain. And they are serious indeed — so serious, in fact, that the legal impediments may buttress the psycho/logical impediments by creating a learned helplessness effect. As Sundquist (1986) observed,

Even those most profoundly convinced that the United States government has serious structural weaknesses come to ask themselves and one another: Why even try to change the Constitution? Why not take for granted that it cannot be altered, and settle for whatever improvements can be made by lesser means — by passing laws, or changing party rules and structures, or concentrating on electing better officials to high office? The process of amending the country’s two-hundred-year-old charter is so formidable that reformers can be excused for being daunted at the outset, and theorists forgiven for devoting their analytical energies to other subjects. Not only may an amendment be blocked by 34 percent of the voting members of one house of Congress but, if it passes that hurdle, it can still be defeated by the adverse vote, or simple inaction, of as few as thirteen of the ninety-nine state legislative houses, or fewer than 14 percent.434

The institutional structure makes forging the necessary Majority coalitions near-impossible, because any substantive change, whatever its nature, will have a short-term adverse effect on powerful political Minorities — who are able to nip in the bud any such efforts. And the subtle nature of institutional reform means that it will be difficult to arouse popular support for what seem to be ephemeral considerations:

Institutional structure is not an issue likely to arouse popular fervor, in the absence of a patent breakdown in the functioning of government, and even then — as at the time of Watergate — most people are inclined to place the blame on the failure of individual leaders rather than of institutions. Proposals for structural change may not arouse fervent opposition either, but in the absence of popular support any organized
institutional opposition is likely to be sufficient to prevail. If either of the major parties sees its interests jeopardized by a proposal, or incumbent legislators discern a loss of power for their branch, or the president and defenders of presidential power foresee a weakening of the executive, the proposal is doomed. Any significant ideological bloc, also, would surely have enough strength in enough states to block an amendment; so no proposal has much chance of success if it arouses conservative concern that it hides a bias toward big government, or liberal concern that it favors weak government, or elitist worry that it embodies an excess of democracy, or antiestablishment fear that it upsets the balance the other way.

But institutional changes are seldom neutral, and even if one could be conceived that is truly neutral — and would be perceived that way — neutrality is not enough. Each of the elements of the institutional system, and each major ideological group as well, must see some benefit. Unless something is to be gained, why risk change at all? But gains for everyone is a logical impossibility. True, the government as a whole can accrue power, as it has been doing for most of two centuries, but the division among institutions and officeholders of the right to exercise any given aggregate of power becomes a zero-sum game. If one institution or one political party or one ideological group gains, another loses. That, at bottom, is why there has not been a single amendment in two hundred years that redistributed governmental power. The two amendments that can be classed as even affecting the institutional structure at all — the Seventeenth and the Twenty-second — concerned only the selection of the individuals who would wield institutional power, not the scope of the institutional authority itself.

But the distribution of power among the elements of the governmental system is what . . . constitutional changes . . . would, in one or another degree, affect. The scale of the benefit to governmental effectiveness to be derived from any measure or set of measures would depend on the magnitude of that effect. But so would the vigor of the opposition each measure would incite. It becomes an axiom of constitutional reform, then, that any structural amendment that would bring major benefits cannot be adopted — again, barring a governmental collapse that can be clearly attributed to the constitutional design — while any measure that stands a chance of passage is likely to be innocuous.435

Nor can we expect our representatives in Washington, who are ostensibly in charge of promoting “the general Welfare,” to promote the general Welfare by changing the nature of their job descriptions:
The proposal for change will certainly not come from the existing heads of the multitude of permanent committees in Congress. These heads of committees have come to their positions not on their merits as recognized by their present fellow members but by the rule of seniority. They are ‘sitting pretty,’ and mean to hold on to their prerogatives and power. The situation is not likely to be challenged, either, by the majority members next in line under the seniority rule, or by the ranking minority members of the committees, who stand to be the actual heads if there is a shift in the balance of parties in Congress. Why, then, does not the new member, the ‘outsider,’ the man who has got poor committee assignments, challenge the arrangement? Because, unless his campaign can be assured of success in advance, no individual member wants ‘to stick his neck out’ by incurring the displeasure of the existing Congressional leaders and committee heads, who have it in their power to decide whether or not he shall get a good appointment and be an influential member of Congress. It may be almost as difficult to effect this change, in short, as it would be to amend the Constitution directly.  

The upshot of the political reality is that any movement for substantive political change must come from those who “ordain and establish” constitutions, the PEOPLE:

Government by the people means that the people themselves must play their part in deciding what is to be done with their government. And that means the people must be informed and must themselves act.

The methods for changing our governmental institutions must be orderly and thoughtful and the changes themselves must be statesmanlike and forward-looking. This cannot be done hurriedly or haphazardly.

What could be better disposed to meet these grave national responsibilities than a Second Constitutional Convention?  

The convening of a Constitutional Convention is the People’s sacred right, and the Constitutional method for circumventing a corrupt and/or ineffective Legislative Branch. But is there a way to force Congress to call this Convention? The answer is YES.

**THE CONSTITUTIONAL SAFETY-VALVE**

Luckily for Americans in the 21st Century, the Framers provided a safety-valve in the Constitution in the event the Federal Government ignored its constitutional strictures — perhaps the most significant check on Governmental
irresponsibility in that document. This safety valve lies in the House of Representatives. With smaller voting Districts (making communication between the People easier), a two-year term (increasing the Accountability of the Representative to the People), and the control over revenue (and thus Appropriations) granted to the House in Article One, Section Seven, the People were given the ultimate tool to prevail upon the House of Representatives to prevail upon the other Branches of Government to take those actions that became necessary to force a return to basic principles. As Madison wrote,

The house of representatives can not only refuse, but they alone can propose, the supplies requisite for the support of government. They, in a word, hold the purse; that powerful instrument by which we behold, in the history of the British Constitution, an infant and humble representation of the people gradually enlarging the sphere of its activity and importance, and finally reducing, as far as it seems to have wished, all the overgrown prerogatives of the other branches of the government. This power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.438

Madison later stated that “the house of representatives, with the people on their side, will at all times be able to bring back the Constitution to its primitive form and principles.”439 Under this Madisonian strategy, the frequency of elections provided by the two-year term of the House would furnish the means of bringing Government back to its roots.

The brilliance of the strategy implied by Madison is that it is not necessary to get 140 million people to agree on a political course of action, a well-nigh impossible task, and which, if required, would doom the chances for any grassroots movement. Luckily, no such effort is required. Due to the way the House is elected, and the fact that millions of people have dropped out of the political process, it will be possible to force Congress to call a Constitutional Convention with only 22,236,000 people voting strategically: still a high number, to be sure, but only twelve percent of the voting age population in 1988.440

The reason for this is that only 218 of the 435 Districts have to be captured to secure a Majority in the House. And voter turnout for Representative elections has historically been poor, especially in those years when there is no concurrent Presidential election. In 1986, only 33.4 percent of the voting-age population turned out to vote for their Representatives on a National basis441; and many Districts had even lower voter turnouts. In 1986, for example, 50,738
people voted for Representative Thomas Manton in the Ninth District of New York. The District had a population of approximately 525,000, with a resultant voting age population of 394,000. This means that Representative Manton was elected by only thirteen percent of the eligible voters in his District! Put another way, a mere fourteen percent of the voters in the Ninth District could have elected a Representative who had pledged to work for the passage of the Second Federal Convention Act, the legislation creating the rules for, and convening, a Constitutional Convention.

If the 51,000 voters required to elect an alternative candidate had held for each of the 218 Districts in 1986, this would have meant that a Majority of the House of Representatives would have been composed of alternative candidates had 11,118,000 people pursued the strategy on a National basis in that election! Of course, these totals are misleading, because few Districts in the United States had the incredibly low turnout of New York’s Ninth District. Still, even assuming that 102,000 voters would be required, on average, to elect an alternative candidate in the 218 Districts with the lowest voter turnout, this means that only 22,236,000 Americans would need to pursue the political strategy. A formidable number, certainly, but not an insurmountable hurdle.

Assuming that this twelve percent of the population could organize itself to pursue this particular political strategy, what would the Congressional outcome be in the event the strategy is successful? Simply this: if the alternative candidates are elected, the candidates would vow to vote no on EVERY piece of legislation but the Second Federal Convention Act, until the Senate would also agree to vote for the Second Federal Convention Act, and the President would agree to sign it into law. If 218 Districts are represented by the alternative candidates, the Senate and the President would have no choice but to support the Act, since the Government would come to a standstill, given that the source of revenue, the House of Representatives, had turned off the spigot. With millions of Federal employees no longer drawing a salary, and thousands of Government services no longer being offered, the Senate and the President could ill-afford to withstand the political fallout that would accrue to them. In short, the Senate and President would be forced to capitulate, and the Convention would be called under the provisions of the Act. The Convention, itself a demographic mirror of the People, would turn out one or more constitutions for the People to consider. A vote would be taken. If the People decided to vote for the 1787 Constitution, that, as they say, would be that. This latter eventuality would be extremely unlikely, but if it happened, at least the People (not their representatives) would be responsible for the subsequent political consequences.

WHAT YOU CAN DO
If you feel that working for a New Constitution is a goal worth pursuing, there are at least two significant actions you can pursue:

*Talk About It*

One of the simplest strategies to pursue is to *talk about* the need for a New Constitution in discussions with friends, fellow students, and co-workers. Discuss the social problems found in society today, and trace their genesis to a constitutional form that does not allow for the ready amelioration of social problems. Having read this book, and being newly informed, you will be surprised at the level of ignorance in society on this most critical of issues. This level of ignorance is truly humbling, and even a bit intimidating; but the only way to deal with it is through *communication*, which of necessity must begin on an individual basis.

*The Vote-Out-Incumbent Strategy*

Another simple strategy to pursue, but an enormously *effective* political strategy that requires virtually no effort at all, is (as previously discussed) to simply *refuse to vote for Incumbents*, and to pursue that strategy tenaciously, without regard to political party, the “character” of the Incumbent, or similar factors irrelevant to the success of the strategy. One can refuse to vote for an Incumbent simply by staying home on Election Day, but an even more effective route is to go into the voting booth and pull the lever next to the challenger’s name, whomever s/he happens to be. If only twelve percent of the population pursues this strategy, big changes will occur in Washington, as politicians realize that Americans will no longer tolerate the waste of their hard-earned dollars, and have decided to finally *exercise* that small amount of political power they have been allowed to retain. Since this strategy (like any political strategy) is effective only if pursued on a *National* basis, it must be communicated — a goal one can achieve simply by discussing it in conversations, but far more quickly and effectively by pursuing the three strategies to come.

The exception to the Vote-Out-Incumbent strategy, of course, is if the Incumbent has agreed to vote for the Second Federal Convention Act AND has voted (and will *continue* to vote) “No” on *all other legislation* until the Act is passed. Such an Incumbent *deserves* your vote.

This implementation of this strategy (which received a jump-start in 1992 thanks to the Congressional Check-Bouncing Scandal of that year) will require no investment of time nor money, but will be devastatingly *effective* — and its
implementation will in all probability be essential for achieving substantive change.
THE BENEFITS OF ACTION

It is difficult to capsulize the effect(s) THE 21ST CENTURY CONSTITUTION will have on society in a few short pages. The best way to gauge the operational effects of the provisions — the impact they will have on society — is to discuss this book with other interested parties. If you are a student in a political science class, you are ahead of the game. If not, you may want to mention this book to your friends or co-workers, and discuss the various provisions with them: what role will the National Database play? How will the Federal Academy work? What will be broadcast on the National Channel, and what effect will it have on the education of the populace? How will the National Poll help politicians implement the desires of the People? It is also important to note that these provisions, significant as they are standing alone, are substantially more powerful in their totality of operation. Here’s a brief explanation of how certain provisions of THE 21ST CENTURY CONSTITUTION can work together to greatly increase the probability that one of the more significant problems of our day — the problem of child abuse — will be solved (note that these procedural changes have far-reaching effects):

• *The Legislative Review Board* (Article One, Section Seven) streamlines the passage of legislation. Under the new system, “pork barrel” Bills will no longer exist, freeing funds for worthy causes, such as the amelioration of child abuse. Ridiculous waste, such as the B-2 program and “Star Wars,” will no longer be funded.

• *The Federal Academy* (Article One, Section Ten) will educate politicians in the nature and causes of social problems, and they will be more inclined and better able to take action on those problems.

• *The National Database* (Article One, Section Eleven) makes articles on the topic available to the general public. The facts will be readily accessible to all.

• *The National Channel* (Article One, Section Eleven) allows social interest groups to broadcast their messages to the entire Nation. The issue will no longer be abstract, and will appear as compelling as it actually is (for some measure of the National impact, compare the effect the Rodney King videotape had on the National consciousness regarding police brutality).
• *The Legislative Committee* provisions (Article One, Section Fifteen) allow groups of concerned Citizens to draft legislation on particular topics and have them submitted to Congress, where they will be voted upon. Children’s organizations could draft legislation providing for a National child abuse hotline, increased penalties for child abuse, preliminary intervention before abuse is allowed to reach critical levels, etc.

• *The Electronic Post Office* (Article One, Section Nine, Clause Seven) allows organizations to send electronic mail to hundreds of thousands of people at a fraction of the current postal rates. More people will have the capacity to join these organizations due to the increased ease and reduced cost of communicating.

• The addition of the *Right to an Education* (Article One, Section Eleven) means that it will be easier to persuade Citizens of the necessity of legislation, since functional illiteracy will be drastically reduced, and everyone’s general knowledge will be greatly increased.

The New Constitution thus provides *many avenues* for the amelioration of social problems (including others not listed, such as the relaxed standing requirement, the Department of Rights Enforcement, equal representation provisions, etc.). In this manner, THE 21ST CENTURY CONSTITUTION gives individuals with heightened social awareness the *tools* to attain worthy social goals. A thorough discussion of the interrelated provisions with one’s contemporaries will aid the analysis that will reveal these effects.

Other than discussion of operational effects with friends and associates, there is another useful way to provisionally evaluate THE 21ST CENTURY CONSTITUTION (or any constitution, for that matter) — by *analysis with reference to the criteria necessary for good Government*. A useful technique is to posit essential criteria that a constitution should satisfy (such as efficiency in Government), and then ask, “Does this Constitution I am evaluating satisfy these criteria?” The best constitutions, provisionally, are those which best satisfy the criteria. Here is a list of criteria that may be used to evaluate the Constitution proposed in this book (with selected provisions that secure them), and future constitutions that may be proposed by a Constitutional Convention:
Establish Justice
Equal rights under the law and equal access to the justice system are *sine qua non* aspects of a constitutional system. No person should receive more or less justice based on irrelevant criteria such as race, wealth, etc. All Citizens have a right to arbitration of their disputes by a Judicial tribunal, without having to invest an inordinate amount of time, or inordinate expense, in the resolution of those disputes.

[Department of Rights Enforcement; Relaxed Standing Requirement; Common-Law Codification; Equal Representation Provisions; Obligations of Congress; Right to an Education]

Promote the General Welfare
When people enter into a social contract, they do so because the benefits of organizing and cooperation outweigh the risks of division and disunity. That being the case, the role of Government is to improve the society in a way not otherwise attainable without the social cooperation regulated and enforced by Government. In addition, a National constitution must secure the *National* Interest first, and afterwards, *local* interests. If America is not healthy, no State or City within it can be healthy.

[Revised Bill Procedure; Legislative Review Board; Evaluation; Performance Ratings; Vote-Trading Prohibition; Conflict-of-Interest Prohibition; Prohibition Against Political Party Membership; Obligations of Congress; Legislative Responsibilities; National Objectives]

Provide for Efficiency in Government
The Constitution should remove all procedural roadblocks to the contemplation and passage of Constitutional legislation. High technology times and a more competitive world economic environment demand that the Legislative process be responsive to these changing times. It should implement all procedural legislation necessary for achieving this goal.

[Timetables; Evaluation; Revised Separation of Powers; Oversight by Senate; Federal Academy; Delegation Allowed with Legislative Veto; Revised Bill Procedure; Revised Article Five]

Insure Fiscal Responsibility
It goes without saying that one of the primary considerations in forming a constitution is that it contains mechanisms that help to insure fiscal responsibility by preventing “log-rolling,” deficit spending, and other institutional effects that increase the probability of fiscal imprudence.

[Auditor; Revised Borrow Clause; Revised Tax Clause; Legislative Review Board; Quarterly Publication of Receipts and Expenditures; Vote-Trading Prohibition; Federal Academy]

**Accountability**

Necessary legislation must be passed, and must be enforced. If either of these situations fail to obtain, the constitutional process must be constructed to provide for immediate determination of the source of the failure, and to provide for swift correction of the problem.

[Annual Term for Representatives; One-Subject Bills; Evaluation; Oversight by Senate; National Database; Electronic Post Office; National Objectives]

**Provide Mechanisms for Self-Enforcement**

A good Constitution will establish Governmental bodies that will enforce its provisions. If, as an example, the Supreme Court is given the power of declaring laws unconstitutional — and does not do so when the exercise of the power is indicated — then the Constitution is flawed. If Judicial interpretation changes the meaning of the Constitution, the Constitution should provide a swift mechanism for restoring the original parameters.

[Department of Rights Enforcement; Oversight by Senate; Annual Term for Representatives; Federal Academy Rule Proposal; Performance Ratings; Federal Elections Commission; Legislative Committees; Electronic Post Office; National Database; National Referendum; National Recall; Relaxed Standing Requirement; Constitutional Convention Query on Ballot]

**Stability**

A Constitution must ensure that the Government of the United States proceed in a stable, orderly fashion.

[Revised Articles One, Two, and Three; Alternate]

**Flexible Amendability**
Not every aspect of a constitution is as necessary for the security of liberty as another; in addition, some aspects of a constitution will become outdated before others. A Constitution should be “modular” to the extent that it allows for this varying amendability.

**[Constitutional Supplement; Variable Term Lengths]**

**Insure that All People are Adequately Represented**
Every United States Citizen is equal under the eyes of the law; consequently, every Citizen has the right to be heard by his or her Government; and no Citizen shall have any more of a voice in the Government than any other Citizen.

**[Equal Representation Provisions]**

**Guarantee Fairness to the Greatest Extent Possible**
The law should not only represent people equally, but treat them equally. No Constitution can permit the unfair treatment of one group of people by another.

**[Equal Protection Clause; Equal Representation Provisions]**

**Decrease the Irrational Forces Which Mold Legislation**
In any civilized society, various groups will attempt to influence the passage of legislation by use of irrational cues such as party affiliation, or by the use of logical fallacies, direct misstatements, and even bribery. A Constitution should ensure that those who make our laws consider only the facts, the values of their constituents, and their Constitutional mandate while creating legislation.

**[Federal Academy; Federal Academy Proposal of Rules; Prohibition Against Political Party Membership; Vote Trading Prohibition; Term Limitation Provisions; Public Financing; Federal Elections Commission; Ethics Legislation]**

**Minimize or Eliminate Corruption**
Corruption, the most insidious form of tyranny, is the bane of all civilized Governments. The most delicately balanced constitution that could be devised will be toppled if it contains no mechanisms that operate to minimize or eliminate the political cancer which has historically afflicted societies. With privately financed elections, newly-elected Officers of Government are beholden to the interests which put
them there. This is no less a distortion of the Legislative process than a direct bribe is in the Judicial process. Since the proper functioning of the State is dependent on the balanced representation of the population, the Government must provide for the financing of elections.

[Public Financing Provisions; Oversight by Senate; Prohibition Against Political Party Membership; Increased Number of Representatives; Term Limitation Provisions; Ethics Legislation; Performance Ratings; Nominating Process]

Provide for Direct Citizen Input
A constitution is a document of, by, and for the People; as such, it should provide for ways in which groups of Citizens united on a particular issue can place issues on the National Agenda.

[Legislative Committees; Electronic Post Office; National Channel; National Database; National Objectives]

Provide for Direct Voter Decisionmaking
Because Legislatures are not always responsive to their constituents when they ought to be, and because certain volatile issues are best left out of the Legislative process, a constitution should provide for direct legislation by the Citizens. A constitution is only as good as the legislation which it authorizes; the People of America, being the greatest source of new ideas, should be encouraged to take part in the political process. Among other things, this will have the salutary effect of restoring Citizen confidence in Government, and of decreasing voter apathy.

[National Initiative; Recall; Legislative Committees]

Veto Power
To reduce the need for “single-issue” voting, a constitution should allow Citizens to directly veto legislation.

[National Referendum]

Guarantee the Education of the People
An informed populace necessary for any process which claims to be democratic in nature, a constitution should insure that all its Citizens receive (to the greatest extent possible) the education they need to achieve their highest potential, both as Citizens and as human beings. In
addition, a constitution should provide continuing education (and access to the resources which make education possible) for the People.

[Right to an Education; National Database; National Channel; Electronic Post Office]

**Filtering**

While the constitution must be responsive to the wishes of its Citizens, it must also filter all the requests for future legislation through a set of criteria; among them, constitutionality, necessity, simplicity, cost-effectiveness, and the General Welfare of society. Thus, Bills introduced by Citizens should be examined according to the above criteria, and evaluated accordingly before being acted upon.

[Legislative Review Board; Evaluation; Performance Ratings; Timetables; Revised Bill Procedure; Federal Academy]

**Ensure that Officeholders are Adequately Educated for their Positions**

In society, we don’t trust our bodies to doctors who have not been properly trained; nor do we trust enforcement of our rights to attorneys who have not been educated for the task. Similarly, we should not trust the promulgation of our country’s laws to those who have not received the training necessary for their positions. A constitution must provide for the rigorous schooling of those who will shape society by their decisions.

[Federal Academy Graduation Requirement; Alternate]

**Provide a Nominating Process for All Branches of Government**

As the primary step in securing candidates for office, the nominating process needs to be clearly articulated in the constitution. Without such a provision, there is no guarantee that the initial selection of candidates will have been educated properly, nor be fairly representative of the populace, nor be free of “hidden agendas” favoring special or local interests.

**Separation of Powers**

For reasons of efficiency and to prevent concentration of power, power should be dispersed, and the integrity of the Branches must remain intact.
[Revised Articles One, Two, and Three; Common-Law Codification]

Enumeration of Powers
A Constitution should clearly designate specific powers to specific Branches of Government, and clearly delineate the boundaries beyond which the power may not extend.

[Revised Articles One, Two, and Three]

Checks and Balances
A constitution should not only separate powers, but distribute those powers when necessary to preserve the integrity of the Branches — and to disperse political power when necessary for reasons of efficiency.

[Revised Articles One, Two, and Three; Revised Impeachment Process; Timetables; Evaluation; Branches Not Empowered to Enforce Unconstitutional Legislation; National Recall; Relaxed Standing Requirement; Senate Restrictions on Delegates]

Resolve Internal Inconsistencies Within the Document
To the greatest extent possible, constitutions should be drafted to avoid internal inconsistencies. One contemporary example would be a journalist’s right to report a trial interfering with the accused’s right to a fair hearing. If internal inconsistencies are unavoidable, the Constitution should provide for their resolution within the document to the greatest extent possible.

[Rules of Construction; Definition in Constitutional Supplement Section B-145; Hypothetical Example Requirement]

Easily Comprehensible
The Constitution should be written in a language understandable by the average literate American.

Specificity
It is a fundamental Principle of jurisprudence that the laws we live under be as unambiguous as possible. The more vague the term, the more latitude granted the Judicial power; if a construction is vague enough (e.g., “speedy trial”), the court is forced to legislate and give content to the provision, violating the Principle of Separation of Powers. Because the use of ambiguous terms is unavoidable, however, a mechanism for
definition should be made within the Constitution itself, to prevent the creation of informal mechanisms.

[Definition in Constitutional Supplement Section B-145; Hypothetical Example Requirement; Rules of Construction]

**Formal Rules of Construction**

Certain constitutional matters, such as the mode of textual interpretation, must be articulated in the document itself, and not enunciated on an *ad hoc* basis.

[Article Eight]

**Majority Representation**

Minority Rule, or rule by the few, is found in oligarchy, monarchy, and tyranny. *Majority Rule* is the Principle of *Democracy*, and must be preserved to the greatest extent possible. This being the case, a constitution must provide a mechanism for gauging the National Will, and thus determining the Will of the Majority.

[National Poll; National Objectives; Right to Vote; Annual Term for Representatives; Increased Number of Representatives; National Initiative]

**Guarantee All the Rights to Which People are Due**

Since *all* people fall into one Minority classification or another, a corollary of Majority rule is a proper constitutional respect for legitimate Minority rights, which function to limit the scope of Federal, State, and Local power. No Constitution can enumerate every right to which Americans are entitled; it can, however, articulate and secure all those rights which the People deem as fundamental to insure a society of political equality. As part of the guarantee, the articulation of a right must include sanctions for those who violate the right.

[Penalties for Violation of Rights; Department of Rights Enforcement; Revised Bill of Rights; Relaxed Standing Requirement]

When THE 21ST CENTURY CONSTITUTION is analyzed with reference to the preceding criteria, one can see that the provisions established within it were designed specifically to *secure* their existence. By this analysis, THE 21ST CENTURY CONSTITUTION is both successful and desirable.
Both analytical approaches have their strengths — analysis by reference to criteria is more objective, but the operational mode of evaluation is more vivid. Utilizing the operational approach, it is useful to filter existing reality through the proposed constitutional provisions, and to imagine the results under those provisions. When ugly National incidents take place like the videotaped beating of Rodney King, ask what the outcome will be under THE 21ST CENTURY CONSTITUTION — ask yourself what will happen to the perpetrators of that offense. Call into mind the relevant constitutional provisions: the Department of Rights Enforcement, the Legislative Committees, the National Objectives. When you read about the Savings and Loan scandal and the billions of taxpayer dollars required to bail out the banks, and the hundreds of thousands of dollars the banks lavished on the politicians who arranged this bailout, ask yourself “is it reasonable to believe that such a fiasco would happen under THE 21ST CENTURY CONSTITUTION?” After careful thought and close analysis of the provisions, you’ll see that the short answer is “No!” Ask yourself, “Will we have a $4,000,000,000,000 National Debt under THE 21ST CENTURY CONSTITUTION?” Answer: No. “Will billions of dollars be wasted on unnecessary defense projects under THE 21ST CENTURY CONSTITUTION?” Answer: No. “Will billions of dollars be wasted on unnecessary animal research under THE 21ST CENTURY CONSTITUTION?” Answer: No. “Would the EPA identify only seven hazardous chemicals as ‘hazardous’ under THE 21ST CENTURY CONSTITUTION?” Answer: No. “Would there be a feeling of helplessness in the face of Government inaction under THE 21ST CENTURY CONSTITUTION?” Answer: No. “Would the networks be able to monopolize the airwaves and exclude alternative political dialogue under THE 21ST CENTURY CONSTITUTION?” Answer: No.

In short, THE 21ST CENTURY CONSTITUTION is the key — it is the tool, an absolutely necessary tool, for the social change we so desperately need. To fail to work for this New Constitution is to condemn one’s future self to the past — a past that is in many ways, and for many people, extraordinarily unpleasant.

The 1787 Constitution has changed your role in life — from master to servant. Your employees issue commands — commands which you are compelled to obey (“pay your taxes!”), even if the commands have no basis in reason. You have no choice, because organizing against this structure is made extraordinarily difficult, given that the financial resources necessary to retain control of the structure are withheld from your paycheck! And the resulting monolith (the Political/Educational/Media complex) controls the flow of information — we are not provided with the facts (nor even the concepts) necessary to evaluate what’s happening.

Children without hope? Or Children who can create Paradise? To what World will you send our future generations? A World where every move to
create a rational and just society is fought at every turn, or a World where good ideas are evaluated, considered, and implemented?

Do you want a better World? Do you have a dream? Then give yourself the tool to make your dream a reality.

Ask yourself the critical question — what World was always possible? Imagine that World. Then ask yourself, is it plausible that it will be achieved under our present political system? If it is not — and the mass of evidence points directly to that conclusion — then it’s time to roll up your sleeves.

Human beings have enormous capacities. Our greatness is unexplored. If you don’t work to make this New World a reality, it will not happen. Apathy is expensive. In fact, if people knew the cost of apathy, they would work 24 hours a day, seven days a week, to avoid paying its cost.

You sow what you reap. If you don’t work for the Good, the Good will remain unborn. The Good, today only a dim possibility, yells out to the World currently existing: “Fight for me!”

But if you pick up the remote control instead, the Good remains invisible. The Good is the world you never saw — and never will.

A New Millennium gives us a new mindset, and therefore gives us hope — and a chance to achieve enormously significant social change for the better that comes along only once every 1000 years. Ignore that hope? Let it die?

That would be the greatest Tragedy of all.

THE BEGINNING
Further Reading

THE 21ST CENTURY CONSTITUTION attempts to summarize many of the arguments against our current constitutional structure, but it is impossible to do justice to all of these arguments in a 300 page book — indeed, for reasons of space, many significant issues have been given short shrift, or left out entirely. Certain topics, such as the existence of the Empirical Constitution and the vastly different role of the Supreme Court under that Constitution, are worthy of their own books. No study of the Constitution ends with one book, and the reader is urged (strongly urged) to gain further knowledge of the problems with our constitutional structure.

The following bibliography contains the books that were the most helpful in writing THE 21ST CENTURY CONSTITUTION. For historical background, the most essential reading is Madison’s Notes on the Debates of the Federal Convention, which is also found in Max Farrand’s Records of the Federal Convention. Another essential read is Ralph Ketcham’s The Anti-Federalist Papers and the Constitutional Convention Debates, an extremely concise and well-edited discussion of the Constitution, pro and con. Also essential is The Federalist, which contains many nuggets of political wisdom useful for drafting and evaluating New Constitutions. Veit, Bowling and Bickford’s Creating the Bill of Rights is the documentary record from the first Federal Congress, and contains all the discussion on the drafting of those provisions, as well as the text of over 100 proposed amendments to the Constitution that were, ultimately, rejected. The Founder’s Constitution is a five-volume compendium, clause by clause, of virtually all the historical material relating to the Constitution — a must-read for constitutional scholars.

The best single view of what comprises the Empirical Constitution, aside from Ladanyi’s The 1987 Constitution, is Corwin’s The Constitution and What It Means Today, an extraordinarily detailed analysis of Supreme Court “interpretations” of the Constitution. Congressional Quarterly’s Guide to the U.S. Supreme Court contains a great deal of interesting and valuable information on the scope of the Court’s expanded power, up to and including de facto constitutional rewrites. Louis Fisher’s Constitutional Conflicts Between Congress and the President gives dozens of examples of disparities between the Written and Empirical Constitution. Two other books of interest are Siegan’s The Supreme Court’s Constitution, and Tugwell’s The Compromising of the Constitution. Also useful in this regard are two summaries of Constitutional Law used by law students, Gilbert’s and Emanuel’s Constitutional Law.
The best books on the defects of the Constitution are, in order, *The Constitution Under Pressure*, *Government for the Third American Century*, *A New Constitution Now*, and *Cracks in the Constitution*. Laurence Dodd’s essay “Congress and the Quest for Power” is a concise attack on the Committee System in Congress. The two law review articles, “Return to Philadelphia” and “Constitutional Conventions and the Deficit” are *must*-reading. Wilson’s *Congressional Government* is a classic criticism of our political system, and Beard’s *Economic Interpretation of the Constitution* is of equal stature. Chapter Six of the *Economic Interpretation*, 36 pages in length, is the single best summary of the political science of the Framers extant today. No study of the 1787 Constitution is complete without it.

Some excellent studies of the political process today are (in no particular order), Stern’s *The Best Congress Money Can Buy* and *The Rape of the Taxpayer*, Greenberg’s *The American Political System*, Kerbo’s *Social Stratification and Inequality*, Strick’s *Injustice for All*, Pascall’s *The Trillion Dollar Budget*, and Domhoff’s *Who Rules America Now*?. For a nice dose of politics as it really is, subscribe to the *Congressional Record*, and read the debates on the various issues — see the political system in action. Another good idea is to walk into a university bookstore, and peruse the political science section for books on our political process. Look for the ones which contain extensive quotations. *The Statistical Abstract of the United States* contains many valuable statistics on our country. *Plunkitt of Tammany Hall* is probably the most ruthless expose of politics as it really is — very readable, and very scary.

The two best books on a Constitutional Convention are *Constitutional Brinksmanship*, and *Unfounded Fears*. If you fear a Constitutional Convention, read these books.

Decisions of the Supreme Court and other Federal Courts contain much explication of the Written (and Empirical) Constitution, and make fine reading. The *Atkins* and *Chadha* decisions cited in the bibliography are two extremely important Separation-of-Powers decisions, and well worth studying. Also interesting are certain decisions of the Supreme Court, which, contrary to popular opinion, do nothing to preserve our “rights,” but in fact limit them. Among these decisions are *U.S. v. Stanley*, 483 U.S. 669 (1987); *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94 (1973); *Barron v. Baltimore*, 8 L. Ed. 672 (1833); *United States v. Richardson*, 418 U.S. 166 (1973); *Muntz v. Hoffman*, 422 U.S. 454 (1975); *Schlesinger v. Reservists Committee to Stop the War*, 418 U.S. 208 (1974); *Duncan v. Louisiana*, 391 U.S. 145 (1968); *Lehman v. City of Shaker Heights*, 418 U.S.
Finally, readers should acquire some general books on informal fallacies and the art of critical thinking. The study of informal fallacies and the study of critical thinking are the single most important topics that can be studied by a human being, bar none. Without this study, one is helpless in the face of rhetoriticians like William F. Buckley, Pat Buchanan, and Tom Wicker, who have studied these fallacies, and who use them to their (short-term) benefit. Take it from your humble author — your ignorance is not “bliss.” Some excellent books on informal fallacies are: Kahane’s *Logic and Contemporary Rhetoric*, Damer’s *Attacking Faulty Reasoning*, Johnson and Blair’s *Logical Self-Defense*, Rothwell’s *Telling It Like It Isn’t*, Huck and Sandler’s *Rival Hypotheses*, Chase’s *The Tyranny of Words*, Weddle’s *Argument: A Guide to Critical Thinking*, and Moore and Parker’s *Critical Thinking*. One of the best books around that can teach you “how to think” is the third edition of Hosper’s *An Introduction to Philosophical Analysis*. Baron and Sternberg’s *Teaching Thinking Skills*, while addressed to the teachers of the art of critical thinking, contains many valuable insights everyone can use. (These books, and books like them, can be found in university bookstores).

One cannot seriously evaluate the legitimacy of claims, political or otherwise, without serious study of the art of critical thinking. If you do not have at least four of these books in your library, consider yourself at an extraordinary disadvantage; not only in political discussions, but in everyday life. Rest assured that when the time comes to evaluate new constitutions, the fallacies will fly fast and thick. Be prepared!
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1 “Second Treatise,” John Locke, §223, 1 Founders’ Constitution 84-5 (All quotes indicated Founders’ Constitution are taken from The Founders’ Constitution, ed. by Philip Kurland and Ralph Lerner (University of Chicago: 1987)). All bold emphasis in the text is by the author.

2 Federalist 1, p. 2 (Hamilton). Punctuation and spelling modified for readability.


7 3 Records 222.

8 Injustice for All, p. 146.


10 All the work was for naught: the Brady Bill, ultimately, did not pass the Senate. Ten months later, in an article titled “Republicans’ Filibuster in Senate Kills Chances for Anti-Crime Bill,” The New York Times reported that “The Senate, mired in election-year politics, today virtually killed for the year an anti-crime bill that included a five-day nationwide waiting period for handgun sales.” Thus, all the money and time that was invested in the passage of the Brady Bill was wasted. See The New York Times, March 20, 1992, p. A-2.


18 17 Ohio Northern University Law Review 543, 548.

19 17 Ohio Northern University Law Review 543, 552.

20 17 Ohio Northern University Law Review 543, 555.


24 Federalist 75, pp. 381-2 (Hamilton).

25 Federalist 9, p. 38 (Hamilton).

26 Federalist 51, p. 261 (Madison).

27 Federalist 51, p. 262 (Madison).

28 Federalist 51, p. 263 (Madison).

29 Federalist 51, p. 263 (Madison).

30 Federalist 63, p. 334 (Hamilton).

31 “Four Letters on Interesting Subjects,” 1776, 1 Founders’ Constitution 638.

32 Federalist 62, p. 314 (Madison).

33 The Constitution Under Pressure, pp. 161-165 (citations omitted).


35 Federalist 70, p. 355 (Hamilton).

36 Federalist 72, p. 368 (Hamilton).

37 Federalist 64, p. 327 (Jay).


A New Constitution Now, p. 83 (all quotes taken from the first edition unless otherwise noted).


42 A New Constitution Now, pp. 4-5.


A New Constitution Now, p. 20.

Federalist 70, p. 358-60 (Hamilton).


A New Constitution Now, p. 39, quoting William McDonald, A New Constitution for a New America (1921).

Federalist 22, pp. 105-6 (Hamilton).

The Constitution Under Pressure, p. 198.

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The Best Congress Money Can Buy, p. 36.

The Best Congress Money Can Buy, p. 46.

The Best Congress Money Can Buy, p. 47.


1 Records 166-67 (June 8).

The Constitution Under Pressure, p. 183.

The Constitution Under Pressure, pp. 184-8 (citations omitted).

The Constitution Under Pressure, pp. 184-8 (citations omitted).


Constitutional Reform in America, p. xi.

Federalist 20, p. 97 (Madison).

(emphasis supplied).

“Second Treatise,” §141, John Locke, 1 Founders’ Constitution 618.

Federalist 64, p. 328 (Jay).

Federalist 78, p. 373 (Hamilton).

Federalist 49, p. 255 (Madison).


Federalist 62, p. 314 (Madison).

The delegation of legislative power to unelected bodies, thus, creates an obvious violation of the People’s right to vote for their legislators.

Federalist 78, p. 395 (Hamilton).


Chadha at 989.

Chadha at 999.
Chadha at 985.

Chadha at 985-86 (citations omitted).

Federalist 75, p. 380 (Hamilton) (emphasis supplied).

Chadha at 985-86 (citations omitted) (emphasis supplied).


The American Political System, p. 269.


See the discussion in the book Chadha: The Story of an Epic Constitutional Struggle, by Barbara Craig (Oxford University Press: 1988), and especially Chapter 6 (and pages 165 and 184).

Chadha at 967.

Chadha at 944.

Chadha at 959.

Chadha at 968.


Chadha at 978.

3 Records 127.

Federalist 50, p. 259 (Madison).

Federalist 41, p. 204 (Madison).

Federalist 41, p. 204 (Madison).

Federalist 44, p. 227 (Madison).

Federalist 61, p. 311 (Hamilton).

Federalist 61, p. 311 (Hamilton)


Letter from James Madison to Andrew Stevenson, November 17, 1830, 3 Records 488, (emphasis supplied)

3 Founders’ Constitution 258.

2 Founders’ Constitution 497-98.


“Veto Message,” July 10, 1832, 3 Founders’ Constitution 263.

Letter from James Madison to Spencer Roane, Sept. 2, 1819, 3 Founders’ Constitution 259.

3 Founders’ Constitution 259.

The Compromising of the Constitution, p. 75 (Letter from Thomas Jefferson to Senator Nicholas of Virginia).

The Compromising of the Constitution, p. 72.


1 Cooley Law Review 1, 35-6 (footnotes omitted).


Letter from Thomas Jefferson to Spencer Roane, Sept. 6, 1819, 3 Founders’ Constitution 261.

Baldwin at 74-5.
Here are some of the differences between the Written and Empirical Constitution, as authored or condoned by the Supreme Court:

<table>
<thead>
<tr>
<th>The Written Constitution</th>
<th>The Empirical Constitution</th>
</tr>
</thead>
<tbody>
<tr>
<td>• All legislative power vested in Congress.</td>
<td>• Some legislative power vested in Congress.</td>
</tr>
<tr>
<td>• All crimes tried by jury.</td>
<td>• Some crimes tried by jury.</td>
</tr>
<tr>
<td>• No Congressional laws against free speech.</td>
<td>• Laws against speech permitted if they serve a compelling interest.</td>
</tr>
<tr>
<td>• Congress creates rules for the Supreme Court.</td>
<td>• The Supreme Court creates its own rules, depending on the circumstances.</td>
</tr>
<tr>
<td>• Congress must declare war.</td>
<td>• The President can conduct “covert” operations.</td>
</tr>
<tr>
<td>• Treaties must be ratified by the Senate.</td>
<td>• Treaties called “executive agreements” need not be ratified by the Senate.</td>
</tr>
<tr>
<td>• Minors and military personnel are “citizens.”</td>
<td>• Minors and military personnel are not “citizens.”</td>
</tr>
<tr>
<td>• No two-party system.</td>
<td>• Two-party system is permissible.</td>
</tr>
<tr>
<td>• $20 jury trial requirement.</td>
<td>• $10,000 jury trial requirement.</td>
</tr>
<tr>
<td>• No ex post facto laws.</td>
<td>• No criminal ex post facto laws.</td>
</tr>
<tr>
<td>• Two-year limit on military appropriations.</td>
<td>• Five-year limit.</td>
</tr>
<tr>
<td>• Exclusive copyright.</td>
<td>• “Fair use” allowed.</td>
</tr>
<tr>
<td>• People have right to petition government for a redress of grievances.</td>
<td>• People have right if courts allow it.</td>
</tr>
<tr>
<td>• Bill of Rights other than First Amendment applies to states.</td>
<td>• Bill of Rights applies to States only when Supreme Court says so.</td>
</tr>
<tr>
<td>• Congress must publish all appropriations.</td>
<td>• Congress need not publish all appropriations.</td>
</tr>
<tr>
<td>• Federal powers limited.</td>
<td>• Federal powers broad.</td>
</tr>
</tbody>
</table>

129 The 1987 Constitution, pp. 5-6.
130 The 1987 Constitution, pp. 35-37.
132 The 1987 Constitution, pp. 4-5 (word “we” omitted before “do ordain”).
133 The Compromising of the Constitution, p. 108.
135 The Compromising of the Constitution, pp. 6-7.
138 1 Cooley Law Review 1, 44.
139 1 Cooley Law Review 1, 52.
140 1 Cooley Law Review 1, 56-8.
141 1 Cooley Law Review 1, 58.
146 Congressional Record, October 3, 1991, H7344 (Representative Dan Burton (R-IN)).
156 Studies of Congress, p. 516.
158 Federalist 14, pp. 66-7 (Madison).
159 Letter from Jefferson to Samuel Kercheval, July 12, 1816, 12 Works of Thomas Jefferson 12.
160 1 Cooley Law Review 1, 42 (1982).
163 Studies of Congress, p. 517.
165 A New Constitution Now, pp. 8-9.
166 2 Founders' Constitution 419, 459, 463.
167 Federalist 84, pp. 436-7 (Hamilton).
168 2 Founders' Constitution 4
169 2 Records 565 (September 10). (Records is Farrand’s Records of the Federal Convention)
170 Letter from Thomas Jefferson to James Madison, September 6, 1789, 1 Founders' Constitution 68.
171 Political Disquisitions, James Burgh, 1 Founders' Constitution 54-5.
173 1 Founders' Constitution 667.
176 1 Founders' Constitution 6.
177 1 Founders' Constitution 6.
178 1 Founders' Constitution 9-10.
179 1 Founders' Constitution 11.
180 “Massachusetts Constitution of 1780,” Articles 5 and 7, 1 Founders' Constitution 12.
181 Federalist 22, p. 111 (Hamilton).
182 Federalist 40, p. 202 (Madison).
183 Federalist 63, p. 321 (Madison).
184 “Cato’s Letters, No. 60,” John Trenchard, January 6, 1721, 1 Founders' Constitution 620.
185 Federalist 51, p. 262 (Madison).

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1 Founders’ Constitution 453-4 (November 28-December 4, 1787) (first paragraph);

3 Records 142 (November 24, 1787) (second paragraph).


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1 Founders’ Constitution 667-8.


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1 Records 360 (June 21).

1 Records 381 (June 22).

1 Records 361 (June 21).

1 Records 361 (June 21).

1 Records 365 (June 21).

Caleb Strong in the Massachusetts Convention, January 15, 1788, 2 Founders’ Constitution 53.

Federalist 53, p. 275 (Madison).

Federalist 53, p. 274 (Madison).

Federalist 37, p. 178 (Madison).

Federalist 53, p. 274 (Madison).

Federalist 53, p. 272 (Madison).

Federalist 52, pp. 269-70 (Madison).

Federalist 55, p. 281 (Madison).

Data from Table 440 of the 1991 Statistical Abstract. The lowest percentage of incumbents re-elected in the 1964-1988 time frame was 86.6 percent in 1964. In 1988, 98.3 percent of the incumbents were re-elected.

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The Best Congress Money Can Buy, p. 195 (Figure is in 1986 dollars).


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Fortune, May 6, 1991, p. 76.

Federalist 52, p. 267 (Madison).

Federalist 57, p. 289 (Madison).

Federalist 62, p. 316 (Madison).

Federalist 56, p. 285 (Madison).

Federalist 53, p. 252 (Madison).


The Trillion Dollar Budget, p. 81.

The Trillion Dollar Budget, p. 83.

Federalist 35, p. 168 (Hamilton).

Federalist 62, p. 315 (Madison).

Federalist 62, p. 315 (Madison).

Federalist 64, p. 330 (Jay).


“Washington’s Farewell Address,” September 1796, 1 Founders' Constitution 683.

Federalist 1, p. 3 ((Hamilton).

Federalist 1, pp. 3-4 (Hamilton).

Federalist 81, p. 410 (Hamilton).

Federalist 65, p. 331 (Hamilton).

This figure was derived by dividing the number of votes cast for President Bush in 1988, 48.886 million, by the voting age population in 1988, 178.1 million. 130 million eligible voters did not vote for President Bush, or did not vote at all (all numbers from the 1991 Statistical Abstract of the United States, Tables 426 and 450).

Federalist 64, p. 325 (Jay).

Under the Prisoner’s Dilemma, mutual cooperation benefitting two parties is extremely improbable, if the parties are put in a situation where one party’s cooperation combined with the other party’s defection would result in severe consequences for the cooperating party. For further discussion of this extremely important effect, see the essay “Irrationality is the Square Root of All Evil” in Metamagical Themas, by Douglas Hofstadter (Bantam: 1985), p. 756.

Federalist 3, p. 12 (Jay).

Federalist 50, p. 260 (Madison).

Federalist 10, p. 47 (Madison).

1 Records 578 (July 11)

Federalist 37, p. 181 (Madison).


Federalist 14, p. 62 (Madison).

The Constitution Under Pressure, p. 111.


The Constitution Under Pressure, p. 131.


While history may on rare occasions produce an occasional superpatriotic multibillionaire (H. Ross Perot in 1992) willing to invest up to $100 million of private funds to win a Presidential election in times of extreme anti-establishment sentiment (the only candidate who may be able to
surmount the traditional institutional hurdles), this eventuality that does not alter the fact that more
traditional (and underfinanced) third-parties and/or independents, such as the Libertarians and the
Greens, labor in obscurity.

277 Senator Kerry did not give the equivalent figure for the Democrats.
279 Buckley v. Valeo, 424 U.S. 1, 293-4 (1976). The court had stated earlier that “there are
legitimate reasons not to provide public funding, which would effectively facilitate hopeless
candidacies.” Buckley at 95.

280 Direct Democracy, p. 165.
284 The Constitution Under Pressure, pp. 141-42.
287 Who Rules America Now?, p. 120.
288 Who Rules America Now?, p. 120.
289 Who Robbed America?, p. 82.
291 Federalist 76, p. 385 (Hamilton).
292 Federalist 77, p. 390 (Hamilton).
293 “Commentaries on the Constitution,” § 1523, Joseph Story, 4 Founders’ Constitution 117.
294 Branti at 522, 29, 31 (citations omitted).
297 Plunkitt of Tammany Hall, p. 3.
298 Plunkitt of Tammany Hall, p. 13.
299 Plunkitt of Tammany Hall, p. 74.
300 Who Robbed America?, p. 78.
301 Branti at 530-31.
302 Federalist 60, p. 305 (Hamilton).
304 CSC at 567.
305 Federalist 44, p. 229 (Madison).
307 Direct Democracy, p. 211.
308 The Constitution Under Pressure, p. 189.
309 The Constitution Under Pressure, p. 192.
310 The Political Writings of John Adams, ed. George
311 1 Records 132 (June 6).
312 Federalist 35, pp. 166-9 (Hamilton) (order of sentences reversed) (emphasis supplied).
313 See The Best Congress Money Can Buy by Philip Stern.
316 If a Representative is discrepant ten times in ten votes, however, s/he by necessity breaches the
10 percent mark, since 10 out of 100 is 10 percent.
317 2 Founders’ Constitution 161.
The Constitution Under Pressure, pp. 184-8 (citations omitted).

The Constitution Under Pressure, p. 189.


The 1990 Statistical Abstract of the United States shows that in 1988, 214.1 million dollars was paid in interest on the public debt (table 497). This figure was approximately 8 percent of the outstanding gross Federal debt [2.6008 trillion dollars, according to table 497]. Thus, we are paying approximately 8 percent interest on the National Debt. The 1991 Statistical Abstract of the United States, perhaps for political reasons (an upcoming election), omits the interest paid on the public debt figure in table 507, the equivalent of table 497 in the 1990 Statistical Abstract. However, the interest paid on the public debt can be calculated by extrapolation. The figure for the 1990 outstanding gross federal debt given in the 1991 Statistical Abstract (an estimated figure) is $3.113 trillion dollars (table 507). Assuming the rate of 8 percent interest paid by the United States government to the holders of the Federal Debt in 1988 (as indicated by the 1990 Statistical Abstract), this gives a figure of $240 billion dollars paid in interest. The National Debt is expected to hit 4 trillion dollars at the end of 1992, which would give a figure of $320 million dollars in interest paid, assuming that the rate of 8 percent interest remains constant (Congressional Quarterly Weekly Report, September 14, 1991, page 2607).

In 1988, according to the 1990 Statistical Abstract (table 497), 214.1 million dollars was paid in interest on the public debt. In that same year, according to the 1991 Statistical Abstract (table 522), 473.7 million dollars was paid in individual income taxes. 214.1 million dollars is 45 percent of 473.7 million dollars. In 1980, by contrast, the interest paid on the national debt (74.9 million dollars [see table 497, 1990 Statistical Abstract]) was 26 percent of the individual income taxes paid (287.5 million dollars [see table 522 of the 1991 Statistical Abstract]). There is a clear upward trend, for obvious reasons.

The figures for calculating the percentages were obtained from The New York Times, “Win or Lose, Democrats Frustrated by Bush Veto,” September 29, 1991, p. L-22.

The Anti-Federalist, ed. by Herbert Storing (University of Chicago: 1985), pp. 150-1. Yates was writing under a pseudonym, as was customary at the time.


In 1988, according to the 1990 Statistical Abstract (table 497), 214.1 million dollars was paid in interest on the public debt. In that same year, according to the 1991 Statistical Abstract (table 522), 473.7 million dollars was paid in individual income taxes. 214.1 million dollars is 45 percent of 473.7 million dollars.


Federalist 43, p. 229 (Madison).

Federalist 15, p. 72 (Hamilton).

Two particularly obnoxious decisions in this regard are CBS v. Democratic National Committee, 412 U.S. 94 (1973), where the Court held that a broadcaster had the right to refuse to air politically-oriented messages paid for by private parties, and Miami Herald Pub. Co. v. Tornillo, 418 U.S. 241 (1974), where the Court held unconstitutional a statute that required newspapers to print the replies of political candidates whom the paper had attacked.


The Constitution Under Pressure, p. 197.

Letter from Thomas Jefferson to George Wythe, August 13, 1786, 10 Papers of Thomas Jefferson 244.

The language in the Second Clause is derived from Dr. Ladanyi’s reduction of the Empirical Constitution.
The language in this Clause is derived from Dr. Ladanyi’s reduction of the Empirical Constitution. Other amendments to Section Twelve were derived from Supreme Court re-writes, a draft District of Columbia constitution (in the event it was granted statehood), and by the Author.


*Federalist* 62, p. 317 (Madison).


See *Baker v. Carr*, 369 U.S. 186, 204 (1962) (the party suing should have a “personal stake in the outcome of a controversy”).

*Richardson* at 176. The First Amendment gives citizens a right to petition the government for grievances. Ostensibly, this does not mean some grievances, but all grievances, including “generalized” ones.

*Schlesinger* at 229 (1974).

*Craig* at 497.


*Direct Democracy*, p. 51. Florida and Illinois adopted constitutional initiatives only. 6 other states adopted the referendum.


*Direct Democracy*, pp. 185, 186, 199, 202.

*Direct Democracy*, pp. 172-3 (this movement received over 200 endorsements from congressional candidates in the 1978 campaign).

*Direct Democracy*, pp. 204-5.


*3 Founders’ Constitution* 261.


*Federalist* 69, p. 353-4 (Hamilton).

*Federalist* 69, p. 354 (Hamilton).

*2 Records* 99 (June 4).

*2 Records* 99 (June 4).

*2 Records* 101 (June 4).

*2 Records* 101 (June 4).

*1 Records* 103 (June 4).

372 *Federalist 69*, p. 354 (Hamilton).
374 *Federalist 69*, p. 354 (Hamilton).
376 *Federalist 69*, p. 354 (Hamilton).
378 *Federalist 69*, p. 354 (Hamilton).
379 *The President, Congress, and the Constitution*, p. 171.
380 *Federalist 69*, p. 354 (Hamilton).
381 1 *Records* 113 (June 4).
382 *A Detailed Analysis of the Constitution*, pp. 64-5.
383 In *Lochner v. New York*, 198 U.S. 45 (1905), the Court held that a law limiting the number of hours that bakers could work unreasonably interfered with the “freedom” of contract between “master” and employee. See also *Hammer v. Dagenhart*, 247 U.S. 251 (1918), which held that Congress could not pass laws regulating child labor.
385 See *Roe v. Wade*, 410 U.S. 113, 124-5 (1972). The Court acknowledged that the issue was moot, but allowed the appeal anyway.
388 See Justice Brennan’s dissent at page 394.
389 According to Justice Blackmun, “the contours of Art. IV, § 2, Cl. 1 are not well developed . . . .” See the cases discussed in *Baldwin*.
390 *The Constitution and What It Means Today*, p. 258 (See *People ex rel Holland v. Bleigh Construction Co.*, 335 N.E. 2d 469 (1975)).
392 *Direct Democracy*, p. 34.
393 1 *Records* 122 (June 5).
394 1 *Records*. 202-03 (June 11).
396 2 *Records* 558 (September 10).
397 1 *Records* 202-03 (June 11).
398 2 *Records* 629 (September 15).
399 *Federalist* 85, p. 448 (Hamilton).
400 *Federalist* 85, p. 447 (Hamilton).
401 *Federalist* 85, p. 448 (Hamilton).
402 *Federalist* 85, p. 448 (Hamilton).
403 In fact, Congress has passed no law regarding the deadlines for applications. See *Constitutional Brinksmanship* at page 110.
404 *Unfounded Fears*, p. 55.
405 *Unfounded Fears*, p. 56.
407 Some of the States restricted their call for a Convention to the balanced-budget issue, but Article Six states that the Constitution (and the laws of the United States passed in pursuance thereof) are the “supreme Law of the Land,” and that “all” legislative power granted is vested in *Congress*. According to the Tenth Amendment, “powers not delegated to the United States” are reserved to the States. But any such power to restrict the meaning of Article Five, if there were such a power, would be vested in *Congress*. The Constitution grants *Congress* the power to make all Laws which are “necessary and proper” for carrying into execution its powers (which include calling a convention),
provided, of course, that the Congress does not pass laws which function to amend the Constitution (such as adding subject-matter and time-frame requirements to Article Five).

408 Constitutional Brinksmanship, p. xix.

409 Federalist 85, p. 448 (Hamilton).

410 The mathematics are as follows: assume 9 red balls in a box, with 4 additional white balls. The odds of picking a red ball on the first pick are 9 chances out of 13, or .69230769. Assume that a red ball is picked. There are now 8 out of 12 balls that are red. The odds of picking a red ball on the second pick are 8 chances out of 12, or 0.66666667. The odds of picking a red ball on the first and second pick is the probability of occurrence of the first instance (.69230769) times the probability of occurrence of the second instance (.66666667). To get the final probability, the probabilities are multiplied all down the line. The resulting probability — of picking 9 red out of 13 total — is 0.001398601. The odds of picking the 34 red balls out of a total of 50 is .00000000000020309972030, a task that is 6,886,279,295 times more difficult to achieve.


416 15 Papers of Thomas Jefferson 395-6.

417 The Compromising of the Constitution, p. 104.

418 Federalist 40, p. 202 (Madison).

419 Federalist 43, p. 224 (Madison).

420 Federalist 22, p. 111 (Hamilton).

421 Federalist 38, p. 187 (Madison).

422 Federalist 41, p. 203 (Madison).

423 Federalist 15, p. 70 (Hamilton).

424 Federalist 1, p. 2 (Hamilton).

425 Federalist 14, p. 66 (Madison).

426 Federalist 85, p. 449 (Hamilton).

427 The Social Animal, pp. 102-04.


430 A New Constitution Now, p. 91.


432 Federalist 37, p. 176 (Madison).

433 Unfounded Fears, p. 138.


436 A New Constitution Now, pp. 94-5.

437 Time for Change, p. 6.

438 Federalist 58, pp. 296-7 (Madison).

439 Federalist 63, pp. 324-5 (Madison).

440 The voting age population in 1988 was 182,779,000 (Table 454, 1991 Statistical Abstract).

441 Table 453, 1991 Statistical Abstract.


443 The district population in 1984 was 516,143 (1987 Congressional Staff Directory), and on a national basis, 75 percent of the United States was of voting age. (In 1988, the United States population was 245,051,000 [Table 2 of the 1991 Statistical Abstract], and the voting age population was 182,779,000 [table 454], giving a percentage of approximately 75 percent.)

444 The President’s support will be required if aspects of the Act are considered to fall under Article One, Section Eight of the Constitution, and not Article Five.