

A Constitutional Conversation at Crystal Bridges

Thursday, August 11, 2022

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[00:00:00] Jeffrey Rosen: Hello friends. I'm Jeffrey Rosen, President and CEO of the National Constitution Center, and welcome to We the People, a weekly show of constitutional debate. The National Constitution Center is a nonpartisan nonprofit, chartered by Congress to increase awareness and understanding of the constitution among the American people. The Crystal Bridges Museum of American Art in Bentonville, Arkansas, has just opened a new exhibit called We the People: The Radical Notions of Democracy. It features a rare print of the constitution, and to celebrate the opening, the museum invited me to be in conversation with Eric Slauter about the text and impact of the Declaration and the Constitution. It was a wonderful conversation and I'm excited to share it with you today.

[00:00:48] Eric Slauter is Deputy Dean of the Humanities at the University of Chicago, and the author of *The State as a Work of Art: The Cultural Origins of the Constitution*. Enjoy the conversation.

[00:01:00] Friends, it is such an honor to be in this spectacularly beautiful place. It's so exciting to see the exhibit which Eric and I have just toured. And it's such a meaningful reminder that the Constitution and the Declaration and the Bill of Rights are the words that unite us in these polarized times. These inspiring texts define who we are as Americans. They're so beautifully displayed with the glorious art, and I know both of us are honored to be part of this inaugural conversation. I'm really looking forward to learning from Eric Slauter as well. He's a brilliant expert on the cultural and intellectual sources of these documents. We did a wonderful panel on poetry and the Constitution at the National Constitution Center, and he cast such light on it, and I know we're gonna, um, have a great conversation. So here's the thought, uh, we'll talk about the relationship between the Declaration and the Constitution.

[00:02:00] What are the ideas that underlie it and what were those glorious words trying to achieve? We'll talk about freedom of conscience and speech. We'll talk about the original meaning of the pursuit of happiness. And we'll talk about, uh, how the founders reconciled the hypocrisy of slavery with the promise of the Declaration, and how that promise was fulfilled in the post-civil war amendments to the constitution, and then we'll, we'll see where that goes and we'll take your questions. I'm gonna jump in by framing the question about freedom of conscience. So just a few months ago, we unveiled at the National Constitution Center, the first amendment tablet. These are the words of the first amendment, 75 feet high, 50 tons of marble. They'd come from the museum building in Washington, DC. When the museum shut down, these words were lovingly packed onto a truck on I-95 and driven to the National Constitution Center

and installed in this glorious space that's about as big as the room we're in now. But imagine if behind us we' not the beautiful lake, but Independence Hall itself.

[00:03:11] So we're unveiling the First Amendment tablet, and I'm standing in front of these incredibly powerful words, glimmering in silver, looking out on Independence Hall as I'm inaugurating this tablet. And I was moved to talk about two documents, Jefferson's Bill for establishing religious freedom, and Louis Brandeis's dissent in *Whitney v. California*. The greatest free speech decision of the 20th century. And Brandeis read Jefferson's speech when he wrote *Whitney* and traced its arguments word for word. And Jefferson of course wrote his Virginia Declaration soon before drafting the Declaration of Independence. So I was sort of gazing on Independence Hall and feeling the spirit of Jefferson basking over that words. And what's so striking about Jefferson's speech is he identifies four reasons for protecting freedom of conscience and speech.

[00:04:05] First, freedom of conscience is a natural and unalienable right. Second, freedom of conscience is necessary for holding our public officials to account. Third, freedom of conscience is necessary for the discovery and spread of political truth. And fourth, it is necessary for engaging political participation. And these are the four reasons that the Supreme Court embraced in the 20th century as the main reasons for protecting speech and Brandeis just runs through them all in his glorious *Whitney* decision. And it was thrilling to see that as a connection between the Declaration and the Constitution and the Bill of Rights. What I wanna begin with Eric, 'cause you've written such coruscatingly, illuminating books about natural rights, is help our friends unpack what Jefferson meant when he said conscience is an unalienable right. He and Madison believed, as Madison said in his bill for establishing memorial against religious assessments, Madison said freedom of conscience is unalienable because the opinions of men being dependent on evidence contemplated by their own minds, cannot be controlled by other men.

[00:05:20] In other words, I can't give to you the power to control my thoughts 'cause I can't entirely control them myself. They're the product of my reason and the evidence that it contemplates. And that was why freedom of conscience is listed in so many of the revolutionary era state constitutions as an unalienable right. And just to kind of get the technicalities down, unalienable means when I move from the state of nature to civil society to form a government, I alienate or surrender certain rights to the government in order to get greater security of the rights I've retained. So I alienate the power to control, punish, murder, but I, I retain the rights of, uh, conscience 'cause I can't surrender them and I can't get anything useful in response to them. A long question, Eric, but do I have it basically, right? And tell our friends more about why conscience was unalienable, why unalienable rights were so central to the revolution, and why it ended up appearing in the Bill of Rights.

[00:06:20] Eric Slauter: The short answer is yes, I do have a right. [laughing] Um, but because I'm a professor, we are gonna get a longer answer. So I wanna start by just thanking the sponsors, uh, and Crystal Bridges itself for this wonderful opportunity to have a discussion with you, Jeff, uh, and all with all of you and to, um, tour the just astonishing exhibit, um, that combines so beautifully these really precious documents. And it's so fun to, it's fun for me as a historian to,

uh, to come to an art museum and see these documents and see them described, um, in their material form the way you might describe, you know, a painting as oil on canvas.

[00:07:04] So, uh, many times as you'll see in the exhibit, these are described as ink on paper. [laughing] Which is a very, um, literal way to think about our founding documents, that the Declaration of Independence is ink on paper, the Constitution is ink on paper and, you know, it's wonderful to see it, all of these documents under glass. Because it suggests not only that they're worthy of that kind of attention, the kind of attention that we often give to artworks in a museum, but that they are valuable and that they are fragile. That the words on paper can, uh, be erased, they can be destroyed by fire and so forth.

[00:07:47] And so, you know, one of the, one of the great innovations of the late 18th century and the American Revolution was the creation of textual records, textual instruments that would organize governments. So the British had, uh, a constitution that was not textualized. There were certain things that you could point to, the English Bill of Rights, but most of these things were not written down. Uh, but by the end of the 18th century, if you said Constitution and you couldn't pull it out of your pocket, then you didn't have one, right? If you couldn't, you know, reach into your pocket and pull out a copy of the Constitution or the Declaration. Um, and I have several more in here.

[00:08:35] Jeffrey Rosen: [laughs]

[00:08:35] Eric Slauter: [laughing] One's from the early 19th century-

[00:08:38] Jeffrey Rosen: I'll trade you for the, for that one. [laughs]

[00:08:39] Eric Slauter: Yeah. Um, but, but you know, the idea was that these, uh, these precious objects could be multiplied through the mechanism of, of printing and that they could be, um, they could be preserved, right? It would be one thing to preserve them on parchment, but I think we've, many of you who have gone to the national archives have seen in what bad shape [laughs], um, many parchments are. Even the, the lovely 13th amendment that is on display here, um, is a little illegible because, um, parchments, you know, requires a special kind of humidity and care and so forth. And it's not, it doesn't tend to last as well as, um, as, uh, paper from, from the 18th century, which was made of rags of, of linen and so forth.

[00:09:24] So in any, in any case, I'm very glad to be here. I'm very glad to see all these, um, all these wonderful documents. And to get to Jeff's question, can I have a show of hands of those who have read the Virginia statute for establishing religious freedom?

[laughing] Okay. Okay. [laughs]

[00:09:42] Jeffrey Rosen: Probably [laughs]

[00:09:43] Eric Slauter: Uh, uh, okay. Excellent. Because you all have phones, you can all read it now, but don't do that. Wait, wait until after. [laughing] This is, uh, it's it is really, it's a, it's a legislative milestone. It is perhaps the, one of the greatest pieces of statute law from the age of the American Revolution, and functionally, it does one thing. It says, um, that, you know, there

won't be an established religion in Virginia. Many of the colonies had established religions. Virginia had the, the Church of England, the Anglican Church, uh, and after the revolution, there were movements, um, by different denominations, uh, Baptists and others who did not like the idea that their taxes were going to support the, uh, Anglican Church or one particular, um, uh, church in that as Baptist, let's say they were merely being tolerated, right?

[00:10:42] Um, and in fact, you know, throughout the revolution, you see a kind of wholesale, uh, denigration of just the concept of toleration, because toleration implies superiority. If I can tolerate you, right? Um, it suggests that I'm above you in some way, or that my religion is better than yours, but I'll allow yours to, to, um, to function. So in the first draft of the Virginia Declaration of Rights in June of 1776, George Mason uses the word toleration. And James Madison is a committee member and he says, "Actually, no. Let's, uh, instead of toleration, let's cross that out and write free exercise of religion, right? Or Liberty of conscience." Those are, those are more egalitarian than this concept of toleration.

[00:11:35] When George Washington, um, writes a letter to the synagogue in Newport, he says, "It's wonderful that we no longer talk about toleration, um, because it suggests that we're merely tolerating you, um, and now we all celebrate free exercise of, of religion." So when you do read after, after this session, when you do go and look at the, either the 1779 draft that Jefferson wrote of the religious freedom, uh, it was called then a bill for establishing religious freedom. It's kind of play on words, right? That you're establi- you're not establishing a religion, you're establishing, uh, a right.

[00:12:16] And, um, whether you read that one or the one that was ultimately enacted, there are very few changes. And it was his, um, protégé, James Madison, who was able to get it through the Virginia legislature in the middle of the 1780s after the revolution was, was completed. Um, it's in three parts. The second part is the enacting clause. It's, uh, the main sentence that says that there, there will not be an established religion. The third part, um, is a little curious. It says something to the effect of, even though we're just ordinary legislators who are making a statute and any future legislators could change that statute because that's what legislators do. And legislation in the period, um, is full of repealing things and passing new things and repealing and amending and, and so forth and going back and forth.

[00:13:11] So they're, they're afraid that it could be. They said, "But just so you know, um, this is one of the, uh, inalienable rights of nature, um, and thus should always be protected except by despotic governments." Right? So if, if a future legislature decides they're going to do that, it's a warning. [laughing] But that's not where the, that's not where the energy of that document is. The energy of that document is in its first sentence, which is perhaps the longest sentence written in the 18th century. [laughs] I, I don't know that for sure. It is something like 540 words. It is all connected by semi-colons. There are 10 semi-colons. I will, you know, joke to my class that I'm just gonna read them one sentence from the, from the Virginia Statute, you know, and then four and a half minutes later, um, I'm still going.

[00:14:05] Um, so it, it's a, it's a wonderful enlightenment document that argues for, you know, that it would be hypocritical for people to, um, to be forced into their religions, uh, because religion is often not a conscious choice. Uh, it's whatever the evidence that is presented to you,

um, tells you. It is a very private, uh, um, right, uh, and thus a very, very fragile one, um, and, and worthy of governmental protection, right? Now, Massachusetts at the same time, as, as, uh, Virginia takes a very different tact. They decide that because virtue, [laughs] one of, one of your keywords is so important to, um, Republican governments and Massachusetts is a Republican government, that, um, they will support the public professors of religion, meaning a church.

[00:15:01] Um, and so, you know, there are different strategies for thinking about, um, the role of religion in political life in the 18th century. But boy, that, that, um, that Virginia statute is just, uh, it- it's, it's breathtaking. And so, you know, go home, you can probably listen to it on YouTube, or you can, you can read it to one another. Um, but it is, it's a real, uh, it's a real milestone.

[00:15:26] Jeffrey Rosen: Wonderful. Thank you for inspiring us all to read it. Um, I'm so excited that the, the Constitution Center is gonna put that document and a lot of the other central documents of American history online in this new founder's library-

[00:15:42] Eric Slauter: Mm-hmm.

[00:15:42] Jeffrey Rosen: ... that leading liberal and conservative historians are selecting so that you can learn from the primary texts and make up your own mind. I wanna ask you now, Eric, about this really meaningful reading project that I began during the COVID quarantine and has now become the subject of my next book which is gonna be called Pursuing Happiness: The Ancient Wisdom That Inspired the Founders' Quest for the Good Life. And basically during the quarantine, I noticed a surprising coincidence I hadn't seen before. Benjamin Franklin, when he was starting off in Philadelphia, made a list of the 13 virtues that were necessary to achieve moral perfection. And they included patience and humility, and he included chastity, even though he'd just sired a son out of wedlock. [laughing] And he, he included humility, even though he knew he'd have trouble, uh, with this once he published-

[00:16:38] Eric Slauter: [laughs]

[00:16:38] Jeffrey Rosen: ... a pamphlet called With Big Type Humility by Benjamin Franklin.

[00:16:41] Eric Slauter: [laughs]

[00:16:42] Jeffrey Rosen: Uh, and, uh, but he nevertheless made a list of these virtues and he'd put little X marks during the ones that he'd fallen short of. And he found this very depressing, 'cause he was falling short so much, but he said he became a better person than he would've if he hadn't. And the motto for this project was a book by Cicero that I'd never heard of called the Tusculan Disputations. Well, what struck me was that Thomas Jefferson made a similar list of 12 virtues, and when he was asked to define happiness, he sent to a main school master called Amos Cook an excerpt from the same book, Cicero's Tusculan Disputations. And it said, "The man who is unruffled in his tranquility, who is neither driven to Heights of wanton exaltation nor great despair, he is the wise man of whom we are in quest. He is the virtuous and happy man."

[00:17:38] So struck by the fact that both of these great figures had defined happiness with this reference to this stoic self-help manual that I never read, [laughing] I decided to read the books

that inspired Jefferson when he wrote the Declaration. And I just learned a moment ago that Eric in his phenomenal class actually has his students use the same reading list that I did, which was a list that Jefferson sent to the son of a, a friend of his who was going to law school called Robert Skipworth. And Jefferson says, here's what, the books you have to read, the core curriculum, make sure you read them at these times of day and start at 6:00 AM when your mind is clearest and don't stop until 9:00.

[00:18:19] Eric Slauter: [laughs]

[00:18:19] Jeffrey Rosen: It was this incredibly rigorous-

[00:18:22] Eric Slauter: Did you keep that schedule?

[00:18:23] Jeffrey Rosen: Well, I did.

[00:18:23] Eric Slauter: [laughs]

[00:18:23] Jeffrey Rosen: I got up every morning at 5:00. I thought if I'm gonna get through these, I better be Pytha- strict like Pythagoras who inspired Jefferson and, and Franklin in keeping these strict schedules. And I'd watch the sunrise, and then I'd kind of do my reading and, and, uh, and I, and I got through the, the reading list. And what I discovered blew my mind, which is that the books, well, first of all, that I hadn't read these books. So I had, I've had a very magnificent education privilege to study with the greatest teachers at great universities. But even though I studied English and American literature and politics and history and philosophy, I missed the books of moral philosophy that Jefferson said were crucial to this young man who was going to law school. These were part of the core curriculum of a lot of high schools for much of American history and they just weren't taught when I went to college and law school.

[00:19:13] And the other thing that struck me so much is that all of the books, both from the classical Greek and Roman period and the enlightenment period, Cicero, Seneca, Epictetus, Marcus Aurelius for the classics, and then John Locke, Francis Hutcheson, uh, Jean-Jacques Burlamaqui, Lord Kames. Some of them I heard of, some of them I didn't. All of them contain the phrase pursuit of happiness. So when Jefferson said that he wasn't making up the Declaration from thin air, but was channeling writers like Aristotle, Cicero, Locke, and others around Sydney, I suddenly saw that he was telling the truth. But what was even more significant is that there's a definition of happiness that was totally unfamiliar to our modern ears. Today we defined happiness as feeling good. For the founders and the classical philosophers, it was being good.

[00:20:06] Happiness was virtue. Aristotle famously defined happiness as eudemonia, which means good spirit. And it's hard to define, but in his Nicomachean Ethics he defines it as activities of the soul in conformity with virtue or excellence. So for Aristotle, happiness was being your best self, mastering your unreasonable emotions like anger and jealousy and fear so that you could serve others and achieve your potential. Today, we'd call it emotional intelligence, uh, or you could use a word like being a lifelong learner. But it was essentially spending each day becoming the best person that you could through reading and spiritual and intellectual self discipline. Remarkably, it has a lot in common with the lessons of the great religions and wisdom

traditions, both the King James Bible, the Dhammapada, the Upanishads, the Bhagvad Gita, which Adams read and discussed with Thomas Jefferson in his old age, all say things like we are what we think. Life is controlled by the mind as the Buddha puts it, and we have to focus on what's in our control, which is our own thoughts and actions rather than trying to control the thoughts or activities of others.

[00:21:29] It's the ancient and empowering wisdom and it was just remarkable to see it in all of these great books of moral philosophy. And the, the, the other thing that just was so striking, is it helped me see the documents that we're talking about today in a new light. So when you look at the Federalist papers, you'll see that it's full of the antithesis between reason and passion, and Madison defines faction in the Federalist papers as any group, either a majority or a minority, animated by passion rather than reason, devoted to self interest rather than the common good. And Washington in his Farewell Address warns that the republic will collapse unless America can maintain the virtue that it's sustained during the Revolutionary War, and that means resisting factions and being governed by the mental tranquility and calm focus that's necessary for both private happiness and public happiness.

[00:22:22] And Washington's not sure at the end of his life about whether Americans will muster that virtue. He's kind of depressed about the rise of the political parties that Madison and Hamilton are presiding over. Jefferson is worrying about civil war. Adams also isn't sure Americans can be virtuous enough. Only Madison, who had lower expectations because he designed a constitution to slow down deliberation so that hasty impulsive passions would be cooled and reason could prevail. He thought maybe there was a chance of optimism for the future of the republic. So you can see, as I talk about it, how excited I am to write this book that looks at each of the founders, asks, what books did they read in particular? What inspired them as kids? How did they absorb this philosophy of happiness and self mastery? How did they live up to it in their personal lives? And then how did it, how is it reflected in their constitutional achievements?

[00:23:18] I couldn't be more excited about it. It changed the way I viewed the constitution, and I have to say that it changed my life because it really is a council of spiritual self mastery as being a precondition to being a good citizen. And that's why the founders talk so much about the connection between virtue and citizenship. So, um, and it's obviously not a question, Eric, it's just in introducing the fact that I'm now immersed in a topic that you've been teaching for a long time. I, I won't ask do I have it right? Because-[laughs]

[00:23:47] Eric Slauter: [laughs]

[00:23:48] Jeffrey Rosen: ... if I don't, I'm, I'm, I'm in real trouble. But thoughts, reactions, what else should I read? And what for you, as you've studied this, is the relevance between the founder's understanding of the pursuit of happiness and their theories of personal and political self-

[00:24:02] Eric Slauter: Yeah. I think that's such a wonderful exercise. And so that's another thing that we can suggest or put on our syllabus- [laughs]

[00:24:10] Jeffrey Rosen: Yeah.

[00:24:10] Eric Slauter: ... is this letter between Thomas Jefferson and his neighbor, Robert Skipwith. His neighbor had written to him to say, "I didn't go to William and Mary, I didn't go to college." So few people had, he was studying law, but that didn't mean you had to have gone to college. It was a trade. Um, he s- he, you know, had to confess to Jefferson who read several languages, that he could only read English. He couldn't read Greek or Latin, so he would need books in translation, right? And he had about 50 pounds to spend, which was an enormous amount.

[00:24:43] And Jefferson being Jefferson and a- all of these founders when given a task like this would come back with, um, much more, you know, Je- when, when somebody wrote a pamphlet against, uh, the American constitutions, um, Adams responded with a three volume treatise, right? [laughing] I mean the- there was a, there was a kind of, um, surplus energy, uh-

[00:25:08] Jeffrey Rosen: [laughs]

[00:25:08] Eric Slauter: And, uh, um, and Jefferson, you know, wrote back to his friend and said, "Well, you know, here's a list, it's aspirational, it's 100 pounds. So it's twice as much as you wanted to spend." Um, I'm not gonna put a lot of law books on there, but there were things that were not that old, Blackstone's Commentaries, which was, had, you know, come out, you know, five or six years earlier. There were all of those wonderful, uh, English translations of the books that Jeff has mentioned, including translations, um, by women.

[00:25:43] So, uh, translation of Epictetus by Elizabeth Carter, who was one of the female savans of the, of the 18th century, member of the Blue Stocking, um, Circle. And, um, you know, it's just, it is, it's a wonderful list, and I use it for, in my class on the Declaration of Independence, just to introduce students to the really rich world that they don't know. So, you know, Adam Smith's, uh, Theory of Moral Sentiments is on there. They might know Smith from the wealth of nations at Chicago. They definitely know, um, the Smith of the Wealth of Nations. Um, but you know, they don't know the Theory of Moral Sentiments or that Smith dabbled in all sorts of things, um, in, in his position, in, in Scotland.

[00:26:27] So it's just a, it's a wonderful reading list. And I think, you know, Benjamin Franklin is such a, such a great example. He wrote that second part of his autobiography. He wrote the first part of his autobiography in 1771, right after he had had a kind of explosive session, uh, where he had been angling to get a position inside of the British cabinet. Did not work out, and he retreated to a friend's estate and wrote the first part of his autobiography to his son.

[00:26:58] 13 years later, the revolution has happened. He's not talking to his son who is a loyalist. Um, so he is now addressing the general population. And it's in those, it's that section written in 1783, '84, where he sets out that whole table of virtues and so forth. And it's clear to me, at least, you know, that he was speaking now to a post-revolutionary generation, that if a republic was based in virtue, then the cultivation of virtue was one of the most important things that could happen, right? And so he was setting out in a pretty radical and non-denominational

way, how to adopt things that we might think are associated with religion, a sort of moral center and, and all of this, um, in a non-denominational and nonreligious, um, way.

[00:27:56] And it's really just, it's a, it's an incredible set of documents. You'll see his daily schedule, which looked a lot like yours. He would rise at 6:00, you know, and celebrate infinite goodness, I think is what he, he called the, the, the deity. And then it would be, "What good can I do today?" You know? And then at the end of the day, "What good have I done today?" Right? There would be a, a kind of daily accounting of one's, uh, achievements and public good because Franklin uses the autobiography to talk about the various things that he did for the public, the creation of a library, the creation of a hospital and so forth.

[00:28:32] And I think, you know, one of the things, all of these, all of the documents that were, are on display are instances of the enlightenment in America. And I think maybe we don't think about this enough, but y- you know, what the enlightenment meant was that the distinctions between individual men, individual persons were not innate. They entirely came down to education, to what people had been exposed to. Locke has this idea that the mind is a blank slate of paper, and all of your experiences are what forms your character, right? So that's why education is so important in the, in the 18th century, and why a book that's on that list, which is Locke's some thoughts concerning education. It comes at the very end in a section called Miscellaneous, the works of Voltaire and [laughs] Locke's, Locke on education.

[00:29:28] And, you know, we, we now know that probably more people read Locke on education in the 18th century than Locke's theory of government or Locke's letters on toleration. It was just, it was a kind of child rearing, uh, manual, because now that you believe that character is all based on what the, the sort of education you have, it becomes a central object. It's why Russo writes a, a treatise on education as well after writing the, the social contract. So I think it's, I think, I think I love your self-improvement during the, during the COVID, and I can't wait to read this book on happiness, which I've always felt is a word that has a couple of registers in the Declaration.

[00:30:13] I, I'd be interested in hearing what you, what you think, because there are some who think, well, happiness is put in place in that first or second paragraph of the Declaration. We hold these true to be self-evident that all men are created equal, that they're endowed by their creator with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness. And that happiness is filling in for the word property. Now, there are other documents that mention happiness and property [laughs] from the Virginia Declaration of, of Rights, pursuing and obtaining happiness and safety, as well as property.

[00:30:50] Locke said that it was life, liberty and the state, and they were all property [laughs]. Um, so happiness can't simply mean property. And as you're saying, it can't simply mean hedonism in that sort of way, but it's a word like the word right that appears multiple times in the Declaration. I've got it, I've got it out because I had it in my pocket that, you know, the next sentences 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 foundations on such principles and organizing its powers in such form as to them shall seem most likely to affect their safety and happiness.

[00:31:42] Now that too is a long sentence with multiple, multiple, um, but yeah, it's, and say more about, about happiness in the Declaration. So how does, how does all of this reading help you sort of think about this document differently?

[00:31:57] Jeffrey Rosen: It was so exciting to watch the genesis of those phrases in the earlier documents. And one of the amazing things about living in our internet age is these documents are online and you can just word-search them, so you can see where the phrases are coming from. So Jefferson, as you say, had before him, uh, the Virginia Declaration of Rights written a few months earlier by George Mason, which talks about taking measures necessary to obtain their safety and happiness. And George Mason is getting that phrase safety and happiness from, safety and happiness comes from Jean-Jacques Burlamaqui, one of the natural law theorists. Um, but the Virginia Declaration isn't footnoted. So, um, uh, but another document is. So at the beginning of COVID again, I went to the Pennsylvania Historical Society and found James Wilson's original draft of his thoughts concerning legislative authority in Britain, which he writes in 1763.

[00:32:57] And in the Pennsylvania Historical Society, you can see his footnotes on the draft. And it's like a secret key that unlocks the founder's sources wonderfully. This document is online and you can now see it yourselves. And Wilson is citing to people like Philip Sydney for a phrase, and he's, he's giving his own theory of happiness, and, uh, I'm, I'm giving you these details, 'cause it helps understand the mind of the founders in a holistic way. Wilson uses the phrase, "You have the right to speak as you think and think as you speak." And Jefferson uses that too. And they're both used without attribution, but Wilson criticizes, uh, Cato's letters, which were these wig pamphlets, which were widely read. And then the wig folks don't credit them, but I just learned through more word-searching that it came from Spinoza originally, amazingly the philosopher.

[00:33:51] What does this tell us about the pursuit of happiness and the, the fact that, to reinforce your point, it wasn't just property and/or happiness, but it's a holistic worldview? All of these figures of the enlightenment believe that happiness comes from living according to divine reason. That was the stoic view, that you can only be happy when you align your life with nature and the divine laws of the universe. And when you do that, you achieve your purpose that is necessary for private happiness. And when the state is aligned with that, then they achieve, uh, public happiness.

[00:34:28] So there's no parsing or inconsistency. It's really, that's why you can, n- now I can understand in a new way what it means to live a virtuous life. It's, it's to obey all those laws of nature that the Declaration declares to be self-evident. When you're doing it, it's a feeling, rather than a thought, that all of these common sense people are very big on the idea that when you're living an aligned life that's full of calm, tranquility and doing the right thing and overcoming your ego based emotions, you kind of feel it, which is why conscience was a, or a moral sense was innate according to some of these guys.

[00:35:03] And that's why the connection between the Declaration, the Constitution and the Bill of Rights is so palpable. I wanna ask you now, Eric, about your new book, which I'm so excited about, and we'll introduce a really important topic. And that is how were these founders who talked so much about virtue and tried to live according to it, able to tolerate the existence of chattel slavery. And of course, that's such a central question that's being debated today and it's really important to engage it. What so struck me, and this was new to me 'cause I hadn't read these sources before, and you, and you're so deeply immersed in them, was that far from denying the hypocrisy and the inconsistency of slavery with the ideals of the Declaration, the founders openly and repeatedly acknowledged it. There's an amazing letter from Patrick Henry, "How is it possible that I, who myself I'm devoted to the natural equality of all men, myself, own slaves? I cannot justify it and I will not attempt to."

[00:36:08] He, he totally recognized the inconsistency. And, and Jefferson of course, famously is spending his entire life denouncing slavery, saying it must eventually be abolished at some long point in the future, but not only is he unable to actually take steps to make that a reality, but he won't even free his own slaves, including his own children. The, the, the enslaved children that he had with Sally Hemmings, most of them are not freed either. What's Jefferson's explanation for this hypocrisy. I was struck by how direct and simple his exploration was. Avarice, greed, in other words, he recognized that he and other slaveholders were simply too addicted to the lifestyle that slavery made possible to give it up. They knew it was wrong, but they didn't wanna give it up 'cause they liked the lifestyle. And that's why Jefferson didn't free his enslaved population 'cause he didn't want to pass on debts to his daughters. As it happened he was so much in debt that they had to sell Monticello immediately.

[00:37:10] And it's striking how much in the debates, Jefferson and Mason during the constitutional convention, they want slavery ended right away because Virginia has moved from a tobacco crop to wheat, and they don't need more people, human beings imported in chains from abroad. They're, they're happy with the existing population. It's South Carolina and Georgia that they blame for wanting more to continue the slave trade, and, and Jefferson and Mason, Mason is furious in the convention that the, the convention decides to wait until 1808 to ban the importation of slavery. Eric was pointing out to me that on the wonderful copy of the constitution that you have here, there's a typo, and the actual constitution says slavery can't be banned before 1808. The typo says, uh, 17, uh, 08, because it's, um, they haven't updated the type setting yet.

[00:38:05] But Mason is furious about this 'cause he wanted to end it right away. But he and Jefferson all blame South Carolina and Georgia. They're being greedy. They're being avaricious. Avarice is one of the vices according to the classical typology. Greed, anger, jealousy, fear and greed, whereas the virtues are patience, humility and so forth. So they're viewing it within a classical lens. They recognize that it's a vice rather than a virtue. They recognize it's a form of, uh, greed, but they just can't bring themselves to bring it up. Now, you in your book are examining not only what the founders thought, but how subsequent generations, including African-Americans, both enslaved and free, invoke the Declaration. At the time of the constitution, like Prince Hall in 1776 and in the years leading up to the civil war, to hold the founders to account, to say as Frederick Douglass so memorably did, how you cannot justify this practice. It is inconsistent with the ideals that you hold and that I embrace.

[00:39:06] And all of these great figures called on America to live up to its ideals, which after a bloody civil war and the passage of the civil war amendments, which you also have displayed here, that promise began to be a reality. So that's, that's where I am in this crucial debate, but tell us more about what you're finding and what you are going to examine in your important new book about the Declaration and slavery.

[00:39:30] **Eric Slauter: Yeah.** I mean, Jeff was telling you about the modern scholarly practice of keyword searching [laughs] And, you know, about a decade ago I guess, I decided I would just look through all of the digitized newspapers, all of the newspapers printed in, um, what became the United States before 1800 were available. Um, they had been on microfilm, but those weren't keyword searchable and suddenly they were digitized. And so I just, I punched in all men are created equal, wanting to know who was citing these words. And what I found really, um, kind of blew me away.

[00:40:10] Uh, so what we know, and what historians have told us is that the Declaration is in three parts. There is the part that we all know, [laughs] uh, we hold these truths to be self-evident, that all men are created equal. Um, there's a long list of grievances. So there's a articulation of what are the natural rights of, of people and the collective right to, uh, revolution. Then there's a list of grievances which are offenses against right by George III. And then finally there's an articulation of the powers of Congress and the states. So, uh, an articulation of the rights of states at the end. So all about rights, but it's different kinds of rights at different moments. If you look at the Declaration in, in, um, the exhibit, you'll see that there are capital letters on only one part, and that's the enacting clause of the Declaration of Independence.

[00:41:07] You know, we declare these United colonies are and of right ought to be free and independent states, right? And that was in many ways the most important part of the Declaration. And when people came to argue about this or that point, you know, when, when the British responded in pamphlets and so forth to the Declaration, um, crucially, one thing that they couldn't do was, um, when the Declaration was printed in Britain, they couldn't name the person who was being indicted. So it would say the history of the present blank of Great Britain. [laughs] Um, they could not use the word tyrant. [laughs] This speaks to the whole issue of press freedom and, and seditious libel law. Um, you know, one of the things that made, uh, Thomas Paine's famous common sense so electric and led to many blank spaces when it was printed in [laughs] in Britain was just a constant stream of abuse directed toward the king.

[00:42:09] He was called a royal brute, a royal wretch. William the Conqueror was called a French bastard. I mean, so, uh, in, in any case, these were things that had to be taken out and any reference to tyrants or, or tyranny. But very few people commented on that first part of the Declaration, but those who did tended to be anti-slavery activists, and they did it from the moment of the nation's birth. They, you know, uh, a young African-American man, um, in Massachusetts who had been an indentured servant, but never a slave, had served a little bit of time in the Continental Army in 1775, eventually became a congregationalist minister named Lemuel Haynes.

[00:42:54] He sat down in, in the summer of 1776 and, and hand-wrote a pamphlet called Free Thoughts on Slave-Keeping. And as many pamphlets in the 18th century did, it had an epigraph

on the, on the front page. It was never printed, but it had, he had designed basically what the title page should look like. And there in his handwriting, um, is the phrase we all know. "We hold these truths to be self-evident that all men are created equal, that they're endowed by their creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness."

[00:43:29] And from that moment, it was picked up by anti-slavery activists. Abolitionist societies used it in their constitution. Um, as you were saying, uh, African-Americans, uh, you know, Haynes, but also Benjamin Banneker has a, has, has a very public exchange with Thomas Jefferson when Jefferson is the Secretary of State and Banneker is a mathematician who's producing his own Almanac and, and a surveyor, where Banneker quotes back to the author of the Declaration those words. [laughs]

[00:44:03] How p- I mean, how incredibly powerful? So there was no question in the period that it raised eyebrows, but abolitionists represented a very small minority of readers, but it was ultimately that reading that over time came to be our reading, such to the point that we don't really care so much about the middle section when we take for granted the last section, but we look for great inspiration to that opening passage, right? That's the passage that Lincoln is gonna invoke at Gettysburg in 1863. It's the passage that Martin Luther King is going to invoke in 1963 at the Lincoln Memorial. It is in many ways the most important sentence in American history [laughs] arguably. Um, and by the time of the Civil War, you have a, a case of a kind of Declaration divided against itself so that the south can succeed looking at the Declaration as a model, and many of the southern states will issue secession ordinances that are mimicking the language of the Declaration, not the language of the equality of all men, but the language of the equality of states and the right of revolution.

[00:45:22] You have what seems astonishing today, John C. Calhoun, um, in the well of the Senate saying in 1848, that the, um, claims of the Declaration about the equality of all men are self-evident lies, not self-evident truths. "That's clearly not true", he says. Um, and you have others like, you know, Charles Sumner, the Senator from, uh, Massachusetts who will wrap himself in those early, um, sentences of the Declaration, and then will ultimately eulogize, uh, Abraham Lincoln with a, with a eulogy called The Promises of the Declaration Fulfilled, right?

[00:46:03] Um, in many ways, thinking of the 13th amendment as the, the fulfillment, the constitutional fulfillment of, of that claim in, in the Declaration that all men are created equal, or the claim that begins all of the early state bills of rights, but doesn't begin our bill of rights that men are born free and equal and have certain inalienable rights, right? When anti-federalists in 1788 complained that there wasn't a Bill of Rights, they had a certain idea of what that meant. It didn't simply mean protecting speech, press religion, although all those things were important. It meant an articulation of the fundamental equality of people, of the right of, uh, of people to form their own governments, that governments were created by consent out of exactly those inalienable rights, rights, uh, the, the rights that you could inalienate, you know, there are alienable and inalienable ones.

[00:46:55] Um, and it was designed to protect those that you couldn't, uh, alienate. And, you know, Madison tried in June of 1789. He dutifully brought a bill, uh, before the first Congress where he said, "Okay, you know, a number of states have asked for a Bill of Rights. Bill of, Bills

of Rights tend to begin constitutions. You declare what's untouchable before you explain what the powers that are delegated are. And so we'll start out, not with a claim of all men are created equal, but a claim that, you know, governments are formed by consent and the people have the right to reform them when they, um, become oppressive, right? The basic, basic doctrine of the Declaration."

[00:47:44] Um, the problem was that he wanted to take away the current preamble, right? [laughs] He wanted to remove the current preamble and put in a new preamble that would include a Bill of Rights. And ultimately that move was, was, uh, negated. You know, Madison wanted to interweave all of the amendments into the constitution. So if you were going to say Congress shall make no law respecting an establishment of religion, that shouldn't go at the very end, it should go in article one where you're enumerating the powers of Congress. In any case, uh, the question is a very big one, Jeff [laughs] about the, the place of, of liberty and slavery in the age of the American revolution.

[00:48:26] One of the things that startles sometimes my students is that the first newspaper to announce that Congress had declared independence happened on July 2nd, because that was when Congress actually declared independence, and then they worked the next few days on the draft that they had commissioned by the committee of five, uh, to produce the Declaration of Independence of, of July 4th. But it appeared in a newspaper in the only place where the printer had space, which was on the back page, which is the page where all the advertisements were. It was the page that you might set the very last. So, uh, you know, we think, "Oh, big news." [laughs]

[00:49:07] It just appears, you know, this day, the Congress declared these, you know, colonies free and independent states. It just a one line, um, blurred, but it was a scoop, right? [laughs] Uh, and it appears on a page with advertisements, and there are advertisements for all sorts of commodities from around the world sold by Philadelphia merchants. There are advertisements for a number of run-away indentured servants, an Irish servant, uh, and then there's an ad for a runaway slave named Ishman, or unfree, uh, black man, um, who had, had been missing for about a month and a half, a really long time before you put out a, an ad.

[00:49:52] But, um, you know, the proximity of, uh, a runaway slave notice and the first announcement of, you know, our country's independence, kind of gives you a, a sense of how things, you know, this, how things sat in 1776 or 1787. So very close. And so many of the ideas and ideals of liberty and freedom were informed, I think, by that very close relationship to unfreedom and to slavery.

[00:50:30] **Jeffrey Rosen:** Completely fascinating. I'm learning so much from this conversation. I've, I have no idea what time it is, so I'm gonna check to see if we need to take questions.

[00:50:36] **Eric Slauter:** [laughs]

[00:50:36] **Jeffrey Rosen:** It, it is, it's 8:10, so I'm gonna-

[00:50:39] **Eric Slauter:** Class is not over yet. [laughs]

[00:50:40] Jeffrey Rosen: No, it's so I, I, I'm, it's a, it's a joy to learn with you. And you are reminding us of the central value of education for these people of the enlightenment, who thought that we had no innate ideas. And that all of our ability to cultivate ourselves was the result of our learning is so central, and that's why Washington, when he's standing in front of Congress in 1796, as his last wish says, "I'm not sure if the Republic will succeed. The one thing that can save us is a national university." He says, "If we create a single university in a single place, probably DC, and allow people of different backgrounds from across the country to come together, to set aside their sectional jealousies and local loyalties, and through friendship and conversation learn from each other, then they'll learn the habits of civil dialogue that allow them to unite around shared principles."

[00:51:36] An inspiring ideal Congress never passed it, 'cause we're suspicious in America of centralized education funding-

[00:51:42] Eric Slauter: [laughs]

[00:51:43] Jeffrey Rosen: ... you know, from the very beginning. [laughing] But that's why I'm so excited about the work that you're doing here at Crystal Bridges with the, um, outreach efforts. And that's why I'm so thrilled that this interactive constitution that the National Constitution Center is creating. I think we'll fulfill Washington's hopes. And by putting all of these texts free and online so all of you can learn from them, and our kids can learn from them, and creating curricula for high school kids and middle school kids and videos around them and podcasts, anything to engage this sort of deep reading, will really achieve this vision of a central learning place where, uh, we can all be guided by reason and can improve ourselves every day. So it's a thrilling possibility. You can tell how excited we are by studying this.

[00:52:29] I hope we've inspired you with our enthusiasm to do some of this reading yourself and to pick one of the texts we've talked about that seem exciting, read it and then just follow the links and you'll, you'll just be full of great learning. Now I'm gonna try to test both my, I need my constitutional reading glasses-

[00:52:48] Eric Slauter: [laughs]

[00:52:48] Jeffrey Rosen: ... and my text skills to see if your questions will magically appear. Yes, wonderful. How do we reconcile the right we have to speak freely with realizing the responsibility of not harming others with our speech? And this central question of how to reconcile free speech, the right to speak as you will and think as you speak with avoiding harm is crucial. For me, the best answer to your questions is Brandeis' concurrence in *Whitney*, which I mentioned, I think is the greatest statement of why it is that in America we protect free speech more stringently than any other country in the world. In America, because of the test that Brandeis articulated in *Whitney*, you can only ban speech if it's intended to and likely to cause imminent violence.

[00:53:36] Go shoot Jeff now, he's talking too much. He's gotta stop. That may, hopefully wouldn't mean it. That might be protected, but maybe that would be on the line. But short of that, Jeff is boring. I wish he would stop talking about happiness, you know-

[00:53:50] Eric Slauter: [laughs]

[00:53:50] Jeffrey Rosen: ... tweeting all sorts of terrible things, totally protected here in America. If we were in Europe and you tweeted the completely unfair and scarless thing, "Jeff is boring. I wish he hadn't talked so much." I could Sue Google and demanded that your tweet be removed under something called the right to be forgotten. This is a right of the European Court of Justice, and it says that anyone who thinks their dignity has been offended by speech can demand that the speech be removed from Google, unless you're a public figure and the speech is in the public interest. And if Google guesses wrong and doesn't remove the speech, then Google is liable for 2% of its annual income, which was something like \$70 billion last year, that concentrates the mind, and as a result, Google has removed most of the take-down request it's received.

[00:54:36] So that's a different way of balancing order and liberty, but in America it's gotta be intended to and likely to cause imminent violence. Why? I'll just quote Brandeis. Listen to the words carefully, because Brandeis remember is reading Jefferson, and he's channeling words about happiness and the classical definition of happiness and bringing it all together in this bit of constitutional poetry. Here we go. "Those who won our revolution believed that the final end of the state was to make men free to develop their faculties, and that in its government, the deliberative forces should prevail over the arbitrary. They value liberty both as an end and as a means. They believe liberty to be the secret of happiness and courage to be the secret of liberty." A quotation from Pericles's funeral oration.

[00:55:24] "They believe that freedom to think as you will, and speak as you think", quoting Jefferson, "are means indispensable to the discovery and spread of political truth, that without free speech and assembly, discussion would be futile, that with them discussion affords ordinarily adequate protection against the dissemination of noxious doctrine, that the greatest threat to freedom is an inert people, that public discussion is a political duty, and that this should be a fundamental principle of the American government." It's just spectacular. Every word is true and I'll end there. Eric, what do you think?

[00:56:00] Eric Slauter: [laughing] It's totally not fair 'cause that's my party trick and you can't, you can't be Brandeis, but-

[00:56:06] Jeffrey Rosen: [laughs] I, I think you have a better memory than I do.

[00:56:09] Eric Slauter: No, no I've done it a whole bunch of times.

[00:56:10] Jeffrey Rosen: Um, or that you've played Brandeis in some kind of moot court.
[laughing]

[00:56:15] Eric Slauter: Um, I, I did once have to do it.

[00:56:17] Jeffrey Rosen: Did you?

[00:56:17] Eric Slauter: Yeah, I, you know, we haven't talked about, um, free speech and you know, it's, it's obviously one of the protected rights in the, in the first amendment and maybe this is an opportunity to say sort of we're sitting under banner that talks about the, the sort of radical, no nature of American democracy, that this, this was a relatively novel right in the late 18th century, the right to, to speak freely. It was a right guaranteed in the English Bill of Rights in 1689 for members of parliament, right? To speak in debate, right? [laughs]

[00:57:00] But most of us are not members of parliament. And um, uh, and so, you know, one of the things that that happened, uh, was the extension of this, the adoption of this, um, uh, as a right to be protected, not just for representatives, but from representatives, right? [laughs] Uh, from legislation that might, that might, um, infringe upon it. And that gets us into a, a rather interesting, um, uh, it is kind of intellectual history, which is this sort of intellectual history of rights in the, in the 18th century. And you know, when, when Madison and co are enumerating rights in the, in the late 18th century, in 1791 in, in New York, in the first federal Congress, um, it is astonishing how many of them are relatively new.

[00:57:56] The idea that your papers couldn't be seized, um, I don't think would've occurred to someone before the 1760s. The quartering of, uh, of troops, I don't think would have necessarily, um, been, uh, uh, d- declared a right, um, prior to the revolution. Some of these are the effect of the war and, and so forth. But the, the press one is incredibly important, and in fact, there's a wonderful book by, uh, Linda Coley about the sort of spread of written constitutions from 1776 all the way up to the present. It's one of the, you know, fundamental aspects of modern politics. It's one of the fundamental genres.

[00:58:42] We don't really have them before 1776, at least written ones. Um, and then we almost have nothing but them [laughs] afterwards. There are very few countries that don't have one. But a lot of these rights like freedom of speech, freedom of the press, um, were hard won and they were relatively novel. And there was a sense, I think, in the 18th century, um, and one of the difficulties of writing the Bill of Rights was to try to write it in such a way that A, when you said Congress shall make no law respecting an establishment of religion, you didn't create other powers for Congress. You didn't inadvertently augment federal power in any area that you didn't mention. This was the, the reason why Alexander Hamilton thought that a Bill of Rights was not only unnecessary but dangerous, right?

[00:59:29] Many of the Federalist avant-garde thought that, you know, a Bill of Rights, um, was a throwback. Monarchies had Bills of Rights and they protected people, they protected legislatures from the crown, right? That's where you declare rights and declare rights against James II, against George III. But declaring rights against your own government, um, your own freely elected government didn't make a lot of sense to people like Wilson, to people like Madison, to people like Hamilton. Um, and Madison was ultimately one over by thinking that it would become a kind of, um, a way of u- uniting people around the constitution.

[01:00:10] So we have the Bill of Rights because of a massive dissent at the moment of the founding, right? It's important to, to remember. But it was also very difficult, um, for them to engage in the act of writing these constitutions, because as Madison said in Federalist 37, which is actually open, um, on, on display there, that the, the medium itself in which we express ideas,

words is a cloudy medium and subject to much confusion. So I might mean one thing by freedom of the press and you might mean another, and we say that there's the liberty of the freedom of the press, but we mean different things by it, right? Um, and there was a real sense in the period of the, both the excitement of writing things down in constitutions, and also the, the kind of danger [laughs] right? That you might foreclose possibilities, that people might think that only these rights that are enumerated are the ones, um, that are protected.

[01:01:10] And so what they did was add the ninth amendment, right? The enumeration in this constitution of certain rights shall not be construed. It's an interpretive, um, problem to deny or disparage others that are retained by the, by the people. Um, and I think that's a really important, you know, kind of loophole [laughs] within the, within the constitution and their thinking in the 18th century, that because so many of the rights in the Bill of Rights were designed to answer the, the real objections of anti-federalists the ones, you know, Madison said, "Let's just do the ones that, that most people were, were upset about, conscience, press, assembly, quartering, and so on", means that they didn't take under consideration lots and lots of things, right?

[01:01:56] They, they left unsaid quite, quite a lot. And I think that's a really im- important aspect of, of sort of the intellectual history of constitutions in the period.

[01:02:06] **Jeffrey Rosen:** Absolutely wonderful, and such a fascinating reminder of their understanding of the malleability of words, as well as a reminder of the novelty of the speech right. So I'm going to read several questions and then answer them and then give you the last word. When did we start losing the classical definition of happiness and how can we get it back? The classical definition of happiness you conveyed reminded me of the notion of self-actualization from Maslow's hierarchy of need. Is that a fair comparison? And the National Constitution Center has been integral in a personal belief that if we remain virtuous, our republic will survive. We will continue to strive for a more perfect union. How do you see virtue playing out today, and do you have hope for our republic? A wonderful question.

[01:02:53] Okay. So how do we start losing the classical definition and how can we get it back is such an important question. Students who are lucky enough to take Eric's class, read the books that I mentioned, but they clearly dropped out of the curriculum. Um, David Brooks is writing about the founders and character, and he thinks it was around the '40s. And I'm not sure why exactly it was right after World War II, but there's no question that by the '60s, the whole definition of happiness became much more focused on letting it all hang out about autonomy, about pleasure-seeking and not so much about this self mastery, self actualization idea, so that it became so unfashionable that that may have had something to do with it.

[01:03:36] But that the question of why I wanna learn more about the, the, when seems to be in the mid t- uh, the, the mid 20th century that it dropped out of the curriculum. Um, is it like Maslow's self-actualization? I think so. I, I think so. Self, self mastery, self-discipline where the 19th century turns, um, self-government, government of the self. Um, but, uh, Maslow's ideas of being your best self of human flourishing, which is really an Aristotelian idea seems exactly right. And then you ask, are there grounds for hope? And that's a really important question today. And I'll be candid because I must be, I must, we must, uh, be, reason with each other, as Brandeis said.

[01:04:21] This is obviously an extraordinarily challenging time, and it's hard not to think of how uncertain the founders themselves were at a time as polarized as today, after the election of 1800, where people are fighting duels, Hamilton is dying, people are running for Congress on the grounds that their left hook is better than the other guys. And then, and they're beating, uh, each other on the floors of Congress, and, and Washington is not sure whether factions will overtake the union And Jefferson fears civil war and, and, and Madison is despairing of classical virtue. Uh, you know, only Madison has some cautious tempered optimism, but they're not sure, because it's never obvious whether a majority of citizens at any time will muster

[01:05:08] It's very difficult to be a citizen. First you have to perfect yourself, and then you have to perfect yourself as a citizen, the perfect citizen as, uh, in the perfect state as the Greek called it. And it's very arduous. It takes a lot of work. It takes education, and education has to be widespread. And there are so many factors today that are militating against Madison's optimism, including polarization and social media, which are the opposite of the slow cool deliberation and the diffusion of reason across the land in, in thoughtful journals like the Federalist papers that that Madison thought was the key to success. So I don't know about the future of the Madisonian vision. Part of it is fate and fortune, and we've seen throughout American history how small contingencies can lead to wars or peace.

[01:06:01] But one thing I know, and this is my grounds for optimism, each of us has the capacity in us every day to learn and grow. There's a Marvel of learning and richness out there. These books that the founders had to pray would show up and be printed are available for us at the touch of a mouse if we just have the, or whatever, the, the button, if we just have the discipline to do it. So, and, and, and just knowing how, look how much we've learned from each other tonight, and look how much you've learned just by taking the time, an hour and a half to really dig in.

[01:06:36] It is extraordinarily rewarding to follow the path and to learn and grow, and, and, and the other thing is when you model conversations of learning like we're doing here, like you're doing at Crystal Bridges, like we're doing at the constitution center, and we're trying to bring to kids across America, middle school kids, high school kids show them what it's like to have a civil dialogue, bring them the primary text and learn together. They always rise to the occasion, and it's so inspiring to see these kids in the Zoom chat when I exhort them read the majority opinions and the dissents of the Supreme Court opinion.

[01:07:08] One kid said, "I'm only nine. I'm not sure I can read the dissent."

[01:07:12] Eric Slauter: [laughs]

[01:07:13] Jeffrey Rosen: [laughs] But, but he did, and you can, and you can too. And you can. So people will, will rise to the occasion if you have faith in them as I do, and I cannot help but imagine, given all the glorious... If, if education is the answer and we now have it within our power to diffuse this light free across the whole land in a way that wasn't technologically possible at the time of the framing, I'm confident that ultimately this more perfect union will survive. Last word, Eric, to you.

[01:07:46] Eric Slauter: It's hard to follow that. Um, [laughing] you know, I think, I think these documents can provide a touchstone that unifies the country. They have done that at different moments. I think it's also important to remember that they were never the product of unanimity. The constitution is signed. Uh, there's a, there's a signature at the, at the end, um, done in convention by the unanimous consent of the states present. That was a trick of Franklin's to, um, get around the fact that there were certain delegates who were not going to sign it, but might be persuaded to sign it if it was just the unanimous consent of the states, not the individuals who were at the meeting, and three didn't sign. And Washington, when he went home that night wrote in his diary the constitution was signed, um, by all the states then present and Colonel Hamilton. [laughs] Because his delegation had left. The only del- he was, he was the only delegate left and thus couldn't really vote on measures.

[01:08:57] Um, but in any case, you know, we tend to forget that this, you know, we sometimes look back on the, on the period of the American revolution as if it was a united period. The founding fathers were in fundamental agreement about, um, most things. And I don't think that's completely true. A few votes in the ratification convention in New York, in Virginia and in Massachusetts, and the constitution would not have been ratified in 1788. It was not by any means a unanimous, um, passage. And as I was saying before, we wouldn't have the Bill of Rights if there hadn't been, um, deep division at, at that moment. Uh, and an attempt at some kind of, not just pacification, but reconciliation, you know? Um, these documents, uh, you know, I know from my own children, these documents seem very distant from us.

[01:09:58] Um, and when you look at them, uh, you know, on parchment and you can barely read them, and maybe you can't read handwriting, um, or you, uh, look at the, the typography and it seems so foreign because there are long essays and, uh, and, and, you know, letters we don't, characters we don't use anymore, who on their way out even at the time. Um, I think it, it's worth remembering that this is a fairly young country.

[01:10:29] You know, I was, I was walking around the grounds today and it's just beautiful, the, the nature walks and the trails and so forth. And there are, you know, not just wonderful pieces of art, but signs telling us what, what the, um, particular kinds of trees are. And there are some wonderful old, uh, black walnuts, um, that I passed by, and black walnuts can have a lifespan of about 250 years if you are lucky. And that's about where we're at, as [laughs] as a nation, right? So if you think, you know, we walk outside and there are trees that are as old as our country, that's not very old. [laughs] Right?

[01:11:15] And, uh, those trees will not [laughs] maybe make it, uh, after a certain point, but the hope is that, you know, the nation will. So I, I guess I am, I am hopeful that we will outlast, uh, the black walnuts of the [laughing] of, of Crystal Bridges. Not that I want to see them cut down or burn down or anything anything like that [laughing], just, just that I, you know, I think it's a, it's a good living touchstone out there, um, that's about the same age as our country.

[01:11:47] Jeffrey Rosen: Beautiful. Eric, thank you so much for a meaningful and memorable conversation.

[01:11:52] Eric Slauter: Yeah.

[01:11:52] Jeffrey Rosen: Thanks to your office. Today's show was produced by Melody Rowell. Research was provided by Sam Desai, Vishan Chaudhary, Colin Thibault and Sam Turner. Many thanks to the whole team at Crystal Bridges for hosting the conversation and for allowing us to share it with We the People listeners. The exhibit is running until January 2nd, 2023. Please be sure to check it out if you are in Northwest Arkansas. Please rate, review and subscribe to We the People on Apple and recommend the show to friends, colleagues, or anyone anywhere who is eager for a weekly dose of constitutional education and debate. All of us are thrilled at the National Constitution Center that Justice Stephen Breyer has just joined us as our honorary co-chair, along with Justice Neil Gorsuch.

[01:12:34] Justice's Breyer and Gorsuch are committed to the National Constitution Center's mission of advancing civil dialogue and debate, and we're really looking forward to our work together in the years ahead. You can support our mission by becoming a member at constitutioncenter.org/membership, or give a donation of any amount to support our work, including this podcast at constitutioncenter.org/donate. On behalf of the National Constitution Center, I'm Jeffrey Rosen.