



Living Constitutionally- Insights From A.J. Jacobs and Jeffrey Rosen

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[00:00:05.7] Lana Ulrich: Welcome to Live at the National Constitution Center, the podcast sharing live constitutional conversations and debates hosted by The Center in person and online. I'm Lana Ulrich, Vice President of Content. In this episode, AJ Jacobs discusses his latest book, *The Year of Living Constitutionally*, and explores what it means to live constitutionally today with Jeffrey Rosen, NCC President and CEO. Here's Jeff to get the conversation started.

[00:00:33.0] Jeffrey Rosen: Hello, friends. Welcome to the National Constitution Center and to today's convening of America's Town Hall. I'm Jeffrey Rosen, the president and CEO of this wonderful institution. Before we begin, let's inspire ourselves, as always, by reciting together the National Constitution Center's mission statement. Here we go. The National Constitution Center is the only institution in America, chartered by Congress, to increase awareness and understanding of the US Constitution among the American people on a nonpartisan basis. I am so excited friends, to share with you today's special guest, AJ Jacobs, to talk about his new book, *The Year of Living Constitutionally*. He is an acclaimed author of four New York Times bestsellers, including *The Know-It-All* and *The Year of Living Biblically*, and he's a contributor to NPR, The New York Times, and Esquire. I was so delighted when he agreed to join to talk about *The Year of Living Constitutionally* with the National Constitution Center. Please join me in welcoming AJ A.J, thank you so much for coming. The book is marvelous. It's such a unique, clarifying, thoughtful, and fun attempt to resurrect what it was like to live at the time of the founding and what it could tell us about the Constitution today. Let's begin with the obvious question. Why did you decide to spend a year living constitutionally?

[00:02:03.4] A.J. Jacobs: Yes. Before I get to that, I just wanna thank you because I could not have written this book without your work, Jeff, and the National Constitution Center, the website, the podcast, the museum. It was so helpful. So huzzah for the National Constitution Center. And I am wearing a tricorne hat for those who can't see me. But so I do commit. But I started this project because I saw a report a couple of years ago that most Americans have not

read the Constitution from start to finish. And I realized I was one of those most Americans. And yet every day I would see a news story about how this document has a huge impact on how we live our lives, still the center of heated debate. And I decided, okay, I need to understand or try to understand the Constitution the best I can. So I decided to read it, but more than that, I decided to immerse myself in it and its world, and that's what I'd like to do as a writer. One of my previous books was called 'The Year of Living Biblically', and so for that one, I didn't just read the Bible, but I actually followed the Ten Commandments.

[00:03:23.7] A.J. Jacobs: I grew a beard. I wore the robe. I just, I committed to the bit, as my son says. And so for this one, I said, I'm gonna try to spend a year living by the original meaning of the Constitution. So that meant carrying an 18th century musket on the streets of New York. It meant giving up social media in favor of writing with a quill pen. And it was a strange, a bit of a strange experiment. But at the same time, it was enlightening and delightful. And I hope the book is fun to read, but I also hope that it is thought-provoking, because I really did try to get into issues such as how should we interpret the Constitution? How best can we use it today?

[00:04:17.2] A.J. Jacobs: How much should we focus on that original meaning and how much should evolve? And most of all, how can we ensure that democracy continues? So I spent my year, I would get up, I would write with the quill pen, and I interviewed constitutional scholars from all over the political spectrum. So from the most liberal, to the most conservative, to the most originalist. I interviewed one who was so originalist, he refused to capitalize the 'S' in Supreme Court because it is not capitalized in the Constitution. And I explored, as you had mentioned in the intro, the idea of how do we interpret the Constitution, and I looked at all sorts of frameworks, including originalism and living constitutionalism. In a sense, I was trying to be the ultimate originalist and look at the Constitution, not just from the original meaning, but also the original mindset and the original tools and technology.

[00:05:24.2] Jeffrey Rosen: Absolutely. I'm so looking forward to exploring what you learned about the Constitution. But first, just tell us what it was like to live constitutionally. You started following Ben Franklin's schedule. You lived by candlelight. You used quill pens. What were among the most unusual changes with that technology? And what was it like to live like Ben Franklin?

[00:05:47.5] A.J. Jacobs: Right. I figured if I was gonna try to understand the 18th century, why not actually live as much as I can in modern-day New York City that way. So I wrote much of it with a quill pen. I loved writing with a quill pen. I loved the sound of it, the scratch, scratch, scratch. I loved the fact that when I was writing with a quill pen, there were no dings or pings or instant messages. I could just focus on what I was writing. And I do think that it changed the way I thought. I do, and I hope I became a more subtle and profound thinker. Because when you are typing with your thumbs an acronym out of anger, that is a very different kind of writing than

what you're doing offline. And I shudder to think what would have happened if the founding fathers had had iPhones, would they have been able to have the concentration to write a constitution? I'm not so sure. So I don't think everyone needs to go back to quill pens, but really thinking offline as you write in your wonderful book, reading deeply offline, writing deeply offline is very important.

[00:07:02.0] Jeffrey Rosen: That's so interesting that you tried it and found it to be helpful to slow down, to write slowly, to think before you tweet, you have those great examples of actually writing tweets on foolscap and trying to hand them out to people on the street and I think people were reluctant to accept them and you also did what Ben Franklin said which is getting up at 5:00 and keeping a steady schedule and doing self-accounting just say more about how you found it helpful. Just not having the distractions of browsing must be useful, but have you continued to keep the Franklin schedule now that you finished the book?

[00:07:44.5] A.J. Jacobs: I have, actually. I still get up at 5:00 AM, which I think would shock me of five years ago. But I do get so much more done. And I actually love another part of Ben Franklin's schedule was that when he got up, the first thing he did was a, what good can I do today? Which I just love is such a great moral compass. And I wrote it with a quill and put it over my desk because if I'm doing something, if I go on Instagram and post and it doesn't get enough likes and I start to get angry, then I look at that little thing, what good can I do today? And I say, well, is this really what I am supposed to be doing with my life is getting angry about the lack of likes? No, let's refocus. And it's, as you point out, it's not that I'm being selfless. It also makes me happier because virtue does lead to happiness.

[00:08:44.3] Jeffrey Rosen: It does 'cause you feel like you're using your time productively and not idly browsing and reading instead is a habit that I developed during the COVID year that did change my life. And you just feel like you're using time better. Tell us about other things that were hard to overcome. You had the beef-smelling tallow candles that you gave up for better-smelling ones, and your wife was very indulgent about this whole project, but what were some other inconveniences?

[00:09:22.8] A.J. Jacobs: Right. Well, it does make you grateful for some modern conveniences. I think that as we talk about social media is a doubleedged sword. But I have never been more grateful for elastic, elastic and democracy. Those are the two takeaways. I am so grateful for both of them. But I was wearing the clothes, so I would put on these woolen socks and they didn't have elastic, so they would fall down to my ankles. So every morning I had to put on sock belts. They weren't even garters. They were pre-garters, just little belts. And so the amount of time I had to spend putting on sock belts, I will never get back. And it just amazes me that these people were able to get so much done, even with inconveniences like putting on sock

belts every morning. The fact that they were able to read and write a constitution is still an astounding fact.

[00:10:20.6] Jeffrey Rosen: How did they do it? As you say, sock belts and freezing and sleeping in the same beds and disease and no antibiotics. But they spent so much time reading and writing, just fewer distractions or more discipline. How do they do it?

[00:10:35.0] A.J. Jacobs: I think so. I mean, you probably know better than me, but I do think when you slow down, ironically, paradoxically, you are more efficient because it's not that I was working slowly. I was working quickly. It's just I didn't have the distractions that seem like they're making your life better. But really looking at Twitter or X is not making your life faster or more efficient.

[00:11:03.0] Jeffrey Rosen: So true. And those distractions are so crucial, and Jefferson has that great line, "I've given up newspapers for Tacitus, and I feel much better." And it is true that when you're not constantly on the news and actually reading books, you can change the world. One really powerful theme of your book is the importance of changing your mind, and you quote Madison's supposed last words that he had changed his mind, just an amazing anecdote, and recently wrote an opinion piece for CNN about the importance of the founder's epistemic humility. Tell us about that.

[00:11:40.0] A.J. Jacobs: Yes. Thank you for asking, because that is one of my favorite themes and takeaways from the book, is that it is patriotic to change your mind or evolve, whatever you want to call it. This idea that you have to be rigid and stick with your beliefs is not a truly American idea. And as you mentioned, one of my favorite anecdotes is James Madison, and this is perhaps lore, but I choose to believe it, which is that on his deathbed, he made a strange face. And his niece, who was with him said, "Uncle. What's the matter? Why are you making that face?" And he said, "Oh, it's nothing. I just changed my mind." And then he died. So we don't know what he changed his mind about. It could be the bicameral legislature, it could be the wallpaper. His last action on earth was to change his mind, to me, is so poetic and beautiful.

[00:12:39.3] A.J. Jacobs: And one of the great mind changers was Ben Franklin. Who as you know, at the Constitutional Convention gave that amazing speech at the end about how the older he is, the less certain he is of his own opinions. And he told a lovely little joke parable about how he said there was a French lady who said to her sister, it's so strange that I am the only one I've ever met who is right on every single issue. And of course his point was, we are all that French lady. We all think that we are right on everything, and we are not. So the fact that he was aware of his own cognitive biases and humans' tendency to be overconfident in their correctness, I mean, this was hundreds of years before Daniel Kahneman. It's amazing. So that has taught me

we need to reward the changing of mind in the face of evidence and reason, not just willy-nilly changing of mind, as opposed to punishing it as some sort of weakness or flip-flopping.

[00:13:46.0] Jeffrey Rosen: So true. Just the central lesson of the convention in the example you give of Franklin. And it was certainly key to Madison, as you say too. Once the party system got up and running, Hamilton and Jefferson found it harder to change their mind as they retreated into their ideological camps. Was there something about the structure of the Constitution that encourages epistemic humility, or does it require virtue and self-restraint?

[00:14:19.1] A.J. Jacobs: Oh, that's a great question. Well, one thing, and you can check, I love this interview because usually I know more than the interviewer since I've spent a couple of years on this. This time, I have epistemic humility and know that you know a ton more than me. But I believe that in the convention itself, they did not write down the names, they did not write down who voted for what in the early voting. And partly that was because they wanted the freedom to be able to change their minds. Is that true? Is that your understanding?

[00:14:54.3] Jeffrey Rosen: I think that's absolutely right, and that's also why the convention was secret, so that they could compromise and change their minds. So two crucial points.

[00:15:04.8] A.J. Jacobs: Right. I think it happens with all institutions that the initial flexibility gives way to more rigidity. And the advantage of that is stability, which is a good thing. But the disadvantage is the inability to change as circumstances change. And what was amazing to me was reading James Madison's notes on the Constitution, on the convention, and how fluid the ideas were how if a few delegates had voted a different way, we would have three presidents. I was blown away by the fact that when, I believe it was James Wilson brought up the idea of a single president, several delegates said, are you jesting? I don't think they said that, but they said, this is a terrible idea. We just fought a war to get rid of a monarch. Why would we wanna go back to what they called the fetus of monarchy? A single president is the fetus of monarchy. And so just which, in my opinion, was very prescient because the presidential power, both Democrat and Republican, has expanded alarmingly. And I don't think three presidents is a great idea. I don't think we want Biden, Trump and RFK Jr, co-working in the White Oval Office. However, I do think this idea of restraining the president in some way. And also the fluidity of ideas is so crucial.

[00:16:38.1] Jeffrey Rosen: Absolutely. One great power of the book is you so well distill the central debates of the convention, Hamilton's desire to create a strong national government, his opponent's fear that he would crush the states, and that debate about the presidency is just such a great example. You also talk about the importance of balance, and that example of the president having much more power than the founders envisioned is just one of the many ways in which the

balances anticipated by the founders have gotten out of whack. What are some other technological and constitutional structural changes that unsettled the founding balance?

[00:17:25.9] A.J. Jacobs: Well, I think, yes, the president, I believe the founders would be surprised by how much power. And I also think, and you can tell me if you agree, that they would be surprised by how much power the Supreme Court has. Because I don't think, I talked to a great scholar who I'm sure, I probably heard him on We the People, Jonathan Gienapp at Stanford, who has studied. The power at the very beginning. And his argument is that the Supreme Court was not considered the final say. Most founders would have been surprised that the Supreme Court has the final say on matters constitutional and what is and is not. They were supposed to have judicial review. They were supposed to be in the mix. But Gienapp argues that it was a combined, it was sort of nebulous. The president also had say over it, and the Congress, and the court. So they had judicial review. They did not have what he calls judicial supremacy. And that is the situation we are in now, where they are considered the final word. So I think that is a little out of balance.

[00:18:42.0] Jeffrey Rosen: Absolutely. And you capture that so well too. And as you just said, broad agreement on judicial review, the power of courts to strike down unconstitutional laws, but also a broad consensus that the Supreme Court did not have the last word in that vision, as you suggest, of departmentalism, the idea that each of the branches can interpret the Constitution on their own persists certainly with Lincoln in the Civil War and even into the 20th century. It's such a deft combination of talking to scholars like Professor Gienapp, Akhil Amar, Jud Campbell on the First Amendment, and then living it in really powerful ways. The First Amendment is a great chapter and section of the book, and you powerfully suggest that our modern libertarian First Amendment, embraced by liberals and conservatives on the court is not consistent with original understanding. You quote the many forms of speech that could be suppressed in the founding from blasphemy to sedition, and you spent some time trying not to curse. Tell us about how that went down.

[00:19:53.9] A.J. Jacobs: It was a challenge, yes. Yes. Much of it is from the great work of Jud Campbell, who is at Stanford, and he argues convincingly that the First Amendment, as conceived by the founders, was much more constrained than what we have now. I happen to like the broader First Amendment we have now, partly due to the Jehovah's Witnesses, who brought a series of cases in the 20th century to broaden free speech, so thank you Jehovah's Witnesses, but that's another topic. But back then, he argues, it was the right of free speech was balanced against the common good, and they considered this, we were in the infancy of a fragile republic, and so sedition was something that was much more likely to get you in trouble, both mostly with John Adams and the Federalist Party, but also Jefferson sometimes said that he was for free speech, but acted otherwise. And so you had constraints, like as you said, state laws, these are state laws, because those are not covered by the First Amendment until much later, state laws

that said you could not curse. In New York it was 37 and a half cents for every time you cursed or blasphemed. So I tried, I have teenage sons, I was like, this is a good way to clean up my family.

[00:21:39.7] A.J. Jacobs: So I tried to fine them, 37.5 cents per curse. It didn't go well 'cause they argued we don't have half a cent. But I did find it fascinating that you had a much more constrained view of what we're allowed to say. And even I looked at some Connecticut laws about first free expression in the early 1800s. They banned acrobatics and juggling. They had something against juggling. So it was a much stricter view of what we could say and do.

[00:22:19.7] Jeffrey Rosen: It was indeed. And how did the modern conservative originalists deal with the fact that the First Amendment that the court is enforcing today does not seem consistent with the original understanding?

[00:22:33.7] A.J. Jacobs: That is a great question. What's interesting to me is when it comes to originalism. And by the way, I like you, I think it's very important to steelman, both sides as a strawman. So steelman make the other side. So in the end, I probably lean more towards pragmatism or living constitutionalism or pluralism. This idea that you shouldn't only focus or mostly focus on the original meaning. However, I wanted to make clear the advantages and the lure of originalism. But when you're dealing with it, there are two questions to me. First, are the originalists following the original meaning? Are they getting it accurate? And second, is that the best way to interpret the constitution and make judgments? And for the First Amendment, I would argue they are not interpreting that correctly, at least according to the latest work by folks like Jud Campbell. Because I asked Jud outright, I said, what would the founders think of something like Citizens United, where it is considered donations to politicians are considered free speech, and corporations are considered covered under free speech?

[00:24:03.4] A.J. Jacobs: He said, "No. There's no way the founders would have approved of that. They were very concerned about the corruption of money in politics. And that is just not the way they envisioned free speech." As he pointed out, it was a balance. You had natural rights, you were born with natural rights. But those rights, once you entered into society, you made a contract and those rights had to be balanced against the common good.

[00:24:30.9] Jeffrey Rosen: You well articulate the arguments on both sides. And you've got a great chapter or section, a complete listing of all arguments for and against originalism that everyone will agree is absolutely definitive and error free. I love that.

[00:24:45.1] A.J. Jacobs: I was trying to blunt criticism 'cause I know I will get some.

[00:24:48.8] Jeffrey Rosen: Well, it was a great effort to try to steelman the arguments, as you say, both for and against, and maybe just give listeners a sense of some of them. Objection one, why should we be bound by a 237-year-old piece of parchment? What are the originalist response and the living constitutionalists counterpoint to that?

[00:25:07.6] A.J. Jacobs: The originalist might say, well, it's like a contract or it's like a recipe. Those are two metaphors they use. So you can't just willy-nilly change it. It has a mechanism, Article 5, for changing the constitution if you don't like it. But otherwise, you should not be changing it. It would be like if you hired a contractor to install a new faucet and they said, oh, well, I also decided to put a bed in there and a chandelier and hope that's okay. On the other hand, the living constitutionalists would say that, well, yes, exactly. That's the problem. This is a 237-year-old document, technology changes, but also morality changes. So something like the 14th Amendment, which was originally meant to protect Black men against the racist attacks by Southern states, and that's what equal protection and due process refers to. But now we realize there are many other marginalized groups who need protection. So the 14th Amendment should apply not just to one group, but also to women, to gay people, to trans people, whatever. So those are two ways to approach the interpreting of these passages.

[00:26:32.8] Jeffrey Rosen: Very well presented as you do in the chapter and maybe just put one or two more on the table 'cause it's helpful. You have objection three and four that originalism is a smoke screen to justify conservative opinions and originalism doesn't achieve its stated purposes, which are to restrain judges. What are the originalist and living constitutionalist responses to that along with, we'll just put them all on the table, the Supreme Court's new emphasis on history and tradition is confusing, arbitrary, and not even originalist.

[00:27:02.7] A.J. Jacobs: Great. Yes. Okay. You're making me work. I have to remember these, but I'm gonna try. I'm gonna do it. So yes, the first one was that originalism is just a smokescreen for conservative opinions. So progressives would argue it is a really weird coincidence that originalism, which is supposed to be an objective way to interpret the constitution, always seems to align with conservative values, such as the Dobbs decision about abortion or gun rights. And so their argument is intentionally or unintentionally they are just using originalism as confirmation bias to approve of their own values. The originalists might argue back, well that's not true, look at the evidence. Scalia, Antonin Scalia, one of the founders of modern originalism said, "I ruled in the flag burning case that it should be allowed, even though it is deeply offensive to me. I ruled under the First Amendment, it should be allowed. So I do go against my principles and just try to go by the original meaning." And then, to which progressives often respond well, that's one case. Let's hear some more. So they would say, statistically, it is more likely to align. So that is one debate. And remind me, what was the other one we were discussing?

[00:28:44.2] Jeffrey Rosen: The last one, you say the Supreme Court's new emphasis on history and tradition is confusing, arbitrary, and not even originalist. That is the central new debate introduced by the Bruin case, as you say, and what are the arguments for and against that claim?

[00:28:58.4] A.J. Jacobs: Yes. And you know, I got a lot of this research from the great podcast, We the People, which had an excellent episode on originalism 3.0, as some call it. So Jeff could probably say this much better than me. But my understanding is that this new version of originalism doesn't just focus on the original meaning from 1789 or whenever those words were ratified in the case of amendments later. So it's not just the original meaning, it's also something called history and tradition. So it is the laws throughout America from the founding and it is arbitrary, sometimes it ends in the 1800s, sometimes it's later. And so for instance, Bruin, the gun control ruling had a lot to do with looking at how were guns regulated in the 1800s and looking for similarities between something like, can you bring a gun on the subway? What is the 1800s equivalent of the subway? Is it going to a tavern? Is it a stagecoach? So it puts a lot of burden on the federal court judges to try to figure out what are these linkages between the past and the present. And so some originalists, progressives of course, do not like it because it's not very forward looking. You're mostly looking backwards. But some originalists also object to this way of looking at it because it is not the traditional originalism, which is focusing on the original meaning. It's looking at more than the original meaning. It's looking at how the laws were interpreted through the decades.

[00:30:58.2] Jeffrey Rosen: Very well summed up and you performed a service in the book in distilling the strong arguments for and against these methodologies in really clear terms. In some ways, your whole book is a rebuke to the idea that history and tradition can be applied seamlessly because as you learned living constitutionally, so much has changed, starting with your very first example of public ballots where you'd go to the polling station to cast your vote out loud and you're not allowed to do that anymore. Did the experience of living constitutionally make you more or less skepticism about originalism as a methodology?

[00:31:39.5] A.J. Jacobs: I believe that reading the originalists and their point of view did give me some respect for originalism and realizing, yes, I understand the idea of constraining judges. We don't want these nine unelected people to have that much power. But in the end, I do think that it is just one way of looking at the constitution. Originalism should be, the original meaning should play a part, but it should be balanced. We talked earlier about the importance of balance in the government. I believe the same thing in terms of interpreting the Constitution. It should be balanced. You should balance the original meaning, against considerations such as the consequences to society if you make this, or the stare decisis, the recent or the Supreme Court's rulings. And to me, that's a more American way of interpreting the constitution, is balanced. I talk about, the great writer Isaiah Berlin talked about how there are two types of thinkers; There are the hedgehogs and the foxes. The hedgehogs see everything through a single lens. So

whether that's Marxism or religion or capitalism, and then the foxes see the world through multiple lenses. I am much more of a fox. I like looking at the world through multiple lenses. And I think pluralism, as its name implies, is a way of looking at the Constitution through multiple lenses to see how best we can help the general welfare, the common good, which is at the heart of the Constitution.

[00:33:31.6] Jeffrey Rosen: Very well expressed defense of the pluralist or pragmatic viewpoint. Justice Breyer was at The Constitution Center recently to talk about his new book and also defended pragmatism in those consequentialist terms. And just to put it on the table in the spirit of debate, which is so central for the NCC, of course, the argument on the other side is, well, that just frees up judges to balance the Constitution against policy concerns. And it's not the business of judges to think about consequences. They should interpret the Constitution and let the heavens fall. What is your response to that?

[00:34:10.2] A.J. Jacobs: I think that it would be more acceptable if the Constitution were easier to change. I think the problem is, and you can tell me if this sense is true, my sense is the founders wanted to make it very hard to change the Constitution because you don't want someone coming in and making it so that you're president for life. But I don't think they thought it would be this hard to change. I don't think that they anticipated the rigid two-party system that makes it so difficult to get that two-thirds in the Congress and three-quarters in the legislature. So if we had a way to slightly more easily change the Constitution so that, for instance, you could have a constitutional amendment on women's rights or gay rights, then originalism might make more sense. But in a world where it's so difficult and the world is changing, then something has to give. So in my view, interpretation, making it a more flexible and elastic interpretation is the best solution. What's your thoughts on that?

[00:35:24.6] Jeffrey Rosen: Well, I will keep to my NCC moderator

[00:35:29.8] A.J. Jacobs: That's true. But I was more like fact checking. Is it harder to change the Constitution than the founders would have predicted? Do you think?

[00:35:42.7] Jeffrey Rosen: Well, we certainly can say that Jefferson never would have imagined that we'd have no amendments at all since the 1970s. He wanted a new convention every 19 years and indeed centrally thought that whenever there is a dispute between the president and Congress about the scope of constitutional authority, you'd have a convention and ultimately an amendment would have to decide. So I think it's certainly fair to say that because of polarization and other political changes, it's just harder to get amendments through than it used to be. And that isn't what the founders intended. I think you're absolutely right. You have a great chapter on amendments and you discussed the possibilities of amendments with your

friends and then you called up Gregory Watson, an unsung hero of our republic. Tell us about him and what you learned from Gregory Watson.

[00:36:32.3] A.J. Jacobs: Oh yes, he is a great character. I'm a big fan. He is not single-handedly because nothing is done with just one person, but he was a large impetus in passing the most recent amendment, the 27th amendment in 1992, which is the one that says that Congress cannot give itself a raise, it can give the next Congress a raise, which was actually proposed as one of the very first amendments by James Madison. Now, Gregory Watson was a student at the University of Texas at Austin, and he read about this and he wrote a paper that maybe we should resurrect it. His teacher gave him a bad grade and he said, I'm not gonna accept that. I'm going to prove the teacher wrong. And he spent the next years writing letters to hundreds of state legislatures saying, this amendment is not dead. It's a zombie amendment. It's half alive, half dead. It just never got enough states. It didn't get three quarters of the state's legislatures. If we can get three quarters of the current 50 states to pass it, it will become an amendment. And he finally got it through years later. And that is proof that even though we knew almost all things are the result of vast cooperation, one person still can make a difference in this world.

[00:37:56.0] Jeffrey Rosen: And just an amazing story and so great that you were able to talk to him and make his incredible story concrete. Gregory Watson and the amendment process was one of the issues that you discussed at your constitutional dinner party. And you had an 18th century dinner party. You invited people from all over the political spectrum for beef stew and cloves and 18th century song. What was that like and what did you learn about what they would change about the Constitution if they could?

[00:38:30.0] A.J. Jacobs: Well, this I feel, was a very National Constitution Center project because the idea was that we need to return to face-to-face civil discussions of how to fix our country, what works and what doesn't. So, as you say, I brought in conservatives and liberals. My son cooked a meal. They loved cloves in the 18th century, so it was very clove-heavy. I tried to start at light by telling a joke from an 18th century joke book that did not go over great. I'll just say it very quickly. It was about a woman married to a mathematician, but they didn't have kids. Her friend said, your husband is a great mathematician. And she replied, "Yes, but he cannot multiply." So a dad joke, I call it a founding dad joke, which is sort of a meta dad joke, because it's a dad joke about dad joke. But in any case, after that, we went around and said, what do we like about the Constitution?

[00:39:32.0] A.J. Jacobs: What would we change? And of course, it differed vastly depending on the person. But we, at the end, we all felt a little more optimistic because there were some things that we could agree on even through the disagreement. One of them was just the meta idea that we need to talk about this more. We need to gather and have more face-to-face discussions. So it was a wonderful experience and I recommend it to everyone. You don't need to do the

cloves or the beef stew, but getting together with people of vastly different views and having a civil discussion which I know is part of the NCC's mission, is just so important.

[00:40:16.5] Jeffrey Rosen: It really is. And it's just so another really inspiring example of how when you talk about questions at the constitutional dimension, what would you change about the Constitution? You can achieve unexpected agreement and always civility. And as you know, we have that great Constitution drafting project where liberals, conservatives and libertarians were able to agree on constitutional amendments because they were discussing things in constitutional terms. That leads me to ask. Do you think the discussion would have been similarly civil if you talked about politics or not?

[00:40:48.6] A.J. Jacobs: That is a great question. I hope so. I'd like to try that experiment because I do think that is the only way. But when I talk politics, my previous book was on puzzles, my love of all kinds of puzzles, crosswords and the wordle and all that. And so when I'm having a political discussion with someone from the opposite side of the spectrum, I try not to frame it as a debate or a war but instead as a puzzle. Why do we disagree on what we disagree? Why do we believe what we believe? And is there any evidence that we can present to change the other person's mind or our own mind? And if we do disagree, the puzzle is, what do we do from there? Is there any other productive path forward? And I find it much more effective. You actually get some solutions out of it. And also just from my own mental health. It is so much better to see this as a cooperative adventure in figuring out why we disagree, as opposed to a war of words where no one rarely changes their mind and instead just polarizes and entrenches.

[00:42:04.0] Jeffrey Rosen: What a constructive framing for a political discussion. And it's just great. And you're practicing what Ben Franklin recommended, which is never tendentiously to assert opinions. It's this way or I'm convinced. Instead, it may be so or I hazard to venture or something like that in the spirit of humility and trying to figure out why people believe what they do is really powerful and maybe we can try that at the NCC.

[00:42:34.0] A.J. Jacobs: Wonderful.

[00:42:35.6] Jeffrey Rosen: One great theme of your book is the joy and awe that early Americans had at the idea of being able to vote and in order to revive that feeling of wonder you started a movement to bake cakes, election cake tell us about that.

[00:42:53.5] A.J. Jacobs: Yes. Save democracy with cake was the idea. Democracy is sweet was our catchphrase. Again, there's pros and cons to the past. We don't want to go back to 18th century voting, of course, because women were banned from voting, Black people and indigenous people. So it was bad in some ways. However, for the privileged few who could vote, this idea of voting was a new right. And there was this sense of awe that you could actually

choose your leaders as opposed to most of the rest of history when they were commanded upon you. So the voting election day was more festive. I wouldn't say it was Coachella or Burning Man, but it was, you had music and you had farmers markets, rum, a lot of rum, and cakes. People would make these cakes and bring them to the polls to celebrate. And sometimes huge cakes, like 70 pounds. And I thought, this is a lovely idea. We have to remind ourselves that yes, this is something we should celebrate and be joyous about, this voting. So I started a movement to try to revive the election cake, and I did it over Facebook, which I know is not very 18th century, although it is one of the older platforms.

[00:44:24.6] A.J. Jacobs: And I got hundreds of people across the country in all 50 states to bake these election cakes. Some of them were by the original recipe, which included, as I mentioned, cloves. But I was not a cake dictator. I was not a tough bakery boss like Lochner. I threw that in for you. I was instead a much more liberal. I said, whatever you want to express your creativity. So people in Georgia would use peaches to make their election cake. And it is a small thing, but it was also not that small for two reasons; One, there is some evidence that something like this could work. There was a great article by political scientists a few years ago that if you create a festive atmosphere, it drives voters. Australia has what they call the, I believe it's 'The Democracy Sausage'. So it's like a big barbecue celebration on election day.

[00:45:27.0] A.J. Jacobs: And even though it was a small thing, mentally it was not a small thing because I feel that elections and politics, there's so much negativity and cynicism and nihilism, and it just, it was really weighing me down personally. And to have this one little positive action to do as sort of a wedge in the door to maybe bigger action, things like reforming gerrymandering, this really just, it gave me so much joy and I got so many letters from people who were so moved by the experience. So I am doing it again in this coming November, and I would love for anyone out there who wants to save democracy with baking, please contact me through my website or whatever, and we share photos, and it's just a wonderful time.

[00:46:20.1] Jeffrey Rosen: What a wonderful movement to revive that sense of wonder at the pageant of American democracy. As you say, the great celebrations of the 19th century and 18th century are well worth reviving in the 20th. And you also handed out some rum and a few election workers took it.

[00:46:39.4 A.J.] Jacobs: Well, this is yes. I started the book in November of 2022 and then ended it on 2023. So my first effort at handing out was I did include rum. I decided to go more G-rated on the second. But drinking, I was shocked reading the history of drinking. It was a bad time for teetotalers in the 18th century. There was a lot of drinking going on. And you've probably seen the list of alcohol that George Washington gave to voters in a very early election in Virginia. And I can't remember the exact amount, but it was more than your average frat party.

[00:47:22.5] Jeffrey Rosen: That is great. And in the Q&A, Eileen Dranetz notes that Massachusetts has school bake sales on election day. And it's interesting that this tradition started in the 18th century. There are all sorts of great questions in the chat and let's put a few of them on the table. Stephen Gilroy asked, did you learn anything during your year that was extremely disappointing and/or encouraging? And did you live constitutionally only in New York or did you live that way elsewhere?

[00:47:47.9] A.J. Jacobs: Well, I did do some traveling, including, of course, to Philadelphia to the National Constitution Center. And I should have, of course, taken a horse. I was able to get a horse a little bit in New York. But there are very strict laws now about horses on the streets. So I guess that was disappointing. I would say one thing that I don't know if it was disappointing, but it was surprising is how there are these wonderful, almost timeless passages in the Constitution, like about general welfare and equal protection. But then there are parts such as the section on Congress has the right to grant letters of bark and reprisal, which is basically legalized piracy. The government could say to a fisherman, you can put some cannons on your boat, go out, capture the British ships and keep the booty, the sherry, the clothes. And it was called privateering. And we would not have won The Revolutionary War without it.

[00:48:56.0] A.J. Jacobs: Not a lot of people pay attention to it. But it was a crucial part. Privateers captured 2,000 ships. And as part of my adventure, I decided, why not try to be the first privateer since 1815? And I actually met with a congressman, Ro Khanna from California, and presented him with my application for marque and reprisal and he was very enthusiastic until I explained in more detail what it meant, because not a lot of people know it. And then he said, "Well, that might be a problem, you're going into enemy waters with your friend's water skiing boat." So I guess that's a disappointment. I'm still not a privateer.

[00:49:35.0] Jeffrey Rosen: They're still hoping, as you said, taking down on water skis would be just as great. Kim Barbin asks, which founding father or fathers are your favorites now and why?

[00:49:45.4] A.J. Jacobs: I do have to go with Ben Franklin for so many reasons. I think that, well, first of all, he was an abolitionist, at least at the end of his life. He did have an enslaved person for some of his life, but at the end, he embraced abolition. The epistemic humility that we talked about, I think is brilliant that he would change his mind. He and the inventiveness and creativity. I loved Walter Isaacson's biography of him, how even in his 80s, on his way back from Europe from his last voyage, instead of just relaxing and staring at the sky or whatever, he was doing experiments on the boat. He would lower a bottle and try to get the water to figure out the temperature and the depths of the sea. To me, that is just so American, this idea of curiosity and experimentalism.

[00:50:43.2] Jeffrey Rosen: Beautifully said. Thomas Welch says, when you talked about the many ways in early interpretations of the Constitution was more restrictive than today, what were things you found you couldn't do today besides riding a horse in New York because government power is more restrictive today than originally interpreted?

[00:51:02.2] A.J. Jacobs: Well, this one was a little awkward because of the 14th Amendment. If you are an ultra originalist, it does not apply to gender or sex. So women's rights were much more constrained. There was something called coverture, which was basically treating women as second class citizens or even children. And I brought it up with my wife. I said in many states in 18th and 19th century, you wouldn't be allowed to sign contracts. She owns a business where she signs contracts every day. And I said, maybe for this experiment, I should be signing those contracts. At first she said, "Great. I hate doing the paperwork." I was so bad at it and made such a mess. She fired me after an hour. So that is one I don't recommend we go back to.

[00:51:58.0] Jeffrey Rosen: That is a very good recommendation. And that is a response also to AJ Conroy's question, who asked how your wife experienced the year with coverture. Well, that's a good question. I'm going to pose from Stephen Gilroy and then ask for your concluding thoughts. Stephen asked, at the end of the year, were you more or less optimistic about the future of democracy?

[00:52:20.4] A.J. Jacobs: Oh, I love that question. I love that. And I would say I am more optimistic with an asterisk. I do believe, and I'm sure that I've heard this on the show before, but the wonderful story that Ben Franklin told about the wood carving on the back of George Washington's chair during the Constitutional Convention. It was half a sun, so you could only see half of it. You didn't know whether it was rising or setting. And at the end, when they had created this Constitution against all odds, Ben Franklin said, "Now I know the sun is rising. The sun is rising on America." So a lot of this project was, is the sun still rising on America? Because you read the news and you get the sense, maybe it's not. And I believe that it's up to us whether it is still rising. It's not gravity. It doesn't rise by itself. We have to be the ones who go in there and try to make America more democratic and make it more perfect and live up to its ideals. There are ways to make structural reform, whether that's term limits on the Supreme Court or gerrymandering. And so I am optimistic but it's going to require us. It's not going to do it itself.

[00:53:38.8] Jeffrey Rosen: Well, that is so eloquent that I think we can leave it there. Thank you so much, AJ Jacobs, for the energy and industriousness and love for the Constitution that led you plunge into this great project. It was just such a wonderful way of inspiring other citizens to learn about the Constitution and to live constitutionally themselves and very much in the spirit of the National Constitution Center. It was an honor to host you and thank you so much for inspiring us all to live constitutionally.

[00:54:15.0] A.J. Jacobs: My pleasure. And thank you for all you do, as I've mentioned, and could not have done this book without the NCC's work.

[00:54:23.7] Jeffrey Rosen: Very much appreciated. Thanks to you, AJ Jacobs. Thanks to you, dear NCC friends. Have a good weekend, all. Thank you.

[00:54:32.6] Lana Ulrich: This program was live-streamed on May 10, 2024. This episode was produced by Tanaya Tauber, Bill Pollock, and me, Lana Ulrich. It was engineered by Kevin Kilbourne and Bill Pollock. Research was provided by Sam Samson Mostashari, Cooper Smith, and Yara Daraiseh. Check out our full lineup of exciting programs and register to join us virtually at constitutioncenter.org. As always, we'll publish those programs on the podcast, so stay tuned here as well, or watch our videos available in our media library at [constitutioncenter.org forward/media library](https://constitutioncenter.org/forward/media-library). Please rate, review, and subscribe to Live at the National Constitution Center on Apple Podcasts or follow us on Spotify. On behalf of the National Constitution Center, I'm Lana Ulrich.