



The Intellectual Inspirations Behind the Constitution

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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 non-profit, chartered by Congress to increase awareness and understanding of the constitution among the American people.

[00:00:22] Dear *We The People* friends I'm thrilled that the National Constitution Center has just launched our constitution 101 course and *Founders' Library* of historic documents. This is our core curriculum on the web, an introduction to everything you need to know about the constitution from the founding era to the civil rights movement.

[00:00:41] It includes videos and materials for teachers and includes this magnificent Founders' Library of primary texts. They're selected by America's leading historians and law professors from diverse perspectives. They begin with the intellectual sources of the founding and move through the civil rights era. It's just this magnificent library of learning and light.

[00:01:05] And I'm so excited to share it with you today, uh, with two of the professors who helped us select the text. Um, I want you in the discussion that follows to read along with us. So go to the National Constitution Center homepage, uh, you, you'll find historic documents, um, right there on the, on the homepage and, and click on that.

[00:01:24] And read along with us as we delve into this magnificent resource for learning. Uh, we're honored to be joined by two of the professors who helped us select the texts. And I'm so thrilled to introduce them to you now.

[00:01:42] Paul Rahe is professor of history and Charles O. Lee and Louise K. Lee chair in the Western Heritage at Hillsdale College. His most recent book is *Sparta's Second Attic War: The Grand Strategy of Sparta*. Along with professor Colleen Sheehan, he selected the sources in the intellectual foundation section of the *Founders' Library*. Paul, it's an honor to welcome you to *We The People*.

[00:02:03] Paul Rahe: It's a great pleasure to be with you.

[00:02:06] Jeffrey Rosen: And Jonathan Gienapp, is an associate professor of history at Stanford University. He's the author of *The Second Creation: Fixing the American Constitution in the Founding Era*. With professor Bill Allen, he selected the sources for the founding era section of the *Founders' Library*. Jonathan, it's an honor to welcome you to the show.

[00:02:24] Jonathan Gienapp: Thank you for having me.

[00:02:26] Jeffrey Rosen: Paul Rahe, it was so meaningful for me to work with you and Colleen Sheehan and selecting the intellectual foundations sources, you've chosen to highlight a series of them, and you wanna begin with Thucydides. Tell us which selection you chose and why you chose it.

[00:02:43] Paul Rahe: Well, I chose book three, paragraph 80, 81 of Thucydides' *History of the War Between the Peloponnesians and Athenians*, because it focuses on faction and on civil war. And the American founders were in some measure inspired by the classical example, they were republicans in antiquity.

[00:03:07] The Greek republics had defeated the Persians, Rome had conquered the Mediterranean. These republics had been partially successful and they'd been partial failures. And what the Americans were doing in the founding period is to try to succeed where the ancients had failed.

[00:03:32] And one of the ways in which the ancients had failed is through civil wars. It was civil wars that destroyed the Roman Republic. It is really a civil war that was mostly responsible for Athens loss of the Peloponnesian war to Sparta. And that leads ultimately to the dependence of Greece upon Persian gold.

[00:03:54] So part of what the founding generation is doing is thinking through the failures of the past, the successes as well, and attempting to ponder successfully how it might be possible to avoid the mistakes that had been made in antiquity. And, and let me say they weren't alone in doing this.

[00:04:20] If you look at the European writers from Machiavelli through Montesquieu, there's a theme that runs through those writers, which is the greatness of the ancient republics and the defects and failures of the ancient republics.

[00:04:38] So the Americans are looking to grease, they're looking to roam and they are also examining the criticism of classical republicanism that you find in these figures, stretching from, uh, Machiavelli to Montesquieu, figures including James Harrington, including David Hume, including, uh, many of the people who are involved in the English revolution in the 1640s.

[00:05:07] So there's been, there's been hundreds of years of conversation among European intellectuals, about an alternative to the kind of system that they have with monarchies and aristocracy and the like, and pondering what it was that enabled the Greeks and Romans to accomplish what they had accomplished and what it was that it cost them to fail.

[00:05:35] And the thinking about the failure of the ancient Greeks begins with Thucydides. He expects Athens to win the Peloponnesian War, they don't, and he spends much of his life meditating on why they didn't and the particular passage that, uh, Colleen and I excerpted is focused in on a particular weakness of the Greek policy that makes it vulnerable.

[00:06:02] Jeffrey Rosen: Wonderful. Thank you so much for that. I'm gonna read a brief excerpt from the passage and *We The People* friends, I hope as you're listening to this podcast, you'll go to the constitution center website, constitutioncenter.org, click on the historic documents, library and follow along with us as we discuss these inspiring texts.

[00:06:19] This is Thucydides. Afterward all Greece as a man may say was in commotion and quarrels arose everywhere. The cause of all this is desire of rule out of avarice and ambition and the zeal of the contention from the, those two proceedings.

[00:06:35] Jonathan Gienapp, the first document that you've chose to highlight is John Dickinson. Tell us about why you selected the letter from a farmer in Pennsylvania to the inhabitants of the British colonies.

[00:06:47] Jonathan Gienapp: There are a lot of things that distinguished this particular source that John Dickinson wrote first as a set of serialized, um, essays that appeared in newspapers in starting in late 1767 on into 1768, and then were separately published as a, um, pamphlet. Um, and to understand why I think it helps to establish the context.

[00:07:10] So this comes in the later part of the 1760s after the Imperial Crisis with great Britain that will eventually result in the American revolution has begun. And what sets off what ignites that crisis is a problem of public finance, that Great Britain is in, an extraordinary amount of debt, largely incurred from winning the seven years war, much of which was fought on the North American continent.

[00:07:37] And in an effort to find ways to pay down that debt, they turn to measures, uh, that are extremely controversial in the British North American mainland colonies, namely trying to directly tax the North American colonists to help raise revenue to pay down the debt.

[00:07:55] The most explosive early tax that they levy there are, there are a few of them, but the one that receives the strongest pushback is the so-called Stamp Act, which was a general tax on a variety of paper goods, that if you were going to print various things in the colonies you needed to do so on paper that had a particular stamp on it. To buy the paper that had the stamp, you had to pay the tax.

[00:08:18] So there's a huge uproar over this. Colonists say that this violates their liberty. They begin trying to work out, drawing on a lot of their learning and personal experience, why exactly it is that these taxes violate their rights and it causes such an uproar. There's violence in the streets. There's mobbing, um, there's destruction of property that Britain chooses to repeal it.

[00:08:41] But Britain is very concerned having repealed it that they're potentially abandoning, not just an important source of revenue raising, but also the deeper principle upon which it rests that they, as the Supreme sovereign authority in the British empire, generally get to legislate over the colonies.

[00:09:03] So they devised this next set of taxes in the late 1760s, that instead of the Stamp Act which many people regarded as a so-called internal tax, not an external tax like customs duties,

but an internal tax that was directly on the people, that they would instead turn to a set of taxes that were more external in nature.

[00:09:26] So they divides what are called, the Townshend duties named after Charles Townshend who's chancellor of the Exchequer at the time, um, which target a series of luxury goods that are imported to the colonies. So great Britain is thinking well, unlike the Stamp Act which nobody could easily avoid, that seemed more internal in nature, these taxes are more external in nature.

[00:09:48] So these are the kinds of things that Americans will accept. So this is where John Dickinson comes in. And in letters from a farmer in Pennsylvania, what he argues quite cogently and powerfully is that the distinction that matters is not between whether a tax is internal or external, but instead, what the intent behind a tax is.

[00:10:16] Is the tax intended to do something relatively innocuous like regulate trade in the empire, or is it intended to do something more invasive, namely with an aim toward raising revenue? So what Dickinson is doing here is he's taking this older language of external internal and turning it on its head and saying, if you want to understand whether or not a tax violates a people's rights, you need to look towards its aim.

[00:10:43] And in the case of the Townshend duties like the Stamp Act before it, it is intending to raise a revenue. And this is unprecedented in the American colonies he argues and violates the fundamental liberties of Americans, the basic principle that Americans get to determine which major pieces of legislation, which major pieces of legislation that are directed at raising taxes for revenue.

[00:11:08] Um, the ones that will be levied on them, they get to decide what those are. And what this does when Dickinson makes this argument, is it narrows the space that is already shrinking by which Americans can on the one hand claim fiely to the British parliament and claim that the British parliament has meaningful sovereign authority over them, while also claiming that they can't actually legislate in any of these areas that are reserved for Americans.

[00:11:41] So this helps sort of propel the conversation forward to the make or break moment when that arrives in the 1770s, that either Americans need to basically own up to what it is that is lurking beneath Dickinson's argument, that they're actually free and independent political communities, or they need to give ground on some of these points to acknowledge Parliament's authority.

[00:12:07] An attempt to create, um, to reconcile these two positions that the British government had settled on in 1768, Dickinson does a great deal to explode that and to further inflame passions in the colonies that he is right.

[00:12:18] **Jeffrey Rosen:** Thank you so much, uh, for helping us understand that crucial distinction between, uh, taxes for the regulation of trade and taxes for the purposes of raising money. And now I'm gonna read the excerpt, which makes that distinction, which you just introduced explicit.

[00:12:33] Here we may observe Dickinson, an authority expressly claimed and exerted to impose duties on these colonies, not for the regulation of trade, not for the preservation or promotion of a mutually beneficial intercourse between the several constituent parts of the empire, here to afford the sole objects of parliamentary institutions, but for the single purpose of levying money upon us.

[00:12:56] And Dickinson goes on to say that if this is permitted, then Great Britain will have nothing to do, but to lay these duties on the articles which he prohibits us to manufacture, and the tragedy of American liberty is finished. Uh, Paul Rahe, your next documents are from Francis Bacon Selected Excerpts and Thomas Hobbes *Leviathan*. Tell us about those documents and why you put them together.

[00:13:22] **Paul Rahe:** When Benjamin Franklin was in England, he had a conversation with Dr. Johnson that Boswell recorded. And he said the following, "Man is by nature, a tool making animal."

[00:13:38] And I wanna suggest that one of the big differences between ancient republicanism and modern republicanism is that where Aristotle says, man is by nature, a political animal possessed of logos, rational speech, and capable of deliberating concerning the advantageous, concerning the just and concerning the good.

[00:14:04] The Americans shift the emphasis, and they do so under the influence of Bacon and the man who served briefly as Bacon secretary Thomas Hobbes, which is to say they think less about the political rationality of human beings than about man's technological capacity.

[00:14:27] That is to say that Franklin is speaking for his fellow Americans when he speaks to Dr. Johnson in this particular fashion. Now you do not find in the founding period Bacon being quoted right and left, nor do you find Hobbes being quoted right and left.

[00:14:45] And when he is mentioned, it is usually negative because of course Hobbes is a defender of absolute monarchy. But those two figures lie behind John Locke. And the sign of Bacon's importance for the Americans is the inclusion of the patent clause within the American constitution.

[00:15:06] The patent clause is introduced at the constitutional convention. There is no debate concerning it, nobody objects. It is accepted by everyone. When it comes to the debate between the Federalists and the anti-federalists no one objects to the patent clause, it is uncontroversial. It is also extremely revolutionary. It means that there is a new species of property, a species of property in ideas.

[00:15:41] Now there's a history to this notion of property in ideas. And it goes back to the time of Elizabeth when she began issuing patents of two kinds, to inventors and to those who discovered things in North America. So it's patents of monopoly that lead to the creation of the American colonies.

[00:16:03] Uh, but it's also patents that lead to inventions in England and periods of monopoly, and to importation of inventions from abroad and periods of monopoly. What this means is that

there is a marriage that takes place between technology and commerce. And that marriage is created by the practice of issuing patents.

[00:16:31] Now, this practice was challenged early on, and the man who comes forward in the English parliament to defend patents of monopoly is none other than Sir Francis Bacon, the same man who is making the argument for a new science in his advancement of learning, uh, the same man whose proposals lead eventually after his death to the establishment of the Royal Society.

[00:16:57] The Americans are taking what was a practice in England, and they are making it a constitutional right, that's to say something fundamental to the regime. And so they are borrowing, or they are getting on board with the scientific project that's announced by Sir Francis Bacon in the form that it took in England, in Bacon's time.

[00:17:24] Hobbes is an adherent of this same project. Hobbes is a rejector of the idea that man is a political animal and his entire understanding, his political understanding of the state of nature and so forth and what arises from the state of nature is built on the Baconian idea that man is first and foremost a tool making animal.

[00:17:49] What produces the war of all against all is human beings tend to look upon other human beings, according to Hobbes, as tools that they can use. And that leads to the conflict, because if you wanna use me as a tool, and I wanna use you as a tool, we're going to find ourselves eventually at loggerheads.

[00:18:11] And Hobbes tries to provide a kind of solution to that through social contract theory, that is basic to Locke and therefore fundamental to the Americans.

[00:18:22] **Jeffrey Rosen:** That was fascinating. I'm following along wrapped on the Founders' Library website. You've shown us the connection between Bacon, Hobbes and Locke. And I'm now gonna read an excerpt, uh, that you selected with Colleen Sheehan from, uh, Bacon. This is his speech in parliament and defense of the practice of issuing patents of monopoly.

[00:18:41] If any man, out of his own wit, industry or endeavor, find out anything beneficial for the Commonwealth, or bring any new invention, which every subject of this realm may use get in regard of its pain, prevail and charge therein, her majesty is pleased perhaps to grant him of privileges, to use the same only by himself or his deputies for a certain time.

[00:19:02] Jonathan Gienapp, your next selection is William Cushing Instructions to the Jury in the Quock Walker Case, Commonwealth of Massachusetts versus Jennison. Tell us about that document.

[00:19:14] **Jonathan Gienapp:** This is an extremely important document, I think, not least because it's not terribly well known, but ought to be. Uh, so the broader context here, which is extremely important and picks up on what I talked about in the context of John Dickinson was the problem of slavery in the American revolution.

[00:19:34] Now, if there was one thing that the Imperial Crisis with Britain did, it was that it fueled an explosion of liberty talk, of people everywhere you turned talking about the importance

of liberty, the nature of liberty, how it was essential to everything that was dear in political society.

[00:19:56] And also how people had particular kinds of rights that could not be violated. Well, it's not terribly surprising that in the context of so many people drawing attention to political liberty and especially the ways in which, and, and the, um, white British North Americans did this constantly juxtaposed political liberty to the condition of political slavery.

[00:20:20] This is precisely what John Dickinson did in letters on a, from a farmer, uh, in Pennsylvania saying that either we are free or we are, we'll be reduced to political slaves, that is the fundamental question posed by whether or not these taxes will be allowed to stand.

[00:20:34] That all this talk about liberty and political slavery drew attention to a particular contradiction that was staring people in the face that of the millions of people who lived in British North America. And this was not just true of British north America, but this was true around the globe, a significant percentage of them were enslaved.

[00:20:56] They were not political slaves, they were chattel slaves. So it's not terribly surprising that people began drawing attention to this contradiction or that those who were enslaved began saying, if all this talk of liberty indeed is true, why does it not also apply to us?

[00:21:14] So we begin to see right away in the 1760s and 1770s on into the 1780s, a variety of people, including enslaved people of African descent, claiming that these fundamental principles of liberty also apply to them. And that's what brings us to the Quock Walker case in Massachusetts.

[00:21:34] So Commonwealth v. Jennison was the last of three cases that decided the fate of Quock Walker. He had legally challenged his enslavement. He was a black enslaved individual, and he challenged his enslavement on the grounds that it was inconsistent with the Massachusetts constitution of 1780, in particular, um, the part found at the beginning of the declaration of rights that said following off of the declaration of independence, that all men were born free and equal endowed with certain natural rights.

[00:22:08] This is a pretty explosive argument to make. And we can, we can see right here, the sort of contagion of liberty, you begin talking about liberty and how it spreads, people laying claim to it themselves. So the facts of the case, Quock Walker had escaped from his alleged owner and Nathaniel Jennison who attracted him down and severely beaten him for doing so.

[00:22:28] So Walker filed a suit against him for assault and battery, but also made this broader claim that transcended the assault and battery claim about his condition of enslavement itself. So it eventually makes its way to the Supreme Judicial Court of Massachusetts, where William Cushing, who will, um, shortly thereafter become one of the first justices on the United States Supreme Court, in his instructions to the jury, explaining to them what should happen in this case.

[00:22:56] He didn't simply say that Quock Walker was entitled to his in to his freedom, he instead ran with this argument that Quock Walker had made and declared that slavery itself was incompatible with the state's constitution, making a pretty strong argument that if you take seriously what the Massachusetts constitution is saying, and more essentially what fundamental law in a deeper sense in the United States appears to be, slavery is inconsistent with that.

[00:23:27] And there can be no gray area here. And this declaration of Cushing in the resolution in the Quock Walker case helps pave the way to the ultimate extinction of slavery in the Commonwealth of Massachusetts.

[00:23:40] And which is part of a more general process by which slavery is slowly but clearly destroyed in many of the Northern states helping to further heighten the contradiction that for a great many American slavery is inconsistent with the principles of the revolution, which of course will become the defining question in so many ways of the period to follow.

[00:24:03] The antebellum era when Americans have to decide this in a very real sense as they, um, made their way toward what eventually ripped the nation in two over this question.

[00:24:14] Jeffrey Rosen: Thank you so much for that. And for helping us see the connection between the Dickinson document and this one. When I read the end of the Dickinson, I wondered about the contradiction of slavery.

[00:24:24] Dickinson says, as you did, those who are taxed without their own consent expressed by themselves or their representatives are slaves. We are taxed without our consent, expressed by ourselves or our representatives, we are therefore slaves. And then you helped us, uh, understand that the colonists themselves saw that contradiction.

[00:24:42] And in the case, which you called our attention to, uh, we conclude the people of this Commonwealth have solemnly bound themselves declaring that all men are born free and equal, and that every subject is entitled to liberty and to have it guarded by the laws as well as life and property, and is in short, totally repugnant to the idea of being born slaves.

[00:25:02] This being the case, I think the idea of slavery is inconsistent with our own conduct and the constitution. And there can be no such thing as perpetual servitude of a rational creature, unless his liberty is forfeited by some criminal conduct or given up by personal consent or contract.

[00:25:17] Thanks for that. And dear, *We The People* friends, I, I hope that you're going to the website and following along with these texts. It's so empowering to return to the primary sources. It's a radical act to allow the founding generation to speak for itself.

[00:25:31] And we see the connection between their arguments in the most exciting ways. And that's why I'm so excited about the Founders' Library. Paul Rahe, your next source is James Harrington, the *Commonwealth of Oceana*. Tell us about that document.

[00:25:46] Paul Rahe: James Harrington was an English gentleman living during the period of revolution between 1640 and 1660. And there was a great time in 1656 in which a whole series of tracks appeared talking about constituting a new form of government. The most important of these was the Commonwealth of Oceana.

[00:26:11] And it was written in part as a correction to Thomas Hobbes' *Leviathan*, arguing that Hobbesian ends can best be served by a republican government, not by a monarchical government. That's part of the story. The other part of the story is Harrington imagines what the Americans will eventually do, which is to say holding a constitutional convention in in-camera in secret.

[00:26:45] That is to say, everyone knows it's meeting, but the deliberations take place in secret to issue a constitution, uh, that will be then ratified or accepted. So the idea of a group of human beings meeting to form a constitution, something we now take for granted, something that not only Americans take for granted, but since the 1950s, peoples in all parts of the world take for granted.

[00:27:17] He's the fellow who invented the idea of such a convention being held, and of deliberations concerning how best to make republican government function properly. Ideas for example, such as rotation in office, which plays a major role in his thinking, a senate and a sort of body of representatives that are chosen by different procedures, so you get different results.

[00:27:50] All of it presupposing of the Hobbesian principle, that, that people will not think about anything but their own private interests. How can you elicit from a Congress composed of two houses, good legislation when none of them intend the public good? And his answer is, uh, we have to structure things so that you get justice out of selfishness.

[00:28:21] How do you do that? Well, his model is two girls cutting a cake. Each girl wants the larger piece. The rule is one cuts the cake and the other gets first choice. That forces the one cutting the cake to cut it equally, even though equality and justice is not something she's aiming at.

[00:28:45] So what you have is the notion of a constitution that will function properly, even if the highest virtues are not present. Now, the Americans do not follow this in fine detail, and they do not have as negative a view of human nature as Hobbes and as Harrington has, but they are perfectly aware of the problem.

[00:29:08] And they provide for double deliberation, deliberation in a house of representatives and deliberation in a senate. And they provide for, uh, a house that will be constituted in one way on the basis of population and a senate that will be constituted in another way on the basis of preexisting communities, the old colonies now turned states. And their deliberations are inspired by Harrington's literary effort.

[00:29:41] Jeffrey Rosen: That's amazing. Uh, it's so interesting to learn from you, as you just told us that the founders were inspired by Harrington's effort in the introduction to the text, you note that for Harrington, it was a work of utopian fiction.

[00:29:56] He described a constitutional convention held, uh, in secret in-camera so the debates could be frank, which produced this Republican constitution and features all these features that inspired us as well, a militia, an agrarian law, the secret ballot, bicameral legislature, rotation in office.

[00:30:12] And you teach us also that for Harrington, it was not virtue, but interest that governed the constitution. And that's obvious in the excerpt, give us good men and they will make us good laws as Harrington is the maxim of a demagogue.

[00:30:26] And though the alteration of which is commonly perceivable in men, when they have the power to work their own wills, exceedingly fallible, but give us good orders and they will make us good men is the maxim of a legislator and the most infallible in politics. Jonathan Gienapp, your next excerpt is James Iredell's "To The Public." Tell us about that document.

[00:30:51] **Jonathan Gienapp:** So James Iredell's "To The Public" is very interesting for variety of reasons, but to, to set the context as to why, um, we should reflect upon how we think of judges in the Supreme Court today in American Society.

[00:31:09] For quite some time, the Supreme Court has had a particularly elevated role in the American constitutional system playing in, in the eyes of some aversion of basically king having final say over what the constitution means. But it's really important to remember that back in the 18th century, this expectation was not something that a lot of people shared.

[00:31:35] It took a great deal of work and defense to establish even more basic claims, not just that justices in the federal constitutional system or anywhere in the United States would have significant power, but would simply have the power that we call judicial review, to review acts of the legislature for their conformity to the constitution.

[00:32:02] This was not something that people immediately rallied around or for which there was consensus. And this was certainly true in the 1780s prior to the constitutional convention of 1787, under the state constitutions, a lot of people complained that the state legislatures were violating what those constitutions required.

[00:32:27] But nonetheless, there wasn't an immediate appetite for state judges to be the one who enforced these constitutional limits against what the legislatures were doing.

[00:32:39] One of those people though, in this period prior to the constitutional convention who made the case for judges exercising this power, was James Iredell, a jurist in North Carolina who like William Cushing, um, the, the individual I mentioned regarding the previous document I spoke on also became one of the first justices to the United States Supreme Court.

[00:33:01] In this newspaper essay published in New Bern, North Carolina in 1786, observing this debate that had been unfolding for some time, but especially in the 1780s across the various states, James Iredell explained why he thought it was reasonable at least in some instances for judges to exercise judicial review, to strike down acts of the legislature that judges could see were plainly in violation of the constitution.

[00:33:32] Now, the key question here was about who got to enforce the constitution, not so much the idea that the constitution was superior to the legislature. Everybody agreed with that premise that the constitution was supreme. It was fundamental. Nobody could violate it.

[00:33:47] The question was what was the remedy in the case that the legislature had. And here the anxiety was why could another political body, much less judges second guess what a legislature had done? Because for so long, local legislatures had been viewed as the safest repository of power in North America, either prior to the American revolution, under the British empire, or after the American revolution in the independent states.

[00:34:20] No institution more closely mirrored the people's interests or seemed to more readily carry out their wishes. So it seems strange to a great many people that judges who had never historically played that role might be able to second guess the people's closest representatives.

[00:34:39] So Iredell in this essay offered a lot of the arguments that Alexander Hamilton would pick up famously in Federalist 78 and then John Marshall in *Marbury v. Madison* of 1803, the famous case that a lot of people point to and learn about when they're younger, that seemed to lay down the principle of judicial review.

[00:34:59] And among the things that Iredell argued in his piece was okay, suppose there has been a violation of the constitution. We are told that the right remedies for that are either to petition the government, to ask them to second guess what they've done and maybe overturn it or a universal resistance of the people, basically a quasi right of revolution. And he said, these are just simply not reasonable remedies.

[00:35:27] These are not remedies that will allow constitutional government to endure. So he then says kind of coyly, is there any role for the judicial power here? He doesn't necessarily say the judiciary plays the primary role. He just says, is there any role? And he says, if we think about it, straightforwardly there, of course is.

[00:35:46] And here his innovation is to say that even though a state constitution is supreme fundamental law, it is still just law. That's what Iredell claims. So as a result, if an act of a legislature, which also is a law comes before the state judiciary, they have no choice in examining it, but to compare it to this other law that they're bound by, the state constitution.

[00:36:10] And as judges, they're always under the responsibility of allowing a superior form of law to trump an inferior form of law that is contrary to it. So he presents it as though it is merely part of the judicial power and responsibility under these circumstances. If a case comes before a state judge or later a federal judge and the law in question directly violates the constitution, a judge's hands is, is tied.

[00:36:35] They simply have to strike it down. Now, very few people at the time.... I mean, it, it is difficult to measure exactly how many, but this, this, this argument that Iredell made was not in the dominant majority. He had friends in North Carolina who wrote to him and said, "I just can't see how judges could exercise this role."

[00:36:54] But what we see here in this document is Iredell in a particularly crisp way, making an argument that will later gain considerable traction and ultimately become pretty doctrinaire in the American constitutional system.

[00:37:07] **Jeffrey Rosen:** Thank you so much, uh, for correcting my pronunciation of Iredell, first of all, and for calling my attention and, and those of *Founders' Library* users to this document, which I had in my long education so far missed. Here as you say, is the obvious inspiration for Hamilton in *Federal 78* and for Marshall and Marbury.

[00:37:30] Uh, Iredell says, an act of the assembly inconsistent with the constitution is a void and cannot be obeyed without disobeying the superior law to which we were previously and irrevocably bound. The judges therefore must take care of their peril, that every act of assembly they presume to enforce is warranted by the constitution. If it is not, they act without lawful authority.

[00:37:52] This is not a usurped or discretionary power, but one inevitably resulting from the constitution of their office, they being judges for the benefit of the whole people and not mere servants of the assembly. Paul Rahe, your next documents are from Locke. We have several excerpts in the intellectual foundation's section, and you wanted to call our attention to a letter concerning toleration and the *Two Treatises of Government*.

[00:38:20] **Paul Rahe:** I'm gonna focus in my remarks here on the Two Treatises of Government. And I wanna focus on an aspect of it that is not always emphasized, which is to say Locke on property, uh, the chapter five of the Two Treatises of Government is extraordinarily important.

[00:38:41] Um, but before I do that, I, I, I wanna say the obvious, which is to say that if you look at the declaration of independence, uh, it draws heavily on the language of the Two Treatises of Government, and it makes its argument for the breach with Great Britain on the basis of Locke's doctrine of resistance against, um, tyrannical authority.

[00:39:06] But along the way, Locke talks about property in a new way, in a way that I think reflects the Baconian and Hobbesian understanding of man as a tool making animal. Now, what I have in mind is this, he asks the question, how property is acquired. And he points to a time when property is communally held, that is to say, there is no private owner.

[00:39:37] So the question is who can acquire it and how is it acquired? And his answer is every man has property in his own person. It's from this that his rights are derived. He can mix his labor with items from nature and in mixing his labor with those items from nature, he gives them value and they become his property.

[00:40:08] To put it in, in other terms, Locke is the person who argues that a man has the right to the fruits of his own labor. And if you think through the logic of that, it makes slavery which Locke had himself been involved with in years prior to the glorious revolution. He owns shares in South Sea company.

[00:40:34] It makes slavery problematic. Indeed, it makes slavery unjust. Locke does not fully draw out the implications of this. He is writing a tract, a polemical tract, which was originally created to support a revolution that never came off, but then was published at the time of a revolution that did come off, which is to say the glorious revolution.

[00:41:01] So he's writing a polemical track for a particular set of circumstances. He does not draw out the implications, for example, for Ireland, a friend of his does, and he's not so terribly happy about that. Um, but the implications are there to be drawn. And in Scotland, there are scholars who teach from Locke and in footnoting, the *Two Treatises of Government*, they point to its implications for slavery.

[00:41:29] So the secular anti-slavery doctrine begins with Locke's laying out an understanding of the right to the fruits of one's own labor, which is to say one has property in the fruits of one's own labor, and to the implications drawn out of that by subsequent figures in Scotland. And of course, by the first philosopher, the first secular figure of great notoriety who condemns slavery, which is Montesquieu.

[00:42:04] **Jeffrey Rosen:** Thank you so much for calling our attention to the central importance of Locke and the Scottish and other thinkers who extended him to question slavery. We have Montesquieu in the Founders' Library, along with Francis Hutcheson from the Scottish enlightenment who called slavery unjust.

[00:42:21] And here's the selection from Locke that you were just discussing. Though the earth and all inferior creatures, be common to all men yet every man has property in his own person. This no body has any right to, but himself the labor of his body and the work of his hands, we may say are properly his.

[00:42:40] Whatsoever then he removes out of the state that nature has provided and left in it. He hath mixed his labor with and joined to it something that is his own and thereby makes it his property. Jonathan Gienapp, your next selection is George Mason, objections to the constitution of government formed by the convention. Tell us about that.

[00:43:03] **Jonathan Gienapp:** George Mason, uh, is little known today, but he was an extremely important statesman during the revolutionary era. He was a member of a extremely prominent Virginia family. And he had been the primary author of Virginia's Declaration of Rights in 1776, uh, that was influential and widely read.

[00:43:26] So this made it especially important that Mason, having participated as one of the 55 delegates to the constitutional convention and being so respected was among the three individuals there at the end of the convention who refused to sign the finished constitution.

[00:43:45] So George Mason, his fellow Virginian, Edmund Randolph and Elbridge Gerry from Massachusetts were the three conspicuous non signers. So this suggested, um, that moving forward when the constitution, when the constitutional convention's work was unveiled to the American public, thus setting off the ratification debates, the debates over whether or not this

constitution proposed by this convention in Philadelphia would indeed be approved as the nation's new system of federal governance would be met with some resistance.

[00:44:18] If people in Philadelphia and people of, of, of the stature of George Mason were unwilling to sign onto it, there was going to be other people who had issues. So it's not just that George Mason refused to sign it, he also immediately upon leaving the convention wrote this memorandum, the source that we're discussing, outlining his objections.

[00:44:42] And it's a private memorandum, but it soon circulated widely. And it more or less became the basic template for anti-federalists opposition to the constitution in part, because it's so concisely articulated a lot of the objections that would reverberate over the many months during which the nation was engulfed in the ratification struggle.

[00:45:04] So written as a memo, it's basically takes the form of bullet points, but it makes a series of key observations that would become essential anti-federalists criticisms about why the constitution was not going to in fact ensure the promise of the American revolution, but by contrast destroyed.

[00:45:22] So among the first things that Mason articulated in his opposition was that there was no declaration of rights. If you ask most Americans today what's in the constitution, their answers often will come from what we now call the bill of rights or the first 10 amendments to the constitution.

[00:45:41] Um, protections for freedom of speech, freedom of, to, you know, free exercise of religion, prohibitions against illegal searches and seizures and so on. None of those are in the 1787 constitution, of course. They were added by amendments later, and they were partly added because anti-federalists taking Mason's lead strongly objected to this omission.

[00:46:05] Mason had raised the issue at the 11th hour in the constitutional convention. He had asked the **[inaudible 00:46:10]** to consider adding a federal bill of rights and received very little support for it. So it was one of the major reasons he couldn't support the constitution as written in 1787.

[00:46:20] He also complained that the United States Congress as set up by the proposed constitution could not adequately represent the people of the United States. And this was a very important argument, because this was an argument that anti-federalists returned to time and again, and in their eyes directly drew on the essential political principles that the American revolution had been for.

[00:46:46] So when people in the 18th century talked about representation, they often had pictorial imagery in mind, a representation in a political context was like a representation of you in the form of a painting. It was something that took the place of you and was very much a copy of you in miniature.

[00:47:06] So John Adams in thoughts on government, one of the other sources that we highlight in our selections talked about how a good legislative assembly should think and feel like the

people at large. So for people like Mason, this had a very literal meaning that a good representative assembly had to effectively think and feel like the broader population.

[00:47:31] And that simply was not going to be possible in the United States Congress because the house of representatives would only have 65 members beginning in 1789. And how could 65 people possibly represent all the diverse interests, ways of thinking and feeling found in a population of three million.

[00:47:53] If Congress was going to be representative, it needed to be significantly increased in size. So this was a fundamental objection that Mason leveled that lots of anti-federalists ran with, that the people who would end up in Congress would not meaningfully speak for certain portions of the population.

[00:48:14] And then lastly, and this built directly from the problem with representation, because there could be no confidence that the national government set up by the United States constitution would be representative of the people, it was especially dangerous how much power was going to be given to this government.

[00:48:31] And in particular here, George Mason pointed to the fact that while it seemed as though there were relatively strict limits on the legislative powers that Congress could exercise because there was an enumeration of powers found in article one, section eight, because you found at the end of article one, section eight, the so-called necessary in proper clause or what Mason often referred to as the sweeping clause.

[00:48:57] Or the clause that said, in addition to all the powers that are enumerated, Congress shall have the power to make all laws necessary and proper to carry out the foregoing powers and all other powers vested in the government of the United States. As Mason thought, and lots of anti-federalists ran with this.

[00:49:14] This was an enormous discretionary power that Congress would get to decide what powers were necessary and proper to fulfill its purposes. And what made this so dangerous, this wouldn't necessarily be dangerous at the state level was again, because the federal government wouldn't be representative.

[00:49:32] It was one thing to give this kind of discretionary power to a government that you had confidence, represented the people, but one that didn't really needed to be hemmed in. And for Mason, this constitution did not adequately hem in Congress.

[00:49:46] So this template that laid out these various interlocking objections was something that those who opposed the constitution got a lot of mileage out of repeating.

[00:49:55] Jeffrey Rosen: This is George Mason, objections to the constitution of government formed by the convention. There is no declaration of rights and the laws of the general government being paramount to the laws and constitutions of the several states, the declarations of rights in the separate states are no security.

[00:50:12] This government will commence in a moderate aristocracy. It is at present impossible to foresee whether it will in its operation produce a monarchy or a corrupt oppressive aristocracy. It most probably will vibrate some years between the two and then terminate in one or the other. What a wonderful phrase.

[00:50:31] Uh, we have two more rounds of documents in this feast of learning that we're doing together *We The People* friends and I hope you're following along on the website. Paul Rahe, your next document. And it's, uh, substantial is, uh, David Hume's *Essays, Moral, Political, and Literary* and Adam Smith's *Wealth of Nations*.

[00:50:52] **Paul Rahe:** Hume's work, and Adam Smith's work are both important for the Americans. I wanna focus on something more narrow within Adam Smith's work that is rarely noticed. Everyone knows about Adam Smith and the division of labor. Everyone knows about Adam Smith and the arguments for free trade.

[00:51:18] Very few people know that Adam Smith also included a select... a section in his *Wealth of Nations* about education and discussed religion in that section. Now what makes it interesting, and the reason that I listed David Hume alongside Adam Smith is he's attacking David Hume. Now these two men were very close friends.

[00:51:40] And David Hume in his histories of England had raised the problem of sectarian religious conflict, which had been a major problem in 16th and 17th century Europe, and continued to be a major concern in political thought ever after that.

[00:51:59] In fact, the whole line of thinking that you, that you have from Thomas Hobbes to, uh, John Locke, who, who writes the letter on toleration and on into the 18th century, what we think of as liberal thinking and, and of a thinking that leads to limited government is motivated by the desire to avoid sectarian conflict.

[00:52:20] If you limit the scope of government and you put religion into the private sphere, you will have less trouble. And if government plays no role in forcing one particular religion or preferring one particular religion over another particular religion, you can avoid this kind of trouble.

[00:52:39] David Hume thought there should be an established church. And he thought there should be an established church because as he put it, with an established church you can bribe the indolence of the clergy. His view was the problem was zeal. His model was Anglicanism.

[00:52:57] Sometimes people today refer to Anglicans as God's frozen chosen. That is exactly what David Hume thought, and he liked it. Anglican ministers weren't especially zealous because they were guaranteed an income. Their indolence had been bribed by the fact that it was an established church. He thought this a good thing. Adam Smith responds. Now the *Wealth of Nations* is published in 1776.

[00:53:28] Adam Smith is not in a position to take into account the American revolution, but he does know quite a bit about the American colonies, which he discusses in that work. Uh, and his

model for dealing with the danger posed by sectarian conflict for constitutional, for lawful government is Pennsylvania.

[00:53:51] And his argument is where there is a multiplicity of religious sects, where the government does not have an established church. What you have is a competition between these religious sect that is very important for reinforcing the human capacity for self government.

[00:54:14] Which is to say the various ministers in their competition with one another, promote the same morality with great zeal, and that morality of self-discipline, self-control and generosity is exactly the kind of morality you need to underpin self government.

[00:54:37] I used to think until this afternoon when I was teaching that this was original with Adam Smith. I've discovered it in the Persian letters, uh, published by Montesquieu in 1721, which I, I taught a couple of hours ago. I came across a passage where in brief the same exact argument is made.

[00:55:00] So there's a lot of, um, interchange between these figures, Hume and Montesquieu were friends. Uh, Adam Smith was a great admirer of Montesquieu, and they borrow thinking from one another in this particular period.

[00:55:16] **Jeffrey Rosen:** That is wonderful. It really is among the most exciting discoveries when we see these connections among the texts, and they're always, uh, presenting themselves to us and the, the Smith Montesquieu connection is great. Uh, I'm gonna read now from, uh, Adam Smith.

[00:55:32] The interested and active zeal of religious teachers can be dangerous and troublesome only when there is either but one sect tolerated in the society or where the whole of a large society is divided into two or three great sects that teachers of each acting by concert and under a regular discipline and subordination.

[00:55:49] But that zeal must be altogether innocent, where the society is divided into two or 300 or perhaps into as many as a thousand sects of which no one could be considerable enough to disturb the public tranquility. Jonathan Gienapp, your next to last excerpt is Noah Webster, An Examination into the Leading Principles of the Federal Constitution.

[00:56:11] **Jonathan Gienapp:** Noah Webster's best known today as the person who wrote Americans' first dictionary and his work with the English language in the late 18th and early 19th century. But he was also a frequent commentator on politics and constitutionalism.

[00:56:27] And part of what makes him interesting is he thought the two subjects were intimately connected that how people used language, how they used language to communicate meaning and understand one another was inextricably entangled with how you constituted political authority and constitutional authority.

[00:56:46] Um, which of course is true in so many ways, given the reliance on written constitutionalism that develops in the 18th century. But in this particular essay that was written

in defense of the constitution, what Webster argued is worth our attention for a variety of reasons, I think.

[00:57:08] What he was trying to draw attention to was the fact that constitutional freedom and the endurance of a constitution rested on deeper social and economic foundations that were non-negotiable. And in his case, he argued that if a free constitution, a republican constitution was genuinely to endure, then you needed a relatively equal distribution of property in society.

[00:57:38] And he laid out in detail why it was that he thought some of the other mechanisms that other writers had attached importance to were actually either inadequate or less important. A lot of people had talked about the importance of virtue that you would need a sort of virtuous citizenry to maintain a republic.

[00:57:59] And he said, this simply wouldn't be enough. The same thing with patriotism or love of country, that would never be enough either. If you really were interested in maintaining broad freedom, then you needed a relatively equal distribution of wealth. Now it's important to read this in context, we can read this today and think a great many things.

[00:58:22] And in some ways we should, because there's always a conversation to be had in conjunction with our national history and tradition about what kind of distribution of wealth, what type of economy, what kind of society is necessary to work with the kind of constitutional government we want.

[00:58:39] But what Webster was really focused on was what was going on in other parts of the world, especially Europe. And his claim here is basically, if you look at Europe, the inequality you find there is so stark and so immense that it's no surprise that the kind of free government that Americans are trying to construct has not been supported there in any meaningful way.

[00:59:04] And what he's trying to draw attention to is that if Americans follow that path of having gross inequality of wealth, it doesn't really matter what's written in to the constitution, that ultimately there will be a sapping of the kind of freedom that is necessary.

[00:59:22] And then a second point he makes that he thinks is very subservient to the, to his point about the relatively equal distribution of wealth, but is also very important, not just in the 18th century, but onto today, was his claim that well, in addition to emphasizing the fundamental importance of an equal distribution of property, he said there was also an auxiliary support that, that couldn't do the trick quite as much, but was also very important, which was to have a broad diffusion of knowledge, an educated citizenry.

[00:59:52] So Webster really picks out two things that I think we should think about, one, that you need a certain kind of base level material equality, not strict equality at all, just that everybody has enough to a certain degree that they can, they have a meaningful stake in the political community. And that the broader population is sufficiently educated that public debate and evaluation of information is possible.

[01:00:17] So it's really interesting to see Noah Webster here when a lot of people are focused on the text of the constitution, on the structure of government that will be set up, also pointing to the auxiliary things that surround government that he thinks are absolutely foundational, that constitute the meaningful endurance of a constitution.

[01:00:37] **Jeffrey Rosen:** What a fascinating insight from Webster, that a tolerably equal distribution of property and education are more important than virtue in sustaining a republic. Uh, here's uh, Webster, virtue, patriotism or love of country never was and never will be till men's natures are changed a fixed permanent principle and supportive government, but in an agricultural country, a general possession of land and fee simple may be rendered perpetual.

[01:01:03] And the inequalities introduced by commerce are too fluctuating to endanger government. And he says for that reason, a general and tolerably equal distribution of land and property as the whole basis of national freedom.

[01:01:14] The system of the great Montesquieu will ever be erroneous till the words property or lands and fees simple are substituted for virtue throughout his spirit of the laws. And that of course is a perfect transition to Paul Rahe's last excerpt, and that is Montesquieu's *Spirit of the Laws*.

[01:01:33] **Paul Rahe:** In the period stretching from 1762 to 1800, one would think that the author most often cited would be John Locke, but it's not true, it's Montesquieu. Montesquieu is second to Locke in the period prior to 1776, he is dominant in the period between 1776 and 1787.

[01:01:53] And he is second to Blackstone in the period between 1787 and 1800. Uh, he's someone who towers over this period like a Colossus. And it's a great shame, he has not so often read anymore. What does he do? Well, he is the Aristotle of modern politics. He is the figure who provides an analysis of forms of government and how they operate.

[01:02:25] Um, so for example, at the very beginning of his spirit of the laws, he distinguishes between monarchies, republics and despotism, and he argues that each is guided by a kind of what he calls a **[foreign language 01:02:43]**, but principle, but the principle turns out to be the passion that sets it in motion.

[01:02:48] In the case of monarchy, it's the love of honor. In the case of democracy, he sometimes says that it's virtue, sometimes he says, it's the love of equality. In the case of despotism it's terror, it's simply fear. What's interesting is in his analysis, he doesn't find a way to encompass the English form of government.

[01:03:15] So in a later chapter, book 11, chapter six, he provides an account of the English form of government in terms of the separation of powers, which has a profound effect, uh, upon the Americans, has a profound effect on the British, in his own day. And then he goes on in a later chapter book 19, chapter 27 to examine what you might call the political psychology of the English.

[01:03:47] So though he doesn't call it a [foreign language 01:03:50] or a principle, he actually explores the kind of thinking of people in England and under the English form of government, which he defines as a republic in the guise of a monarchy. And the theme of it is that there is a kind of anxiety that is to say a fear without a particular object that guides the English form of government.

[01:04:21] And it causes a kind of nervousness about politics, a kind of jealousy that gives rise to what the English called a country party and a court party. The court party being whoever's in charge of the government and the country party being everyone else. Uh, and it's the oscillation that is caused by this conflict that actually supports English liberty.

[01:04:46] And one of his themes, which fits in rather nicely with Noah Webster, I think more nicely than Noah Webster himself knew, but one of his themes is the British are not virtuous. What one thinks of as Republican virtue, he never mentions it with regard to this republic disguised as a monarchy. Uh, and it's this republic disguised as a monarchy that becomes the model in the United States.

[01:05:15] They have inherited British institutions. They are used to an upper house and a lower house. They are used to a unitary executive. They experiment with various forms between 1776 and 1787. And then they move towards a form that looks like the British government with two major changes.

[01:05:38] One, uh, you have an elective Monarch who serves for a limited period of time, uh, or who is expected to serve for a limited period of time. And of course, who comes up for reelection, so he can be dismissed after four years. And you have a Senate that isn't a hereditary aristocracy, it's drawn from the preexisting corporations, uh, once the colonies, now the states.

[01:06:05] Furthermore, the spirit of this new regime is a spirit that relies less on virtue than on property. Some would say property land, others would say a diversity of interest that will be represented by a legislature, uh, that is tolerably sizable, at least in the house of representatives.

[01:06:26] **Jeffrey Rosen:** Just fascinating to put these authors in conversation with each other. And as you say, in Montesquieu book, uh, 19 section 27, we see this abandonment of the ideal of virtue. And here is Montesquieu talking of England, all the passions being unrestrained, hatred, envy, jealousy, and an ambitious desire of riches and honors appear in their extent.

[01:06:50] Where it otherwise the state would be in the condition of a man weakened by sickness who is without passions because he is without strength. The hatred which arises between the two parties will always subsist because it will not be impotent, but Montesquieu does predict that these parties being composed of free men, if the one becomes too powerful to the other, as a consequence of liberty, the other is depressed while the citizen take the weaker side.

[01:07:12] But the same readiness as the hand lender assistance to remove the infirmities and disorders of the body. Absolutely fascinating. Our final excerpt in this wonderful discussion are

the *Federalist Papers*, Jonathan Gienapp, uh, you and Bill Allen picked several and the National Constitution Center added a few more.

[01:07:32] You picked *Federalist 37* by Madison and by Hamilton, *Federalist 70*, as well as, uh, 68 and 72. Just, uh, we're not gonna be able to run through all of them, of course, but at, at the end of this superb introduction to the *Founders' Library*, what would you like to share with *We The People* listeners about the *Federalist* papers excerpts that you chose?

[01:07:52] Jonathan Gienapp: I will focus on *Federalist 37*, which is written by James Madison, who was enormously influential at the constitutional convention, of course, and thereafter did so much to shape how people thought about the constitution, how it was interpreted, how it was implemented, that he eventually earned the name that he still largely holds to this day as the father of the constitution.

[01:08:16] That name was first given to him in the 1820s and is still something, uh, that is broadly attached to him. And among the many things that Madison did for the constitution was he vigorously defended it against those anti-federalists criticisms from the likes of George Mason that I talked about earlier.

[01:08:37] He did so in a lot of settings, but, um, nowhere more famously or conspicuously than the *Federalist Papers*, the set of 85 essays published initially in New York newspapers that he co-wrote with Alexander Hamilton and John Jay. And *Federalist 37*, there are many Federalist papers, as you mentioned, Jeff, that are, are, are worth calling attention to, but Federalist 37 is interesting for a variety of reasons.

[01:09:01] Here Madison tried to emphasize the enormous challenges that the constitutional convention had faced in drafting this constitution to try to reset the terms of debate. So at this point, this is *Federalist 37*. So we know 36 came before it, there's been a lot of back and forth for and against the constitution.

[01:09:23] The, the equivalent of 18th century Twitter has been a blaze with, uh, with, with conversation. So Madison is trying to reset some of the terms of this debate. And in particular, he is trying to respond to a frequent anti-federalists argument that built from something George Mason had hinted at, that one of the Constitution's deficiencies was that it was written in purposefully ambiguous language.

[01:09:50] Anti-federalists loved to latch onto the language in which the constitution was written and the ways in which that supple indeterminate ambiguous language would be molded and sculpted by those in power to advance their agendas.

[01:10:08] So what Madison tried to do in Federalist 37 was not deny this fact, but redirect our understanding of it. And he said, of course, the constitution featured its share of indeterminacy because that was simply inherent, not just to the activity of writing constitutions, but to the medium of human language itself.

[01:10:33] Human language had a very hard time and here he was more or less pulling from John Locke's book, the third book of, um, an essay concerning human understanding that it had a really hard time delineating novel, complex objects, objects that we were, that we would try to think of in the mind and then how do you find the language to precisely describe them.

[01:10:56] And Madison's whole point was, these were the kinds of objects that the framers at the constitutional convention were trying to find the right terms for. And there was no way to do this with absolute precision, because human beings were fallible and the language in which they operated was fallible.

[01:11:15] So this wasn't a defect because no matter what kind of constitution you wrote, it would be in a certain sense, uncertain or ambiguous. What you needed to think about then was what would come of the ambiguities that were necessarily baked into any constitutional system. How would those be worked out?

[01:11:36] And here Madison emphasized that this was an ongoing project and conversation, that no matter how much thought was given to initially writing a constitution, no matter how much attention to detail was paid, there would still be a series of problems and complexities that could only be worked out and settled down the road when they emerged in concrete form and people were able to think about them clearly for the first time.

[01:12:07] This was not a defective this constitution or any other. This was simply something to be embraced as part of an ongoing project of constitutional governance. So anti-federalists had it completely wrong. Yes, you could point to areas of the constitution that were not perfectly determinant, but that was no meaningful observation.

[01:12:26] What was worth recognizing was actually how few of them there were relatively speaking and more importantly, to train attention on how subsequent practice would do a great deal to help settle or as Madison put it, liquidate certain parts of the constitution that would necessarily require additional attention.

[01:12:46] **Jeffrey Rosen:** Absolutely phenomenal. So much in the learning that you just shared from the analogy between the difficulties of defining the faculties of the mind, to the difficulties of defining the, uh, departments of government, to the need for liquidation by time and experience.

[01:13:03] Here is Madison in *Federalist 37*. The use of words is to express ideas. Perspicuity therefore requires not only that ideas should be distinctly formed, but that they should be expressed by words distinctly and exclusively appropriate to them. But no language is so copious as to supply words and phrases for every complex idea or so correct as not to include many equivocally denoting, different ideas.

[01:13:28] Paul Rahe and Jonathan Gienapp, thank you so much for your superb work, both in selecting these documents for the *Founders' Library* and also for teaching us about them, um, in such an exciting way.

[01:13:42] Dear *We The People* friends, isn't this a marvelous project that there is so much learning and light now on the web collected in this magnificent Founders' Library and so much learning for us to do together, as we read the primary text, read them out loud together and discuss them and make up our own minds.

[01:14:00] This is the beginning of so much, uh, learning that we're gonna do together over the coming years. And I'm just thrilled to introduce this great project to you with these two superb scholars on behalf of all *We The People* listeners, uh, please accept my most sincere thanks, Paul Rahe and Jonathan Gienapp for your wonderful work in assembling the Founders' Library. Paul, Jonathan, thank you so much for joining.

[01:14:24] **Paul Rahe: Thank you.**

[01:14:25] **Jonathan Gienapp: Thank you.**

[01:14:30] **Jeffrey Rosen:** Today's show was produced by Melody Rowell and engineered by Greg [inaudible 01:14:34]. Research was provided by Sam Desai and Lana Ulrich. Homework of the week, well this one's obvious, *We The People* friends, go to the Founders' Library, um, click through and read the documents that we discussed, or pick another document and learn from that.

[01:14:48] What a magnificent source of excitement and learning this resource is. And after you've clicked around in it, and most importantly done some reading in it, um, let me know what you learned. Always remember that the National Constitution Center is a private nonprofit.

[01:15:06] It's philanthropy that makes resources like this possible, donations from you and from other lovers of constitutional education and debate across the country. We rely on that generosity and are so grateful to you for supporting it.

[01:15:20] You can support the 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.