Time for Proof on Syrian CW Attack

World attention has moved to the destruction of Syria's chemical weapons, but the evidence on the Aug. 21 attack near Damascus remains hidden and in dispute, causing a group of former U.S. intelligence professionals to ask Moscow and Washington to present what they have.

Memorandum to: Secretary of State John Kerry and Foreign Minister Sergey Lavrov

From: Veteran Intelligence Professionals for Sanity

We applaud your moves toward a peaceful resolution of the Syria crisis that will lead to the destruction of all chemical stockpiles possessed by the Syrian Government.

At the same time, we strongly believe the world has the right to know the truth about the chemical attack near Damascus. We note that both sides continue to claim possession of compelling evidence regarding the true perpetrators of this crime.

We therefore call upon Russia and the United States to release all the intelligence and corroborative information related to the 21 August chemical attack so that the international community can make a judgment regarding what is actually known and not known.

We the undersigned – former intelligence, military and federal law enforcement officers who have collectively dedicated, cumulatively, hundreds of years to making the American people more secure – hereby register our dismay at the continued withholding of this vital evidence.

The issue is one of great importance, as the United States has within recent memory gone to war based on allegations of a threat that proved to be groundless. The indictment of Syria on possibly unsubstantiated claims of war crimes could easily lead to another unnecessary armed conflict that would produce disastrous results for the entire region, and indeed the entire world.

We recognize that when it comes to intelligence, there are many gray areas, as well as evidence that can be subject to interpretation. We further believe, based on our own experience and knowledge of how intelligence collection and analysis actually works, that if there is a clear case to be made – either way – to identify the perpetrators of the attack it has not yet been publicly revealed.

If there is not a credible case, neither the United States nor Russia should be

claiming that they know who carried out the attack. We note, for example, the specific claim made by you, Secretary Kerry, that 1,429 civilians had died in the chemical attack. Yet the politically impartial non-governmental organization Medecins Sans Frontieres, which was on the ground in Syria, provided a much smaller figure.

Foreign Minister Lavrov, you have questioned the sources of the chemicals and possible delivery systems, describing the alleged Sarin agent as “homemade.” You have suggested that the chemicals used in the attack were likely in the hands of the insurgents but have cited little hard evidence, and an intelligence assessment you provided to Secretary Kerry has not been made public.

We recognize that protection of intelligence sources and methods requires that some information will be off limits or must be sanitized, but if there is a genuine case to be made, we believe you owe it to the world to make that case now.

If Washington actually has evidence to demonstrate indisputably that August 21st was carried out by the government in Damascus, let us see it. If Moscow can demonstrate otherwise, let us see it.

Respectfully submitted for the Steering Group, Veteran Intelligence Professionals for Sanity:

Philip Giraldi, CIA, Operations Officer (ret.)

Larry Johnson, CIA & State Department (ret.)

W. Patrick Lang, Senior Executive and Defense Intelligence Officer, DIA (ret.)

Ray McGovern, former US Army infantry/intelligence officer & CIA analyst (ret.)

Elizabeth Murray, former Deputy NIO for the Near East, National Intelligence Council (ret.)

Todd Pierce, US Army Judge Advocate General (ret.)

Coleen Rowley, former Chief Division Counsel & FBI Special Agent (ret.)

Ann Wright, Col., US Army (ret); Foreign Service Officer (ret.)

Why Right’s Lemmings Don Suicide Vest

Exclusive: The government-sabotaging fervor of the Republican Right likened by

one GOP congressman to “lemmings with suicide vests” can only be understood from inside the right-wing bubble where a distorted view of the Constitution prevails and actual democracy is disdained, writes Robert Parry.

By Robert Parry

There is an old saying from the late Sen. Daniel Patrick Moynihan, “Everyone is entitled to his own opinion, but not his own facts.” But the modern American Right seems to believe that “Hey, this is the USA, why shouldn’t we have our own facts!”

That sentiment is at the center of the current U.S. crisis involving the shutdown of the federal government and the threats to default on America’s credit. A determined minority within the House of Representatives has decided that its view of the Founding Principles and its assessment on the role of government are the only ones that count, whether factually anchored or not.

And it doesn’t even matter that this right-wing group has no mandate from the American people. Not only did the Democrats win the White House and the Senate in 2012, but the Democrats garnered about 1½ million more votes for House seats than the Republicans did.

The Republican House “majority” is derived to a significant degree from aggressive gerrymandering of congressional districts, like the one for northern Ohio where the GOP-controlled statehouse combined a Democratic district in Cleveland (represented by Dennis Kucinich) with one in Toledo (represented by Marcy Kaptur). The two cities are 116 miles apart and the connection along Lake Erie is so narrow in spots that you have to leave the district to drive from one half to the other.

But today’s Republican Party cares little about genuine democracy. Especially the GOP’s right wing is about shaping a false historical narrative which misrepresents the intent of the Constitution’s Framers and then insists that the Right’s fake Founding Principles must be applied regardless of how the majority of Americans voted. [See Consortiumnews.com’s “The Right’s Made-Up ‘Constitution.’”]

Thus, holding the federal government and indeed the nation’s economy hostage to impose the Tea Party’s will on the people makes a sort of perverted sense. If you’ve convinced yourself that the normal democratic process is threatening the esteemed wisdom of the Founders, then as Sen. Barry Goldwater once proclaimed “extremism in the defense of liberty is no vice.”

For many Tea Partiers, their hostility toward democracy is even stronger when

you factor in that President Barack Obama and the congressional Democrats won their majorities by piling up votes from African-Americans, Hispanics and Asian-Americans. In the view of many on the Right, these non-whites are not “Real Americans” and thus their ballots should not count or at least not count as much as the votes of whites.

That racist attitude explains the recent surge of voter ID laws and the reduction of voting hours that are being enacted by Republican statehouses around the United States. They are doing so with the aid and encouragement of the five right-wing U.S. Supreme Court justices who gutted a clearly constitutional provision in the Voting Rights Act which required states with a history of racial discrimination in voting to get prior federal approval for changing voting rules.

The Fifteenth Amendment states, “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.” And the amendment gives Congress the “power to enforce this article by appropriate legislation.” Yet, the five right-wing justices deemed that their ideological belief in “states’ rights” trumped the explicit wording of the Constitution.

White Power Structure

Many on the Right with their selective interpretation of the Constitution despise these post-Civil War amendments, in particular, because they were forced on the white power structure of the South after the Confederate insurrection fought to save but failed to preserve slavery, the right of whites to own blacks.

So, these amendments, especially the Fourteenth and Fifteenth which protect the rights of blacks and other racial minorities, are seen as illegitimate, tolerable only if they don’t intrude on ultimate white rule. Or as famed conservative William F. Buckley declared in 1957, “the white community in the South is entitled to take such measures as are necessary to prevail, politically and culturally, in areas in which it does not predominate numerically.”

Buckley’s edict is still the operational theory of the American Right: it’s okay to let black and brown people express their silly little opinions once in a while but they must never be in charge. So today’s Republican Party feels justified in taking action to make sure that whites can continue to “prevail, politically and culturally.”

There were political optimists who thought that the election of Barack Obama as the first African-American president would lift the United States into a post-

racial era, but it instead has prompted an angry last stand for white supremacy.

That history of defending white supremacy can be traced back to the battle over the Constitution when some of its prominent opponents, known as Anti-Federalists, saw the document's concentration of power in the federal government as an eventual death knell to slavery (despite the Constitution's implicit acceptance of slavery).

To the slave-owning Anti-Federalists, the Constitution's powerful central government combined with the North's emerging industrial strength presaged an eventual elimination of slavery. To them, it didn't help that some key supporters of the Constitution, like Alexander Hamilton and Benjamin Franklin, were abolitionists.

As Virginian Anti-Federalist leader Patrick Henry warned his fellow slave-owners in urging them not to ratify the Constitution, "they'll free your niggers!"

The struggle to constrain the Constitution's potential threat to slavery didn't end with the Constitution's ratification in 1788. The slave-owning opponents rallied behind fellow slaveholder Thomas Jefferson to impose a revisionist view of the Constitution, one that elevated states' rights again and pushed back against federal authority.

Following the same line, today's American Right consistently adopts not the literal reading of the Constitution or the views of the Federalists, its principal authors, but rather the revisionist interpretation imposed by Jefferson and what might be called "the pre-Confederates." [See Consortiumnews.com's "The Four Eras of the American Right."]

Southern Strategy

The Civil War and Reconstruction ended slavery but enabled the Democratic Party to exploit white resentment against the anti-slavery Republican Party and consolidate a white base within the Old Confederacy. With Jim Crow laws to repress black citizens, the Democratic Party, which had emerged from Jefferson's southern-based political faction, went from being the party of slavery to the party of segregation.

That changed in the 1960s when the national Democrats took the lead in ending racial segregation. Though the Republican Party had historically been the anti-slavery and anti-segregation party, President Richard Nixon saw an opening for stealing away the Democratic Party's southern white support. Nixon's Southern Strategy appealed to white Southerners with racial code words in the 1970s and Ronald Reagan consolidated the Republican lock on southern whites in the 1980s with his populist appeals against "welfare queens" and other racial stereotypes.

Along with the Republican embrace of neo-Confederate ideology, right-wing think tanks and the rapidly expanding right-wing media popularized bogus versions of the Founding narrative, turning the Framers of the Constitution, who actually implemented a dramatic consolidation of power in the central government, into their opposites, big promoters of states' rights who wanted a tightly constrained federal government.

Given the historical illiteracy of many Americans and the disdain that many on the Left feel toward the Constitution for its protection of property rights there was little protest over this stolen American narrative. Few in mainstream media or academia dared remind the public of the actual history in which the key Framers of the Constitution were pragmatic nationalists who placed very few limits on what the federal government could do.

Despite their many aristocratic tendencies, the Framers arguably had more faith in democracy than the current batch of Tea Party extremists. The Framers created a constitutional system that trusted the judgment of the people's representatives to do essentially whatever was necessary to "provide for the common Defense and the general Welfare of the United States," as they wrote in Article I, Section 8.

Further, Section 8's so-called "enumerated powers" authorized Congress "to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

It was initially the pro-slavery forces of the South who imposed a revisionist view of these powers, insisting they should be much more limited than they were written by the Framers of the Constitution. This "limited government" banner was later picked up by the Robber Baron industrialists of the late Nineteenth Century as they resisted reform movements that sought to constrain their power over the economy.

Anti-Democratic Movement

The struggle to impose this revisionist interpretation of the Constitution has always been anti-democratic in its desire to prevent the collective will of the broad American populace to implement changes to "promote the general Welfare."

The insistence that the Constitution forbids what it actually endorses has been a touchstone of the American Right for more than two centuries, especially relating to expanded rights of non-whites and the effective regulation of powerful corporations. By demanding a "Confederate" interpretation of the Constitution, the Right asserts that reformist government action responsive to

the popular will must be prohibited.

While the Right's view is anti-historical, it can be persuasive if you put yourself into the right-wing media bubble where this made-up national narrative is all you hear. You see yourself standing shoulder-to-shoulder with George Washington and James Madison in denouncing health-care reform as an existential threat to American liberty.

But someone outside that bubble, who actually has read the Constitution and knows the history, would see the Affordable Care Act as simply an imperfect attempt to provide for "the general Welfare" by ensuring that millions of citizens who have been locked out of regular health care by a greedy health-insurance industry can finally go see a doctor without inviting bankruptcy.

Clearly, there were more efficient ways of accomplishing that goal i.e. a single-payer system or at least a Medicare buy-in but those other options were precluded by Republicans and some pro-corporate Democrats, thus leading to a free-market-oriented structure that had originally been devised by the right-wing Heritage Foundation and promoted in Massachusetts by Republican Gov. Mitt Romney.

Only when this plan was embraced by President Obama did the concept become an unconscionable assault on the constitutional rights of Americans. But the fury around the issue can only be explained by the Right's bogus interpretation of the Constitution, which excites the base to don tri-corner caps and wave yellow flags with a coiled snake declaring, "Don't Tread on Me."

The extremism of this Republican Tea Party faction is so intense that it has bewildered even other conservative Republicans. For instance, Rep. Devin Nunes, R-California, likened the behavior to "lemmings with suicide vests," adding:

"It's kind of an insult to lemmings to call them lemmings, so they'd have to be more than just a lemming, because jumping to your death is not enough."

The Right's Made-Up 'Constitution'

From the Archive: Behind the U.S. government shutdown is the Right's erroneous belief that the U.S. Constitution tightly limits the federal government and carves out broad powers for the states, a bogus history that suggests the Tea Partiers don't understand the Founding document, as historian Jada Thacker wrote in July.

By Jada Thacker (Originally published on July 6, 2013)

The Cato Institute's *Handbook for Policy Makers* says, "The American system was established to provide limited government." The American Enterprise Institute states its purpose to "defend the principles" of "limited government." The Heritage Foundation claims its mission is to promote "principles of limited government." A multitude of Tea Party associations follow suit.

At first glance the concept of "limited government" seems like a no-brainer. Everybody believes the power of government should be limited somehow. All those who think totalitarianism is a good idea raise your hand. But there is one problem with the ultra-conservatives' "limited government" program: it is wrong. It is not just a little bit wrong, but demonstrably false.

The Constitution was never intended to "provide limited government," and furthermore it did not do so. The U.S. government possessed the same constitutional power at the moment of its inception as it did yesterday afternoon.

This is not a matter of opinion, but of literacy. If we want to discover the truth about the scope of power granted to federal government by the Constitution, all we have to do is read what it says.

The Constitution's grant of essentially unlimited power springs forth in its opening phrases: "We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

As might be expected in a preamble to a founding document, especially one written under supervision of arch-aristocrat Gouverneur Morris, the terms are sweeping and rather grandiose. But the point is crystal clear: "to form a more perfect Union." If the object of the Constitution were to establish "limited government," its own Preamble must be considered a misstatement.

Enumerated Powers

Article I establishes Congress, and Section 8 enumerates its powers. The first clause of Article I, Section 8 repeats the sweeping rhetoric of the Preamble verbatim. While it provides for a measure of uniformity, it does not so much as hint at a limit on the federal government's power to legislate as it sees fit:

"The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States"

No attempt is made here, or at any other place in the Constitution, to define "general Welfare." This oversight (if that is what it was) is crucial. The ambiguous nature of the phrase "provide for thegeneral Welfare" leaves it open to widely divergent interpretations.

Making matters worse for federal government power-deniers is the wording of the last clause of Article I, the so-called "Elastic Clause": Congress shall have power "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

Thus the type, breadth and scope of federal legislation became unchained. When viewed in light of the ambiguous authorization of the Article's first clause, the importance of the "necessary and proper" clause truly is astonishing. Taken together, these clauses restated in the vernacular flatly announce that "Congress can make any law it feels is necessary to provide for whatever it considers the general welfare of the country."

Lately there has been an embarrassingly naive call from the Tea Party to require Congress to specify in each of its bills the Constitutional authority upon which the bill is grounded. Nothing could be easier: the first and last clauses of Article I, Section 8 gives Congress black-and-white authority to make any law it so desires. Nor was this authority lost on the Founders.

"Limited government" advocates are fond of cherry-picking quotes from *The Federalist Papers* to lend their argument credibility, but an adverse collection of essays called the *Anti-federalist Papers* unsurprisingly never gets a glance. Here is a sample from New Yorker Robert Yates, a would-be founder who walked out of the Philadelphia convention in protest, written a month after the Constitution had been completed:

"This government is to possess absolute and uncontrollable power, legislative,

executive and judicial, with respect to every object to which it extends. The government then, so far as it extends, is a complete one. It has the authority to make laws which will affect the lives, the liberty, and the property of every man in the United States; nor can the constitution or the laws of any state, in any way prevent or impede the full and complete execution of every power given."

Yates, it must be emphasized, took pains to identify the "necessary and proper" clause as the root of the "absolute power" inherent in the Constitution well over a year before ratification.

The Tenth Amendment

A particular darling of secession-prone, far-Right Texas Gov. Rick Perry, the Tenth Amendment is often claimed as the silver-bullet antidote for the powers unleashed by the "general welfare" and "elastic clauses." Here is the text of the Amendment in its entirety: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Superficially, the Tenth seems to mean "since certain powers are not delegated to the federal government, then those powers are reserved to the states or the people." This would seem to be good news for champions of limited government. But this is not the case.

The Tenth does *not* say that important powers remain to be delegated to the United States. It merely says that powers "not [yet] delegated" are "reserved" to the states or the people. This sounds like a terrific idea until we realize, of course, that all the important powers had *already* been delegated in 1787, four years before the Tenth Amendment was ratified.

As we have seen, the first and last clauses of Article I, Section 8 made the Tenth Amendment a lame-duck measure even as James Madison composed its words in 1791 and so it remains today. The sweeping powers "to make all laws necessary and proper" in order to "provide for the general welfare," had already been bestowed upon Congress. The Johnny-come-lately Tenth Amendment closed the constitutional pasture gate after the horses had been let out.

This apparently has never occurred to the likes of Gov. Rick Perry and his far-Right cohorts who believe a state may reclaim power by withdrawing its consent, in effect repossessing their previously delegated power through state legislation. Superficially, the logic of this position seems sound: if the states had the legal authority to delegate power, then they may use the same authority to "un-delegate" it by law.

But a close re-reading of the Tenth's wording nixes such reasoning. Oddly, the

Tenth Amendment does not say the *states* delegated their powers to the federal government although it may be argued that it probably ought to have said so. It says “The powers not delegated to the United States *by the Constitution* are reserved to the States. ”

Thus, according to the Tenth Amendment, the Constitution *itself* delegated the power to the federal government. States, in other words, now have no standing to “reserve-back” what they had never “delegated-away” in the first place.

Had it been possible to “un-delegate” the powers of the United States by invoking the Tenth, the Old South would have simply done so and spared itself the bother of secession not to mention the bother of being annihilated by a series of subsequent Northern invasions. The fact that the South did not even attempt such a strategy attests to the toothlessness of the Tenth Amendment.

No other instance in law would be a better example that we should choose our votes carefully. For in ratifying the Bill of Rights, which included the Tenth Amendment, the American people endorsed the legal fiction that the Constitution not the original 13 states, or “We the People” authorized the power of the United States *because the Constitution itself said so*. If the Constitution has an Orwellian twist, this is it no matter which side of the aisle you’re on.

The states and the people may amend the Constitution. But they may not do so by nullification (according to the logic inherent in the wording of the Tenth Amendment), or by the judgment of state courts (according to the “supremacy clause” of Article VI), nor may any Amendment be made without the participation of the federal government, itself (according to Article V.) If the Founders had meant to
ensure “limited government,” there is no trace of such intent here.

Paucity of Rights

If the Constitution were intended to provide “limited government,” we might expect it to be chock full of guarantees of individual rights. This is what Tea Partiers may fantasize but this is not really true. In fact, the Constitution is amazingly stingy in reference to “rights.”

The word “right” is mentioned *only once* in the Constitution as ratified. (Art. I, Sec. 8 allows Congress to award copyrights/patents to ensure their holders “ Right to their respective Writings and Discoveries.”)

The word “right” somewhat counter-intuitively appears only six times in the ten Amendments called the “Bill of Rights.”

Almost a century later, the first of seven other rights were added under

pressure from Progressive activists almost all of which were intended to create and extend democratic participation in self-government.

Amendment XIV (sanctions against states denying suffrage); XV (universal male suffrage); XIX (women's suffrage); XXIV (denial of poll tax); and XXVI (18 year-old suffrage); and twice in Amendment XX, which gives Congress the "right of choice" in presidential succession.

In grand total, the word "right" appears only 14 times in the entire Constitution, as it exists today (including the two rights conferred *to government*).

Did we all notice that the "Constitution of the Founders" did not include the "right" for anybody at all to vote? Notable, too, is the absence of language implying that any "rights" are "unalienable" or "natural" or "endowed by their Creator." All such phraseology belongs to the Declaration of Independence, which apparently unbeknownst to Tea Partiers everywhere bears no force of law.

The word "power," by the way, occurs 43 times in the Constitution, each time referring exclusively to the prerogative of government, not right-wingers. Since "individual" rights are mentioned only 12 times, this yields a ratio of about 4:1 in favor of government power over individual rights. Without the efforts of those pesky, democracy-mongering Progressives, who fought for universal voting rights, the ratio would be more than 6:1 today or 50 percent higher.

This statistical factoid is not as trivial as it may appear. Expressed in practical terms, Michele Bachmann, Sarah Palin or Clarence Thomas would almost certainly never have achieved public office had they lived under the "limited government" designed by the Founders they so revere.

The Bill of Rights

So what exactly are our non-patent/copyright "rights," under so-called "limited government?"

Amendment I the right of people "peaceably to assemble, and to petition the government for redress of grievances"

Amendment II the right "to keep and bear arms, shall not be infringed"

Amendment IV the right "to be secureagainst unreasonable searches or seizures"

Amendment VI the right "to a speedy and public trial"

Amendment VII the right "of a trial by jury"

Amendment IX enumeration “of certain rights” shall not deny “others retained by the people”

That’s it. What happened to the famous rights of free speech, religion or press? The way the First Amendment is worded does not enumerate these as positive rights that people possess, but rather as activities the government may not infringe upon. If Bill of Rights author James Madison had meant to stipulate them as positive “rights” all he had to do was write it that way, but he did not.

Bear in mind Madison (then a federalist) wrote the Bill of Rights under political duress. Since anti-federalists (recall the skepticism of Robert Yates) flatly refused to ratify the Constitution unless it guaranteed *something*, Madison had to write *something.* In effect, the amendments were the pig the anti-federalists had bought in the poke, three years after ratification had paid for it.

Madison, at the time of writing, had little incentive to take pains with what he wrote because federalists did not believe a Bill of Rights was necessary, or even good idea (with Alexander Hamilton arguing a Bill of Rights would be “dangerous.”) This may account for the fact that some of what Madison wrote seems vague, or even ambiguous, as in the case of Amendment II.

Amendment IX, for example, actually makes little sense, which may account for the fact nobody ever seems to mention it: “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

This sounds “righteous” enough, until we recall the Constitution to which this Amendment pertains had “enumerated” only a single right in the first place! Even if Amendment IX applies to the Bill of Rights (to include itself), then all it says is “the people may have more rights than the half dozen mentioned so far, but we’re not going to tell you what they are.” (So if Amendment X is Orwellian, Amendment IX verges on Catch-22.)

Of course the idea was to calm suspicions that people would possess only the half-dozen rights enumerated in the Bill of Rights (plus patents!) and no others. Even so, Amendment IX did not guarantee any un-enumerated rights; it just did not peremptorily “deny or disparage” any.

And what sense should we make of the crucial Amendment V one of the four Bills of Rights not actually containing the word “right” at all?

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising

in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be **deprived of life, liberty, or property**, *without due process of law*; nor shall private property be taken for public use, without just compensation." [Emphasis supplied]

Thus, life, liberty and property are *not* expressly granted status as fundamental "rights," but only as personal possessions that may be deprived or taken according to "due process." The crucial implication is that Amendment V exists *in order to stipulate how the government may deny* an individual claim to life, liberty or property. *With* due process, you life, liberty and property may be toast. That is what it plainly says.

It is interesting, too, that the Bill of Rights does not speak to the origin of rights, but only to their existence. Moreover, the Constitution never speaks of granting rights, but only protecting them. There is a good reason for this: excepting the Progressive suffrage Amendments, none of the guaranteed rights were American inventions, but had for centuries been considered the rights of the English nobility.

For those who want to believe in "American Exceptionalism" as the basis of "limited government," this is not encouraging news. Moreover, the Constitution, including the Bill of Rights, hardly includes any "right" that had not already been recognized at one time or another by medieval English monarchs or in ancient Rome and Greece.

Property Rights and 'Republic'

The strict libertarians among us claim the sole legitimate power of government is that which is necessary to protect private property rights. On this score, however, the "limited government" of the Founders is practically mute. Except for the aforementioned Article I, Section 8 provision for patents and copyrights, private "property" is only mentioned twice in the Constitution, both times in a single sentence of the "right"-less Amendment V quoted above:

"No person shall be deprived of life, liberty or **property** *without due process of law*; nor shall private **property** be taken for public use, *without just compensation*." [Emphasis supplied]

Once again, Amendment V fails to guarantee personal immunity from the power of the state, but rather details the way state power may be used to dispossess individuals of their property. And we must bear in mind these words were not penned by Marxists, socialists, or Progressives.

Whether by design or happenstance, the original “Constitution of the Founders,” or the Bill of Rights, or even the Constitution with all its Amendments does not grant any irrevocable “right of possession” to property. Even the Second Amendment’s “right to keep” arms, is subject to the terms by which property may be taken under terms of Amendment V, and it always has been.

Tellingly, the word “democracy” does not appear in the Constitution. This intentional oversight is often smugly celebrated by anti-democrats among us, who insist that the United States of America was founded as a “republic.” No doubt this is true, given that the Constitution was written by an exclusive, hand-picked cadre of oligarchs, whose number did not include a single woman, person of color, or wage-earner.

Unfortunately for the pro-republic “limited government” crowd, the Constitution does not contain the word “republic” either. The word does appear as an adjective, but only once, (Article IV, Section 4): “The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them from Invasion”

Typically for the Constitution, which defines few of its terms, the word “Republican” also remains unexplained. The ambiguity of the term turned out to be handy, however, as Radical Republicans continuously and egregiously violated Article IV, Sec. 4 from 1865-1877 as they enforced blatantly unconstitutional military occupation of former Confederate states during the gross misnomer of “Reconstruction.”

It should be obvious that the “Constitution of our Founders,” including the Bill of Rights, may not protect as many rights as many wish to believe. Moreover, we have already noted the Constitution dropped all revolutionary talk of “unalienable” rights and “Creator endowed” liberty. This was not an oversight.

The revolutionary bit about “consent of the governed” posed an especially delicate problem for the Founders. Almost all owned slaves or were masters of property-less tenants or domestic servants, including their wives none of whom could offer their legal consent even if they wished to do so. Thus the Founders shrewdly considered it unnecessary to include any voting rights in the new republic they planned to rule, uncontested by the disenfranchised lower castes.

Did this result in the land of the free, with liberty and justice for all? Let’s see.

Under the U.S. Constitution, Americans were sentenced to death for protesting unfair taxes; journalists and citizens imprisoned for criticizing government officials; citizens’ property seized illegally; workers murdered by government

agents; thousands jailed without the “privilege” of *habeas corpus*; entire states deprived of civilian courts; untold numbers of American Indians defrauded of liberty and property; debt-peonage and debtors’ prisons flourished, as did slavery and child labor; and the majority of the public was denied the vote.

All this was considered constitutional by the Founders. None of these outrages, please note, was the result of “progressivism,” which had yet to be articulated, and all were common prior to the New Deal and the advent of so-called Big Government. Was this the face of “limited government?”

No, it was not. The concept of a democratically “limited government” was not for a moment entertained by our Founders, nor is it by those who idolize them today. With few exceptions, the Founders were Eighteenth Century patricians who took a revolutionary gamble meant chiefly to perpetuate their privileges, free from English colonial overlord-ship. It should come as no surprise these elitists drafted a Constitution that posed no threat to aristocracy.

‘Limited Government’ as Act of Faith

The original Constitution of the United States of America was just so much ink on paper. The Constitution, as it stands today, is just a lot more ink on paper.

But the Constitution’s ink is important and deserves respect because it represents nothing less than the collective civic conscience of the American people. A great many Americans have dedicated their lives in trust to that conscience on battlefields, in classrooms, in everyday civic life, and even a few in the halls of power.

It is evident that most of the Amendments to the original Constitution as well as the Supreme Court’s decisions interpreting its scope and purpose were made because the document had over the course of time been found wanting by the American people, whose common interests it was not originally intended to serve. As the collective civic conscience of the people changed, so too did their interpretation of self-government.

But the entire concept of social evolution (much less biological evolution) is something the ultra-Conservative rank-and-file likely does not comprehend and it is not something their leaders encourage them to consider. The reason for this may have less to do with politics than with fundamentalist faith.

An anecdote in point: the editor-in-chief at Random House once asked the extremist libertarian Ayn Rand if she would consider revising a passage in one of her manuscripts. She reportedly replied, “Would you consider revising the Bible?”

Ergo, that which is sacrosanct neither requires nor will tolerate change to include the fantasized “limited government” of the immortalized “Founding Fathers.” The fact that Rand was a noted atheist only underscores the point that fundamentalist faith is not restricted to any particular brand of fanaticism.

Yet the Constitution’s conception was anything but immaculate. It was not carted down from the Mount in tablets of stone, nor is it the product of some mysterious Natural Law interpretable only by libertarian gurus. And whether its meaning is best exemplified by the Tea Party flag depicting a talking snake (“Don’t Tread on Me”), perhaps only Eve could judge with authority.

The Constitution is not a holy book, and there is no good reason for anybody to treat it like one. The men who wrote it were not prophets, nor were they particularly virtuous, though some could turn a pretty phrase. In fact, the Constitution’s most unholy-book characteristic is its most welcomed attribute: its readers are not required to believe in its infallibility in order for it to make sense to them.

But we are required to read the Constitution if we want to know what it says. The ultra-conservatives’ obsession with a constitutionally “limited government,” which has never actually existed, suggests they do not understand the Constitution as much as they merely idolize it.

These constitutional fundamentalists along with the American public in general would do better to pick the document up and read it sometime, not fall on bended knee before it and expect the rest of us to follow their example.

Jada Thacker, Ed.D is a Vietnam veteran and author of *Dissecting American History*. He teaches U.S. History at a private institution in Texas. Contact: jadathacker@sbcglobal.net

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The Founders’ ‘Musket Mandate’

From the Archive: At the center of the Republican shutdown of the U.S. government is the claim that a “mandate” requiring Americans to get health insurance violates Founding principles, but the Framers of the Constitution were comfortable with a similar mandate for an armed militia, as Robert Parry noted in 2012.

By Robert Parry (Originally published on April 2, 2012)

If Fox News and Antonin Scalia were around in 1792 when James Madison and George Washington helped push through the Militia Acts requiring citizens to buy muskets and other military supplies, those Founders likely would have heard complaints like: “What else will the federal government do? Make us buy broccoli?”

Okay, broccoli wasn’t really grown in the United States at the time, arriving in the next century with waves of Italian immigrants. But the distinction between the Founding era and today is illustrative of how the seriousness of American politics has eroded.

In 1792, just four years after ratification of the U.S. Constitution, Madison and Washington two key Framers of the document saw nothing wrong with mandating Americans to buy certain products in the private market. It was simply a practical way for the government to arm militias to put down insurrections and defend against foreign enemies.

In 2012, however, the Republican majority on the U.S. Supreme Court behaved like Fox News pundits, offering goofy hypothetical possibilities about what Congress might mandate if the Affordable Care Act’s requirement to buy health insurance stands. We heard lots about required purchases of broccoli, burial insurance, cars, cell phones, etc.

The debate also was influenced by the false assertion that never before in U.S. history had the federal government required Americans to buy a private product. For “originalists” like Justice Scalia that was particularly important because he claims to believe that only actions reflective of the Framers’ original vision can be constitutional.

But here was a stubborn historical fact, that Madison, as a member of the Second Congress, and Washington, as the first President, had supported the Militia Acts of 1792, which gave each able-bodied white male of fighting age six months to “provide himself with a good musket or firelock, a sufficient bayonet and belt, two spare flints, and a knapsack, a pouch, with a box therein, to contain not less than twenty four cartridges, suited to the bore of his musket or firelock, each cartridge to contain a proper quantity of powder and ball.”

Yes, I know that the law was passed under Article Two powers of the Executive, which makes the President the Commander in Chief of the military, not Article One’s Commerce Clause, which grants Congress unrestricted power to regulate interstate commerce. But the principle is the same, that the government can order Americans to buy something that Congress deemed necessary for the country’s good.

So Long Ago

I'm also aware that the musket precedent is dismissed by some because it was so long ago. But that should be exactly the point when Scalia and the other Republican justices are weighing the constitutionality of the health insurance mandate.

If mandates were okay for Madison, the Constitution's chief architect, and Washington, who presided at the Constitutional Convention, then that should be determinative on the question of whether mandates passed constitutional muster with the Framers. Madison and Washington along with other men in the Second Congress and inside Washington's administration were, like, the actual Framers.

The fact that the musket mandate was approved just four years after the Constitution's ratification should count even more for the "originalists" like Scalia than if some mandate had been approved later.

Unlike the petty partisans of today, the Framers of the Constitution were mostly pragmatic individuals. Sure, they cared about liberty (at least for white males), but they also were driven by the need to build a strong nation that could maintain its independence against the encroachment of European powers.

That was why Madison proposed the strong Commerce Clause in the first place. He understood that only national action and coordination could enable the United States to marshal its resources properly and fend off Europe's predatory economic tactics.

Madison's Commerce Clause idea even predated the Constitution. He initially proposed giving the federal government control over national commerce when the Articles of Confederation were still governing the country (from 1777 to 1787).

General Washington, who hated the Articles because they had created a weak central government that often left his troops unpaid and unfed, backed Madison's proposal when it was before the Virginia Legislature after the Revolutionary War. In a letter, Washington expressed the need for greater national unity.

"The [commerce] proposition in my opinion is so self evident that I confess I am at a loss to discover wherein lies the weight of the objection to the measure," Washington wrote. "We are either a united people, or we are not. If the former, let us, in all matters of a general concern act as a nation, which have national objects to promote, and a national character to support. If we are not, let us no longer act a farce by pretending it to be."

Madison failed in his bid to attach his commerce amendment to the Articles, but

he revived the idea when the Constitutional Convention convened in Philadelphia in 1787. Though the convention was supposed to simply propose changes to the Articles, Madison and Washington engineered the scrapping of the earlier system to be replaced with an entirely new Constitution.

There at the Start

So, on the first day of substantive debate May 29, 1787 as a fellow Virginian, Edmund Randolph, presented Madison's constitutional framework, the Commerce Clause was there.

Madison's convention notes recount Randolph saying that "there were many advantages, which the U. S. might acquire, which were not attainable under the confederation such as a productive impost [or tax] counteraction of the commercial regulations of other nations pushing of commerce ad libitum &c &c."

In other words, the Founders at their most "originalist" moment understood the value of the federal government taking action to negate the commercial advantages of other countries and to take steps for "pushing of [American] commerce." The "ad libitum &c &c" notation suggests that Randolph provided other examples off the top of his head.

So, Madison and other key Framers recognized that a legitimate role of Congress was to ensure that the nation could match up against other countries economically and could address problems impeding the nation's economic success.

After the Convention, when the proposed Constitution was under fire from Anti-Federalists who favored retaining the states-rights orientation of the Articles of Confederation, Madison returned, in the Federalist Papers, to arguing the value of the Commerce Clause.

Ironically, Madison considered the Commerce Clause one of the least controversial elements of his new governing structure. In Federalist Paper No. 45, writing under the pseudonym Publius, Madison referred to the Commerce Clause as "a new power; but an addition which few oppose, and from which no apprehensions are entertained."

In Federalist Paper No. 14, Madison explained how the Commerce Clause could help the young nation overcome some of its problems with communications and access to interior lands.

"[T]he union will be daily facilitated by new improvements," Madison wrote. "Roads will everywhere be shortened, and kept in better order; accommodations for travelers will be multiplied and meliorated; an interior navigation on our eastern side will be opened throughout, or nearly throughout the whole extent of

the Thirteen States.

“The communication between the western and Atlantic districts, and between different parts of each, will be rendered more and more easy by those numerous canals with which the beneficence of nature has intersected our country, and which art finds it so little difficult to connect and complete.”

The building of canals, as an argument in support of the Commerce Clause and the Constitution, further reflects the pragmatic and commercial attitudes of key Founders. In 1785, two years before the Constitutional Convention, George Washington established the Potowmack Company, which began digging canals to extend navigable waterways westward where he and other Founders had invested in Ohio and other undeveloped lands.

Thus, the idea of involving the central government in major economic projects a government-business partnership to create jobs and profits was there from the beginning. Madison, Washington and other early American leaders saw the Constitution as creating a dynamic system so the young country could grow and compete with rival economies. [See Consortiumnews.com’s “Did the Founders Hate Government?“]

Health Costs

In that sense, the Affordable Care Act comports with the original intent of the Commerce Clause, to keep U.S. industry competitive with international rivals. Today, one of the heaviest burdens on U.S. companies in relation to foreign competitors is the soaring cost of health care that has made American products more expensive.

The Constitution also explicitly empowers the federal government “to promote the general Welfare” and when tens of millions of Americans are without affordable health care and tens of thousands are dying each year because they can’t afford to see a doctor, that is surely an impediment to “the general Welfare.”

But what is perhaps most striking when comparing the Founding era of the United States to today’s politicized and petty times is the stunning loss of pragmatism and common sense.

Then, the Founders were finding ways to do what was necessary to build the nation. Now, partisans like Scalia and Fox News are all about scoring debating points. They conjure up arguments to win for the GOP side even if the nation loses.

Today’s Republican partisans, including justices on the Supreme Court, denounce the health-insurance mandate even though it was originally a

conservative proposal from the Heritage Foundation. Yet, once a Democratic president embraced it, the individual mandate became a socialistic affront to the Constitution.

One might reflect upon Washington's letter supporting Madison's commerce idea: "We are either a united people, or we are not. If the former, let us, in all matters of a general concern act as a nation, which have national objects to promote, and a national character to support. If we are not, let us no longer act a farce by pretending it to be."