One Document, Under Siege

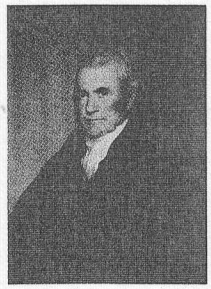
Here are a few things the framers did not know about: World War II. DNA. Sexting. Airplanes. The atom. Television. Medicare. Collateralized debt obligations. The germ theory of disease. Miniskirts. The internal combustion engine. Computers. Antibiotics. Lady Gaga. ¶ People on the right and left constantly ask what the framers would say about some...

By Richard Stengel

Photograph by Dwight Eschliman for TIME

...event that is happening today. What would the framers say about whether the

drones over Libya constitute a violation of Article I, Section 8, which gives Congress the power to declare war? Well, since George Washington didn't even dream that man could fly, much less use a global-positioning satellite to aim a missile, it's hard to say what he would think. What would the framers say about whether a tax on people who did not buy health insurance is an abuse of Congress's authority under the commerce clause? Well, since James Madison did not know what health insurance was and doctors back then still used leeches, it's difficult to know what he would say. And what would Thomas Jefferson, a man who owned slaves and is believed to have fathered children with at least one of them, think about a half-white, half-black American President born in Hawaii (a state that did not exist)? Again, hard to say.



In his opinion in the 1819 Supreme Court case *McCulloch vs. Maryland*, Chief Justice John Marshall wrote that the Constitution was "intended to endure for ages to come, and consequently to be adapted to the various crises of human affairs"

The framers were not gods and were not infallible. Yes, they gave us, and the world, a blueprint for the protection of democratic freedoms—freedom of speech, assembly, religion—but they also gave us the idea that a black person was three-fifths of a human being, that women were not allowed to vote and that South Dakota should have the same number of Senators as California, which is kind of crazy. And I'm not even going to mention the Electoral College. They did not give us income taxes. Or Prohibition. Those came later.

Americans have debated the Constitution since the day it was signed, but seldom have so many disagreed so fiercely about so much. Would it be unconstitutional to default on our debt? Should we have a balanced-budget amendment? Is it constitutional to ask illegal immigrants to carry documents? The past decade, beginning with the disputed election of 2000, has been a long national civics class about what the Constitution means—and how much it still matters. For eight years under George W. Bush, the nation wrestled with the balance between privacy and security (an issue the framers contended with) while the left portrayed the country as moving toward tyranny. For the past three years under President Obama, we have weighed issues of individual freedom vs. government control while the right has portrayed the country as moving toward a socialist welfare state.

Where's the Crisis?

A NEW FOCUS ON THE CONSTITUTION IS AT THE center of our political stage with the rise of the Tea Party and its almost fanatical focus on the founding document. The new Republican Congress organized a reading of all 7,200 words of an amended version of the Constitution on the House floor to open its first session. As a counterpoint to the rise of constitutional originalists (those who believe the document should be interpreted only as the drafters understood it), liberal legal scholars analyze the text just as closely to find the elasticity they believe the framers intended. Everywhere there seems to be debate about the scope and meaning and message of the Constitution. This is a healthy thing. Even the framers would agree on that.

So, are we in a constitutional crisis? In a word, no. The Constitution was born in crisis. It was written in secret and in violation of the existing one, the Articles of Confederation, at a time when no one knew whether America would survive. The Constitution has never *not* been under threat. Benjamin Franklin was skeptical that it would work at all. Alexander Hamilton wondered whether Washington should be a king. Jefferson questioned the constitutionality of his own Louisiana Purchase.

Today's debates represent conflict, not crisis. Conflict is at the core of our politics, and the Constitution is designed to manage it. There have been few conflicts in American history greater than the internal debates the framers had about the Constitution. For better or for worse—and I would argue that it is for better—the Constitution allows and even encourages deep arguments about the most basic democratic issues. A crisis is when the Constitution breaks down. We're not in danger of that.

Nor are we in danger of flipping the Constitution on its head, as some of the Tea Party faithful contend. Their view of the founding documents was pretty well summarized by Texas Congressman Ron Paul back in 2008: "The Constitution was written explicitly for one purpose—to restrain the federal government." Well, not exactly. In fact, the framers did the precise opposite. They strengthened the center and weakened the states. The states had extraordinary power under the Articles of Confederation. Most of them had their own navies and their own currencies. The truth is, the Constitution massively strengthened the central government of the U.S. for the simple reason that it established one where none had existed before.

If the Constitution was intended to limit the federal government, it sure doesn't say so. Article I,

MARSHALL: THE SUPREME COURT HISTORICAL SOCIETY

Section 8, the longest section of the longest article of the Constitution, is a drumroll of congressional power. And it ends with the "necessary and proper" clause, which delegates to Congress the 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." Limited government indeed.

It is true that the framers, like Tea Partyers, feared concentrated central power more than disorder. They were, after all, revolutionaries. To them, an all-powerful state was a greater threat to liberty than discord and turbulence. Jefferson, like many of the antifederalists, did think the Constitution created too much centralized power. Most of all, the framers created a weak Executive because they feared kings. They created checks and balances to neutralize any concentration of power. This often makes for disorderly government, but it does forestall any one branch from having too much influence. The framers weren't afraid of a little messiness. Which is another reason we shouldn't be so delicate about changing the Constitution or reinterpreting it. It was written in a spirit of change and revolution and turbulence. It was not written in stone. Its purpose was to create a government that could unite and lead and govern a new nation, a nation the framers hoped would grow in size and strength in ways they could not imagine. And it did.

Some news events have a way of triggering instantaneous constitutional sparring: the rise of WikiLeaks fueled the debate over the limits to free speech; the shooting of Representative Gabrielle Giffords did the same for the right to bear arms. But a number of other issues in the news at the moment have deep constitutional subcurrents. Let's look at four that are raising constitutional questions: Libya, Obamacare, the debt ceiling and immigration.

I. LIBYA

'The Congress shall have power ... To declare war.'

Article I, Section 8

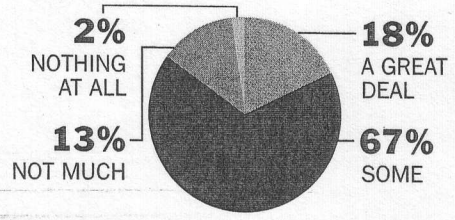
'The president shall be commander in chief of the Army and Navy of the United States.'

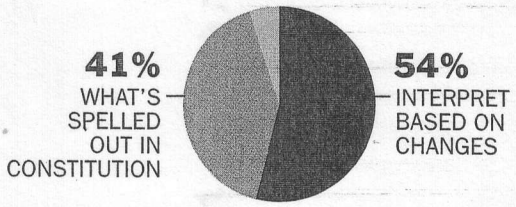
Article II, Section 2

MAY 20 MARKED THE 60TH DAY SINCE PRESIDENT Obama launched military action in Libya. Speaker of the House John Boehner has asserted that the President is in violation of the War Powers

We the People. Americans weigh in on the founding document

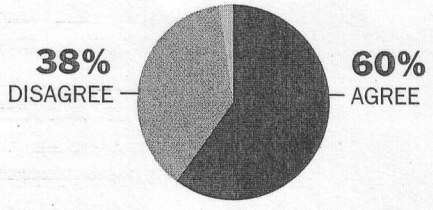
How much do you know about the U.S. Constitution, which was ratified more than 200 years ago?

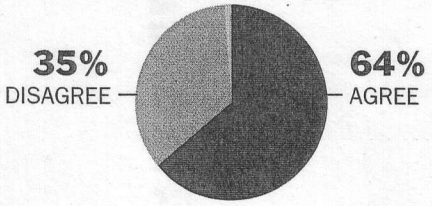




Should the government follow exactly what's spelled out in the Constitution, or should it interpret it based on changes in society, technology and the U.S.'s role in the world?

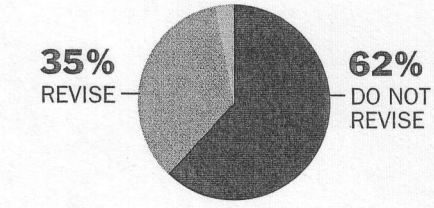
Agree or disagree: State and local governments are not allowed to ban handguns and concealed weapons, even in high-crime areas.

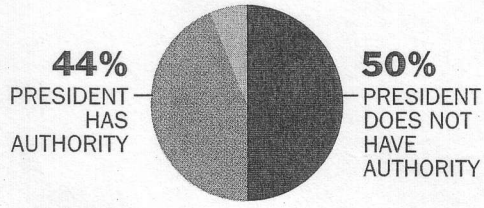




Agree or disagree: A woman should have the right to terminate a pregnancy in its first few months.

The 14th Amendment says that any person born in the U.S. automatically becomes a U.S. citizen. Some say that encourages foreigners to emigrate to the U.S. solely to enable their children to become citizens. Should the amendment be revised?





The Constitution gives the power to declare war to Congress. Does the President have authority to involve the military in Libya without congressional approval, even if the troops are in a supporting role in a NATO mission?

This TIME/Abt SRBI poll was conducted by telephone June 20–21 among a national random sample of 1,003 Americans ages 18 and older. The margin of error for the entire sample is ±3 percentage points

In 1999, amid U.S. involvement in a 78-day NATO campaign in Kosovo, members of Congress sued President Clinton for violating the War Powers Resolution. A district court dismissed the case

Rebel fighters in Libya fire a rocket; House Republicans say the U.S. military action there violates the War Powers Resolution

Americans have debated the Constitution since the day it was signed, but seldom have so many disagreed so fiercely about so much

Resolution, passed in 1973, which requires the President to withdraw U.S. forces from armed hostilities if Congress has not given its approval within 60 days. The Administration argues that what we're doing in Libya does not meet the threshold of hostilities in the legislation so the resolution does not apply.

Let's be honest. No President wants to have his powers as Commander in Chief curtailed. Presidents basically say, I'm the Commander in Chief, and my duty is to protect and defend the U.S., and I can't be tied down by congressional foot dragging or posturing on C-SPAN. When it comes to presidential Executive power, where you stand is where you sit. And if you're sitting in the Oval Office, presidential power looks pretty good. All Presidents—regardless of party—tend to have expansive views of Executive power. And pretty much every presidential candidate, including then Senator Obama, criticizes the sitting President for overreaching. Candidate Obama supported the War Powers Resolution. In 2007 he said, "The President does not have power under the Constitution to unilaterally authorize a military attack in a situation that does not involve stopping an actual or imminent threat to the nation." When it comes to being Commander in Chief, Presidents have a lot more in common with one another than with whatever their own party says when it is out of power.

Since the signing of the Constitution in 1787, Congress has declared war exactly five times: the War of 1812, the Mexican War, the Spanish-American War and World Wars I and II. And since 1787, Presidents have put U.S. military forces into action hundreds of times without congressional authorization. The most intense of these actions was the Korean War, to which President Truman sent some 1.8 million soldiers, sailors and airmen over a period of just three years, and 36,000 lost their lives—but he never sought or received a congressional declaration of war. Congress has not declared war since World War II, despite there being dozens of conflicts since then.

The War Powers Resolution was meant to counteract what Nixon, and Johnson before him, had done in Vietnam. Congress felt manipulated and deceived and wanted to affirm its power as the war-declaring body. But the law is not exactly a macho assertion of congressional prerogative—it politely asks for an authorization letter and then gives the President a three-month deadline. Yet since 1973, Presidents have at best paid lip service to the resolution. Presidents of both

In 1835, for the first and only time in U.S. history, the entire national debt was paid off under Andrew Jackson, who thought debt could "destroy the liberty of our country"

parties have used military force without prior approval from Congress—for example, in Libya in 1986, in Panama in 1989, in Somalia in 1992, in Bosnia in 1995 and in Kosovo in 1999. But in an age of potential nuclear war, global terrorism and missiles that can be launched in seconds and take only minutes to travel thousands of miles, the President must be able to act quickly. In 1787 it took months to order uniforms and muster troops—and declarations of war were written on parchment with quill pens.

It seems clear that when it comes to Libya, Obama did not adhere to the spirit of the War Powers Resolution. He did not ask for authorization, even though he would probably have had congressional support back in March. The White House argues that the operations "do not involve sustained fighting or active exchanges of fire with hostile forces, nor do they involve U.S. ground troops." In short, the Administration is saying, You call this a war? We're not even the lead dog.

The question is, Do Americans really want to let Congress have the sole power to commit U.S. forces to action? The law permits the President to act unilaterally, at least for the first 60 to 90 days. But Congress is trying to have it both ways: it wants to reassert its primacy, but it's not sure whether it really wants to end the action in Libya. If it did, lawmakers have one very clear power that could stop the action overnight: they can defund it.

This is all part of the cat-and-mouse game of checks and balances. The War Powers Resolution is a check on presidential power, but the President seeks to balance this by, well, ignoring it. That's not unconstitutional; that's how our system works. The larger question is whether the War Powers Resolution is constitutional. And the Constitution is in conflict with itself here: the Commander-in-Chief clause vs. the Congress-must-declare-war clause. There's a lot of white space between these two assertions. Republicans are now questioning Obama's use of Executive power. But the greatest proponent of Executive power in modern times was George W. Bush. In fact, it was John Yoo, Deputy Assistant Attorney General in the Office of Legal Counsel for Bush, who wrote that when it came to his role as Commander in Chief, there were "no limits on the Executive's judgment." And, of course, candidate Obama was very critical of that.

The War Powers Resolution is a check on presidential power, but the President seeks to balance this by, well, ignoring it. That's not unconstitutional; that's how our system works

Despite the fact that 10 Congressmen, including Ron Paul and Dennis Kucinich, have sued the President for violating the War Powers Resolution, this matter will not end up in the Supreme Court. Congress does not really want the responsibility of deciding whether to send troops to places like Libya. It just doesn't want the President to do so in a way that makes it look superfluous and impotent.

II. THE DEBT CEILING

'The Congress shall have power ... To borrow money on the credit of the United States.'
Article I, Section 8

'The validity of the public debt of the United States ... shall not be questioned.'
14th Amendment, Section 4

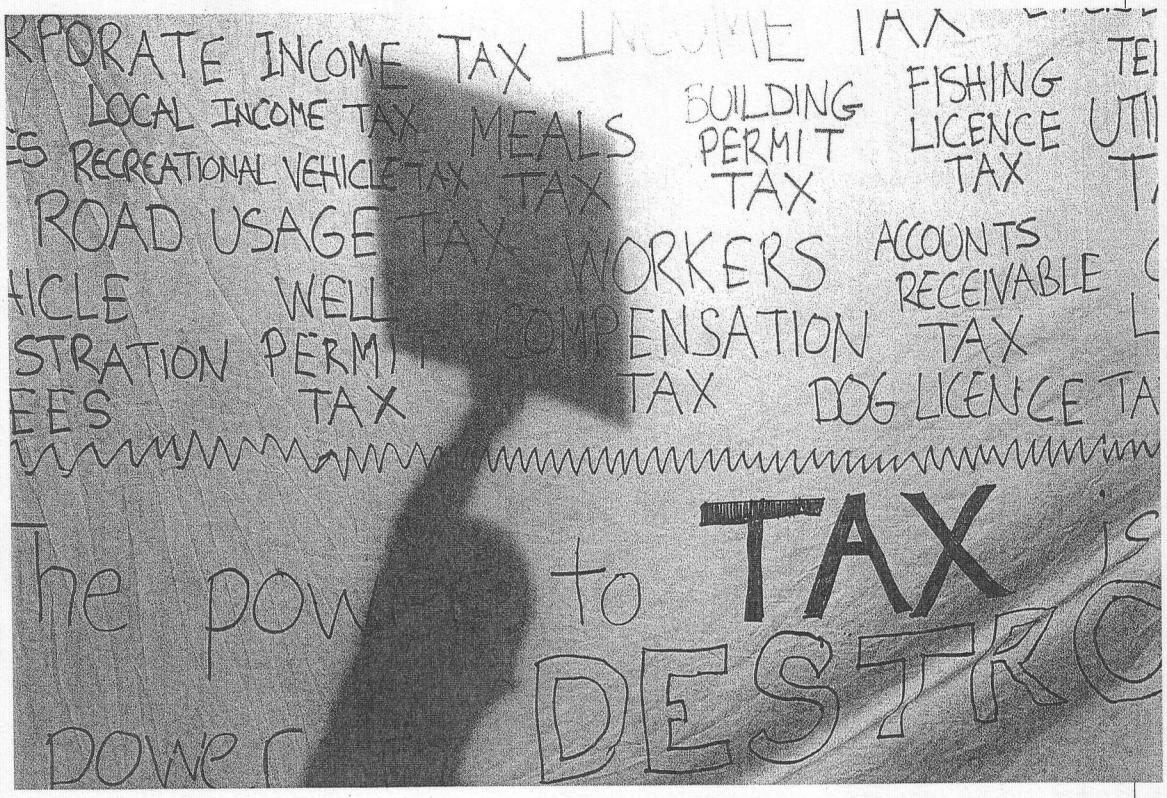
NO ONE DISPUTES THAT CONGRESS HAS THE POWER to tax. That's one of the very first enumerated powers in the Constitution. The framers created a central government in part to be able to pay off the debts from the Revolutionary War. The country was broke. You might not like the power to tax, but it is one of the basic tenets of representative government. The Boston Tea Party slogan was "No taxation without representation!" It wasn't "No taxation."

There are those in Congress and beyond who suggest that the U.S.'s not raising the debt ceiling and defaulting would be a lesson to a spendthrift government not to borrow more than it can repay. But the idea that we can default on our debt is not only reckless; it's probably unconstitutional. No one is saying the debt is wise and prudent—far from it—but defaulting on it flies in the face of one of the few absolute proscriptions in the Constitution, Section 4 of the 14th Amendment: "The validity of the public debt ... shall not be questioned." The idea is that the U.S. shouldn't weasel out of its debts. It does not say that we can't undertake dumb obligations—the Constitution can't prevent bridges to nowhere—but that we need to pay off the public obligations that we do set for ourselves, whether those are Social Security payments to retirees or interest to Chinese bankers. When Congress borrows money "on the credit of the United States," it creates a binding obligation to pay that debt.

The debate over raising the debt ceiling is mostly cable-TV playacting. The party out of power is always against raising the debt limit, and the party in power is always for it. When Bush needed to raise the debt limit in 2006, then Senators Obama and Joe Biden voted against it, with Obama saying that raising the limit was "a sign of leadership failure." Since 1962, Congress has enacted 75 separate measures to alter the limit on the debt, including 17 under Ronald Reagan, six under Jimmy Carter and four under Bill Clinton. Congress has raised the debt limit 10 times since 2001. It ain't a partisan issue.

At the same time, there's nothing unconstitutional about the public debt's exceeding the size of the GDP. It's not wise, and we might look like Greece, but it's not unconstitutional. And there's nothing

Under the Articles of Confederation, the budding nation struggled to avoid bankruptcy as states resisted Congress's suggestions for raising revenue



The GOP may currently oppose raising the debt limit, but Congress has routinely done so, 75 times since 1962

unconstitutional about Congress's trying to impose cuts in the federal budget to decrease the size of the debt or to bargain for cuts in order to vote to raise the ceiling. But if in the end Congress seems intent on allowing the U.S. to default on its debt, the President can assert that that is unconstitutional and take extraordinary measures to avoid it. He can use his Executive power to order the Treasury to produce binding debt instruments that cover all of the U.S.'s obligations around the world. He can sell assets, furlough workers, freeze checks—heck, he could lease Yellowstone Park. And it would all be constitutional.

The idea that we can default on our debt is not only reckless; it's probably unconstitutional

III. OBAMACARE

'The Congress shall have power ... To regulate Commerce with foreign Nations, and among the several States.'
Article I, Section 8, Clause 3

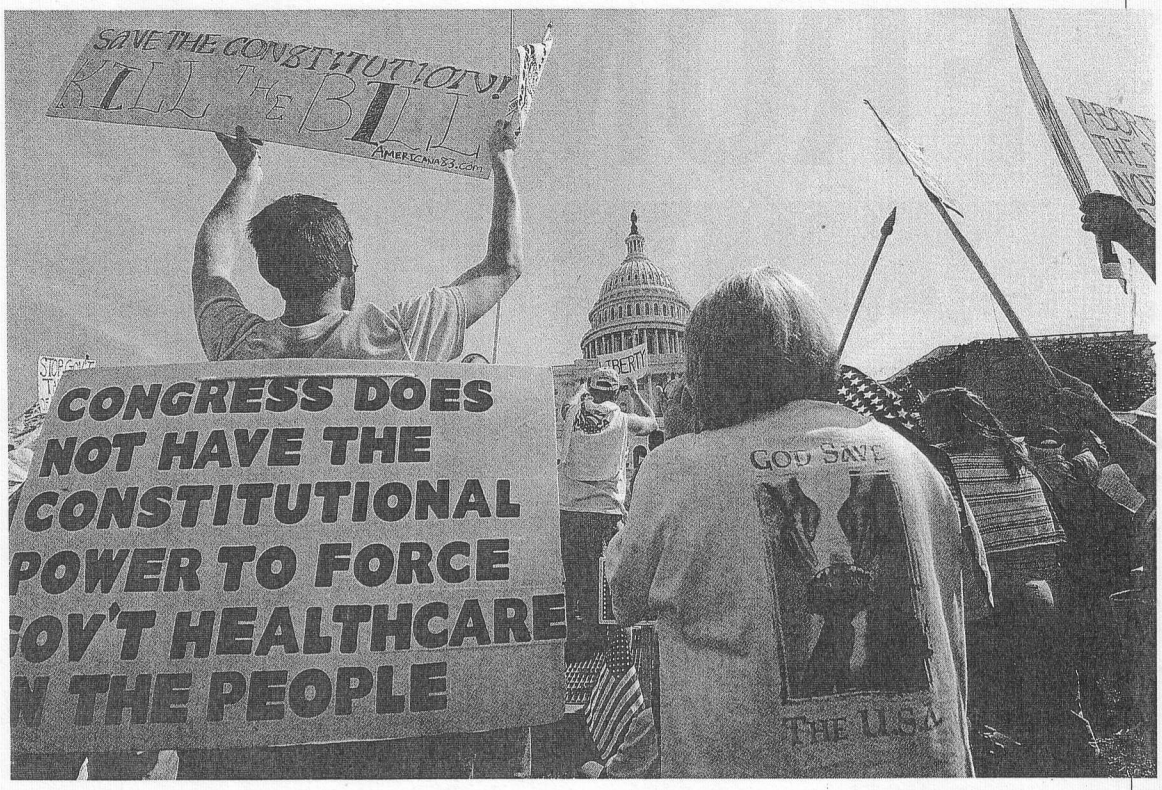
CRITICS HAVE ARGUED THAT OBAMA'S HEALTH CARE ACT takes government power to unprecedented—and unconstitutional—levels. They contend that the government can't compel us to do things, or buy things, simply because we are here. In his ruling declaring the Affordable Care Act unconstitutional, Florida federal District Judge Roger Vinson argued, "Never before has Congress required that everyone buy a product from a private company (essentially for life) just for being alive and residing in the United States."

Well, maybe. The government does require us to pay taxes, serve on juries, register for the draft. The government also compels us to buy car insurance (if we want to legally drive our car), which is a product from a private company. George Washington once signed a bill asking Americans to buy a musket and ammunition. There's nothing in the Constitution that restricts the government from asking us to do something or buy something or pay a tax—even if we don't like it.

No one really disputes Congress's power to regulate interstate commerce, and it's silly to argue that health care—which accounts for 17% of the U.S. economy—doesn't involve interstate commerce. Your doctor's stethoscope was made in one state and was shipped to and sold in another. What conservatives mostly argue is that the individual mandate in the bill is unconstitutional and that the government can't regulate something you don't do. Supporters of Obamacare note that it's not a mandate but, in effect, a tax, imposed on people who do not buy health

TAX PROTEST: JASON ANDREW—REPORTAGE BY GETTY IMAGES

During the Depression, Franklin D. Roosevelt's New Deal legislation greatly expanded the power of Congress to regulate under the commerce clause



Tea Party supporters take the constitutionality of Obama's Affordable Care Act to the streets as the House deliberates

In drafting the 14th Amendment, Congress was definitely not thinking about illegal immigration. At the time, the country needed a lot more immigrants, legal or otherwise

insurance. And that it's not universal; people who are on Medicare and Medicaid, for example, don't need that coverage.

One would like to think that the decision to buy health insurance—or not—is a private one. If you're young and healthy, you might just say, I'd rather spend my money on something else. That's your right—and it may well be a rational decision. But it's hard to argue that not buying health insurance has no interstate economic consequences. Opponents say Congress can regulate commercial activity only, and not buying health insurance is not an activity—it's doing nothing.

But what happens when that healthy, young uninsured woman goes skiing and tears her anterior cruciate ligament and has to have emergency surgery? She can't afford to pay the full fee, and the hospital absorbs much of the cost. That's basically a tax on everyone who does have health insurance, and it ultimately raises the cost of hospital care and insurance premiums. I devoutly believe in Justice Louis Brandeis' famous dissent in the 1928 wiretapping case of *Olmstead v. United States*, in which he wrote that the Constitution conferred on all of us "the right to be let alone—the most comprehensive of rights and the right most valued by civilized men." Amen. But doing nothing can be a private decision with public consequences. Some argue that the Affordable Care Act is cynical. As a *University of Pennsylvania Law Review* article contended, "Making healthy young adults pay billions of dollars in premiums into the national health-care market is the only way to fund universal coverage without raising substantial new taxes." But cynicism—or pragmatism—is not proscribed by the Constitution. The Affordable Care Act may be bad legislation, as some contend, but that doesn't mean it's unconstitutional. There's no law against bad laws. The remedy for bad laws is elections.

IV. IMMIGRATION

'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.'
14th Amendment, 1868

ALL AROUND THE WORLD, THERE ARE BASICALLY three ways of acquiring citizenship: by birth, by blood or by naturalization. All of them depend on the circumstances of one's birth. The principle of jus soli (right of the soil) means that if you're born within the borders of a country, you're automatically

ROOSEVELT: GRANGER COLLECTION, NYC; PROTEST: NICHOLAS KAMM—AFP/GETTY IMAGES

In 1857 the Supreme Court ruled in *Dred Scott v. Sandford* that a free black man is not a citizen, pushing the nation closer to the brink of the Civil War

a citizen. Jus sanguinis (right of blood) means that if your parents are citizens of a country, you too are a citizen, no matter where you were born. And naturalization is the process by which a noncitizen becomes a citizen through residency, a test or an oath—or some combination of the three.

The U.S. is one of the last nations—and by far the largest—to follow the principle of jus soli, better known as birthright citizenship. The 14th Amendment, ratified in 1868, basically holds that if you're physically born in the U.S. or a U.S. territory, you're a citizen. Full stop. Of the world's advanced economies, only the U.S. and Canada offer birthright citizenship. No European nation does so. Nor does China or Japan. We are in part a jus sanguinis nation as well in that children of American citizens who are born outside the U.S. can become citizens. But in the latter case, it's not so simple. For example, an out-of-wedlock child born to an unemployed illegal-immigrant mother in Paris, Texas, is a citizen when he breathes his first breath, whereas a child born to an American mother and father working for IBM in Paris, France, must apply for a certificate of citizenship and file months or years of paperwork with the State Department to show evidence that the child qualifies for American citizenship. Last year nearly 620,000 immigrants went through the naturalization process in the U.S., which on top of the paperwork includes tests in English and civics that many jus soli citizens might not be able to pass.

It was the 14th Amendment—one of the post–Civil War Reconstruction amendments—that made it crystal clear that anyone born in the U.S. was a citizen. It was passed for a very specific reason: to establish that former slaves were indeed citizens and entitled to all the rights of citizenship, including voting. For African Americans, this was a new birth of freedom. The 14th Amendment was a reaction to the infamous *Dred Scott* decision of 1857, which asserted that African Americans were "beings of an inferior order" who "had no rights which the white man was bound to respect." That ruling declared that African Americans could never be U.S. citizens and were therefore not entitled to any constitutional protections. The 14th Amendment reversed that. In drafting the 14th Amendment, Congress was definitely not thinking about illegal immigration. At the time, the country needed a lot more immigrants, legal or otherwise. Congress was thinking more practically. It wanted to emancipate blacks and allow them to vote so that white Southern Democrats would not try to reverse the gains of the Civil War. It was also a direct response to the Black Codes passed by Southern states that sought to put freed slaves into something like the condition they were in before the war.

Some opponents of birthright citizenship argue that illegal immigrants are not under U.S. jurisdiction and therefore their children should not automatically become citizens, but this argument doesn't hold up under scrutiny. Senator Lindsey Graham of South Carolina has suggested he might offer an amendment to overturn the principle of birthright citizenship. I've always thought it odd that a nation united not by blood or religion or ethnic identity but by certain extraordinary ideas is a nation where citizenship is conferred on the basis of where you were physically born. It's equally strange to me that a nation that was forged through immigration—and is still formed by immigration—is also a nation that makes it constitutionally impossible for someone who was not physically born here to run for President. (Yes, the framers had their reasons for that, but those reasons have long since vanished.)

Critics of birthright citizenship argue that people come here to give birth—and some do—and that the U.S. has a rash of anchor babies who then get all kinds of rights for their families. But the law says the parents of such a child must wait till she is 21 for her to be allowed to sponsor them to live and work legally in the U.S., and research shows that the vast majority of children of illegal immigrants are born years after the mother and father have arrived in the U.S.

But even so, it's a problem.

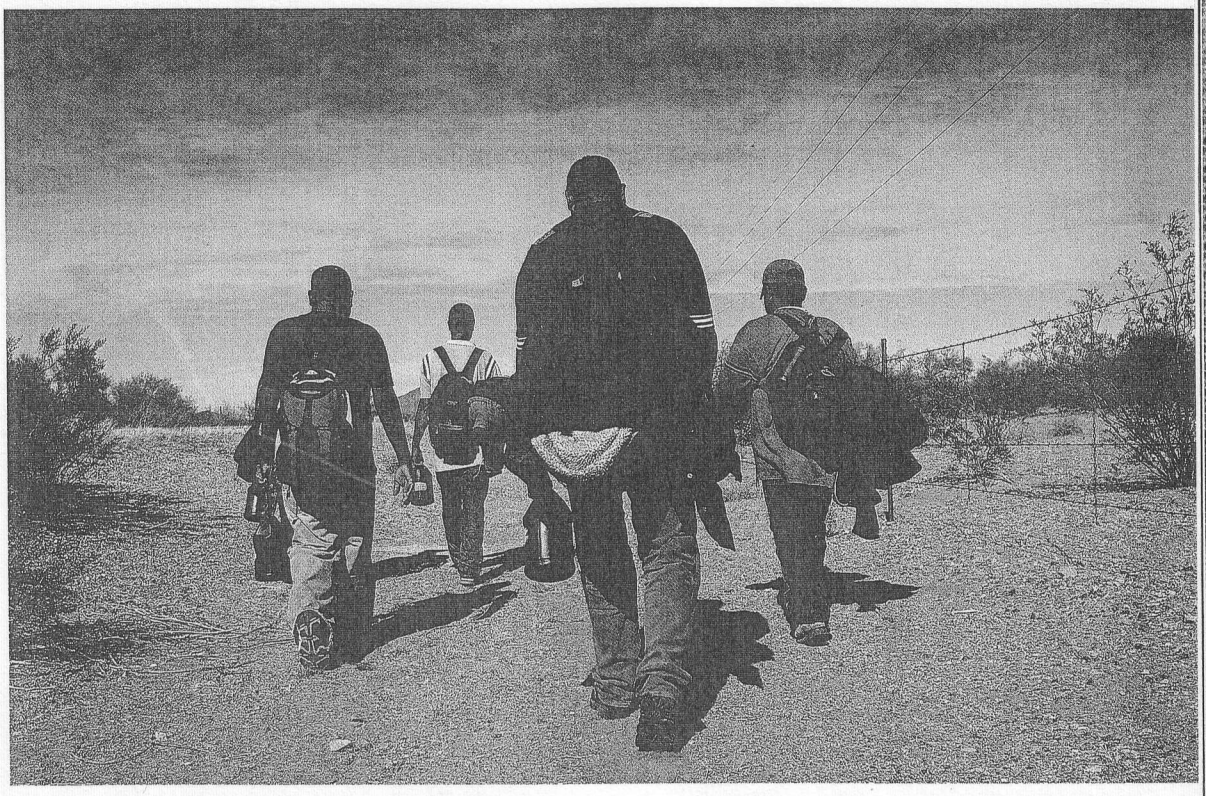
There are liberals and conservatives alike who oppose changing birthright citizenship. It's seen as a core American value. It is important to African Americans as well as Hispanic Americans. But it is an outmoded law. However, changing the birthright-citizenship law would not end immigration or even slow it. Most illegal immigrants are economic immigrants.

Arizona and now Georgia have passed laws designed to decrease illegal immigration by making it a crime for illegal immigrants not to carry documentation and by giving the police broad powers to detain anyone suspected of being in the country illegally without such documents. A federal district court struck down certain provisions in the Arizona bill.

There may well be parts of these bills that are unconstitutional, but it's unclear what the rights of illegal immigrants are as opposed to those of citizens. The U.S. needs to take a carrot-and-stick approach to illegal immigration. Many progressives and business leaders agree that we need to make legal immigration easier, grant legal status to undocumented young people who enter college or join the military, and staple a green card to every engineering degree earned by a foreign-born national. That's the carrot. The stick is that we need better workplace enforcement, a reasonable standard for policing and more secure borders. We need to make legal immigration easier, faster and cheaper so that illegal immigration becomes harder and less desirable.

We need to make legal immigration easier: staple a green card to an engineering degree earned by a foreign-born national

In 1898 the case of Wong Kim Ark, a man born in California to noncitizen Chinese immigrants who was denied re-entry into the U.S., made its way to the Supreme Court. The court ruled that the 14th Amendment indeed made him a citizen



Even if immigrants are undocumented, like the Mexicans above, their U.S.-born children receive birthright citizenship

THERE IS AN OLD LATIN PHRASE, *INTER ARMA ENIM silent leges,* which roughly translates as "in time of war, the Constitution is silent." But it's not just in times of war that the Constitution is silent. The Constitution is silent much of the time. And that's a good thing. Two hundred twenty-three years after it was written, the Constitution is more a guardrail for our society than a traffic cop. The Constitution works so well precisely because it is so opaque, so general, so open to various interpretations. Originalists contend that the Constitution has a clear, fixed meaning. But the framers argued vehemently about its meaning. For them, it was a set of principles, not a code of laws. A code of laws says you have to stop at the red light; a constitution has broad principles that are unchanging but that must accommodate each new generation and circumstance.

We cannot let the Constitution become an obstacle to a future with a sensible health care system, a globalized economy, an evolving sense of civil and political rights

We can pat ourselves on the back about the past 223 years, but we cannot let the Constitution become an obstacle to the U.S.'s moving into the future with a sensible health care system, a globalized economy, an evolving sense of civil and political rights. The Constitution, as Martin Luther King Jr. said in his great speech on the Mall, is a promissory note. That note had not been fulfilled for African Americans. But I would say the Constitution remains a promissory note, one in which "We the People" in each generation try to create that more perfect union.

A constitution in and of itself guarantees nothing. Bolshevik Russia had a constitution, as did Nazi Germany. Cuba and Libya have constitutions. A constitution must embody something that is in the hearts of the people. In the midst of World War II, the great judge Learned Hand gave a speech in New York City's Central Park that came to be known as "The Spirit of Liberty." It was a dark time, with freedom and liberty under threat in Europe. Hand noted that we are Americans by choice, not birth. That we are Americans precisely because we seek liberty and freedom—not only freedom from oppression but freedom of speech and belief and action. "What do we mean when we say that first of all we seek liberty?" he asked. "I often wonder whether we do not rest our hopes too much upon constitutions, upon laws and upon courts. These are false hopes; believe me, these are false hopes. Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can even do much to help it."

The Constitution does not protect our spirit of liberty; our spirit of liberty protects the Constitution. The Constitution serves the nation; the nation does not serve the Constitution.

That's what the framers would say.

—WITH REPORTING BY ANDRÉA FORD ■

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