

Constitution Day

BY WALTER E. WILLIAMS



On September 17, 1787, 39 men signed the U.S. Constitution. Each year since 2004 we have celebrated Constitution Day as a result of legislation, fathered by Senator Robert Byrd, that requires federal agencies and every school that receives federal funds, including universities, to have some kind of program on the Constitution. I cannot think of a more deceitful piece of legislation or a more constitutionally odious person to father it—a person who is known as, and proudly wears the label, “King of Pork.” The only reason that Constitution Day is not greeted with contempt is that most Americans are totally ignorant about the framers’ vision in writing our Constitution. Let’s examine that vision to see how much faith and allegiance today’s Americans give to the U.S. Constitution.

James Madison is the acknowledged father of the Constitution. In 1794, when Congress appropriated \$15,000 for relief of French refugees who fled from insurrection in San Domingo (now Haiti) to Baltimore and Philadelphia, Madison wrote disapprovingly, “I cannot undertake to lay my finger on that article of the Constitution which granted a right to Congress of expending, on objects of benevolence, the money of their constituents” (James Madison, 4 *Annals of Congress* 179 [1794]). Today, at least two-thirds of a \$2.5 trillion federal budget is spent on the “objects of benevolence.” That includes Medicare, Medicaid, Social Security, aid to higher education, farm and business subsidies, welfare, ad nauseam.

A few years later, Madison’s vision was expressed by Representative William Giles of Virginia, who condemned a relief measure for fire victims. Giles insisted that it was neither the purpose nor a right of Congress to “attend to what generosity and humanity require, but to what the Constitution and their duty require” (<http://tuftsprimarysource.org/?p=163>).

In 1827 Davy Crockett was elected to the House of Representatives. During his term of office a \$10,000

relief measure was proposed to assist the widow of a naval officer. Crockett eloquently opposed the measure saying, “Mr. Speaker: I have as much respect for the memory of the deceased, and as much sympathy for the suffering of the living, if there be, as any man in this House, but we must not permit our respect for the dead or our sympathy for part of the living to lead us into an act of injustice to the balance of the living. I will not go into an argument to prove that Congress has not the power to appropriate this money as an act of charity. Every member on this floor knows it. We have the right as individuals, to give away as much of our own money as we please in charity; but as members of Congress we have no right to appropriate a dollar of the public money” (from his famous “Not Yours To Give” speech, originally published in *The Life of Colonel David Crockett* by Edward Sylvester Ellis, www.fee.org/library/books/notyours.asp).

In 1854 President Franklin Pierce vetoed a popular measure to help the mentally ill saying, “I cannot find any authority in the Constitution for public charity.” To approve the measure “would be contrary to the letter and the spirit of the Constitution and subversive to the whole theory upon which the Union of these States is founded” (“Franklin Pierce’s 1854 Veto,” www.disabilitymuseum.org/lib/docs/682.htm?page=2). During President Grover Cleveland’s two terms in office he vetoed many congressional appropriations, often saying there was no constitutional authority for such an appropriation. Vetoing a bill for relief charity, Cleveland said, “I can find no warrant for such an appropriation in the Constitution, and I do not believe that the power and duty of the General Government ought to be extended to the relief of individual suffering which is in no manner properly related to the public service or benefit” (18 *Congressional Record* 1875 [1887]).

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Compared to today, yesteryear's vision differs vastly in what congressional actions are constitutionally permissible. How might today's Congress, President, and courts square their behavior with that of their predecessors? The most generous interpretation of their behavior I can give is their misunderstanding of Article I, Section 8 of the Constitution, which reads, "The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States." Misuse of the General Welfare clause serves as warrant for Congress to do just about anything on which it can secure a majority vote.

The framers addressed the misinterpretation of this clause. Madison said in a letter to James Robertson, "With respect to the two words 'general welfare', I have always regarded them as qualified by the detail of powers connected with them. To take them in a literal and unlimited sense would be a metamorphosis of the Constitution into a character which there is a host of proofs was not contemplated by its creators." Madison also said, "If Congress can do whatever in their discretion can be done by money, and will promote the General Welfare, the Government is no longer a limited one, possessing enumerated powers, but an indefinite one, subject to particular exceptions" (Letter to Edmund Pendleton, January 21, 1792, www.jmu.edu/madison/center/mainpages/madisonarchives/quotes/great/constitution.htm). Madison laid out what he saw as constitutional limits on federal power in Federalist 45, where he explained, "The powers delegated by the proposed Constitution to the federal government are few and defined . . . to be exercised principally on external objects, as war, peace, negotiation, and foreign commerce."

Thomas Jefferson explained in a letter to Albert Gallatin, "Congress has not unlimited powers to provide for the general welfare, but only those specifically enumerated."

What accounts for today's acceptance of a massive

departure from the framers' clear vision of what federal activities were constitutionally permissible? It is tempting to blame politicians, and yes, we can blame them to some extent. But most of the blame lies with the American people, who are either ignorant of the constitutional limits the framers imposed on the federal government or have contempt for those limits.

If They Were Running Today

We can see this by imagining that Madison, Pierce, or Cleveland were campaigning for the presidency today. Imagine their saying to today's Americans they cannot find "a right [of] Congress of expending, on objects of benevolence, the money of their constituents" or "any authority in the Constitution for public charity." Or, "I can find no warrant for such an appropriation in the Constitution." Their candidacy would be greeted with contempt by most Americans. They would be seen as callous, mean-spirited men by a nation of people who have now come to believe they have a right to live at the expense of other people through a variety of federal programs. Such a belief differs only in degree, but not kind, from the belief that one American should be forcibly used, through the tax code, to serve the purposes of another American.

The tragedy is that once such a belief system becomes acceptable, it pays for all Americans to attempt to live at the expense of others. If one American does not use government to live at the expense of another American, that does not mean he will pay lower taxes. It only means that there will be more money left over for others. In a word or so, once legalized theft becomes the standard, it pays for everyone to become a thief. A hundred years from now what Congress does and what is in the Constitution will bear absolutely no relationship at all. As a result Americans will be poorer both in terms of liberty and standard of living. They just might curse today's generation. 