

9-17-2015

"A Republic If You Can Keep It"

Eric Lane

Maurice A. Deane School of Law at Hofstra University, eric.lane@hofstra.edu

Follow this and additional works at: http://scholarlycommons.law.hofstra.edu/lectures_consitutionday



Part of the [Constitutional Law Commons](#)

Recommended Citation

Lane, Eric, "A Republic If You Can Keep It" (2015). *Constitution Day Lectures*. 1.
http://scholarlycommons.law.hofstra.edu/lectures_consitutionday/1

This Lecture is brought to you for free and open access by the Lectures at Scholarly Commons at Hofstra Law. It has been accepted for inclusion in Constitution Day Lectures by an authorized administrator of Scholarly Commons at Hofstra Law. For more information, please contact lawcls@hofstra.edu.

Hello all and thanks to the new Provost Gail Simons for inviting me to give this talk.

A REPUBLIC IF YOU CAN KEEP IT.

The story goes that 228 years ago to this date, on September 17 1787, Benjamin Franklin, on the final day of the Constitutional Convention, was asked by a woman as he left Constitution Hall “what have you given us?”

To which the delegate from Pennsylvania purportedly responded: “a Republic madam if you can keep it”

And by a Republic he was referring to the representative form of government the delegates had just adopted and would on the next day forward to the Continental Congress for submission to the states.

Whether this exchange ever occurred is questionable, but the concern it expressed over the fragility of the

radical new government was widely shared among the Framers.

In fact, some of them thought that only luck could keep the new democracy alive for several decades before it tumbled into chaos and then tyranny.

That has not happened yet!

In fact we are the longest lasting democracy in history, although there have been times when our national democracy has teetered on the brink: particularly over the issue of slavery for which there was no moral or

political basis for compromise despite Lincoln's attempt to find one.

In this talk I want to explore Franklin's warning which I think remains very credible and in fact far closer to a reality than I am sure most of you would agree.

Earlier I called the Constitution radical.

And it is was at the time very radical in both its systems of representation, separated powers, and the absence of any reference to God or King.

The latter I would suggest was an important nod to the enlightenment notion that for self-government to work, people actually had to govern themselves.

But what made the Constitution really radical was that it was created with a clear eyed view of human nature, of what people in America were really like and not what they ought to be like.

“But what is government itself but the greatest of all reflections on

human nature” wrote James Madison in Federalist 51.

and this was the view of human nature possessed by the Framers 11 years after Independence

In short while Americans LOVED freedom what they really loved was the freedom to impose their will on others.

Listen for a moment to James Madison the father of the Constitution and the greatest politician scholar in the country’s history:

“So strong is this propensity of mankind to fall into mutual animosities, that where no substantial occasion presents itself, the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions and excite their most violent conflicts.”

And again to George Washington as he stood ready to preside at the Constitutional Convention:

“Experience has taught us that men will not adopt measures the best calculated for their own good without the intervention of a coercive force.”

And with these sentiments there was little if any dissent among the Framers

What then was the “experience,” using Washington’s word that had led them to these views?

America had always been a rough place. The colonies and different colonists had little regard. As we pushed closer to independence Americans were nearly at war with each other over land, religion, culture, or generally almost anything.

There was as James Dickinson wrote a “decay of public virtue” An inability of Americans to suppress their self-interest for a greater good, there id for their ego.

“A people” Dickenson wrote “is travelling fast to destruction when individuals consider their interests as distinct from those of the public.”

An so close to destruction had America come in the run-up to Independence that as it neared the revolutionary leader James Otis worried that should the colonies be left to themselves they would become

“a mere shambles of blood and confusion.”

This very condition provided an intellectual platform for America’s revolutionary leaders on which to justify independence. “If only we could free ourselves from England we could regain our virtue they would often declare.”

“English corruption was the cause of American venality and Independence from England alone could save America from its discord and conflict,” proclaimed the revolution’s greatest polemicist Thomas Paine, “

freed from England” he continued
“We have the power to begin the
world again,” America under its own
government “hath a blank sheet to
write upon.”

What they then wrote upon that
blank sheet was a story of near
failure.

First the newly created articles of
confederation effectively left the
states in charge of every national
decision

And second the state governments
that were created right after

independence were for the most part dominated by single house legislatures with little or no executive power.

The premise for both levels of government was that virtuous Americans would be able to suppress self-interest for the greater national or state good.

And on this point they were terribly wrong.

Let's start with the war. Yes we won it, but the victory was miraculous given that the absence of any real

support from the new states. And without the French and loss of English will it would have most certainly gone the other way.

Out of a population of 2.5 million people, fewer than 1 percent were willing to join the regular army and state after state refused to supply the necessary resources to make victory possible.

Listen to General Nathaniel Greene
“A country overflowing with plenty is now suffering an army employed for the defense of everything dear and valuable to perish for lack of food.”

Or to Private Martin Plumb: “the army was now not only starved but naked.”

Or to Colonel Ebenezer Huntington from Connecticut who was a member of the continental congress

“I wish I was not born in America . . . the insults which the army has met with from the country beggar all description.”

And then the war was over and the citizens of United States lost whatever discipline the war effort had imposed as the new simple state government

became simply vehicles for majority factions to do what they wanted, which was most often to cancel debts or in the state of Massachusetts to refuse to cancel them which led to the bloody Shay's revolution.

By the mid-1780s it was clear that Public virtue was no more than a slogan or simply a utopian vision.

The Framers as they headed toward a constitution convention saw in America, what the historian Gordon Woods has described as “mistrust, the breakdown of authority, the increase

of debt, the depravity of manners, and decline in virtues.”

Indeed the very societal conditions had historically destroyed efforts at self-government

According to John Quincy Adams, who would become the 6th President of the US “the country was groaning under the intolerable burden of ...accumulated evils” And some were even worried that national chaos would lead to the reestablishment of a monarchy.

Observed John Jay, the first chief justice of the Supreme Court: “I am

told that even respectable characters speak of a monarchical form of government without horror. From thinking proceeds speaking, thence to acting is often but a single step. But how irrevocable and tremendous!”

To the FRAMERS the fault was in the blindness of the revolutionary leaders to the true nature of humans.

George Washington:

“We have probably had too good an opinion of human nature in forming our confederation. We must take human nature as we find it.

Perfection falls not to the share of mortals.”

Benjamin Franklin: Most men indeed . . . think themselves in possession of all truths and that whatever other differ from them it is so far error.”

Alexander Hamilton “Men love power. Give all power to the many they will oppress the few. Give all power to the few, the will oppress the many.”

So, as the Framers gathered in Philadelphia, they faced the enormous task of both protecting

liberty and protecting against its excesses particularly the tyranny of majority factions.

They needed as Madison wrote to find a “republic remedy to the diseases most incident to Republican government.”

The remedies that the convention ultimately propose were

The freedom to demand that a particular view (debt reduction eg) become law would be protected by representation, particularly in the House of Representatives.

That the freedom from having one groups views, imposed on others, the tyranny of factions, would be protect through separating the legislature into two house, with difference means of election, and by the veto power.

And that states' rights would be protected by expressly limiting the power of Congress in the constitution.

Protecting individual rights from the federal government would come later as the bill of rights adopted in 1791.

And it was these remedies along with the promise of a bill of rights that were adopted after a very hard fought

ratification process that ended in 1788.

But from the Framers perspective the ratification of the Constitution was not a stopping point

They recognized that for the new democracy to survive and successfully address national issue, some level of cooperation among its diverse, factionalized citizenry was critically important.

George Washington described this as the foundational need for Americans: “to forget their local prejudices . . . to make mutual concessions which were

requisite to the general prosperity and . . . to sacrifice individual advantage to the interest of the Community.”

The Framers expressed this thought many times in many ways. The pithy preamble to the constitution explained that “we the people” wanted to “establish a more perfect union.”

But most expressly, in 1781 three of the lynch pins of the American Revolution, Adams, Franklin and Jefferson, sought to sum up the thinking in a motto. They came up

with three little words in Latin E
Pluribus Unum, From Many, One.
From mutual concession to general
prosperity. From individual
advantages to community

But the motto was not enough.
People needed to know it and
appreciate it. This idea needed to
become part of the new nation's
ethos. As one historian has written:
the Framers' idea was to "instill in
the consciousness" of the people of
the new nation the belief that "to
create a new society," required "an act
of solidarity," a "communal" effort to
forge from the many, one.

This is what my coauthor, Michael Oreskes and I have called the constitutional conscience in our book the Genius of America. Its values are among others a commitment to both e pluribus unum, and freedom for all.
HOWEVER GUDGINGLY

And like any the values instilled in our individual consciences these values must be taught and retaught
The Framers understood this that is why they insisted on the value of education.

Again Listen to their words:

Madison “A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.”

And Washington calling for education to focus on what he called the “the science of government.” :

“In a republic what species of knowledge can be equally important and what duty more pressing on its

legislature than to patronize a plan for communicating it to those who are to be the future guardians of the liberties of the country?” (8th Speech to Congress in 1796)

The idea was simple at least in in thought: once passion was blocked by the processes and institutions of government, reason, through education, would allow Americans to realize the need to join together to resolve their problems.

And it is with this in mind that we built our system of public education with promise of national literacy and

civic literacy, and as a result
community,.

“Every Child in America,” wrote Noah Webster one of the founding fathers of public education, “should be acquainted with his own country. . . .

A selection of essays respecting the settlement and geography of America, the history of the late revolution and most remarkable characters and events that distinguish it, and a compendium of the principles of the federal and provincial governments should be the principal schoolbook in the United States.”

This idea of the importance of civic education has been with us since then.

If Americans don't understand the Constitution and the institutions and processes through which we are governed, we cannot rationally participate in the political process nor can we preserve the national unity necessary to meaningfully confront the multiple problems we face today.

This view is supported by the empirical work of scholars Dell Carpini and Keeter

Which found that “Civic literacy provides meaningful understanding and support for a number of constitutional values, including compromise and tolerance, and promotes meaningful political participation.” And also observed that “a better-informed citizenry places important limitation on the ability of public officials, interest groups, and other elites to manipulate public opinion and act in ways contrary to the public interest.”

And of course this makes, if I may say, down to earth sense:

How asks Justice Sandra Day O' Connor ""are we going to have a knowledgeable, participatory population if we don't teach ever generation about what our system of government is? And her former colleague Justice David warns (think Franklin) the republic can be lost, it is being lost, it is lost, if it is not understood"

And Americans agree with this.

Poll after poll shows that they constantly long for what they perceive as a lost American community and acknowledge that

democracy requires citizens to be knowledgeable about the Constitution. In a poll of 1000 registered New Yorkers 86 percent of them agreed with this proposition.

And this is where I pick up again on the Franklin warring: “A republic if you can keep it.”

Despite this rhetorical commitment to a national community and civic literacy. Few would argue our government is working.

Well that is not quite true the anticipated obstructions to factionalism seem to be working fine,

but the commitment to a reasoned approach to national problems not so much.

For the most part stalemates have dominate each legislative session for at least the last twenty years and political tensions have run hot in america for almost last 45 years.

We are unable to address the problems that confront us, and when we are able to agree it seems that it seems only in response to crisis.

Occasional breakthroughs or moments of hope rapidly return to stalemate.

Everyone has something to blame. It's too much money in politics. Or too much ideology (or the wrong ideology). Or the partisan way congressional districts are drawn. Or the pathetically low levels of participation in elections.

And in once sense or another all of the above contribute to the problem.

But I'm sticking with the Framers.

Our problem is that we have abandoned both our commitment to national community (e pluribus Unum) and civic education.

The abandonment of e pluribus Unum started in the sixties and has degraded since then. It is the topic of something I am writing about now and is too long deeply explain in this time period.

Its symbolic moment came in 1956 as time of great American anxiety when congress unanimously rejected e pluribus unum as our national motto and adopted In God We Trust, which according to the accompanying congressional reports was

deemed a “superior and more acceptable motto for the United States.”

A real nose thumbing to Adams, Jefferson, and Franklin and the symbolic end to the American enlightenment and the needed spirit of self-government.

And this decline in national community has been accompanied by a decline in civic education.

According to one study:

“formal civic education today comprise only a single course on

government—compared to as many as three course in civics, democracy, and government that were common until the 1960s . . . [particularly] there has been a steep decline . . .away from civics and social studies in elementary grades. Partly because of this changing mix of course, schools are less likely than in the past offer opportunity for student to discuss current issues in class, which research shows is effective in developing civic knowledge and skills.”

And this desertion of public school’s core mission has been accelerated by in the words of Harvard’s Derek Bok

“a preoccupation with preparing the workforces for a global economy.”

No place is this more evident in New York.

Here despite a fundamental commitment to civic education by both law and regulation as fundamental we are part of a national movement to abandon our attention to it. We have given up our 4th and 8th grade social studies assessment tests because social studies are no longer used federally to determine if schools are performing adequately, either under state regulations or the federal

No Child Left Behind law.” No test no teaching has been the outcome as attempts to teach any civic before 11th or 12th grade has fallen by the wayside.

In fact in a focus group I conducted of a number of LI principals and superintendents they doubted they has the personnel who could teach civics related subjects or that they could find them.

as one education expert described the end of social studies testing: “it is the abandonment of history and any hope of civic literacy at all.”

And hope is the right word because NYers, like most Americans, know almost nothing about the US Constitution.

The survey I talked about earlier, as do multiple others, demonstrates this claim. Of the 1000 registered voters questioned only around 40 knew the name of New York's two senators, but much more importantly fewer than a third understood the goals of the Constitution was to strengthen the federal governments; nearly a third believed that Framers were seeking to create a christian nation as they drafted the constitution;

Fewer than 20% even knew anything about factionalism and the Constitution's attempt to tame it;

And a third thought the purpose of the Constitution was to strengthen the states;

Over 40% thought the framers believed the people would live together in freedom if the government did not interfere,

Only 5% understood the Constitution's commitment to block a tyranny of the majority

And the list goes on.

This in a word is pathetic. And then consider our low levels of political participation.

Let me end by describing a 1959 letter exchange between Robert Biggs, a former captain under General Eisenhower's European command and then President Eisenhower.

Worried that the confident America that they had fought for and created was slipping away, Biggs wrote: "We are in a particular time in the history of our country when the normal confidence and feeling of security are

easily shaken.” We need to be “wanted” as we “sometimes [feel] in “church” or “most of the time at home with our loved ones.”

Many politicians might have replied with a “thank you for your recent letter,” a note of sympathy, and, perhaps in this case, a word or two on the great victory they had achieved together 15 years earlier.

Not Eisenhower. His answer provided no such sympathy or camaraderie. Indeed, his response was warning about the true nature of Democracy

and the “taxing” burden it places on each citizen to preserve it.

Democracy is not like military command, Eisenhower wrote. Indeed, it is in many ways the opposite. Its strengths come not from higher authority but from the arduous work each citizen must undertake to understand complex issues and form his or her own views. Only “through being better informed” can the democracy be sustained. This quest for knowledge is, according to Eisenhower, “long and arduous,” but “vital to self-government and to our way of life as free men.” From these

free and informed minds writes Eisenhower “come new ideas, new adjustments to emerging problems, and tremendous vigor, vitality and progress.” And finally Eisenhower warns us that the taxing nature of democracy is what makes authoritarian government so attractive. Relief from such efforts is their promise. Under such regimes people can experience the “freedom from the necessity of informing themselves and making up their own minds concerning these tremendous complex and difficulty questions.”

I think we are heading quickly in that direction. Already some serious scholars are labelling us an oligarchy.

We are without a real sense of national community and without civic education;

If I could act alone My remedies are clear:

Mandatory national service

A drafted military

Mandatory voting

Mandatory meaningful civic education

And perhaps a better understanding of the dynamic by which big government even good big government undermines are desire to participate.

But I cannot act alone, change is up to all of us

As Franklin said: A republic if you can keep it.