

# Is the US Constitution Still Valid?

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I recently participated in a discussion board where an individual stated that the US Constitution is a “deeply flawed document masquerading as a 'contract' or 'compact' which describes a possibly workable, but by no stretch of the imagination consensual government.” This is not the first time that the idea of the US Constitution as a failed contract has come up. Libertarian blogs have been discussing it for years. Rather more recently, however some mainstream liberal and conservative groups have been ‘nibbling around the edges’ of this very same idea. So has our hallowed Constitution failed us? Is it a failed document and idea? Should we scrap it and look for some new compact between the People and the Government? As Congressman Ron Paul—a ‘back to the Constitution’ candidate if there ever was one—is now a viable candidate in the 2008 Presidential race, it seems a good time to look more closely at the issue.

Simply put, the Constitution is not a failed document. If anything it did not fail *us*; we failed *it*. Over time, we have allowed the safeguards that our Founding Fathers built into the Constitution to be abrogated, annulled, or ignored by our government. The founders recognized the sovereignty of the people. The people were to be the ultimate enforcers of the strict limits that were placed on government. As Jefferson said when discussing the impropriety of judicial interpretation of Constitutional questions:

*“I know of no safe depository of the ultimate powers of the society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion by education. This is the true corrective of abuses of constitutional power.”*  
(*The Writings Of Thomas Jefferson*, By Thomas Jefferson, Thomas Jefferson Memorial Association of the United States, Washington, DC, 1902, page 278: letter to William Charles Jarvis, Monticello, September 28, 1820.

<http://books.google.com/books?id=SRoxygL334cC&pg=PA278&vq=safe+depository+of+the+ultimate+powers+of+society&dq=safe+depository+of+the+ultimate+powers+of+society>)

The structures the Founders established in the US Constitution were designed to create and reinforce internal and external competition and balances of power, with the intent of ultimately reducing the threat of government tyranny. The founders recognized that some tasks were best accomplished by government, but with the concomitant danger of accumulation of power in a single group. The State Governments balance the Federal Government balance the people. Within the Federal Government, they balanced the Executive against the Legislative against the Judicial branches. These two groups of three: the People, the State Governments, the Federal Government, and, the Legislative, Executive, Judicial branches, were intended to diffuse the concentration of political power in any one group while still allowing efficiency. As Jefferson put it:

*“No, my friend, the way to have good and safe government, is not to trust it all to one, but to divide it among the many, distributing to every one exactly the functions he is competent to. Let the national government be entrusted with the defence of the nation, and its foreign and federal relations; the State governments with the civil rights, laws, police, and administration of what concerns the State generally; the counties with the local concerns of the counties, and each ward direct the interests within itself. It is by dividing and subdividing these republics from the great national one down through all its subordinations, until it ends in the administration of every man's farm by himself; by placing under every one what his own eye may superintend, that all will be done for the best. What has destroyed liberty and the rights of man in every government which has ever existed under the sun? The generalizing and concentrating all cares and powers into one body, no matter whether of the autocrats of Russia or France, or of the aristocrats of a Venetian senate.”* (Letters, Jefferson, Thomas, 1743-1826, Merrill D. Peterson, Literary Classics of the United States, New York, 1984, page 1380: letter regarding THE WARD SYSTEM, To Joseph C. Cabell. Monticello, February 2, 1816. <http://etext.lib.virginia.edu/etcbin/ot2www-singleauthor?specfile=/web/data/jefferson/texts/jefall.o2w&act=text&offset=6814271&xtreg=1&query=the+civil+rights,+laws,+police,+and+administration> )

The founders also ensured the people had the means to enforce their ultimate sovereignty over government via the 2<sup>nd</sup> Amendment:

*“What country before ever existed a century & half without a rebellion? & what country can preserve it's liberties if their rulers are not warned from time to time that their people preserve the spirit of resistance? Let them take arms. The remedy is to set them right as to facts, pardon & pacify them. What signify a few lives lost in a century or two? The tree of liberty must be refreshed from time to time with the blood of patriots & tyrants. It is it's natural manure.”* (The Writings of Thomas Jefferson, Henry A. Washington, ed, 1853-54, 911: letter regarding THE NEW CONSTITUTION, To William S. Smith. Paris, November 13, 1787. <http://etext.lib.virginia.edu/etcbin/ot2www-singleauthor?specfile=/web/data/jefferson/texts/jefall.o2w&act=text&offset=5674450&xtreg=1&query=Blood+of+Patriots> )

If all else fails, the people are empowered to rebel to protect their liberty and enforce their will on an overweening government. According to Jefferson, this was the only effective means of controlling government. The Constitution provided the people with the tools to effectively balance the Federal and State Governments. The people were expected to play the dominant role by reining in excessive concentrations of power in the State and Federal Governments.

The internal and external balances fundamental to the success of the Constitution have been severely damaged. The 14<sup>th</sup> and 17<sup>th</sup> Amendments eviscerated the powers of the States to function as a counterweight to the Federal Government. The Civil War even removed the right of the people and the States to secede from association with the Federal Government. As a result, power was shifted away from the States and the

people to the Federal Government. Within the Federal Government, the careful balance established by the division of powers between the Legislative, Executive and Judicial branches has been gradually defused amongst all three. The Judiciary and Executive branched now make policy with the force of law. The Judiciary interprets all constitutional questions and applies them to the other branches, the States and the people. The careful balances crafted by the founders have been systematically disassembled, and the associated political power has been shifted further and further to Washington, DC. We the people allowed it, and in some cases actively aided and abetted this shift.

All is not lost, however. There is still time to reestablish the Constitutional balances. The recent defeat of the Immigration Bill provides two lessons: One, we can still get our Representatives to execute our will if we unite and bludgeon them into it. Two, we are nearly to the point where we are in danger of becoming the subjects of a new populist regency. We will have an elected dictatorship of those who pander most to our shortsighted avarice. The people will be left with little more than the ability to elect their choice of dictators. We are not at that point just yet, as our Representatives in the end, bowed to the will of the people. The fact that they nearly did not should serve as a clear warning of how close we are to a complete loss of our power to control the Federal Government.

A recent email exchange I had with a Congressional Aide demonstrates this point. We were discussing the need to rescue Social Security. I had been providing studies and other background materials so that the aide could intelligently brief the Congressman. One statement that the aide made in passing struck me: "Congress is going to have to make some tough decisions shortly. The earlier they tackle the solvency issue, the less painful it will be." Notice that 'Congress' is going to have to make some tough decisions; not the American people. This should serve as a clear indication that we are nearing a point at which the Federal Government will be completely unrestrained by the people.

The Constitution is not a failed document. If there are flaws, the Constitution itself provides for changes. The Founding Fathers were well aware that it was not a perfect document, and so included in Article V two means of modification: Congressional proposals of amendment, and a Constitutional Convention called by the State legislatures. We have seen some of the flaws, such as no clear statements on the right of secession, the limits on judicial interpretation, and the right of the people to adjudge the justice of the law itself, not only the guilt or innocence of the accused. That the Constitution provided a means to fix these types of oversights demonstrates its continued viability.

Erroneously faulting the Constitution for our improper use is equivalent to blaming the handgun for the crimes of a murderer. Our misuse of the tools the Constitution provided has caused a systems failure, however. If we uphold our responsibilities as envisioned by the Constitution, return the power to the States in line with the Constitution, and enforce the division of power within the Federal Government as was intended, we can

correct the systems failure and re-invigorate our Constitutional Republic. With the people firmly back at the helm, just as the Constitution intended.