

Jewel Gilbert

Age: 22

Junior

Muhlenberg College

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.... Wait wrong founding document.

We the People of the United States, in Order to form a more perfect Union, establish Justice..... That is the right document but the wrong part...

While the Declaration of Independence and Preamble of the Constitution give us the soul of our government, the soul of our nation, and the context through which to understand it, it is actually in some less quoted areas that we find the system with which to implement these truths. So, speaking of that system, is it still working?

There is a loaded question!

First I want to say that our Founders did something that is very interesting. They drafted a document that stated **what** our federal government could do, and if it was not deemed a granted power that meant the federal government did not have the right to do it. In 8,000 words the totality of our governmental system was laid out...8,000 words is all it took? How? How can the most powerful and wealthiest nation to ever touch the planet be guided by such a relatively small document?

Looks like it is time to read the Articles of The Constitution of the United States of America and decide if they are still working today.

The Articles are the enumeration of every action our Framers saw fit for government to enact...are they working? What does it mean to *work*? I'll define it as this: Are they accomplishing what they set out to accomplish? Are they protecting our freedom in a way that is building the capacity of the American citizen to pursue happiness? More simply stated; are they helping us or hurting us....or worse, are they irrelevant. In the analysis I'll go through each one of the articles before wrapping it up into my conclusion. Hold on for the ride!

Article 1: Legislature: This sets up our main source of governance as

Jewel Gilbert
Age: 22
Junior
Muhlenberg College

here is where laws are made. This first article builds the House of Representatives and the Senate. Our bicameral Congress steals the best from history and aims to improve on the previous British parliamentary style. Congress is granted the power to write and pass legislation on to the Executive Branch to enact.

Write laws, declare war, coin money, impeach the president, create the post office and post roads, punish the impeached, maintain a military: these are some of the powers that lie within the House of Representatives and the Senate. One of the most important things that we must remember is Congress has COMPLETE power of the federal purse. Nothing happens federally without THEIR funding...directly or indirectly.

Article 1 does contain the single most polarizing clause among any founding document: the $\frac{3}{5}$ Compromise. Without even knowing where it is written let alone knowing its context as a clause in Article 1, men and women tout this single phrase as the piece de resistance of America's inherent racism. This clause Constitutionally recognized blacks as $\frac{3}{5}$ of a person!!! What!!! How can we pretend our Founders believed in inherent supremacy of the self-evident truth that all men are created equal? (only 'If you are white in America.')

We need to pull this back a bit, this banner being flown may be grossly misunderstood.

This analysis is layered in error you see, the actual verbiage is:

“Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons...”

It did NOT ever mention Blacks specifically, nor did it claim that those in servitude were $\frac{3}{5}$ of a person but that their representation was counting as

Jewel Gilbert

Age: 22

Junior

Muhlenberg College

3/5 to the whole of a free person. And remember, there were even some white slaves too, but that's a whole other story. Free Blacks were counted in population in full. And the 3/5 clause was a compromise and a tool of the North used to prevent slave states from having too much representative power over the free states. If they were permitted to fully count their slaves toward their population, the slave states would have had a disproportionate number of men in the House of Representatives thereby giving slave states unbalanced power over free states.

The rest of Article I will address as in relation to the separation of powers and we have a BIG topic left in the commerce clause. We will get there but we some more articles to get through first.

So with the sampling thus far, can we decide whether the first article is guilty or not guilty; does this Article work to protect our freedom? An emphatic yes! We see the people of each state represented and we see a process of power that restricts action as much as possible while allowing government to meet needs and emergencies as necessary. We will look at this again.

Article 2 Executive

The President is NOT a legislator. At least he wasn't meant to be so far as this section of our founding documents are concerned. The President's power is meant to be used as an executive captain of the ship whose course is set. He is meant to keep her heading - not make a new one, nor issue memos to the crew about leaving their sinks running too long or what food choices they make in the lunchroom.

The President is the Commander-in-Chief of the military and the signature that must go on every Bill passed before it becomes law. The president has the power to veto bills seen as unconstitutional or otherwise unjustified, and in such cases the Congress must revote with the majority necessary to override the presidential veto.

Overall, the way the Executive branch was crafted has been effective at

Jewel Gilbert

Age: 22

Junior

Muhlenberg College

maintaining our freedom. It was not designed as an island separate from the judgement of our other branches or so heavily weighted so as to top the balance of power. In reality, as a Head of a Nation the Constitution creates a relatively weak Head of State. Now, what if the President violates that very Constitution? We will get to that, after our 3rd Article: The Judiciary.

The Judiciary's duty was never to legislate or to write new laws with its own interpretations but to decide on the Constitutional lawfulness in cases brought forward. This article brings forth an interesting body of the law. The highest court in the United States is called the Supreme Court and made up of 9 Justices appointed to lifelong terms by the POTUS and approved by Congress. The rulings of this court define how the Constitution is applied across the entire country and have been some of the most aggressive single acts of change in our history. The courts are our unelected body which has made Patriots weary since 1776. That caution was well laid, as the judiciary's radical overstepping in legislative interpretation came long ago.

While our court system is flawed and has too often allowed the freedom of individuals to be stolen or encroached upon....it has done far more to protect the freedom than to take it. This is evidenced in the way we as Americans live our daily lives – how we work, worship, raise our children, etc.

And now we completed the *very brief* overview of our 3 branches of government. Now article 4 changes the everything. We were Constitutionally designed as a union of independent states.

Article 4: The States

Our states actually predate this Union, and it is beneficial for us to see them like that because that is the reality the Founders framed this government in. The states independently decided to form our Union. Article 4 defines how these States are to interact with each other and is the clearest example of the benefit of the Constitution over the Articles of Confederation. Under the Articles of Confederation, the states were cheating each other, had different currency, were blocking trade and

Jewel Gilbert

Age: 22

Junior

Muhlenberg College

placing tariffs, and there was lawlessness across state lines. Now Article 4 ended this, with certain clauses such as “full faith and credit” meaning basically that a citizen of one state had all the rights of a citizen of another state while in that state. We also see the clause of extradition of fugitives back to the state in which the crime was committed.

This article makes this country incredible and gives every citizen his voice of Representation to defend his freedom. The states are guaranteed to have Republican forms of government, and the federal government is bound to protect them against foreign powers.

Now, there are some ugly cases in Article 4 like the extradition clause was extended to runaway slaves. Something that definitely needed changes... Which that brings us perfectly to Article 5, the amendment process.

Article 5, the Constitutional Amendment Processes.

The Founders knew there were things that the Constitution was not going to be able to meet at the time it was written; and therefore, wrote in language that would allow America to grow to become a more perfect Union. They set forward a comprehensive way to amend the Constitution. Amendments can be made in the Congress with a large majority vote or at a time when deemed necessary, the states can call a Constitutional Convention to address changing the document.

Article 6: Honestly 6 is a bit anticlimactic but nonetheless important and deals with the supremacy of Federal law over the States. Functionally, it seems obvious that this is necessary because if Federal law was not supreme the Constitution would be relatively meaningless as any state could pass measures to contradict it.

We must remember that every single power given to the federal government is a wrestling match between the fundamental ideology that most of our Founders had and the elements required to form a Union. They saw government as a necessary evil that must be ultimately limited as far as it can still serve its Constitutional purpose.

Jewel Gilbert
Age: 22
Junior
Muhlenberg College

We in modern history see cohesion of states and federal government almost to a fault this article has certainly served its purpose in keeping this Union one.

Article 7 Ratification.

Well this is a fitting finish - the ratification of the document which enshrined this nation's infamy in all of human existence. The founding states called Constitutional Conventions to vote on ratifying. Instead of the unanimous 13 states as the Articles of Confederation needed for ratification, this article set 9 as the ratifying number. Though all 13 states eventually did vote to ratify.

We have laid out our Articles and how they are designed to issue the rights of governmental action in a way that protects our freedoms. These Articles are not complete without one another and individually do not do much or mean much. It is in their wholeness that this becomes a freedom document. If you pull each Article apart it is easily misconstrued as totalitarian.

The United States Constitution is not meant to be read to find what is explicitly prohibited and find language to justify all other action. What happens if say a branch begins to do just that? The separation of powers is the system by which we remain free. We have discussed each Article and we should recognize the boundaries and limits placed on each branch. These are not arbitrary but carefully crafted. Our Founders saw the government as an entity that must constantly fight itself **so that as much as it tries to expand it collapses**. 'Gridlock' as we call, it was the process for making sure government did not act out of turn. Thomas Jefferson even clamored for a 12-month period from the time a bill is presented to the time it can be voted on, and that it had to be voted on as written originally or else the 12-month period began over again.

This served a few purposes but mainly for the people to be educated on governmental action and have time to be heard. The Government decided to forego this principle which we can see blatantly in bills like the Patriot Act and Affordable Healthcare Act. A politician actually stated that we have to

Jewel Gilbert

Age: 22

Junior

Muhlenberg College

pass the bill before we can find out what is in it.

Now the system of checks and balances means that either the Courts or Executive Branch should protect us when Congress acts unconstitutionally or not in the interest of the electorate, UNLESS those branches are also pushing for the same end results. The Founders bargained that our natural inclination for power 'libidum dominium' would mean that the branches of government may move into individual totalitarian acts in the interest of their own power, yet transgressions would be checked by other branches of government in the interest of retaining that same power and the vicious cycle would go on.

I am going to return into the language of the document now to illustrate how this should work.

The Commerce Clause

The Commerce Clause is cited liberally to justify nearly every action of Congress. Yet, it simply reads: "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.." It was written because prior to the United States of America, our Union had a serious issue with the relationship between the states. And, import states had a clear advantage over non-import states. Easily we can imagine the chaos of interstate squabbles and the inefficient economy of a nation without certain safeguards including that of safeguarding against crippling interstate tariffs. That regulation power, among powers in Article 6, created one nation without warring states...at least it was meant to. This has been abused and manipulated so far beyond reason it is a proper case study for the entire abuse of the government. No clause has been tried upon more, with over 1,400 cases.

Franklin Delano Roosevelt burnt up the envelope that was already pushed open during New Deal measures when he squeezed Congress for legislation that clearly overstepped Federal power and then threatened to replace Supreme Court justices if they did not comply. Congress passed the Agricultural Adjustment Act of 1938. The purpose was to regulate how much wheat hits the market and issue penalties for violation. Now, in one case, a farmer was fined for producing 12 acres over the limit. BUT, none

Jewel Gilbert

Age: 22

Junior

Muhlenberg College

of his wheat was hitting the market yet Congress still wanted to fine him for producing over the market limit. This was brought before the Supreme Court in *Wickard vs. Filburn*, and it the decision was justified in an absolutely frightening way. This farmer did not sell his wheat and used it entirely for his own family from consumption to cow feed. The fine was upheld and the decision made known that since the farmer did not *purchase* wheat he was therefore affecting interstate commerce and Congress then has the right to regulate it.

Since that case, Congress justified nearly any act under the guise of interstate regulation. If you can link any action to having effect on interstate commerce then the government can regulate it in their eyes. Even no action at all can be regulated as with enough degrees of separation we can meet so-called 'interstate commerce.' This clause was even stretched by Congress to try include gun free school zones, yard sales, and Amish raw milk.

Then Article one failed at protecting our freedom didn't it? I want to say that it, Article 1, did not fail. In our Founders' eyes something else did. The President of the United States takes an oath to uphold the Constitution. To pretend the Founders could have ever justified this commerce clause being applied as it has is ludicrous, not simply as a matter of interpretation but worse, we do not have to interpret it because we have the words of our founders in the drafting and ratification debates and thereafter. Quotes of a main Constitutional author James Madison reading "The powers delegated by the proposed Constitution to the federal government are few and defined." This was the general consensus from even the fiercely opposed Founders, that the Constitution defined powers and did not grant sweeping abuses of power.

Our Presidents have seemed to forgotten that oath - with the face of the re-foundry being FDR and Woodrow Wilson. Opposing political parties, yet joined in one belief. They believed that the Constitution was to be read as giving them all power not strictly prohibited by it, and they have created the current post-constitutional government America.

The Supreme Court has not checked Constitutional violations, but

Jewel Gilbert

Age: 22

Junior

Muhlenberg College

enabled them. Essentially the court has written their own legislation when the people never had a voice as 9 unelected officials can never represent the interests of 300 million Americans. Evidence is seen in the commerce clause cases, Roe v. Wade, aspects of the Affordable Healthcare Act, the removal of theistic founding customs from public forums. The people did not vote, the people were not heard. Even if I agree with the outcome in any of those cases, the power is not in the court to have that arm. There is little recourse and the areas of precedence become so muddled that the Court can barely pretend to be consistent.

Honestly, the Supreme Court has an ugly track record of dishonest and corrupt justices, but it was never meant to be handed such a loud delegating voice and only the transgressions of the two other branches allowed that.

So did I just say that Articles 1 and 2 and 3 failed?

Because that all did not sound too good. It is true our politicians failed comprehensively, but I will not say yet the Articles yet failed, because we cannot view them in a vacuum. They were meant to be used as a whole, and a massive chunk of the that whole is Article 4. Without the states we are not America, without the breakup of a single central governmental power which divided local and central power we miss the key to our founding.

The United States of America was never created as a monolithic or majority rules democratic society. The states lay claim to a great deal of responsibility in our governance. They were to have the beginnings of a relationship with the individual that the federal government was not ever meant to have.

The powers delegated by the proposed Constitution to the federal government are few and defined. Those which remain to the State governments are numerous and indefinite.”

-James Madison, Father of the U.S. Constitution 1788.

There is the end to the quote I read a little while ago.

Jewel Gilbert
Age: 22
Junior
Muhlenberg College

The states' rights and the refusal to allow them to be stripped away has to be seen in 2 eras for this essay: Pre/Post Civil War Era and the modern era. This topic is interesting because it took an absolute forfeiting of states' rights to end America's original sin of slavery. But I do not see the Civil War as a states' rights issue, for the truth is that slavery was never permissible under the founding principles and was set on a collision course from the day of the signing of the Declaration. Whether our founders recognized that or not, what they set forth was violently anti-slavery and those ideas fueled some bravest acts from a generation called to meet the task of eradicating slavery. This was the abolitionist movement of writers and underground railroad stops. Amidst the disgusting truth of our nation's evil was the beauty of its goodness in the *accurate* representation of our founding principles.

Now this brings us to the modern era.

The state governments do little to put a definitive end to the overreach of the government. Being bullied by the commerce clause, Supreme Court decisions, it has been time to rise up - but among the Patriots' will were too many eating from the Federal trough, and in that comfort sit fatly content to forget their rights and duties.

The method to which makes this country possible at last is in Article 5, the Amendment Article.

If this was not in place I would say the Constitution failed monstrously at protecting freedom since, well, we needed amendments to end slavery and give women the right to vote. You see though, this process alone shows the founders' thinking. For these amendments never conflict with the founders' principles, and generally could be justified in the Constitutional language, yet instead, to make it loud and clear and allow the power to be freely given by the people to the government to enforce these truths, they were set forth in clear amendments.

The option when the federal government truly ignores the supremacy of the individual and becomes tyrannical in its blindness to Constitutional restrictions, is for the state governments to call a Constitutional Convention to set things right. While we have had energy surrounding this possibility it

Jewel Gilbert
Age: 22
Junior
Muhlenberg College

still has not yet become reality.

We made it! We have gone through the Articles, we have talked about the easy things and the hard things, but now it is time to put this all in context. It is time to really see the question we are asking and attack it.

Are the Articles of the Constitution protecting our freedom or not? Well what I laid out **seems** to affirm the negative. The house of cards collapsed, and the government is only limited by its desire to remain in power at the election box. That can be seen as true, but that is because the house of cards was never built on the Constitution or the Articles. The Articles and this entire house of cards was built on THE PEOPLE. The articles never failed, the people failed to hold our government to them.

“Thomas Jefferson and Alexander Hamilton rarely agreed on principles of government, but they did agree that when the public treasury becomes a public trough and the people recognize that, the people will send to the federal government only those that will bring home the biggest piece of the federal pie,” Judge Andrew Napolitano

“Our Constitution was made only for a moral and religious people. It is wholly inadequate to the governance of any other,” John Adams.

“Only a virtuous people are capable of freedom. As a nation becomes corrupt, ambitious, they have more need of masters,” Benjamin Franklin.

The Articles helped us stand where we are today. And you would have to be blind not to recognize that we are some of the luckiest humans ever to have existed at a time when life is so much easier than it has even been, so much longer, healthier, and can be so much more free. We have almost everything, yet we have allowed our comfort to make us apathetic. What tyranny gives as comfort, freedom gives as fulfillment and meaning. The positive to all of this is that the tools are still at our fingertips to right this ship. All within the Constitution. It will not be easy, but these Articles helped to free people, create a times of incomparable prosperity, and they can help us return to a culture of unbridled passion for life, liberty, and the pursuit of happiness.

Jewel Gilbert
Age: 22
Junior
Muhlenberg College