We have an obligation to protect victims. We also have an obligation to protect the Constitution of the United States.

For those reasons, with all due respect to my colleagues whom I highly respect and have a great regard for—I have worked with my colleague from California on numerous issues, and with my colleague from Arizona, not as many, but I have a high regard for him, for his abilities, and for his contribution to the Senate—I urge them to take the language they proposed, and let's work with it. Let's see if we can't draft a statute that would allow us to address the legitimate concerns of victims. Write it into the ordinances of our land. Test it in the courts, if you will, but do not tamper at this juncture with the Constitution of the United States.

I see the arrival of my good friend whom I just referred to by thanking him publicly for giving me my copy of the Constitution, which I carry with me.

I yield the floor.

Mr. LEAHY. Mr. President, earlier I put into the RECORD the letter that I was honored to sign with the distinguished Senator from West Virginia explaining why we should not go forward with this amendment to the Constitution.

Let me say one last thing on this. Ours is a powerful Constitution. It is inspiring because of what it allows. It is inspiring because it protects the liberty of all of us.

Think of the responsibility the 100 of us here have. Let us be good stewards. Let's keep for our children and our children's children the Constitution with protections as well considered as those bequeathed to us by the founders, the patriots, and the hard-working Americans who preceded us. Work together to improve crime victims' rights in legislation. Let the States do the same. But let us remember that the 100 of us are the ones who must reserve constitutional amendments for those matters for which there are no other alternatives available, and this is not such a matter.

I yield the floor.

ORDER OF PROCEDURE

Mr. KYL. Mr. President, on behalf of the majority leader, I ask consent that when the Senate receives the veto message to accompany the nuclear waste bill, it be considered as read by the clerk and spread in full upon the Journal and then temporarily laid aside, with no call for the regular order returning the veto message as the pending business in order.

I further ask consent that at 9:30 a.m. on Tuesday, May 2, the Senate proceed to the veto message and there be 90 minutes under the control of Senator MURKOWSKI and 90 minutes under the control of Senators REID and BRYAN.

I further ask consent that the Senate stand in recess for the weekly party conferences between the hours of 12:30 and 2:15 p.m. on Tuesday, May 2, 2000.

I further ask consent that at 2:15 p.m. on Tuesday, there be an additional 30 minutes under the control of Senators REID and BRYAN and 30 minutes under the control of Senator MURKOWSKI and at 3:15 p.m. the Senate proceed to vote on the question ''Shall the bill pass, the objections of the President to the contrary notwithstanding?'' all without any intervening action.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Chair notes for the record the receipt by the Senate of the President's veto message on S. 1287, which, under the previous order, shall be considered as read and spread in full upon the Journal and shall be laid aside until 9:30 a.m. on Tuesday, May 2, 2000.

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES TO PROTECT THE RIGHTS OF CRIME VICTIMS—Motion to Proceed—Continued

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I ask unanimous consent to yield my time to the distinguished senior Senator from West Virginia.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from West Virginia.

Mr. BYRD. Mr. President, I have listened to the comments by my colleagues, those who are proponents of the proposed constitutional amendment before the Senate, and I have listened to the comments of many of my colleagues who have spoken in opposition to the proposed amendment. I compliment both sides on the debate. I think it is an enlightening debate.

I will have more to say if the motion to proceed is agreed to.

In view of the statements that have been made by several of those who are opposed to the amendment—the Senator from New York (Mr. SCHUMER), the Senator from Illinois (Mr. DURBIN), and the Senator from Connecticut (Mr. DODD), and others, they have cogently and succinctly expressed my sentiments in opposition to the amendment.

I congratulate the Senator from Vermont, Mr. LEAHY, on his statements in opposition thereto, as well as the leadership he has demonstrated not only on this proposed constitutional amendment but also in reference to other constitutional amendments before the Senate in recent days and in years past. He is a dedicated Senator in every respect. He certainly is dedicated to this Federal Constitution and very ably defends the Constitution.

I do not say that our Constitution is static. John Marshall said it was a Constitution that was meant for the ages. I will go into that more deeply later. At a later date, I will address this particular amendment.

But having been a Member of the Congress now going on 48 years, I may not be an expert on the Constitution, but I have become an expert observer of what is happening in this Congress and its predecessor Congresses, and an observer of what is happening by way of the Constitution. I consider myself to be as much an expert in that regard as anybody living because I have been around longer than most people. I have now been a Member of Congress, including both Houses, longer than any other Member of the 535 Members of Congress today.

I must say that I am very concerned about the cavalierness which I have observed with respect to the offering of constitutional amendments. There seems to be a cavalier spirit abroad which seems to say that if it is good politically, if it sounds good politically, if it looks good politically, if it will get votes, let's introduce an amendment to the Constitution. I am not saying that with respect to proponents of this amendment, but, in my own judgment, I have seen a lot of that going on.

I don't think there is, generally speaking, a clear understanding and appreciation of American constitutionalism. I don't think there is an understanding of where the roots of this Constitution go. I don't think there is an appreciation for the fact that the roots of this Constitution go 1,000 years or more back into antiquity. I do not address this proposed constitutional amendment as something that is necessary, nor do I address this, the Constitution today, as something that just goes back to the year 1787, 212 years ago.

The Constitution was written by men who had ample experience, who benefited by their experience as former Governors, as former members of their State legislatures, as former members of the colonial legislatures which preceded the State legislatures, as former Members of the Continental Congress which began in 1794, as Members of the Congress under the Articles of Confederation which became effective in 1781. Some of the members of the convention came from England, from Scotland, from Ireland. Alexander Hamilton was born in the West Indies. These men were very well acquainted with the experiences of the colonialists. They were very much aware of the weaknesses, the flaws in the Articles of Confederation. They understood the State constitutions. Most of the 13 State constitutions were written in the years 1776 and 1777. Many of the men who sat in the Constitutional Convention of 1787 had helped to create those State constitutions of 1776 and 1777 and subsequent thereto. Many of them had experience on the bench. They had experiences in dealing with Great Britain during and prior to the American Revolution. Some of them had fought in Gen. George Washington's polyglot, motley army. These men came with great experience. Franklin was 81 years

old. Hamilton was 30. The tall man with the peg leg, Gouverneur Morris, was 35. Madison was 36. They were young in years, but they had tremendous experience back of those years.

So the Constitution carries with it the lessons of the experiences of the men who wrote it. They were steeped in the classics. They were steeped in ancient history. They knew about Polybius. They knew how he wrote about mixed government. They knew what Herodotus had to say about mixed government. They knew what other great Greek and Roman authors of history had learned by experience, centuries before the 18th century. They knew about the oppression of tyrannical English monarchs. They knew the importance of the English Constitution, of the Magna Carta, of the English Bill of Rights in 1689. They knew about the English Petition of Right in 1628. All of these were parts of the English Constitution, an unwritten Constitution except for those documents, some of which I have named—the Petition of Right, the Magna Carta, the decisions of English courts, and English statutes.

So to stand here and say, in essence, that the Constitution reflects the viewpoints of the men who wrote that Constitution in 1787, or only reflects the views of our American predecessors of 1789, or those who ratified the Constitution in 1790 or in 1791, is only a partial truth. The roots of this Constitution—a copy of which I hold in my hand—go back 1,000 years, long before 1787, long before 1791 when the first 10 amendments which constitute the American Bill of Rights were ratified. That was only a milestone along the way—1787, 1791. These were mere milestones along the way to the real truths, the real values that are in this Constitution, a copy of which I hold in my hand. Those are only milestones along the way, far beyond 1787, far beyond 1776 or 1775 or 1774. Why was that revolution fought? Why did our forbears take stand there on the field of Lexington, on April 19, and shed their blood? Why was that revolution fought? It was fought on behalf of liberty. That is what this Constitution is all about—liberty, the rights of a free people, the liberties of a free people. Liberty, freedom from oppression, freedom from oppressive government, that is why they shed their blood at Lexington and at Bunker Hill and at Kings Mountain and at Valley Forge, down through the decades and the centuries. The blood of Englishmen was spilled centuries earlier in the interests of liberty, in the interests of freedom: Freedom of the press, freedom to speak, freedom to stand on their feet in Parliament and speak out against the King, freedom from the oppression of the heavy hand of government. That is what that Constitution is about.

There are those who think that the Constitution sprang from the great minds of those 39 men who signed the Constitution at the Convention, of the 55 who attended the meetings of the Convention—some believe that it sprang from their minds right on the spot. Some believe that it came, like manna from Heaven, fell into their arms. It sprang like Minerva from the brain of Jove. That is what they think.

No, I say a miracle happened at Philadelphia, but that was not the miracle. The miracle that occurred at Philadelphia was the miracle that these minds of illustrious men gathered at a given point in time, at Philadelphia, and over a period of 116 days wrote this Constitution. It could not have happened 5 years earlier because they were not ready for it. Their experiences of living under the Articles of Confederation had not yet ripened to a point where they were ready to accept the fact that there had to be a new government, a new constitution written. And it could not have happened 5 years later because the violence that they saw in France, as the guillotine claimed life after life after life, had not yet happened. Some 5 years later, they would have seen that violence of the French Revolution, and they would have recoiled in horror from it.

The writing of this Constitution happened at the right time, at the right place, and it was written by the right men. That was the miracle of Philadelphia.

Here we are today talking about amending it, this great document, the greatest document of its kind that was ever written in the history of the world. There is nothing to compare it with, by way of man-made documents. Who would attempt to amend the Ten Commandments that were handed down to Moses? Not I. Yet, we, little pygmies on this great stage, before the world, would attempt to pit our talents and our wisdom against the talents and wisdom, the experience and the viewpoints of men such as George Washington, James Madison, Alexander Hamilton, Gouverneur Morris, Benjamin Franklin, John Dickenson, James Wilson, Roger Sherman? In article V of this Constitution, they had the foresight to write the standard. If we want to find the standard for this Constitutional amendment, or any other Constitutional amendment here is the standard in the Constitution itself.

> The Congress, whenever two-thirds of both Houses shall deem it necessary—

The Congress, whenever two thirds of both Houses shall deem it necessary—

> shall propose Amendments. . . .

I don't say that the Constitution is static. I don't say it never should be amended. I would vote for a constitutional amendment if I deemed it ''necessary.'' Certainly, I do not see this proposed amendment as necessary, but I will have more to say about that later.

I don't say that the Constitution is perfect. I do say that there is no other comparable document in the world that has ever been created by man. And when that Constitution uses the word ''necessary,'' it means ''necessary,'' because no word in that Constitution was just put into that document as a place filler.

I do think this is a time that I might speak a little about the constitutionalism behind the American Constitution. I think it might be well for anyone who might be patient enough or interested enough, to hear what I am going to say, because I don't think enough people understand the Constitution. I am sure they don't understand the roots of the Constitution. They don't understand American constitutionalism. It is a unique constitutionalism, the American constitutionalism. I don't think most people understand it.

In response to a recent nationwide poll, 91 percent of the respondents agreed with this statement: ''The U.S. Constitution is important to me.''

Mr. President, 91 percent of the respondents agreed to that: ''The U.S. Constitution is important to me.'' Yet only 19 percent of the people polled knew that the Constitution was written in 1787; only 66 percent recognized the first 10 amendments to the Constitution as the Bill of Rights—only 66 percent. Only 58 percent answered correctly that there were three branches of the Federal Government; 17 percent were able to recall that freedom of assembly is guaranteed by the first amendment to the Constitution—17 percent, 17 percent. Yet you see them out here all the time, on the Capitol steps, assembling, petitioning the Government for a redress of what they conceive to be grievances. They know they have that right, but only 17 percent were able to recall that freedom of assembly is guaranteed by the first amendment to the Constitution.

Only 7 percent remembered that the Constitution was written at the Constitutional Convention; 85 percent believed that the Constitution stated that ''All men are created equal''—or failed to answer the question; and only 58 percent agreed that the following statement is false: ''The Constitution states that the first language of the U.S. is English.''

The American people love the Constitution. They believe the Constitution is good for them collectively and individually, but they do not understand much about it. And the same can be said with respect to constitutionalism. The same can be said with respect to the Members of Congress; that means both Houses. Not a huge number, I would wager, of the Members of the Congress of both Houses know a great deal about the Constitution. How many of them have ever read it twice?

Each of us takes an oath to support and defend the Constitution of the United States every time we are elected or reelected. We stand right up at that desk with our hand on the Bible—at least that is the image people have of us—and we swear in the presence of men and Almighty God to support and defend that Constitution. How many of us have read it twice? How many of us

really know what is in that Constitution? And yet we will suggest amendments to it.

With 91 percent of the people polled agreeing that the U.S. Constitution is important to themselves, it is a sad commentary that this national poll would reveal that so many of these same Americans are so hugely ignorant of their Constitution and of the American history that is relevant thereto.

Let us think together for a little while about this marvelous Constitution, its roots and origins and, in essence, the genesis of American constitutionalism—a subject about which volumes have been written and will continue to be written. It is with temerity that I would venture to expound upon such a grand subject, but I do so with a full awareness of my own limited knowledge and capabilities in this respect, which I freely admit, and for which I just as freely apologize. Nonetheless, let us have at it because the clock is running and time stops for no one, not even a modern day Joshua.

Was Gladstone correct in his reputed declaration that the Constitution was ''the most wonderful work ever struck off at a given time by the brain and purpose of man''? Well, hardly.

In 1787, the only written constitutions in the world existed in English-speaking America, where there were 13 State constitutions and a constitution for the Confederation of the States, which was agreed upon and ratified in 1781. That was our first National Constitution. Americans were the heirs of a constitutional tradition that was mature by the time of the Convention that met in Philadelphia. Americans had tested that tradition between 1776 and 1787 by writing eleven of the State constitutions and the Articles of Confederation. Later, with the writing of the United States Constitution, they brought to completion the tradition of constitutional design that had begun a century and a-half or two centuries earlier.

So when someone stands here and says that this Constitution just represents what those people of 1789 or 1787 or 1791 believed, what they thought, then I say we had better stop, look, and listen. The work of the Framers brought to completion the tradition of constitutional design that had begun a century and a half or two centuries earlier right here in America.

Let us move back in point of time and attempt to trace the roots of what is in this great organic document, the Constitution of the United States. Looking back, the search—we are going backward in time now—takes us first to the Articles of Confederation. A lot of people in this country do not know that the Articles of Confederation ever existed. They have forgotten about them. They never hear about them anymore. And then to the earliest State constitutions, and back of these—going back, back in point of time—were the colonial foundation documents that are essentially constitutional, such as the Pilgrim Code of Law, and then to the proto-constitutions, such as the Fundamental Orders of Connecticut and the Mayflower Compact. As one scholar, Donald S. Lutz, has noted:

> The political covenants written by English colonists in America lead us to the church covenants written by radical Protestants in the late 1500's and early 1600's, and these in turn lead us back to the Covenant tradition of the Old Testament.

It is appropriate, for our purposes here to focus for a short time on those Old Testament covenant traditions because they were familiar not only to the early settlers from Europe—your forebears and mine—but also to the learned men who framed the United States Constitution.

In the book of Genesis we are told that the Lord appeared to Abram saying: ''Get thee out of thy country, and from thy kindred, and from thy father's house, unto a land that I will show thee: and I will make of thee a great nation, and I will bless thee, and make thy name great;'' (Genesis 12:1,2)

In Chapter 17 of Genesis, verses 4–7, God told Abram: ''As for me, behold, my covenant is with thee, and thou shalt be a father of many nations. Neither shall thy name any more be called Abram, but thy name shall be Abraham; for a father of many nations have I made thee. . . . And I will make nations of thee, and kings shall come out of thee. And I will establish my covenant between me and thee and thy seed after thee in their generations for an everlasting covenant, to be a God unto thee, and to thy seed after thee.''

Again, speaking to Abraham, God said: ''This is my covenant, which ye shall keep, between me and you and thy seed after thee; Every man child among you shall be circumcised.'' (Genesis 17:10)

The Abrahamic covenant was confirmed upon subsequent occasions, one of which occurred after Abraham had prepared to offer Isaac, his son, as a burnt offering in obedience to God's command, at which time an angel of the Lord called out from heaven and commanded Abraham, ''Lay not thine hand upon the lad, . . . for now I know that thou fearest God.'' (Genesis 22:12)

The Lord then spoke to Abraham saying, ''I will bless thee, and in multiplying, I will multiply thy seed as the stars of the heaven, and as the sand which is upon the sea shore . . . because thou hast obeyed my voice.'' (Genesis 22:17,18)

God's covenant with Abraham was later confirmed in an appearance before Isaac, saying: ''Go not down into Egypt; dwell in the land which I shall tell thee of.'' Sojourn (see Gen. 26:3–5)

God subsequently confirmed and renewed this covenant with Jacob, as he slept with his head upon stones for his pillows and dreamed of a ladder set upon the earth, and the top of it reached to heaven, with angels of God ascending and descending on it. God spoke, saying: ''I am the Lord God of Abraham, . . . and the God of Isaac: the land whereon thou liest, to thee will I give it, and to thy seed; and thy seed shall be as the dust of the earth . . . and in thee and in thy seed shall all the families of the earth be blessed.'' (Genesis 28:11–14)

At Bethel, in the land of Canaan, Jacob built an altar to God, and God appeared unto Jacob, saying: ''Thy name is Jacob; thy name shall not be called any more Jacob, but Israel shall be thy name.'' And God said unto him, ''I am God almighty: be fruitful and multiply; a nation and a company of nations shall be of thee, and kings shall come out of thy loins; and the land which I gave Abraham and Isaac, to thee I will give it, and to thy seed after thee will I give the land.'' (Genesis 35:10,11)

The book of Exodus takes up where Genesis leaves off, and we find that the descendants of Jacob had become a nation of slaves in Egypt. After a sojourn that lasted 430 years, God then brought the Israelites out of Egypt that he might bring them as his own prepared people into the Promised Land. Exodus deals with the birth of a nation, and all subsequent Hebrew history looks back to Exodus as the compilation of the acts of God that constituted the Hebrews a nation.

Thus far, we have seen the successive covenants entered into between God and Abraham and between God and Isaac and between God and Jacob; we have seen the creation of a nation through what might be described as a federation—there is the first system of federalism—a federation of the 12 tribes of Israel, the 12 sons of Jacob having been recognized as the patriarchs of their respective tribes.

Joshua succeeded Moses as leader of the Israelites. Then came the prophets and the judges of Israel, and the turmoils of the divided kingdoms of Judah and Israel. Samuel anointed the first king—Saul, and the kingship of David followed. Thus we see the establishment of a monarchy.

God covenanted with David, speaking to him through Nathan the prophet, and God promised to raise up David's seed after his death, according to which a son would be born of David, whose name would be Solomon. Furthermore, Solomon would build a house for the Lord and would receive wisdom and understanding. The Ark of the Covenant of the Lord, and the holy vessels of God, would be brought into the sanctuary that was to be built to the name of the Lord.

Now I have spoken of the creation of the Hebrew nation, and not without good reason. The American constitutional tradition derives much of its form and much of its content from the Judeo-Christian tradition as interpreted by the radical Protestant sects to which belonged so many of the original European settlers in British North America.

Donald S. Lutz, in his work entitled ''The Origins of American Constitutionalism'', says: ''The tribes of Israel

shared a covenant that made them a nation. American federalism originated at least in part in the dissenting Protestants' familiarity with the Bible''.

The early Calvinist settlers who came to this country from the Old World brought with them a familiarity with the Old Testament covenants that made them especially apt in the formation of colonial documents and state constitutions.

Winton U. Solberg tells us that in 17th-century colonial thought, divine law, a fusion of the law of nature in the Old and New Testaments, usually stood as fundamental law. The Mayflower Compact—we have all heard of that—the Mayflower Compact exemplified the Doctrine of Covenant or Contract. Puritanism exalted the biblical component and drew on certain scriptural passages for a theological outlook. Called the Covenant or Federal Theology, this was a theory of contract regarding man's relations with God and the nature of church and state. Man was deemed an impotent sinner until he received God's grace, and then he became the material out of which sacred and civil communities were built.

Another factor that contributed to the knowledge of the colonists and to their experience in the formation of local governments, was the typical charter from the English Crown. These charters generally required that the colonists pledge their loyalty to the Crown, but left up to them, the colonists, the formation of local governments as long as the laws which the colonists established comported with, and were not repugnant to, the laws of England. Boards of Directors in England nominally controlled the colonies. The fact that the colonies were operating thousands of miles away from the British Isles, together with the fact that the British Government was so involved in a bloody civil war, made it possible for the American colonies to operate and evolve with much greater freedom and latitude than would otherwise have been the case. The experiences gained by the colonists in writing documents that formed the basis for local governments, and the benefits that flowed from experience in the administration of those colonial governments, contributed greatly to the reservoir of understanding of politics and constitutional principles developed by the Framers.

Although the Constitution makes no specific mention of federalism, the federal system of 1787 was not something new to the Framers. Compacts had long been used as a device to knit settlements together. For example, the Fundamental Orders of Connecticut, 1639, established a Common government for the towns of Hartford, Windsor, and Wethersfield, while each town government remained intact. In 1642, the towns of Providence, Pocasset, Portsmouth, and Warwick in Rhode Island devised a compact known as the Organization of the Government of Rhode Island, a federation which became a united colony under the 1663 Rhode Island Charter. The New England Confederation of 1643 was a compact for uniting the colonies of Massachusetts, Connecticut, Plymouth, and New Haven, each of which was comprised of several towns that maintained their respective governments intact.

Thus, the Framers were guided by a long experience with federalism or confederalism, including the Articles of Confederation—an experience that was helpful in devising the new national federal system.

Lutz says that the states, in writing new constitutions in the 1770s, ''drew heavily upon their respective colonial experience and institutions. In American constitutionalism, there was more continuity and from an earlier date than is generally credited.''

That is why I am here today speaking on this subject. Let it be heard. Let it be known that the roots of this Constitution go farther back than 1787, farther back than its ratification in 1791—farther back. They were writing based on historical experiences that went back 1,000 years, before the Magna Carta, back to the Anglo-Saxons, back another 2,000 years, back another 1,500 years, back to the federalism of the Jewish tribes of Israel and Judah. Wake up. This Constitution wasn't just born yesterday or in 1787. Let us go back to history. Let us study the history of American constitutionalism, its roots, how men suffered under oppressive governments. Then we will have a little better understanding of this Constitution. No, the Constitution is not static. History is not static. The journey of mankind over the centuries is not static. We can always learn from history.

To what extent were the Framers influenced by political theorists and republican spokesmen from Britain and the Continent? According to Solberg, republican spokesmen in England constituted an important link on the road to the realization of a republic in the United States.

I hear Senators stand on this floor and say that we live in a democracy. This is not a democracy. This is a republic. You don't have to believe ROBERT C. BYRD. Go to Madison, go to ''The Federalist Papers,'' Federalist Paper No. 10 or Federalist Paper No. 14—those of you who are listening—and you will find the definition of a democracy and the definition of a republic. You will find the difference between the two.

John Milton, whose literary accomplishments and Puritanism assured him of notice in the colonies, was significant for the views expressed in his political writings. He supported the sovereign power of the people, argued for freedom of publications, and justified the death penalty for tyrants.

English political thinkers who influenced American constitutionalism and who exerted an important influence in the colonies were Bolingbroke, Addison, Pope, Hobbes, Blackstone, and Sir Edward Coke. And there were others.

John Locke may be said to have symbolized the dominant political tradition in America down to and in the convention of 1787.

Locke equated property with ''life, liberty, and estate'' and was the crucial right on which man's development depends. Nature, Locke thought, creates rights. Society and government are only auxiliaries which arise when men consent to create them in order to preserve property in the larger sense, and a community calls government into being to secure additional protection for existing rights. As representatives of the people, the legislature is supreme but is itself controlled by the fundamental law. Locke limits government by separating the legislative and administrative functions of government to the end that power may not be monopolized. That is assured by our Constitution also. The people possess the ultimate right of resisting a government which abuses its delegated powers. Such a violation of the contract justified the community in resuming authority.

David Hume dealt with the problem of faction in a large republic, and promoted the device of fragmenting election districts. Madison, when faced with the same problem in preparing for the federal convention, supported the idea of an extended republic—drawing upon Hume's solution.

Blackstone's view was that Parliament was supreme in the British system and that the locus of sovereignty was in the lawmaking body. His absolute doctrine was summed up in the aphorism that ''Parliament can do anything except make a man a woman or a woman a man.''

His ''Commentaries on the Laws of England'' was the most complete survey of the English legal system ever composed by a single hand. The commentaries occupied a crucial role in legal education, and many of Blackstone's ideas were uppermost on American soil from 1776 to 1787, with vital significance for constitutional development both in the states and in Philadelphia. Although delegates to the convention acknowledged Blackstone as the preeminent authority on English law, they, nevertheless, succeeded in separating themselves from some of his other views.

James Harrington's ''Oceana'' presented a republican constitution for England in the guise of a utopia. He concluded that since power does follow property, especially landed property, the stability of society depends on political representation reflecting the actual ownership of property. The distinguishing feature of Harrington's commonwealth was ''an empire of laws and not of men.'' Harrington proposed an elective ballot, rotation in office, indirect election, and a two-chamber legislature.

This goes back a long way, doesn't it?

Harrington proposed legislative bicameralism as a precaution against the dangers of extreme democracy, even in a commonwealth in which property ownership was widespread. He argued that a small and conservative Senate should be able to initiate and discuss but not decide measures, whereas a large and popular house should resolve for or against these without discussion.

These were novel but significant ideas that became influential in America, in this country, before 1787. John Adams was an ardent disciple of Harrington's views.

James Harrington was the modern advocate of mixed government most influential in America. That is what ours is. The government of his ''Oceana'' consisted of a Senate which represented the aristocracy; a huge assembly elected by the common people, thus representing a democracy; and an executive, representing the monarchical element, to provide a balancing of power.

Harrington's respect for mixed government was shared by Algernon Sidney, who declared: ''There never was a good government in the world that did not consist of the three simple species of monarchy, aristocracy, and democracy.''

The mixed government theorists saw the British king, the House of Lords, and the House of Commons as an example of a successful mixed government.

The notion of mixed government goes all the way back to Herodotus, and who knows how far beyond. It was a notion that had been around for several centuries. Herodotus in his writings concerning Persia had expounded on the idea, but it had lost popularity until it was revived by the historian Polybius who lived between the years circa 205–125 B.C. It was a governmental form that pitted the organs of government representing monarchy, aristocracy, and democracy against each other to achieve balance and, thus, stability. The practice of mixed government collapsed along with the Roman Republic, but the doctrine was revived in 17th century England—now we are getting closer—from which it passed to the New World. Those who wrote the Constitution weren't just writing based on the experiences of their time.

Let us turn now to a consideration of the renowned French philosopher and writer, Montesquieu. Montesquieu had a considerable impact upon the political thinking of our constitutional Framers. They were conversant with the political theory and philosophy of Montesquieu, who was born 1689—a hundred years before our Republic was formed—and died in 1755. He died just 32 years before our constitutional forebears met in Philadelphia.

Americans of the Revolutionary period were well acquainted with the philosophical and political writings of Montesquieu in reference to the separation of powers, and John Adams was particularly strong in supporting the doctrine of separation of powers in a mixed government.

Montesquieu advocated the principle of separation of powers. He possessed a belief, which was faulty, that a huge territory did not lend itself to a large republic. He believed that government in a vast expanse of territory would require force and this would lead to tyranny.

He believed that the judicial, executive, and legislative powers should be separated. If they were kept separated, the result would be political freedom, but if these various powers were concentrated in one man, as in his native France, then the result would be tyranny.

Montesquieu visited the more important and larger political divisions of Europe and spent a considerable time in England. His extensive English connections had a strong influence on the development of his political philosophy.

We are acquainted with his ''Spirit of the Laws'' and with his ''Persian Letters,'' but perhaps we are not so familiar with the fact that he also wrote an analysis of the history of the Romans and the Roman state. This essay, titled ''Considerations on the Causes of the Greatness of the Romans and their Decline,'' was produced in 1734.

Considering the fact that Montesquieu was so deeply impressed with the ancient Romans and their system of government, and in further consideration of his influence upon the thinking of the Framers and upon the thinking of educated Americans generally during the period of the American Revolution, let us consider the Roman system as it was seen by Polybius, the Greek historian, who lived in Rome from 168 B.C., following the battle of Pydna, until after 150 B.C., at a time when the Roman Republic was at a pinnacle of majesty that excited his admiration and comment.

Years later, Adams recalled that the writings of Polybius ''Were in the contemplation of those who framed the American Constitution.''

Polybius provided the most detailed analysis of mixed government theory. He agreed that the best constitution assigned approximately equal amounts of power to the three orders of society and explained that only a mixed government could circumvent the cycle of discord which was the inevitable product of the simple forms.

Polybius saw the cycle as beginning when primitive man, suffering from violence, privation, and fear, consented to be ruled by a strong and brave leader. When the son was chosen to succeed this leader, in the expectation that the son's lineage would lead him to emulate his father, the son, having been accustomed to a special status from birth, was lacking in a sense of duty to the public and, after acquiring power, sought to distinguish himself from the rest of the people. Thus, monarchy deteriorated into tyranny. The tyranny then would be overturned by the noblest of aristocrats who were willing to risk their lives. The people naturally chose them to succeed the king as ruler, the result being ''ruled by the best,''—an aristocracy.

Soon, however, aristocracy deteriorated into oligarchy because, in time, the aristocrats' children placed their own welfare above the welfare of the people. A democracy was created when the oppressed people rebelled against the oligarchy. But in a democracy, the wealthy corrupted the people with bribes and created faction in order to raise themselves above the common level in the search for status and privilege and additional wealth. Violence then resulted and ochlocracy (mob rule) came into being.

As the chaos mounted to epic proportions, the people's sentiment grew in the direction of a dictatorship, and monarchy reappeared. Polybius believed that this cycle would repeat itself over and over again indefinitely until the eyes of the people opened to the wisdom of balancing the power of the three orders. Polybius considered the Roman Republic to be the most outstanding example of mixed government.

Polybius viewed the Roman Constitution as having three elements: the executive, the Senate, and the people; with their respective shares of power in the state regulated by a scrupulous regard to equality and equilibrium.

Let us examine this separation of powers in the Roman Republic as explained by Polybius. The consuls—representing the executive—were the supreme masters of the administration of the government when remaining in Rome. All of the other magistrates, except the tribunes, were under the consuls and took their orders from the consuls. The consuls brought matters before the Senate that required its deliberation, and they saw to the execution of the Senate's decrees. In matters requiring the authorization of the people, a consul summoned the popular meetings, presented the proposals for their decision, and carried out the decrees of the majority. The majority rules.

In matters of war, the consuls imposed such levies upon manpower as the consuls deemed appropriate, and made up the roll for soldiers and selected those who were suitable. Consuls had absolute power to inflict punishment upon all who were under their command, and had all but absolute power in the conduct of military campaigns.

As to the Senate, it had complete control over the treasury, and it regulated receipts and disbursements alike. The quaestors (or secretaries of the treasury) could not issue any public money to the various departments of the state without a decree of the Senate. The Senate also controlled the money for the repair and construction of public works and public buildings throughout Italy, and this money could not be obtained by the censors, who oversaw the contracts for public works and public buildings, except by the grant of the Senate.

The Senate also had jurisdiction over all crimes in Italy requiring a public investigation, such as treason, conspiracy, poisoning, or willful murder, as well as controversies between and among allied states. Receptions for ambassadors, and matters affecting foreign states, were the business of the Senate.

What part of the Constitution was left to the people? The people participated in the ratification of treaties and alliances, and decided questions of war and peace. The people passed and repealed laws—subject to the Senate's veto—and bestowed public offices on the deserving, which, according to Polybius, ''are the most honorable rewards for virtue.''

Polybius, having described the separation of powers under the Roman Constitution, how did the three parts of state check and balance each other? Polybius explained the checks and balances of the Roman Constitution, as he had observed them first hand. Remember, he was living in Rome at the time.

What were the checks upon the consul, the executive? The consul—whose power over the administration of the government when in the city, and over the military when in the field, appeared absolute—still had need of the support of the Senate and the people. The consul needed supplies for his legions, but without a decree of the Senate, his soldiers could be supplied with neither corn nor clothes nor pay. Moreover, all of his plans would be futile if the Senate shrank from danger, or if the Senate opposed his plans or sought to hamper them. Therefore, whether the consul could bring any undertaking to a successful conclusion depended upon the Senate, which had the absolute power, at the end of the consul's one-year term, to replace him with another consul or to extend his command or his tenure.

The consuls were also obliged to court the favor of the people, so here is the check of the people against the consuls, for it was the people who would ratify, or refuse to ratify, the terms of peace. But most of all, the consuls, when laying down their office at the conclusion of their one-year term, would have to give an accounting of their administration, both to the Senate and to the people. It was necessary, therefore, that the consuls maintain the good will of both the Senate and the people.

What were the checks against the Senate? The Senate was obliged to take the multitude into account and respect the wishes of the people, for in matters directly affecting the Senators—for instance, in the case of a law diminishing the Senate's traditional authority, or depriving Senators of certain dignities, or even actually reducing the property of Senators—in such cases, the people had the power to pass or reject the laws of the Assembly.

In addition, according to Polybius, if the tribunes imposed their veto, the Senate would not only be unable to pass a decree, but could not even hold a meeting. And because the tribunes must always have a regard for the people's wishes, the Senate could not neglect the feelings of the multitude.

But as a counter balance, what check was there against the people? We have seen certain checks against the consul; we have described some of the checks against the Senate. What about the people? According to Polybius, the people were far from being independent of the Senate, and were bound to take its wishes into account, both collectively and individually.

For example, contracts were given out in all parts of Italy by the censors for the repair and construction of public works and public buildings. Then there was the matter of the collection of revenues from rivers and harbors and mines and land—everything, in a word, that came under the control of the Roman government. In all of these things, the people were engaged, either as contractors or as pledging their property as security for the contractors, or in selling supplies or making loans to the contractors, or as engaging in the work and in the employ of the contractors.

Over all of these transactions, says Polybius, the Senate ''has complete control.'' For example, it could extend the time on a contract and thus assist the contractors; or, in the case of unforeseen accident, it could relieve the contractors of a portion of their obligation, or it could even release them altogether if they were absolutely unable to fulfill the contract. Thus, there were many ways in which the Senate could inflict great hardships upon the contractors, or, on the other hand, grant great indulgences to the contractors. But in every case, the appeal was to the Senate.

Moreover, the judges were selected from the Senate, at the time of Polybius, for the majority of trials in which the charges were heavy. Consequently, the people were cautious about resisting or actively opposing the will of the Senate, because they were uncertain as to when they might need the Senate's aid. For a similar reason, the people did not rashly resist the will of the consuls because one and all might, in one way or another, become subject to the absolute power of the consuls at some point in time.

Polybius had spoken of a regular cycle of constitutional revolution, and the natural order in which constitutions change, are transformed, and then return again to their original stage. Plato on the same line, had arranged six classifications in pairs: kingship would degenerate into tyranny; aristocracy would degenerate into oligarchy; and democracy would degenerate into violence and mob rule—after which, the cycle would begin all over again. Aristotle had had a similar classification.

According to Polybius, Lycurgus—the Spartan lawgiver of, circa, the 9th century B.C.—was fully aware of these changes, and accordingly combined together all of the excellences and distinctive features of the best constitutions, in order that no part should become unduly predominant and be perverted into its kindred vice; and that, each power being checked by the others, no one part should turn the scale or decisively overbalance the others; but that, by being accurately adjusted and in exact equilibrium, ''the whole might remain long steady like a ship sailing close to the wind.''

Polybius summed it up in this way:

> When any one of the three classes becomes puffed up, and manifests an inclination to be contentious and unduly encroaching, the mutual interdependency of all the three, and the possibility of the pretensions of any one being checked and thwarted by the others, must plainly check this tendency. And so the proper equilibrium is maintained by the impulsiveness of the one part being checked by its fear of the other.

Polybius' account may not have been an exact representation of the true state of the Roman system, but he was on the scene, and he was writing to tell us what he saw with his own eyes, not through the eyes of someone else. What better witness could we have?

Mr. President, before the Convention was assembled, Madison studied the histories of all these ancient people—the different kinds of governments—aristocracy, oligarchy, monarchy, democracy, and republic. He prepared himself for this Convention. And there were others in that Convention who were very well prepared also—James Wilson, Dr. William Samuel Johnson, and others.

The theory of a mixed constitution had had its great measure of success in the Roman Republic. It is not surprising then, that the Founding Fathers of the United States should have been familiar with the works of Polybius, or that Montesquieu should have been influenced by the checks and balances and separation of powers in the Roman constitutional system, a clear and central element of which was the control over the purse, vested solely in the Senate in the heyday of the Republic.

Were the Framers influenced by the classics?

Every schoolchild and student in the universities learned how to read and write Greek and Latin. Those were required subjects.

The founders were steeped in the classics, and both the Federalists and the Anti-federalists resorted to ancient history and classical writings in their disquisitions. Not only were classical models invoked; the founders also had their classical ''antimodels''—those individuals and government forms of antiquity whose vices and faults they desired to avoid.

Classical philosophers and the theory of natural law were much discussed during the period prior to and immediately following the American Revolution. It was a time of great political ferment, and thousands of circulars,

pamphlets, and newspaper columns displayed the erudition of Americans who delighted in classical allusions.

Our forbears were erudite. They circulated their pamphlets and their newspaper columns. They talked about these things. Who today studies the classics? Who today studies the different models and forms of government? Who today writes about them?

The 18th-century educational system provided a rich classical conditioning for the founders and immersed them with an indispensable training. They were familiar with Ovid, Homer, Horace, and Virgil, and they had experienced solid encounters with Tacitus, Thucydides, Livius, Plutarch, Suetonius, Eutropius, Xenophon, Florus, and Cornelius Nepos, as well as Caesar's Gallic Wars. They were undoubtedly influenced by a thorough knowledge of the vices of Roman emperors, the logic of orations by Cicero and Demosthenes, and the wisdom and virtue of the scriptures.

They freely used classical symbols, pseudonyms, and allusions to communicate through pamphlets and the press. To persuade their readers they frequently wrapped themselves and their policies in such venerable classical pseudonyms as ''Aristides,'' ''Tully'', ''Cicero'', ''Horatius'', and ''Camillus.'' The Federalist essays, 85 of them in number were signed by ''Publius.''

Some of the Anti-federalists dubbed themselves ''Cato,'' while others called themselves ''Cincinnatus'' or ''A Plebeian.'' The appropriation of classical pseudonyms was sometimes used in private discourse for secret correspondence. George Washington's favorite play was Joseph Addison's ''Cato'' in which Cato committed suicide rather than submit to Caesar's occupation of Utica.

In the words of Carl J. Richard, in his book ''The Founders and the Classics''

> It is my contention that the classics exerted a formative influence upon the founders, both directly and through the mediation of Whig and American perspectives. The classics supplied mixed government theory, the principal basis for the U.S. Constitution. The classics contributed a great deal to the founders' conception of human nature, their understanding of the nature and purpose of virtue, and their appreciation of society's essential role in its production. The classics offered the founders companionship and solace, emotional resources necessary for coping with the deaths and disasters so common in their era. The classics provided the founders with a sense of identity and purpose, assuring them that their exertions were part of a grand universal scheme. The struggles of the Revolutionary and Constitutional periods gave the founders a sense of kinship with the ancients, a thrill of excitement at the opportunity to match their classical heroes' struggles against tyranny and their sage construction of durable republics. In short, the classics supplied a large portion of the founders' intellectual tools.

Now, what about the Declaration of Independence?

It was on June 7, 1776, that Richard Henry Lee introduced the ''Resolve'' clause, which was as follows:

> Resolved, that these United States Colonies are and of right ought to be free and independent states, that they are absolved from all allegiance to the British Crown, and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved.
>
> That it is expedient forthwith to take the most effectual measures for forming foreign alliances.
>
> That a plan of confederation be prepared and transmitted to the respective colonies for their consideration and approbation.

Following the introduction of Lee's resolution, postponement of the question of independence was delayed until July 1. Nevertheless, on June 11, Congress appointed a committee made up of Jefferson, John Adams, Franklin, Roger Sherman, R.R. Livingston, to prepare a declaration. The committee reported on June 28, and, at last, on July 2, Congress decided for independence without a dissenting vote. The delegates considered the text of the declaration for two additional days, and adopted changes on July 4 and ordered the document printed. News that New York had approved on July 9 (the New York Delegates, having been prevented by instructions from assenting, had theretofore refrained from balloting) reached Philadelphia on July 15. Four days later, Congress ordered the statement engrossed. On August 2, signatures were affixed, although all ''signers'' were not then present. Inasmuch as the Declaration was an act of treason—for which any one of those signers or all collectively could have been hanged—the names subscribed were initially kept secret by Congress. The text itself was widely publicized.

Those forebearers of ours who had the courage and the fortitude and the backbone to write the Declaration of Independence, committed an act of treason for which their properties could have been confiscated, their rights could have been forfeited, and their lives could have been taken from them. That is what we are talking about in this Constitution. Men who not only understood life in their times, but also understood the cost of liberty, so they pledged their lives, their fortunes, their sacred honor.

Those were not empty words. Would we have done so?

Much of the Declaration of Independence was derived directly from the early state constitutions. The things have roots. They didn't come up like the prophet's gourd overnight. The Declaration contained twenty-eight charges against the English king justifying the break with Britain. At least 24 of the charges had also appeared in state constitutions. New Hampshire, South Carolina, and Virginia, in that order, adopted the first constitutions of independent states, and these three state constitutions contained 24 of the 28 charges set forth in the Declaration. Lists of grievances against George III had appeared in many of the newspapers, and as far back as May 31, 1775, the Mecklenburg (North Carolina) Resolves contained the following:

> Resolved: that we do hereby declare ourselves a free and independent people; are and of right ought to be a sovereign and self-governing association, under the control of no power, other than that of our God and the general government of the Congress: to the maintenance of which independence we solemnly pledge to each other our mutual cooperation, our lives, our fortunes, and our most sacred honor.

Note that the last sentence of the Declaration of Independence says, ''And for the support of this Declaration, with a firm Reliance on the Protection of divine Providence, [we are not supposed to teach those things in our schools today] we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor.''

Therefore, many of the phrases that were used by Jefferson had already appeared in various forms in the public print. Jefferson also borrowed from the phraseology of Virginia's Declaration of Rights written by George Mason, and adopted by the Virginia Constitutional Convention in June 1776. In the opening Section of that document, the following words appear:

> That all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

Mason also stated in the Virginia Declaration of Rights, ''That all power is vested in, and consequently derived from the people,'' and that, ''when any government shall be found inadequate or contrary to these purposes, a majority of the community has and indubitable, inalienable, and indefeasible right to reform, alter, or abolish it in such manner as shall be judged most conducive to the public weal.''

Jefferson in the Declaration of Independence, stated that ''All men are created equal'' and that they were ''endowed by their creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness—that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed, that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.''

The last paragraph of the Declaration of Independence states that the representatives of the United States of America, in general Congress, assembled, ''Appealing to the supreme judge of the world for the rectitude of our intention, do, in the name, and by authority of the good people of these colonies, solemnly publish and declare, that these United Colonies are, and of right ought to be, free and independent

states; . . .'' Lutz, whose name I mentioned a few times already, makes the following comment:

Any document calling on God as a witness would technically be a covenant. American constitutionalism had its roots in the covenant form that was secularized into the compact. One could argue that with God as a witness, the Declaration of Independence is in fact a covenant. The wording is peculiar, however, and the form of an oath is present, but the words stop short of what is normally expected. But the juxtaposition of a near oath and the words about popular sovereignty is an intricate dance around the covenant-compact form. The Declaration of Independence may be a covenant; it is definitely part of a compact.

As to the words, ''All men are created equal,'' American political literature was full of statements that the American people considered themselves and the British people equal. Lutz states, with reference to this paragraph: '''Nature's God' activates the religious grounding; 'laws of nature' activate a natural rights theory such as Locke's. The Declaration thus simultaneously appeals to reason and to revelation as the basis for the American right to separate from Britain, create a new and independent people, and be considered equal to any other nation on earth.''

Now, as to the State Constitutions—I am talking about the roots, the roots of this Constitution. This Federal Constitution which we are talking about amending—what about the State Constitutions? Does the Federal Constitution have any roots in the State Constitutions?

Throughout the spring of 1776 some of the colonies remained relatively immune to the contagion which prompted others to move toward independence. This prevented the Continental Congress from breaking with Britain. To spread the virus, John Adams and Richard Henry Lee induced the Committee of the Whole to report a resolution which Congress unanimously adopted on May 10. The resolving clause of that resolution recommended to the respective assemblies and conventions of the United Colonies, that, ''where no government sufficient to the exigencies of their affairs had been hitherto established, to adopt such government as shall, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular, and America in general.''

State constitutions were of great significance in the development of our Federal Constitution and our Federal system of government. When the Framers met in Philadelphia, they were familiar with the written constitutions of 13 states, and, as a matter of fact, many of those Framers had served in the State legislatures and conventions that debated and approved the State constitutions. Not only were they, the Framers, conversant with the organic laws of the 13 states, but they were also knowledgeable of the colonial experience under colonial government. As was ably stated by William C. Morey, in the September 1893 edition of ''Annals of the American Academy'' of Political and Social Science:

The state constitutions were linked in the chain of colonial organic laws and they also formed the basis of the federal constitution. The change had its beginning in the early charters of the English trading companies, which were transformed into the organic laws of the colonies, which, in their turn, were translated into the constitutions of the original states, which contributed to the constitution of the federal union.

The Pennsylvania Constitution of 1701 appears to have been the last written form of government that appeared in colonial times. There had been two previous Pennsylvania Constitutions—1683 and 1696—and these, together with the Massachusetts Charter of 1691, constitute the most advanced colonial forms and provide the nearest approach in the colonial period towards the final goal of the national constitution.

The original 13 colonies became 13 States during the decade preceding the 1787 Convention, and all but Connecticut and Rhode Island wrote new constitutions in forming their state governments. These new state constitutions would provide important innovations in American constitutionalism, and the Framers at Philadelphia would benefit hugely, not only from the substantive material and form contained in the Constitutions but also from the experience gained under the Administration of the new governments.

Let us examine some of these new constitutions, noting particularly those features in the State constitutions which would later appear, even if varying degree, in the Federal Constitution. Thus we shall see the guidance which these early State constitutions provided to the men at Philadelphia in 1787.

Let us first examine article I of the Constitution and observe the amazing conformity therein with the equivalent provisions of the various State constitutions written a decade earlier in 1776 and 1777. Take section 1, for example, in which the U.S. Constitution vests all legislative powers in a Congress, consisting of a Senate and House. At least nine of the State constitutions have similar provisions—so you see, our constitutional Framers just did not pick this out of thin air—perhaps varying somewhat in form, which vest the lawmaking powers in a legislature consisting of two separate bodies, the lower of which is generally referred to as an assembly or House of Representatives or House of Delegates—as in the case of West Virginia, which was not in existence at that time, of course—or, as in the case of North Carolina, a House of Commons. The upper body is generally referred to as a Senate, but it varies, likewise, being sometimes referred to as a Council.

Section 2 provides that the U.S. House of Representatives shall choose their speaker and other officers and shall have the sole power of impeachment, and at least a half-dozen states provided that the legislative bodies should choose their speaker and other officers.

Section 3 provides for a rotation of Senators, two from each state, so that two-thirds of the Senate is always in being. Many of the state senators were to represent districts consisting of several counties or parishes or other political units, and several of the States, including Delaware and New York, provided for a rotation of the members of the upper body so that a supermajority of the Senate were always holdovers. The Great Compromise—which was worked out at the 1787 Convention and agreed to on July 16, 1787, providing that the Senate would represent the States, while the House of Representatives' representation would be based on population—may well have benefited from the examples set by Delaware and New York.

At least eight of the State constitutions provided for impeachment by the lower house. Massachusetts and Delaware provided for the trial of impeachments by the upper body, as does the U.S. Constitution, and Massachusetts required that senators be on oath or affirmation. The New York constitution required a vote of two-thirds of the members present for a conviction in trials of impeachment. Here again, the Framers of the U.S. Constitution had examples before them which would guide them.

Conviction, in cases involving impeachment, would, in the instance of New York, not ''extend farther than to removal from office, and disqualification to hold or enjoy any place of honor, trust, or profit under the state, but the party so convicted shall be, nevertheless, liable and subject to indictment, trial, judgment, and punishment, according to the laws of the land''—almost the identical language that appeared a decade later in the U.S. Constitution relative to penalties following conviction in impeachment cases, and almost identical to the language in the unwritten English Constitution which appeared 200 years before.

At least nine of the State constitutions provided that each House should be the judge of the elections, returns, and qualifications of its own members, with a majority to constitute a quorum and with provisions for a minority (of senators) to compel the attendance of absent senators—the equivalent of language which appears in article I, section 5, of the U.S. Constitution.

The provisions of article I, section 5, of the U.S. Constitution allowing each House to determine the rules of its own proceedings could well have been copied from the state constitutions of Maryland, Virginia, Delaware, Georgia, and Massachusetts, and the provision for expulsion of members in the U.S. Constitution could also have been taken from the state constitutions of Delaware, Maryland, and Pennsylvania.

The constitutional requirement that revenue bills originate in the House of Representatives was prefigured by the State constitutions of New Hampshire, New Jersey, Virginia, Delaware, Maryland, Massachusetts, and South Carolina. Massachusetts permitted the senate to propose or concur with amendments to revenue bills as was later provided in the U.S. Constitution.

The presentment clause of article I, section 7, that is what the Congress tripped over when it passed the nefarious Line-Item Veto Act of 1995, the presentment clause.

The presentment clause of article I, section 7, of the U.S. Constitution has been very much in the news lately in reference to the line item veto. The State constitutions of Massachusetts and New York are very revealing and instructive in this regard. The Massachusetts Constitution stated that no bill of the senate or house of representatives should become a law until it ''shall have been laid before the Governor'' and if he approved thereof, ''he shall signify his approbation by signing the same. But if he has any objection to the passing of such bill, he shall return the same, together with his objections thereto, in writing, to the Senate or House of Representatives, in whichever the same shall have originated; who shall enter the objections sent down by the Governor, at large, on their records, and proceed to reconsider the said bill.''

That is what we are about to do very soon with respect to the most recent veto of the President. So one can see these provisions that appear in our own Constitution had their roots in various other documents and experiences that long preceded the writing of the U.S. Constitution.

But, if after such reconsideration, two-thirds of the said senate or house of representatives, shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the legislature, where it shall also be reconsidered, and if approved by two-thirds of the members present, shall have the force of the law. But in all such cases, the votes of both Houses shall be determined by yeas and nays.

The language in the Massachusetts State Constitution is strikingly similar to that which appeared a decade later in the U.S. Constitution concerning Presidential vetoes of bills and the requirement that such bills be presented to the President for his signature or for his approval or rejection.

The U.S. Constitution's language concerning vetoes and the presentment of legislation to the Chief Executive for his approval or disapproval is again exceptionally reminiscent of the language in the New York State Constitution, which provides for a council of revision of all bills. Note, however, the New York State Constitution language:

All bills which have passed the Senate and assembly shall before they become laws, be presented to the said council for their consideration, and if it should appear improper that the said bill should become a law of this state, that they return the same, together with their objections thereto in writing, to the Senate or House of Assembly (in which so ever the same shall have originated) who shall enter the objection sent down by the council at large in their minutes, and proceed to reconsider the said bill. But if, after such reconsideration, two-thirds of the said Senate or House of Assembly shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the legislature, where it shall also be reconsidered, and, if approved by two-thirds of the members present, shall be a law.

And in order to prevent any unnecessary delays, be it further ordained, that if any bill shall not be returned by the council within ten days after it shall have been presented, the same shall be a law, unless the legislature shall, by their adjournment, render a return of the said bill within ten days impracticable; in which case, the bill shall be returned on the first day of the meeting of the legislature after the expiration of the said ten days.

The similarity of the language in the U.S. Constitution's veto and presentment clause to the equally complex language of the Massachusetts and New York State Constitutions is enough to make one sit up and take notice. Except for some slight variations, the U.S. Constitution appears to copy, almost verbatim, the text set forth in the two State constitutions. It cannot be said with a straight face that this is a matter of mere coincidence. It seems to me that one can easily see the fine hand and the eloquent voice of Alexander Hamilton, in the case of New York, and Elbridge Gerry, Nathaniel Gorham, and Rufus King, in the case of Massachusetts, in the behind-the-scenes discussions that probably occurred in the Convention with respect to these and other clauses in the Constitution which appeared to have been copied, almost word for word, from various State constitutions.

The President's State of the Union Message, which grows out of article II, section 3, of the U.S. Constitution, was likely foreordained by the New York Constitution which stated that it was the duty of the Governor ''to inform the legislature, at every session, of the condition of the state, so far as may respect his department; to recommend such matters to their consideration as shall appear to him to concern its good government, welfare, and prosperity; . . .''

Nine of the States provided that the Governor should have the title of commander in chief, thus prefiguring section 2 of article II of the U.S. Constitution which states that the President ''shall be commander in chief'', and at least five of the State constitutions gave the chief executive of the State the power to grant reprieves and pardons, except in cases of impeachment, just as we find in article II, section 2, of the U.S. Constitution with respect to the President's powers.

Other similarities between some of the State constitutions and the U.S. Constitution—in varying degrees, of course—have to do with the requirement to assemble at least once in every year; legislators' privilege from arrest; the requirement that a census be taken for the purpose of the apportionment of representatives; the laying and collection of taxes by the legislative branch; the taking of an oath before entering upon the office of Governor and other high State offices, as in the case of the President and other officials at the national level; provisions in the State and National constitutions for amendments thereto; and prohibitions against bills of attainder and ex post facto laws.

Many of the States, obviously remembering British history—you see, the roots go back, they go back and farther back—expressly prohibited the governor from proroguing, adjourning, or dissolving the legislature, but did provide that the Governor could, under extraordinary circumstances, convene the legislature in advance of the time to which it had previously adjourned.

That the States were very wary of strong and overbearing executives could be seen in the fact that in at least seven of them, the Governor was limited to a 1-year term—that is what they though of their chief executives—2 years, in the case of South Carolina; and 3 years in Delaware and New York. Prohibitions against eligibility for reelection were also prevalent in several of the State constitutions.

In at least eight of the States, the constitutions provided for the selection of the Chief Executive by the legislative branch.

In at least three States—Delaware, New Jersey, and New York—the common law of England was to remain in force. And some of the States, such as South Carolina, appeared to have copied in their constitutions, or their Bills of Rights which were annexed thereto that language from the Magna Carta which, in the language of the South Carolina constitution, states:

That no freeman of this state be taken or imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, exiled or in any manner destroyed or deprived of his life, liberty, or property, but by the judgment of his peers or by the law of the land.

In all of the State constitutions, the Governor was commander-in-chief, and the Federal constitution also makes use of the term, as I say, in relation to the President. In all of the States except Connecticut, Rhode Island, and Georgia, and in South Carolina, the State constitutions before 1787 had granted the pardoning power to the Governor, and, in the Federal Constitution, the President's pardoning power was drawn from this example of the states.

Almost every State prescribed in its constitution a form of oath for its officers, and the oath required of the President of the United States appears in the last paragraph of section 1, article II, of the U.S. Constitution.

The framers provided for the choice of President to be indirect. In the Constitution of Maryland (1776) we find an almost exact counterpart of the electoral college by whom the President is

chosen, in which the Senators from Maryland were to be selected by a body of electors, chosen every 5 years by the inhabitants of the State for this particular purpose and occasion.

This method of choosing the President may have been suggested from the manner of choosing Senators under the Constitution of Maryland.

An examination of these early State constitutions clearly indicates a vast wealth of knowledge concerning constitutional principles and a gradual evolution leading up to the convention based on the experience gained from the administration of governments under the new State constitutions. I see the constitutions of the States as tributaries—tributaries—to a mighty stream of American constitutionalism flowing to the mighty ocean of events that culminated in the grand handiwork of the framers at the 1787 Convention.

Between the completion of State constitutions and the Philadelphia Convention that produced the United States Constitution stood the Articles of Confederation which went into effect on March 1, 1781, from the substance and experience of which Madison and Hamilton and Franklin and others at the Convention gained so much guidance.

Let us now turn our attention to the Articles of Confederation.

Mr. President, I see others on the floor. They may wish to speak. I will be happy to yield the floor at this point if I can regain it later and continue my statement.

Mr. LEAHY. Mr. President, I say to my friend from West Virginia, I have already been on this floor speaking for a couple days. I took a moment to go back to the office. But I was watching the Senator on the monitor, and I just wanted to come over and listen to him in person. I have no intention of wanting to ask him to yield the floor. I appreciate the courtesy he has offered.

Mr. BYRD. I thank the distinguished Senator.

I see the Senator from California. Also, if she wishes to have the floor, I will be happy to yield it for a while.

Mrs. FEINSTEIN. I appreciate the courtesy of the distinguished Senator from West Virginia.

I say to the Senator, please, continue on and conclude. I am just fine. I enjoy listening.

Mr. BYRD. I thank the Senator.

Mr. President, what impact did the Articles of Confederation have upon the Constitution of the United States?

On June 7, 1776, Richard Henry Lee of Virginia introduced a resolution in the Continental Congress resolving:

> That these United Colonies are, and of right ought to be, free and independent states, that they are absolved from all allegiance to the British Crown, and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved.
>
> That is expedient forthwith to take the most effectual measures for forming foreign alliances.
>
> That a plan of confederation be prepared and transmitted to the respective colonies for their consideration and approbation.

In accordance with this resolution, Congress appointed a committee of 12 on June 12—which happens to be my lovely wife's birthday, June 12, although she does not go that far back—1776, to prepare a form of confederation. A month later, on July 12, a draft plan was reported by the committee, written by John Dickinson of Delaware. The document, although reported to Congress on August 20, was delayed in its final consideration, and after having undergone modifications, was finally approved by the last holdout State of Maryland in February 1781, and the Congress, then, first met under the Articles of Confederation on March 1, 1781.

It had been a long time aborning.

New Jersey, Delaware, and Maryland had demanded that the States that had large claims to western lands renounce them in favor of the Confederation. Maryland was the last State to ratify the Articles, but finally went along when she became satisfied that the western claims would become the expected treasure of the entire Nation.

The Articles of Confederation were the direct predecessor of the Constitution of the United States, and the Articles contained within themselves the fatal flaws which doomed the success of the confederation. It was a ''league of friendship'' only, of which the Congress was the unique organ and in which ''each state shall have one vote.'' The votes of nine States were required before important action could be taken by Congress, and the consent of the legislature of each State was necessary to any amendment of the fundamental law.

Congress was given no commercial control and, most unfortunately, no power to raise money, but could only make requisitions on the States and then hope and pray that the States would respond affirmatively and adequately. They seldom if ever did. Control over foreign affairs was vested in Congress, but it was without means of making the States obey treaty requirements. The Congress had responsibility but without power to carry out its responsibility. It dealt with the people, not individually, but over their heads through the States.

Several efforts were made to get the States to amend the articles, by adding the right to levy import duties, but these efforts failed because it was impossible to get the unanimous consent of the legislatures of the 13 States to any amendment of the fundamental law.

It became increasingly difficult to secure a quorum of attendance in Congress, and even when a quorum of Members attended, important measures were blocked by the requirement for the votes of nine States. A State frequently lost its single vote—that is all it had—because of differences among its delegates. It was a time of experimentation, of learning a hard lesson that would be remembered. But the experience gained from learning these hard lessons helped to prepare the way for a better national government. It should also be remembered that at least one substantial act of legislation—the ordinance for the government of the Northwest Territory, was created by the government under the Articles of Confederation.

Under the Articles of Confederation, no State could be represented in Congress by less than two, nor by more than seven, members; and no person could serve as a delegate for more than three years in any term of six years. There were limited terms. Each State had only one vote. All charges of war and other expenses incurred for the common defense or general welfare, if allowed by the United States in Congress assembled, were to be defrayed out of a common treasury, which would be supplied by the several States in proportion to the value of all lands within each State, and the taxes for paying a State's proportion were to be laid and levied by the authority of the legislatures of the several States within the time agreed upon by the Congress.

Under a very complex arrangement—I say to the former Attorney General of the State of Alabama, who presently presides over this august body—the Congress under the Confederation was denominated as the last resort on appeal in all disputes and differences arising between two or more States ''concerning boundary jurisdiction or any other cause whatever.''

The business of Congress was to be carried on during a recess by ''a committee of the states,'' to consist of one delegate from each State.

When it came to the armed forces, requisitions were to be made from each State for its quota, in proportion to the number of white inhabitants in such States, which requisitioned would be binding. Each State would appoint the regimental officers, raise them in and clothe and arm and equip them at the expense of the United States.

However, if the Confederation Congress should determine, based on circumstances, that any State should raise a smaller number than its quota and that any other State should raise a greater number of men than its quota called for, the extra number was to be raised, clothed, and equipped as the quota allowed, unless the legislature of that State should judge that such extra number could not be safely spared. The State would be permitted to raise ''as many of such extra number'' as the State judged could be safely spared.

What a flawed approach! It is little wonder that George Washington, as Commander in Chief of the Revolutionary forces, was constantly frustrated in his efforts to build an effective fighting force. It was almost a miracle that the fledgling Nation managed to carry on and win the war under such conditions, but we can only guess

that Providence was on our side. We know for sure that the situation in England was such that that country's preoccupation with its own internal problems rendered impossible the full concentration of its resources and strength to be brought to bear against us. We were lucky in that regard.

Under the Articles, the ''Union shall be perpetual'' nor could any alteration be made in the Articles—there could be no amendment to that Constitution—unless such alteration was agreed upon in Congress assembled and afterwards confirmed by the legislature of every state.

The Articles of Confederation contained the phrase ''The United States of America,'' for the first time in American documentary history. The Articles were America's first national constitution. Congress was elected by the State legislatures. There was only one body of Congress, not two, back then, as we see today. And Congress was the executive, the legislative branch, and the judiciary in many respects. There was no man living downtown at the White House who was President.

Now let us examine the parallels between the Articles of Confederation and the U.S. Constitution.

I am here showing where the roots of the Constitution go. It is like tracing the roots of a tooth, if one is having a root canal, let us find where those roots go.

Article II of the Articles of Confederation provided that each State would retain its sovereignty and every power and right ''which is not by this confederation expressly delegated to the United States, . . .'' Where do we find that in the Constitution? The tenth amendment to the U.S. Constitution provided that the powers not delegated to the United States by the Constitution nor prohibited by it to the States ''are reserved to the states respectively, or to the people.''

Article IV of the Articles of Confederation provided that the people of the different States would ''be entitled to all privileges and immunities of free citizens in the several states'', that ''full faith and credit'' should be given in each of the States to the records, acts, and judicial proceedings of the courts and magistrates of every other state; and that any person guilty of a felony in any state who fled from justice and was found in any other state, would ''upon demand of the Governor or executive power of the state from which he fled,'' be delivered up ''to the state having jurisdiction of his offense.''

The ''privileges and immunities'' clause of the Articles of Confederation, found in article IV thereof, appears in the U.S. Constitution in article IV, section 2.

The ''full faith and credit'' clause of the Articles of Confederation is to be found in the U.S. Constitution, article IV, section 1.

The delivering up of persons charged with felonies to another state on demand of the executive authority thereof, found in article IV of the Articles is also found in article IV, section 2, paragraph 2, of the U.S. Constitution.

The PRESIDING OFFICER (Mr. SESSIONS). The Chair notes that the Senator's time has expired.

Mr. WELLSTONE. Mr. President, I ask unanimous consent to yield 40 minutes of my 60 minutes to the Senator from West Virginia.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I thank the distinguished Senator from Minnesota for his characteristic courtesy.

Article 5 of the Articles provided for the meeting of Congress on the first Monday in November in every year. Under the U.S. Constitution, article I, section 4, paragraph 2, Congress ''shall assemble at least once in every year, and such meeting was originally to have been on the first Monday in December, but this was changed to provide that Congress could by law appoint a different day from that of Monday in December.

Under article V of the Articles of Confederation, freedom of speech and debate in Congress could not be impeached or questioned in any court or place out of Congress. Under the U.S. Constitution, article I, section 6, members of Congress, for any speech or debate in either House, ''shall not be questioned in any other place.''

Article V of the Articles protects members of Congress from arrests during the time of their going to and from, and attendance in Congress, except for treason felony, or breach of the peace.

Members of Congress are likewise protected under article I, section 6, paragraph 1, of the U.S. Constitution.

Article VI of the Articles precludes any person holding office of profit or trust under the United States from accepting any present, emolument, office or title of any kind whatever from any king, prince or foreign state. Nor could Congress grant any title of nobility.

In almost identical language, the U.S. Constitution, in article I, section 9, paragraph 7, prohibits members of Congress from accepting any present, emolument, office, or title, from any king, prince or foreign state.

Under the Articles of Confederation no vessels of war or any body of forces could be kept up in time of peace without the consent of Congress. The same prohibition against the states was included in the U.S. Constitution in article 1, section 10, paragraph 2.

Provisions concerning state militias are contained in article VI of the Articles, and in article I, section 8, of the U.S. Constitution.

Article IX of the Articles vested the power of declaring war, establishing rules for captures on land or water, and granting letters of marque and reprisal. The equivalent provisions are to be found in article I, section 8, of the U.S. Constitution.

So, you see, these provisions are not something new that just came from the minds, from the heads of our constitutional forebears and the Constitutional Convention in 1787. They were already written down in other places. Thank God for that and for their guidance, as it were.

Both the Articles of Confederation and the U.S. Constitution provide for the trail of piracies and felonies committed on the high seas, in article IX of the Articles and in article I, Section 8 of the Constitution.

Article IX of the Articles of Confederation gave Congress the sole and exclusive right and power of regulating the alloy and value of coin, fixing the standard of weights and measures throughout the United States, and regulating the trade and managing all affairs with the Indians. Congress under the Constitution was given the same powers in article I, section 8.

The power to establish and regulate post offices, and the power to make rules for the government and regulation of the land and naval forces was given to the Congress by the Articles of Confederation in article IX. The same powers to establish post offices and to make rules for the government and regulation of the land and naval forces were given to the Congress in article I, section 8, of the U.S. Constitution.

Article IX of the Confederation Articles provided that the yeas and nays of members of Congress were to be entered on the journal when desired by any member of the Congress. The U.S. Constitution article I, section 5 provided for the yeas and nays of members to be entered on the journal when desired by one-fifth of those members present.

The admission of other colonies into the confederation was provided for in article 11 of the Articles of Confederation, while, under the Constitution new States may be admitted by Congress into the Union, under Section 3 of article IV.

So, you see, we had a good roadmap in the Articles of Confederation, which went before the U.S. Constitution.

Congress was given power under the Articles of Confederation to borrow money on the credit of the United States, to build and equip a navy, to agree upon the number of land forces. Under the Constitution, article I, section 8, Congress was given the power to borrow money on the credit of the United States; to raise and support armies; and to provide and maintain a navy.

In article XIII of the Articles of Confederation, every state was required to abide by the determination of Congress, and the Articles of Confederation were to be inviolably observed by every state. The counterpart of these provisions is to be found in the U.S. Constitution, article VI, paragraph 2, where it is provided that the Constitution and the laws of the United States, and all treaties made, ''shall be the supreme law of the land''; and the judges in every state were to be bound thereby.

Article V of the U.S. Constitution provides for amendments to that document when proposed by two-thirds of both Houses of Congress or upon the application of two-thirds of the state legislatures. Amendments to the Articles of Confederation required approval by the Congress, followed by confirmation by the legislature of all the states.

The Articles set up what amounts to a national court system (article IX), but the system functioned only to adjudicate disputes between states, not individuals. Congress could pass no laws directly affecting individuals, and thus the national court had no jurisdiction over individuals. But when Congress was given such power in the 1787 Constitution, the notion of dual citizenship was revolutionized. The invention of dual citizenship in the Articles of Confederation, and then the transfer of this concept to the national constitution in article VI, section 2, was the legal basis for the operation of federalism in all of its many manifestations.

Aside from the narrower grant of power to Congress, and a unicameral legislature in which each state had one vote, the Articles differed from the U.S. Constitution mainly in placing the court directly under Congress and in having the committee of the states (one delegate from each state) instead of a single executive. Characteristic of state constitution were a weak executive, often under the sway of a committee appointed or elected by the legislature, and a court system directly under the legislature. The Articles of Confederation in these respects was not the result of independent theorizing about the best institutions. It was a straightforward extension of Whig political thought to national government.

The Constitution of the United States provided, in article VII, for its ratification by the conventions of nine states. The ratification of any new Constitution, under the Articles of Confederation, required the approval of Congress and the unanimous confirmation by the legislatures of all states.

The Framers of the U.S. Constitution devised an ingenious way of getting around this insuperable requirement of unanimity by the state legislatures, and we can be thankful for that. Otherwise, we would still be governed by the unworkable Articles of Confederation—if, indeed, we had been able to survive as a nation. Ours might have been the balkanized States of America instead of the United States of America. This was done by circumventing the legislatures altogether, and securing ratification directly by the people in state conventions.

Why did the Founders require nine states to ratify the Constitution rather than 13 or a majority of seven? Experience, and the likelihood that Rhode Island would not ratify, made unanimity an impractical alternative. A simple majority of seven might not have included the large states, and the new nation would have been crippled from the start. There was, however, considerable experience with a nine-state requirement in the Continental Congress. You see how these Framers benefited by the experience that had gone before them. Nine states constituted a two-thirds majority. Although such a majority was at times extremely difficult to construct, a provision that satisfied nine states invariably satisfied more than nine. This was a litmus test that the Framers understood, and the two-thirds majority required by the Articles led them to adopt a similar requirement for ratifying the constitution.

Without the Articles of Confederation, the extended republic would have had to be invented out of the writings of Europeans as a rank experiment that a skeptical public would likely not have accepted. On the other hand, Americans had learned that government on a continental basis was possible, in certain respects desirable, and that a stable effective national government required more than an extended republic—it needed power that could be applied directly to individuals. Experience also convinced them that the national government should have limited powers, and that state governments could not be destroyed. There was a logic to experience that no amount of reading and political theory could shake.

Providing for an amendment process was one of the most innovative aspects of both national constitutions. Equally innovative was the provision for admitting new states. History had demonstrated that a nation adding new territory almost invariably treated it as conquered land, as did the ancient Romans, the Greeks, the Persians, and so on. The founders proposed the future addition, on an equal footing, of new states from territories now sparsely settled, if settled at all. The Articles of Confederation is of major historical importance for first containing this extraordinarily liberal provision, which became part of the U.S. Constitution. It guaranteed the building of an extended republic.

The general impression of the people today is that the Articles of Confederation were wholly replaced in 1787, but, in fact, as I have shown, much of what was in the Articles showed up in the 1787 Constitution. As a matter of fact, few Americans today, relatively speaking, know much if anything about the Articles of Confederation or are even aware that such Articles ever existed.

But not only did the Framers of the Constitution copy into that document a great deal of what was contained in the Articles of Confederation, but by virtue of the fact that they had lived under the Articles for over 6 years, they benefited from the experience gained thereby and were thus able to avoid many of the faults and flaws of the Articles by including in the Constitution corrective provisions for such avoidance. In other words, many of the provisions of the U.S. Constitution which have worked so well over these 212 years probably would never have been included in the Constitution, or even thought of, without having had the experience of living under the Articles. It could perhaps better be said that the Framers profited by the mistakes or negative experiences of living under the Articles. In other words, hindsight provided a 20/20 vision to the Framers.

Mr. President, as we examine the roots of our Constitution, how could we avoid taking a look at the British Constitution?

What part did the British Constitution play in the formulation of our own fundamental organic national document? Perhaps not as much directly as did the state constitutions and the Articles of Confederation. Yet, indirectly, woven into the experience of living under the colonial governments and the early state constitutions and the Articles of Confederation there were, running throughout, important threads of the ancient British Constitution that are often overlooked and were accepted as a practice in the early colonial documents and state constitutional forms without conscious attribution. Nevertheless, consciously or not, various rudiments of the American system can be traced back to developments that had occurred in England and even as far back as the Anglo-Saxon period which found their way into the fabric of American constitutionalism. Let us examine some of these antecedents.

Many of the principles imbedded in American constitutionalism look back to the annals of the motherland for their sources and explanations and were carried forward by the political development of many generations of men.

To begin with, our nation was founded by colonists of whom the great majority, let us not forget, were of the English branch of the Teutonic race. For the most part, they were of one blood and their language and social usages were those of Great Britain. It is where my forebearers are from. The same can be said by others here. They brought with them to these North American shores the English law itself, and, for a century or more, they continued in political union with England as members of one empire, often referring to themselves as ''Englishmen away from home'', claiming all of the rights and liberties of British subjects.

Read your history. Forget those modern social studies. Go back to the history. Follow the taproots of our Constitution.

Their institutions were mainly of an English nature, and they possessed in common with their English brethren a certain stock of political ideas. For example, a single executive, a legislative branch consisting of two houses—the British House of Lords, and the British House of Commons—the upper of which

was conservative and the lower of which was representative of the people at large. There were also general principles such as trial by jury, taxation by the elected representatives of the people, and a system of jurisprudence based upon custom and the precedents of the English common law.

These liberties and these rights had been wrenched from tyrannical monarchs over centuries at the cost of blood—the blood of Englishmen, the people of the British Isles, Scotland, Ireland, and Wales.

The earliest representative legislative assembly ever held in America was convened in 1619 at Jamestown and was composed of 22 representatives from several towns and counties. This was the germ of hundreds of later local, town, and state assemblies throughout America.

It also imitated the British Parliament, with the legislative power lodged partly in a Governor who held the place of the sovereign and who was appointed by the British Crown, partly in a council named by a British trading company, and partly in an assembly composed of representatives chosen by the people. Of course, no law was to be enforced until it was ratified by the company in England, and returned to the colony under that company's seal. Other representative legislative assemblies developed throughout the colonies, and laws were allowed to be made as long as such laws were not contrary or repugnant to the laws of England. There were, of course, variation in the systems of government throughout colonial America, but as we will note in the early state constitutions that were developed in 1776, as has already been noted, the repetition in many details of the political systems was evidence of the unanimity with which the colonies followed a common model. Of course the power over the purse—we have talked about that many times, and I will just touch upon it here—is the central strand in the whole cloth of Anglo-American liberty. Let us engage in a kaleidoscopic viewing of the larger mosaic as it was spun on the loom of time. Let us trace a few of the Anglo-Saxon and later English footprints that left their indelible imprint on our own constitutional system. We have too often forgot and it seems to be a fetish these days, that we ought to forget our roots.

Several developments in the course of British history served as guideposts in the formation of the American Constitution. Many of the principles underlying the British Constitution were the result of lessons learned through centuries of strife and conflict between English monarchs and the people they ruled. The rights and liberties and immunities of Englishmen had been established by men who, like the authors of our Declaration of Independence, were willing to risk their lives, their fortunes, and their sacred honor for those rights.

The U.S. Constitution was in several ways built upon a foundation from which the colonies themselves had never really departed but had only adjusted to local needs and conditions and social republican forces that were at play in American colonial life.

The English Constitution was an unwritten constitution, but it includes many written documents such as Magna Carta (1215), the Petition of Right (1628), and the English Bill of Rights (1689), all of which had some part in influencing the formulation and contents of our own Constitution. There were various other English charters, court decisions, and statutes which were components of the English constitutional matrix and which, in one way or another, were reflected in our own organic law framed at Philadelphia.

Among these great English pillars of liberty, for example, as the Presiding Officer knows, were the writ of habeas corpus: ''you shall have the body.'' Habeas corpus was one of the most celebrated of Anglo-American judicial procedures and has been called the ''Great Writ of Liberty''. The name ''habeas corpus'' derives from the opening words of the ancient English Common law writ that commanded the recipient to ''have the body'' of the prisoner present at the court, there to be subject to such disposition as the court might order. In Darnel's Case (1627), during the struggle for Parliamentary supremacy, if a custodian's return to a writ of habeas corpus asserted that the prisoner was held by ''special command'' of the king, the court accepted this as sufficient justification. This case precipitated three House of Commons Resolutions and the Petition of Right, to which Charles I—who later lost his head as well as his throne—gave his assent, declaring habeas corpus available to examine the underlying cause of a detention and, if no legitimate cause be shown, to order the prisoner released. But even these actions did not resolve the matter. Finally, under Charles II, the habeas corpus act of 1679 guaranteed that no British subject should be imprisoned without being speedily brought to trial, and established habeas corpus as an effective remedy to examine the sufficiency of the actual cause for holding a prisoner.

Although the Act did not extend to the American colonies, the principle that the sovereign had to show just cause for detention of an individual was carried across the Atlantic to the colonies and was implicitly incorporated in the federal constitution's Article 1 provision prohibiting suspension of the writ of habeas corpus ''unless when in cases of rebellion or invasion the public safety may require it.''

Another English statute that made its imprint on our federal constitution was the Act of Settlement. Until the late 17th century, royal judges held their offices ''during the king's good pleasure.'' Under the Act of Settlement of 1701, however, judges were to hold office for life instead of at the king's pleasure and could be removed only as a result of charges of misconduct proved in Parliament. This was a crucial step in insuring the independence of the American judiciary. The Constitutional Convention of 1787 adopted the phrase ''during good behavior'' in Article 3, to define the tenure of federal judges in America.

William the Conqueror had brought with him from Normandy the sworn inquest, the forerunner of our own grand jury, to which the fifth amendment of the Constitution refers. According to the Assize of Clarendon in 1166, Henry II ordered the formation of an accusing or presenting jury to be present at each shire court to meet the king's itinerant justices. This was a jury of ''12 of the more competent men of a hundred and by four of the more competent men of each vill'' who were to be put ''on oath to reply truthfully'' about any man in their hundred or vill ''accused or publicly suspected'' of being a murderer, robber, or thief. This accusing jury—like the sworn inquest under William I—was the antecedent of our own modern grand jury.

Like the presentment jury, the trial jury had Continental origins, and by 1164, there was a clear beginning of the use of petit juries in Crown proceedings. It was mostly used in the reign of Henry II (1154–1189) to determine land claims and claims involving other real property. By 1275, in the reign of Edward I, it was established that the petit jury of 12 neighbors would try the guilt of an accused. Five centuries later, jury trial in federal criminal cases was required by Article 3 of the United States Constitution, and was repeated in the sixth amendment of the U.S. Constitution. My, what a long time—five centuries. The seventh amendment provided for a jury trial in civil matters.

The fountainhead of English liberties—those are your liberties and mine—was Magna Carta, signed by King John on June 15, 1215, in the Meadow of Runnymede on the banks of the Thames, and during the next 200 years, the Magna Carta was reconfirmed 44 times. It is one of the enduring symbols of limited government and the rule of law. Consisting of 63 clauses, it proclaimed no abstract principles but simply redressed wrongs. Simple and direct, it was the language of practical men. Henceforth, no freeman was to be ''arrested, imprisoned, dispossessed, outlawed, exiled, or in any way deprived of his standing . . . except by the lawful judgment of his equals and according to the law of the land.'' The phrase ''law of the land'' would become the phrase ''due process of law'' in later England and in our own Bill of Rights.

Other provisions also anticipated principles that would likewise be reflected five centuries later in the U.S. Constitution. There was language, for example, relating to abuses by royal officials in the requisitioning of private

property and thus are the remote ancestor of the requirement of ''just compensation'' in the fifth amendment in our own Bill of Rights. Other clauses required that fines be ''in proportion to the seriousness'' of the offense and that fines not be so heavy as to jeopardize one's ability to make a living—thus planting the seed of the ''excessive fines'' prohibition in the American Bill of Rights' 8th amendment.

In 1368, more than 600 years ago, more than 400 years before the case of *Marbury* v. *Madison* (1803), a statute of Edward III commanded that Magna Carta ''be holden and kept in all Points; and if there be any Statute made to the contrary, it shall be holden for none.''

So here was an early germ of the principle contained in the supremacy clause of the U.S. Constitution's article VI.

Having observed several elements of our own Constitution that have their roots in English history, let us now look at the English beginnings of some of the liberties and immunities secured to us by the American Bill of Rights.

Mr. President, I think this might be a good time for me to take a break, inasmuch as I have something like 8 minutes left.

The PRESIDING OFFICER (Mr. VOINOVICH). The Senator has 6 minutes left.

Mr. BYRD. I have 6 minutes remaining.

Mr. President, I ask unanimous consent that at such time as I regain the floor, I be able to continue my prepared statement, and that it be joined to the statement that has just preceded my yielding the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. And, since I have 5 remaining minutes, let me say again that what I am doing here is attempting to show that the U.S. Constitution is the result of the struggles of men in centuries before our own, this last year of the 20th century. Forget what the media says, forget what politicians say, this is not the first year of the 21st century, nor is it the first year of the third millennium. Anybody who can count, whether they use the old math or the new math, knows better than that. This is the last year of the 20th century.

But I want to show that these liberties, which were assured to us by our Federal Constitution, did not just spring up overnight like the prophet's gourd at Philadelphia. They had their roots going back decades, centuries—1,000 years or more, and that those roots and those documents—the Articles of Confederation, the State constitutions, the colonial documents, the covenants—the Mayflower Compact and all of these things—were known by the framers and they were guided in their writing of the Federal Constitution by the experience that had been gained by living under the articles, by living in the colonies, and by the lessons taught by the British experience which had come at the point of a sword and through the shedding of blood through many centuries before. This is not just something that sprang up there between May 25 and September 17, a total of 116 days in 1787.

I think it is good for us, as Members of the House and Senate, to just stop once in a while and draw back, take a look at the forest, try to see the forest and not just the trees, and restudy our history, restudy our roots, and establish ourselves again in the perspective of those Framers and their experiences, and understand that Marshall had it right when he said that the Constitution was meant to endure for ages.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I thank my good friend and colleague from West Virginia. For over 25 years, he has been my mentor in the Senate. I probably learned more about the Constitution's history and certainly the procedures of the Senate from him than from anything I have read or anybody else I have known. He is like my late father, one who reveres history because history to him is not just a compilation of dates and facts, but it is the roots of what we are and who we are and where we will go.

The distinguished Senator from West Virginia has cast well over 15,000 votes. I know he could tell me exactly how many he has cast, but it has been well over 15,000 votes. It is the record. I have been privileged to cast over 10,000 votes, and I appreciate the kind words he said when I cast that 10,000th. But those 10,000 votes, those 15,000 votes, many were in serious matters. Some were in procedural matters. Most were on legislation, statutes, laws, amendments—some on treaties. But it is so rare to be actually coming to vote on the issue of a constitutional amendment.

As important as all the statutes, all the treaties, even all the procedural matters are—because the distinguished Senator from West Virginia knows better than anybody else here, a procedural vote often is the determining vote—I think he would agree with me that the two most important votes you might cast would be on a declaration of war or on a constitutional amendment. In many ways, the country may be affected more by a constitutional amendment than by a declaration of war.

The distinguished Senator from West Virginia, my dear friend, has done the Senate and I think the country a service by saying let us pause a moment and ask how we got here. Actually, not only how we got here but why we got here. The answers to those two questions reveals that we should not amend the Constitution this way. It does not even begin to reach that article V level of necessity.

I thank my friend. I don't wish to embarrass him. I know he has been in some discomfort from a procedure on his eye. As one who, for other reasons, is very sensitive to that, I know he did this at some discomfort, but he said something that we should all hear.

I thank him and I yield the floor.

Mr. BYRD. Mr. President, before I yield, if I may, before I yield to the distinguished Senator from Minnesota who has already been so very gracious and considerate to me, I thank my friend from Vermont. I have learned a lot of lessons from him. We can learn from one another. It is easy, very easy if we try.

I appreciate his friendship. I appreciate his statesmanship. I am very grateful for his being a stalwart defender of this great Constitution and one who has voted, alongside me, in many what I consider to be pretty critical votes that we have cast in this Senate.

I close my statement today with these words from Henry Clay:

> The Constitution of the United States was made not merely for the generation that then existed, but for posterity—unlimited, undefined, endless, perpetual posterity.

Clay made those remarks in a Senate speech on January 29, 1850.

Mr. President, I ask unanimous consent that at the close of my remarks, when I have finally brought them to a close this day, the following articles be printed in the RECORD:

A Washington Post editorial of Monday, April 24, titled ''Victims and the Constitution;'' a Washington Post column by George Will titled ''Tinkering Again;'' an item from the National Journal of April 22 titled ''Victims' Rights: Leave the Constitution Alone,'' by Stuart Taylor, Jr.; and an editorial from the New York Times of Saturday, April 3, titled ''Don't Victimize the Constitution.''

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Apr. 24, 2000]

VICTIMS AND THE CONSTITUTION

The Senate is expected soon to take up a victims rights amendment to the Constitution. The laudable goal is to protect the interests of victims of violent crime in proceedings affecting them. But the amendment by Sens. Jon Kyl (R–Ariz.) and Dianne Feinstein (D–Calif.), now gaining support, threatens both prosecutorial interests and the rights of the accused. It should be rejected.

The measure would give victims the right to be notified of any public proceedings arising from the offense against them, to be present at such hearings and to testify when the issues are parole, plea agreements or sentencing. Victims would be notified of the release or escape of a perpetrator or any consideration of executive clemency. They would also be entitled to orders of restitution and to consideration of their interest in speedy trials.

Many of these protections already exist in statute. But the rights of victims properly are bounded under the Constitution by the need to guarantee defendants a fair trial. A defendant's right to a fair trial, for example, should not depend on a victim's interest in seeing justice swiftly done. It may sound perverse to elevate the rights of defendants often correctly accused of crimes above those of their victims. But rights of the accused flow out of the fact that the government is seeking to deprive them of liberty—

or, in some cases, life. In doing so, it already is representing the interests of their victims in seeing justice done.

The Clinton administration backs a constitutional amendment (though it has troubles with the specific language in the current proposal), but it is also worth noting that some prosecutors believe the amendment would hurt law enforcement. Beth Wilkinson, one of the prosecutors in the Oklahoma City bombing case, wrote in these pages last year that ''our prosecution could have been substantially impaired had the constitutional amendment now under consideration been in place.'' The fundamental right of victims is to have government pursue justice on their—and the larger society's—behalf. To interfere with that in the victims' own name would be wrongheaded in the extreme.

[From the Washington Post, Apr. 23, 2000]

TINKERING AGAIN

(By George F. Will)

Congress's constitutional fidgets continue. For the fourth time in 29 days there will be a vote on a constitutional amendment. The House failed to constitutionalize fiscal policy with an amendment to require a balanced budget. The Senate failed to eviscerate the First Amendment by empowering Congress to set ''reasonable limits'' on the funding of political speech. The Senate failed to stop the epidemic of flag burning by an amendment empowering Congress to ban flag desecration. And this week the Senate will vote on an amendment to protect the rights of crime victims.

Because many conservatives consider the amendment a corrective for a justice system too tilted toward the rights of the accused, because liberals relish minting new rights and federalizing things, and because no one enjoys voting against victims, the vote is expected to be close. But the amendment is imprudent.

The amendment would give victims of violent crimes rights to ''reasonable'' notice of and access to public proceedings pertaining to the crime; to be heard at, or to submit a statement to, proceedings to determine conditional release from custody, plea bargaining, sentencing or hearings pertaining to parole, pardon or commutation of sentence; reasonable notice of, and consideration of victim safety regarding, a release or escape from custody relating to the crime; a trial free from unreasonable delay; restitution from convicted offenders.

Were this amendment added to the Constitution, America would need more—a lot more—appellate judges to handle avalanches of litigation, starting with the definition of ''victim.'' For example, how many relatives or loved ones of a murder victim will have victims' rights? Then there are all the requirements of ''reasonableness.'' The Supreme Court—never mind lower courts—has heard more than 100 cases since 1961 just about the meaning of the Fourth Amendment's prohibition of ''unreasonable'' searches.

What is the meaning of the right to ''consideration'' regarding release of a prisoner? And if victims acquire this amendment's panoply of participatory rights, what becomes of, for example, a victim who is also a witness testifying in the trial, and therefore not entitled to unlimited attendance? What is the right of the victim to object to a plea bargain that a prosecutor might strike with a criminal in order to reach other criminals who are more dangerous to society but are of no interest to the victim?

Federalism considerations also argue against this amendment, and not only because it is an unfunded mandate of unknowable cost. States have general police powers. As the Supreme Court has recently reaffirmed, the federal government—never mind its promiscuous federalizing of crimes in recent decades—does not. Thus Roger Pilon, director of the Center for Constitutional Studies at the Cato Institute, says the Victims' Rights Amendment is discordant with ''the very structure and purpose of the Constitution.''

Pilon says the Framers' ''guarded'' approach to constitutionalism was to limit government to certain ends and certain ways of pursuing them. Government, they thought, existed to secure natural rights—rights that do not derive from government. Thus the Bill of Rights consists of grand negatives, saying what government may not do. But the Victims' Rights Amendment has, Pilon says, the flavor of certain European constitutions that treat rights not as liberties government must respect but as entitlements government must provide.

There should be a powerful predisposition against unnecessary tinkering with the nation's constituting document, reverence for which is diminished by treating it as malleable. And all of the Victims' Rights Amendment's aims can be, and in many cases are being, more appropriately and expeditiously addressed by states, which can fine-tune their experiments with victims' rights more easily than can the federal government after it constitutionalizes those rights.

The fact that all 50 states have addressed victims' rights with constitutional amendments or statutes, or both, strengthens the suspicion that the proposed amendment is (as the Equal Rights Amendment would have been) an exercise in using—misusing, actually—the Constitution for the expressive purpose of affirming a sentiment or aspiration. The Constitution would be diminished by treating it as a bulletin board for admirable sentiments and a place to give special dignity to certain social policies. (Remember the jest that libraries used to file the French constitution under periodicals.)

The Constitution has been amended just 18 times (counting ratification of the first 10 amendments as a single act) in 211 years. The 19th time should not be for the Victims' Rights Amendment. It would be constitutional clutter, unnecessary, and because it would require constant judicial exegesis, a source of vast uncertainty in the administration of justice.

[From the National Journal, Apr. 22, 2000]

VICTIMS' RIGHTS: LEAVE THE CONSTITUTION ALONE

(By Stuart Taylor, Jr.)

Chances are that most Senators have not really read the proposed Victims' Rights Amendment, which is scheduled to come to the floor for the first time on April 25. After all, it's kind of wordy—almost as long as the Constitution's first 10 amendments (the Bill of Rights) combined. And you don't have to go far into it to understand two key points.

The first is that a ''no'' vote would open the way for political adversaries to claim that ''Senator So-an-so sold out the rights of crime victims.'' This helps explain why the proposed amendment has a chance of winning the required two-thirds majorities in both the Senate and the House. Sponsored by Sen. Jon Kyl, R–Ariz., it has 41 cosponsors (28 Republicans and 13 Democrats), including Dianne Feinstein, D–Calif., and has garnered rhetorical support from President Clinton, Vice President Gore, and Attorney General Janet Reno. (The Justice Department has hedged its endorsement of the fine print because of the deep misgivings of many of its officials.)

The second point is that even though the criminal justice system often mistreats victims, this well-intentioned proposal is unnecessary, undemocratic, and at odds with principles of federalism. Unnecessary because victims' groups like Mothers Against Drunk Driving have far more political clout than do accused criminals. Victims' groups can and have used this influence to push their elected officials to augment the victims' rights provisions that every state has already adopted. These include both statutes and (state) constitutional amendments, not to mention federal legislation, such as the Violence Against Women Act. Undemocratic and inconsistent with federalism because this proposal—like others currently in vogue—would shift power from voters and their elected officials (state and federal alike) to unelected federal judges, whose liberal or conservative predilections would often influence how they resolve the amendment's gaping ambiguities.

None of this is to deny that many victims—especially in poor and minority communities—are still given short shrift by prosecutors, judges, and parole officials, or that further legislation may be warranted. But would enshrining victims' rights in the Constitution be more effective than enumerating them in ordinary statutes?

Consider the proposed amendment's specific provisions. They would guarantee every ''victim of a crime of violence'' the right to be notified of and ''not to be excluded from'' trials and other public proceedings ''relating to the crime,'' as well as the right ''to be heard'' before critical decisions are made on pre-trial release of defendants, acceptance of plea bargains, sentencing, and parole. In addition, courts would be required to consider crime victims' interests in having any trial be ''free from unreasonable delay,'' and to consider their safety ''in determining any conditional release from custody relating to the crime.'' Other provisions would entitle victims to ''reasonable notice of a release or escape from custody relating to the crime'' and ''an order of restitution from the convicted offender.''

All very worthy objectives. But rights are enumerated in the Constitution mainly to protect powerless and vulnerable minorities—such as criminal defendants, who face possible loss of their liberty or even loss of life—from abuse by majoritarian governments. Amending the Constitution to promote popular causes is rarely a good idea, and advocates of the proposed Victims' Rights Amendment have failed to identify any legitimate interests of victims that cannot be protected legislatively, or any constitutional rights of defendants that stand in the way.

Moreover, to think that putting into the Constitution such benignly vague language as ''free from unreasonable delay'' will have some magical effect—such as cutting through the bureaucratic inertia and resistance that some say have blunted the effect of victims' rights statutes—is both fatuous and belied by our history. And any effort to add enough detail to eliminate ambiguities would distend our fundamental charter into something more like the Code of Federal Regulations.

Of course, at some point the objective of promoting victims' rights bumps up against other worthy goals. They include protecting defendants' rights to due process of law and other procedural protections against wrongful conviction, and giving prosecutors discretion to negotiate plea bargains with some defendants when necessary to get evidence against others.

If the courts were to construe the proposed amendment so narrowly as to leave such traditional rules and practices undisturbed, it would amount to vain tokenism. If, on the other hand, they were to construe the

amendment broadly, it could foment legal confusion; set off torrents of new litigation by and among people claiming to be ''victims'' (a term that the amendment does not define); saddle the legal system with new costs and delays; and even increase the risks that innocent defendants would be convicted, that some of the guilty would escape punishment, and that some victims would be further victimized.

The most obvious risks the amendment poses to innocent defendants—and as President Clinton has discovered, we are all potential defendants—have been detailed by the American Civil Liberties Union. Courts could use the amendment to deny defendants and their counsel enough time to gather evidence of innocence before trial. They might also allow all victim-witnesses to be present when other witnesses are on the stand, even when this could compromise the reliability of the victim-witnesses' own testimony. (Current rules often require sequestering witnesses to prevent them from influencing one another's testimony.)

The risk of a guilty person's escaping punishment would be enhanced if courts used victims' objections as a basis for blocking prosecutors from entering legitimate plea bargains or for requiring them to justify such plea bargains by disclosing their strategies and any weaknesses in their evidence. Consider, for example, what might have happened to the Justice Department's effort to bring now-convicted Oklahoma City bomber Timothy McVeigh to justice if the Victims' Rights Amendment had been in effect in 1995.

Hundreds of victims—the injured and the survivors of the 168 people who died—could have invoked the amendment. Crucial evidence, provided by a witness named Michael Fortier, which helped convict McVeigh and co-defendant Terry Nichols, might have been unavailable if victims who opposed the prosecution's plea bargain with Fortier had been able to derail it, according to congressional testimony by Beth A. Wilkinson, a member of the prosecution team. Emmett E. Welch, whose daughter Julie was among those killed by McVeigh's bomb, testified at another hearing that ''I was so angry after she was killed that I wanted McVeigh and Nichols killed without a trial. . . . I think victims are too emotionally involved in the case and will not make the best decisions about how to handle the case.''

Of course, victims' interests would hardly be served by convicting the innocent or by making it harder to bring the guilty to justice. And some victims could be hurt more directly—for example, battered wives who complain to authorities only to be accused of assault by their victimizers, who can then invoke their own ''victims' rights.''

In short, the proposed constitutional amendment would do little or nothing more for crime victims than would ordinary state or federal legislation, and might in some cases be bad for them. That's why even some victims' groups, including the National Network to End Domestic Violence, are against it.

Most of us agree, of course, that prosecutors and judges should be nice to crime victims (as they usually are). Most of us also agree that parents should be nice to their children. But would we adopt a constitutional amendment declaring, ''Parents shall be nice to their children''? Or ''Parents shall give their children reasonable notice and an opportunity to be heard before deciding whether and how to punish older children who have pushed them around''? Would we leave it to the courts to define the meaning of terms like reasonable and nice? A ban on spanking, perhaps? A minimum of one candy bar per day? Would we let the courts override all state and federal laws that conflict with their interpretations?

We don't need constitutional amendments to embody our broad agreement on such general principles. And we should leave it to the states (and Congress) to detail rules for applying such principles to the messy realities of life, as the states do in laws dealing with child abuse and neglect. Legislatures periodically revise and update such laws—as they revise and update victims' rights laws—to correct unwise judicial interpretations, fix unanticipated problems, resolve troublesome ambiguities, and incorporate evolving social values. It would be far, far harder to revise or update a constitutional amendment.

James Madison wrote that the Constitution's cumbersome amendment process was designed for ''great and extraordinary occasions.'' This doesn't come close.

[From the New York Times, Apr. 3, 2000]

DON'T VICTIMIZE THE CONSTITUTION

Some bad ideas keep recycling back. The latest version of the so-called ''victims' rights amendment'' to the Constitution, a pandering and potentially disruptive measure, is being readied for a full Senate vote by the end of the month.

There is no question that victims of violent crime deserve respect and sympathy in the criminal process, and programs to help them recover from their trauma. But adding this amendment to the nation's bedrock charter could alter the Constitution's delicate balance between accuser and accused, and even end up subverting the victims' main interest—timely and fair prosecution and conviction of their assailants.

To protect victims from insensitive treatment as their cases move through the criminal system, the amendment would establish a new constitutional mandate that victims be notified and allowed to participate in prosecutorial decisions and judicial proceedings. There is widespread concern among the defense bar, the law enforcement community and even some victims' rights groups that the amendment would undermine defendants' rights, give rise to litigation that delays trials and interfere with legitimate plea bargain deals and other aspects of prosecutorial discretion. States are already experimenting to find practical ways to address victims' complaints, consistent with the demands on prosecutors and constitutional protections for defendants. To the extend improvements are needed, the answer is to pass laws to fine-tune the system, not clutter the Constitution.

The bill's two main sponsors—Senators Jon Kyl, an Arizona Republican, and Dianne Feinstein, a California Democrat—have been busily rounding up new co-sponsors. All are supporting an amendment that could inflict unintended consequences on victims, the justice system and the Bill of Rights.

Mr. BYRD. Mr. President, I shall have more to say along this line. I shall wait until another date to address this particular amendment that is before the Senate.

I yield the floor and again thank the Senator from Minnesota and thank my friend from Vermont.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. WELLSTONE. I thank the Chair.

Mr. President, I am more than pleased to give the Senator from West Virginia a good deal of my time. His words are profoundly important. I do not think there is anybody else in the Senate who can speak on this question the way Senator BYRD can, and I hope Senators hear him.

After hearing Senator BYRD, I am going to be very brief. I do not know what I can add to what has been said by other Senators. The way I want to make my argument in just a couple of minutes, actually, is to say this: Senator FEINSTEIN asked me: Do you need to be down on the floor and is it going to be one of these back-and-forth slugfest debates? I said: No, not at all. I do not have any disrespect for what you and Senator KYL are doing, two colleagues whom I like; it is just that, for me, I am reluctant to support any constitutional amendments.

The bar is very high. It is a high threshold test to me. Even for such a noble purpose as campaign finance reform, when Senator HOLLINGS offered his amendment, I did not vote for it. I did not vote for a constitutional amendment to ban the desecration of the flag. I believe there have to be compelling reasons to vote for a constitutional amendment, and I do not think my colleagues have made a compelling case.

I point out that States have moved forward with their own victims' rights legislation or constitutional amendments and, to my knowledge, their work has not been successfully challenged in the courts. I point out that Senators LEAHY and KENNEDY have legislation that gives victims more rights. They want to do it statutorily.

As I see it—and I am not a lawyer—first we go this route and see what the States do. We can also say this is a national concern, a national question. Certainly that is my framework. I do not want to be inconsistent. First we try it statutorily. We pass our law. If the Supreme Court judicial review declares the law to be null and void, then at that point in time we may, indeed, want to come forward and say there is no alternative but to amend the Constitution.

The Chair will smile but I am conservative about this question, for all the reasons Senator BYRD has so ably explained to all of us.

The second point I wish to make is a little different, and it is my own way of thinking about it. I do believe, if we are going to talk about victims' rights, there is a whole lot I want us to do. I want us out here legislating. I made this argument this morning, and I do not know that I need to make it again.

Mr. President, I yield to the Senator from New Mexico for a moment.

Mr. BINGAMAN. Mr. President, I thank the Senator from Minnesota. I yield a half hour from the time I have under cloture to Senator DASCHLE, the leader on the Democratic side.

Mr. LEAHY. Mr. President, if the Senator will withhold, I wonder, just from a discussion I have had since I last spoke with him, would the Senator be willing to yield that half hour to the distinguished Senator from West Virginia, Mr. BYRD?

Mr. BINGAMAN. Mr. President, I so yield the time to the Senator from West Virginia. I thank the Senator from Minnesota and yield the floor.

Mr. WELLSTONE. Mr. President, my second argument is that I want, to the best of my ability, to represent the people in Minnesota, for that matter the people in the country, and I can think of a lot of legislation we could be working on that will give victims more rights.

I have legislation I have been trying to get out on the floor which deals with violence against women and children—they are victims—that provides more protection, that can prevent this violence, that can save lives. Let's get at it legislatively. I do not say it so much in response to this effort on the part of my colleagues from California and Arizona, but, again what I was saying this morning, I hope soon we will get back to the vitality of the Senate, which is we go at it; we have legislation; we have vehicles; and we have amendments. We bring legislation to the floor, we debate, and we vote up or down. That is what we are here to do.

I say to my colleagues who are concerned about victims' rights, I have legislation I want to bring to the floor that I believe does a whole lot by way of protecting victims, by way of making sure people do not become victims, in particular women and children.

My third point is, of course, one of the problems with a constitutional amendment as opposed to a statutory alternative is that it is very difficult to undo what is done. There are some questions I have about this effort. A lot of the work I do with my wife Sheila deals with violence directed at women and children, what some call domestic violence. I ask unanimous consent that letters from the National Clearinghouse For The Defense of Battered Women and the National Network to End Domestic Violence be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

NATIONAL CLEARINGHOUSE FOR THE DEFENSE OF BATTERED WOMEN
Philadelphia, PA, April 14, 2000.

Senator WELLSTONE,
U.S. Senate,
Washington, DC.

DEAR SENATOR WELLSTONE: We are writing to you to express our strong opposition to S.J. Res. 3, the proposed victims' rights amendment to the Constitution of the United States.

The National Clearinghouse for the Defense of Battered Women has opposed each version of the proposed victims' rights amendments that has been introduced over the past four years. After reviewing S.J. Res. 3, the National Clearinghouse for the Defense of Battered Women stands firm in our opposition. Although the current proposed amendment addresses some of the issues we raised in the past, we continue to have grave concerns about the new proposal and continue to oppose it.

We have attached the position paper of the National Clearinghouse for the Defense of Battered Women opposing S.J. Res. 3. We believe that our arguments remain compelling and relevant to the newly proposed amendment.

In the interests of ensuring justice for battered women and children, we urge you to vote ''no'' to the amendment.

Sincerely,

SUE OSTHOFF,
Director.

NATIONAL NETWORK TO END DOMESTIC VIOLENCE,
Washington, DC, March 23, 1999.

Hon. ORRIN HATCH,
Chairman, Judiciary Committee,
U.S. Senate, Washington, DC.

DEAR CHAIRMAN HATCH: I write to apprise you of our continued opposition to the proposed constitutional amendment to protect the rights of crime victims. After careful review and consideration of S.J. Res. 6, we find that despite some minor changes since the 105th Congress our concerns with this proposed constitutional amendment have not changed.

The National Network to end Domestic Violence is a membership organization of state domestic violence coalitions from around the country, representing nearly 2,000 domestic violence programs nationwide. As you may be aware, many of our member coalitions and programs have supported the various state constitutional amendments and statutory enactments similar to the proposed federal constitutional amendment. And yet, we view the proposed federal constitutional amendment as a different proposition, both in kind and in process.

For a victim of domestic violence, the prospect of participating in a protracted criminal proceeding against an abusive husband or father of her children is difficult enough without the added burden of an unforgiving system. Prosecutors, police, judges, prison officials and others in the criminal justice system may not understand her fear, may not have provided for her safety, and may be unwilling to hear fully the story of the violence she's experienced and the potential impact on the impending criminal proceeding sentencing and release of the defendant. Each of these potential failures in the system underscore the need for the criminal justice system to pay closer attention to the needs of victims. Unfortunately, S.J. Res. 6 promises much for victims, but guarantees little on which victims can count to address these practicalities.

Let me outline some of our concerns.

First, if a constitutional right is to mean anything at all, it must be enforceable fully by those whose rights are violated. The proposed amendment expressly precludes any such enforcement rights during a proceeding or against any of those who are charged with securing the constitutional rights. The lack of such an enforcement mechanism is a fatal flaw—a mere gift at the leisure of federal, state and local authorities.

Secondly, the majority of the existing similar state statutes and constitutional amendments have been on the books fewer than 10 years. Thus, given our very limited experience with their implementation, it will be many years before we have sufficient knowledge to craft a federal amendment that will maintain the delicate balance of constitutional rights that ensure fairness in our judicial process. Without benefiting from the state experience, we run the risk of harming victims. We must explore adequately the effectiveness of such laws and the nuances of the various provisions before changing the federal constitution. State constitutions are different—they are more fluid, more amenable to adjustments if we need to ''fix'' things. A change in the federal constitution would allow no such flexibility, thus potentially harming victims by leaving no way to turn back.

And, lastly preserving constitutional protections for defendants, ultimately protects victims. This is especially true for domestic violence victims. The distinctions between defendant and victim are sometimes blurred by circumstance. For a battered woman who finds herself thrust into the criminal justice system for defending herself or having been coerced into crime by her abuser, a justice system that fairly guarantees rights for a defendant may be the only protection she has. Her ultimate safety may be jeopardized in a system of inadequate or uneven protections for criminal defendants, as is likely with the enactment of S.J. Res. 6.

Chairman Hatch, these are concerns that compel us to exercise restraint before proceeding with a constitutional amendment. As you know, in this country each year, too many fall victim to violent crime. These crimes cause death and bodily injury, leaving countless victims—women, men, boys and girls—to pick up the pieces. Tragically, the criminal justice system is less a partner and more an obstacle to the crime victim's ability to attain justice. A constitutional amendment is not the answer for this problem. But, improving policies, practices, procedures and training in the system would help tremendously.

Like you, we are committed to ensuring safety for domestic violence victims through strong criminal justice system enforcement and critical services for victims. However, the resources that must be invested into the process of passing such an amendment and getting it ratified by the states could be better invested in training and education of our judiciary, prosecutors, police, parole boards and others who encounter victims and in changing the regulations and procedures that most adversely impact victims. For those of us working in the field of domestic violence, we know the harm that can be caused directly to victims when policies are pushed without some experience to know whether they will work. And, while this may seem an inconsequential concern, for a battered woman whose safety may be jeopardized by such swift but uncertain action, the difference may be her life.

Please understand that our opposition to S.J. Res. 6 is not opposition to working through the traditional legislative channels to deliberate these issues and to support legislative changes that will allow us to explore various ways in which we can provide victims the voice they deserve in the criminal justice system.

Thank you for your consideration. If you have additional questions, please do not hesitate to be in touch with me at 202/543–5566. We have appreciated your leadership on issues concerning domestic violence over the years and look forward to continuing to work with you.

Sincerely,

DONNA F. EDWARDS,
Executive Director.

Mr. WELLSTONE. Mr. President, there is a tremendous amount of concern that what will happen is that batterers—and it is happening all too often right now—can accuse those whom they have battered as being the batterers, basically saying they are the victims, which then, in turn, triggers all sorts of rights that are in this amendment.

There is tremendous concern, and I will not read through all of it, when it comes to a particular part of the population—women and children who are, unfortunately, the victims of this violence in the homes—that, in fact, this constitutional amendment will have precisely the opposite effect that is intended, especially when it comes to

protection for women and children; it will lessen that protection for women and children.

I quote from the NOW Legal Defense and Education Fund:

While many women are victims of violent crime, women are also criminal defendants. Self-defense cases, dual arrest situations, or the abuse of mandatory arrest and mandatory prosecution policies by batterers who allege abuse by the victim, exemplify contexts in which women victimized by violence may need the vital constitutional protections afforded defendants.

There is a whole question of how this gets implemented, what happens to these women and children. Given the fact this is a big part of my work in the Senate, I ask unanimous consent that this NOW Legal Defense Fund position paper be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NOW LEGAL DEFENSE AND EDUCATION FUND,
New York, NY, April, 2000.

POSITION STATEMENT ON PROPOSED VICTIMS' RIGHTS AMENDMENT

Legislators in the 106th Congress plan to introduce a proposal to amend the U.S. Constitution by adding a ''Victims' Rights Amendment.'' Because NOW Legal Defense and Education Fund (NOW LDEF) chairs the National Task Force on Violence Against Women, and, as an organization that works extensively on behalf of women who are victims of violent crime, including our fight against domestic violence, sexual assault, and all forms of gender-based violence, we have been asked to analyze this proposal.

NOW LDEF agrees with sponsors of victims' rights legislative initiatives that many survivors of violent crime suffer additional victimization by the criminal justice system. We appreciate the injustices and the physical and emotional devastation that drives the initiative for constitutional protection. Nonetheless, we do not agree that amending the federal Constitution is the best strategy for improving the experience of victims as they proceed through the criminal prosecution and trial against an accused perpetrator. Any such amendment raises concerns that outweigh its benefits. After considering the potential benefits and hardships, and particularly considering the circumstances of women who are criminal defendants, NOW LDEF cannot endorse a federal constitutional amendment elevating the legal rights of victims to those currently afforded the accused. However, we fully endorse companion efforts to improve the criminal justice system, including initiatives to ensure consistent enforcement of existing federal and state laws, and enactment and enforcement of additional statutory reform that provide important protections for women victimized by gender-based violence.

The need to improve the criminal justice system's response to women victimized by violence

It is true that survivors of violence often are pushed to the side by the criminal justice system. They may not be informed when judicial proceedings are taking place or told how the system will work. Although many jurisdictions are working on improving their interactions with victims, many victims still experience the judicial system as an ordeal to be endured, or as a forum from which they are excluded. They often experience a loss of control that exacerbates the psychological impact of the crime itself. Certainly women victimized by violence face the persistent gender bias in our criminal justice system, which includes courts and prosecutors that fail to prosecute sexual assault, domestic violence, and other forms of violence against women as vigorously as other crimes. All too often, criminal justice officials blame the victims for ''asking for it'' or for failing to fight back or leave. these negative experiences make it more difficult for women victimized by violence to recover from the trauma and may contribute to reduced reporting and prosecution of violent crimes against women.

As amendment proponents have stressed, increased efforts to promote victims' rights potentially could have a strong and positive impact on women who are victims of crime. The entire public relations and educational campaign mounted on behalf of the amendment can be very informative. Criminal justice system reform can give victims a greater voice in criminal justice proceedings and could increase their control over the impact of the crime on their lives. For example, notice of and participation in court proceedings, including the ability to choose to be present and express their views at sentencing, could be psychologically healing for victims.

More timely information about release or escape and reasonable measures to protect the victim from future stalking and violence could improve women's safety. Women could benefit economically from restitution. Nevertheless, because statutory protections and state constitutional provisions already may provide some or all of these improvements, because additional statutory and state-level reform can be enacted, and because no reform will be effective absent strict enforcement, we do not support a federal constitutional amendment to address the problems facing women crime victims.

Why a Federal Victims' Rights constitutional amendment is problematic

Supporters of a federal victim's rights constitutional amendment begin with the fundamental premise that survivors of violence deserve the same protections that our judicial system affords to an accused perpetrator, and that their interests merit equal weight in the eyes of the state. They urge amending the U.S. Constitution to balance treatment of victims and defendants, positing that other protections, whether granted by statute, or implemented through policy, custom, training or education, could be limited at some point by the rights guaranteed to defendants under the Fourth, Fifth, Sixth and Eighth Amendments to the federal Constitution. However, adding constitutional protections that could offset the fundamental constitutional protections afforded defendants marks a radical break with over two hundred years of law and tradition carefully balancing the rights of criminal defendants against the exercise of state and federal power against them.[1] It is our belief that the proposed reforms can be afforded under statutes and state constitutions. The constitutional amendment proposal contains complex requirements that are far better suited for statutory reform.

The position of a survivor of violence can never be deemed legally equivalent to the position of an individual accused of a crime.[2] The accused—who must be presumed innocent, and may in fact be innocent—is at the mercy of the government, and faces losing her liberty, property, or even her life as a consequence. While the crime victim may have suffered grievous losses, she, unlike the defendant, is not subject to state control and authority. A victims' rights constitutional amendment could undercut the constitutional presumption of innocence by naming and protecting the victim as such before the defendant is found guilty of committing the crime. Amendment proposals leave undefined numerous questions ranging from the definition of a ''victim'' to whether victims would be afforded a right to counsel, or how victims' proposed right to a speedy trial would be balanced against defendants' due process rights. Proposals also inject an additional party (the victim and her attorney), to the proceedings against a defendant as a matter of right, increasing the power of the state and potentially diminishing the rights of the accused, particularly in the eyes of a jury.

The demonstrated existing inequalities of race and class in the modern American criminal justice system only increase the importance of defendants' guaranteed rights. Affording alleged and actual crime victims a constitutional right to participate in criminal proceedings could provide a basis for challenge to those bedrock principles that assure justice and liberty for all citizens.

While many women are victims of violent crime, women are also criminal defendants. Self-defense cases, dual arrest situations, or the abuse of mandatory arrest and mandatory prosecution policies by batterers who allege abuse by the victim, exemplify contexts in which women victimized by violence may need the vital constitutional protections afforded defendants. These cases highlight the need for constitutional protection for criminal defendants belonging to groups historically subject to discrimination.

Proposed alternatives to address the needs of women victimized by violence

NOW LDEF supports efforts to improve the experience of victims in the criminal justice process. Many statutes and state constitutions already contain the reforms contained in amendment proposals. Additional mechanisms for change include enhanced implementation and enforcement of existing state and federal legislation, enacting new statutory protections, increased training for judicial, prosecutorial, probation, parole and police personnel, and improved services for victims such as the more widespread use of victim-witness advocates. Funding available under the Violence Against Women Act can continue to be directed to crucial training and victims' services efforts. Additional statutory reform and funding for program implementation, particularly targeted to eliminate gender bias in all aspects of the criminal justice system can go a long way toward assisting women who have survived crimes of violence.

Statutory reform requiring prosecutors and other criminal justice system officials to take such measures as requiring timely notice to victims of court proceedings are modest and relatively inexpensive steps that would have a great impact. We must work to provide better protection for victims—through consistent enforcement of restraining orders, and by training law enforcement officials and judges about rape, battering and stalking, so that arrest and release decisions accurately reflect the potential harm the defendant poses. NOW LDEF hopes the attention drawn to this issue will promote greater dialogue about the problems that victims face in the criminal justice system, and will increase the criminal justice system's responsiveness to women victimized by gender-motivated violence.

FOOTNOTES

[1] Reported litigation under state constitutional amendments is limited, but illustrates the potential conflicts in balancing the rights of victims and the rights of the defendants. While in some cases the victim's state rights did not infringe on the defendant's federal rights, *see, e.g., Bellamy v. State of Florida,* 594 S.2d 337, 338 (Fla. App. 1st Dep't 1992) (mere

Footnotes at end of statement.

presence of the victim in the courtroom in a sexual battery case would not prejudice the jury against the defendant), in others the defendant's federal rights took primacy. *See. e.g., State of New Mexico v. Gonzales*, 912 P.2d 297, 300 (N.M. App. 1996) (sexual assault victim's rights to fairness, dignity and privacy under state amendment did not allow her to prevent disclosure of medical records to defendant); *State of Arizona ex rel Romely v. Superior Court*, 836 P.2d 445, 449 (Ct. App. Ariz. 1992) (despite victim's right to refuse deposition in this case where defendant claimed she stabbed her husband in self-defense, she would be unable to present a sufficient defense without the deposition and thus she could force him to be deposed).

[2]It may be less legally problematic to recognize the interests of victims by affording them a voice at sentencing or at another post-trial proceeding, after a defendant's guilt has been determined.

Mr. WELLSTONE. Mr. President, I thank my colleagues for their effort. Again, the threshold has to be very high. I speak in opposition.

With the indulgence of my colleagues, since I have been out here for a good period of time, I ask unanimous consent that I may have 5 more minutes for morning business to cover two matters.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WELLSTONE. I thank the Chair.

(The remarks of Mr. WELLSTONE pertaining to the introduction of S. 2465 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I yield to the Senator from North Carolina.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. EDWARDS. I yield 30 minutes of my time to the Democratic leader, Senator DASCHLE.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, I would like to correct the RECORD with respect to the effectiveness of the Victims Rights Clarification Act of 1997.

In the course of this debate on this proposed constitutional amendment, the two principal sponsors of this constitutional amendment, my friends Senator KYL and Senator FEINSTEIN, have spoken at some length about the Oklahoma City bombing cases. They have repeatedly cited that case as evidence that Federal statutes are not adequate for protecting crime victims, and that nothing but a constitutional amendment will do the trick.

They have said that ''the Oklahoma City case provides a compelling illustration of why a constitutional amendment is necessary to fully protect victims' rights in this country'' and that the case shows ''why a statute won't work.''

I have a very different take on the lessons to be learned from the Oklahoma City bombing cases. In my view, what happened in that case is a textbook example of how statutes can and do work, and why the proposed constitutional amendment is wholly unnecessary.

For many years, the proponents of this amendment have pointed to one particular ruling to support their cause. On June 26, 1996, during the first Oklahoma City bombing case, the Timothy McVeigh case, the trial judge, Chief Judge Richard Matsch, issued what I and many other Senators thought was a bizarre pretrial order. He held that any victim who wanted to testify at the penalty hearing, assuming McVeigh was convicted, would be excluded from all pretrial proceedings and from the trial. Judge Matsch's reasoning, as I understand it, was that victims' testimony at sentencing would be improperly influenced by their witnessing the trial.

The U.S. Attorneys who were prosecuting the case promptly consulted with the victims and concluded that Judge Matsch's ruling failed to treat the victims fairly, so they moved for reconsideration. But Judge Matsch denied the U.S. Attorneys' motion and reaffirmed his ruling on October 4, 1996.

As I mentioned, I, like the prosecutors, thought that Judge Matsch's order was wrong. I did not believe that anything in the Constitution or in Federal law required victims to make the painful choice between watching a trial and providing victim impact testimony.

The issue during the trial phase is whether the defendant committed the crime. The issue on which victims testify at the sentencing is what the effects of the crime have been. There is nothing that I know of, in common sense or in American law, that suggests that allowing a mother who has lost her child to hear the evidence of how her child was murdered would somehow taint the mother's testimony about the devastating effects of the murder on her and her family's lives.

So on March 14, 1997, I joined Senator NICKLES, Senator INHOFE, Senator HATCH, and Senator GRASSLEY in introducing the Victims Rights Clarification Act of 1997. This legislation clarified that a court shall not exclude a victim from witnessing a trial on the basis that the victim may, during the sentencing phase of the proceedings, make a statement or present information in relation to the sentence. This legislation also specified that a court shall not prohibit a victim from making a statement or presenting information in relation to the sentence during the sentencing phase of the proceedings solely because the victim has witnessed the trial.

In addition, and just as importantly, the Victims Rights Clarification Act preserved a judge's discretion to exclude a victim's testimony during the sentencing phase if the victim's testimony would unfairly prejudice the jury. It allowed for a judge to exclude a victim if he found a basis—independent of the sole fact that the victim witnessed the trial—that the victim's testimony during the sentencing phase would create unfair prejudice.

My cosponsors and I worked together to pass the Victims Rights Clarification Act within a timeframe that could benefit the victims in the Oklahoma City bombing case. The Senate passed this bill by unanimous consent on March 18, 1997, and President Clinton signed it into law the very next day. I am very proud of how we worked together, Republicans and Democrats, the Senate and the House, the Congress and the President, to pass the Victims Rights Clarification Act in record time, and I believe that its speedy passage speaks volumes about our shared commitment to victims' rights.

More important for this debate than how fast Congress acted, however, is how fast Judge Matsch responded. One week after the President signed the Victims Rights Clarification Act, Judge Matsch reversed his pretrial order and permitted victims to watch the trial, even if they were potential penalty phase victim impact witnesses. In other words, Judge Matsch did what the statute told him to do. Not one victim was prevented from testifying at Timothy McVeigh's sentencing hearing on the ground that he or she had observed part of the trial.

Senator KYL has said that the statute did not work; he suggested that we are now stuck with a judicial precedent that somehow prevents victims from sitting in the courtroom during a trial. Sen. FEINSTEIN has said that the Victim Rights Clarification Act is ''for practical purposes a nullity.'' It's just not true.

Beth Wilkinson, a member of the Government team that successfully prosecuted Timothy McVeigh and Terry Nichols, told our Committee how well the Victim Rights Clarification Act worked. I can do no better than to quote her words, because she was there, in the trenches; she devoted 2½ years of her life to obtaining justice for the victims of the Oklahoma City bombing. Here is what Ms. Wilkinson, one of the lead prosecutors in the case, told the Judiciary Committee:

> What happened in [the McVeigh] case was once you all passed the statute, the judge said that the victims could sit in, but they may have to undergo a voir dire process to determine . . . whether their testimony would have been impacted . . . I am proud to report to you that every single one of those witnesses who decided to sit through the trial . . . survived the voir dire, and not only survived, but I think changed the judge's opinion on the idea that any victim impact testimony would be changed by sitting through the trial. . . . [T]he witnesses underwent the voir dire and testified during the penalty phase for Mr. McVeigh.

Ms. Wilkinson went on to say:

> It worked in that case, but it worked even better in the next case. Just 3 months later when we tried the case against Terry Nichols, every single victim who wanted to watch the trial either in Denver or through closed-circuit television proceedings that were provided also by statute by this Congress, were permitted to sit and watch the trial and testify against Mr. Nichols in the penalty phase.
>
> That operated smoothly. The defendant had no objection, and the judge allowed every one of those witnesses to testify without even undergoing a voir dire process in the second trial. . . .
>
> I think that proves . . . [that] you do not want to amend the Constitution if there are

some statutory alternatives. And I saw the Victim Rights Clarification Act work. Within a year of passage, it had been tried two times and I believe by the second time it had operated smoothly and rectified an interest and a right that I think the victims were entitled to that had not been recognized until passage of that statute.

Senator FEINSTEIN said that Judge Matsch ''ignored'' the Victim Rights Clarification Act. But Ms. Wilkinson was there, and she says the judge did not ignore the statute, he did apply it, and that any initial uncertainty about the constitutionality of the statute was resolved in the McVeigh case, and not a problem in the second trial, against Terry Nichols. In addition, I am unaware of any subsequent case in which the Victim Rights Clarification Act has been less than fully effective.

I hope this lays to rest, once and for all, the repeated assertions of the proponents of this constitutional amendment that the Oklahoma City bombing cases proved that victims cannot be protected by ordinary legislation. There was one very unfortunate ruling that went against victims' rights at the start of the McVeigh case. That ruling was promptly opposed by prosecutors, swiftly corrected by Congress in the Victims Rights Clarification Act, and duly reversed by the trial judge himself before the trial began. The Victims Rights Clarification Act is working.

After Ms. Wilkinson testified before the Committee, I asked one of our other witnesses, Professor Paul Cassell, to comment on what Ms. Wilkinson had said about the Victims Rights Clarification Act. Professor Cassell represented some of the victims of the Oklahoma City bombing, and he advised Senators in connection with the formulation of that legislation.

Knowing that Professor Cassell is now one of the leading advocates of the proposed victims' rights amendment, I wanted to give him an opportunity to explain what he thought the proposed constitutional amendment would have provided the Oklahoma City bombing victims that the Victims Rights Clarification Act did not provide.

The only thing that Professor Cassell could think of was that the amendment would have given the victims ''standing''. In other words, in addition to enabling the victims to watch the trial and testify at the sentencing hearing, which the statute admittedly accomplished, the amendment would have entitled Paul Cassell and other lawyers for the victims, and the victims themselves, to demand additional hearings and to argue before Judge Matsch.

If standing is the only thing that was missing in the Victims Rights Clarification Act, then we have to ask ourselves two things. First, assuming that we want to provide standing for victims and their lawyers to make legal arguments as well as to testify in criminal cases, do we need a constitutional amendment to achieve that? None of the sponsors of the constitutional amendment have explained why that could not be done by statute.

Second, and more importantly, do we really want to give standing to victims and their lawyers, and allow them to raise claims and challenge rulings during the course of a criminal case?

Remember, we are not arguing about whether victims are entitled to attend the trial, whether they are entitled to testify, or whether they are entitled to restitution. Of course they should be, and they already are in most States. The ''standing'' question is a procedural one, about whether victims' rights and the interests of an efficient and effective criminal justice system are best protected by allowing prosecutors to run the prosecution, or by bringing in teams of plaintiffs' lawyers—or, I guess, they would now be called victims' lawyers—to argue over how the case should be conducted.

I am committed to giving victims real and enforceable rights. But I am not convinced that prosecutors are so incapable of protecting those rights, once we make them clear, that every victim needs to get their own trial lawyer. Indeed, from my own experience as a prosecutor, and from what I have seen of Ms. Wilkinson and the dedicated team that prosecuted the Oklahoma City cases, I am confident that prosecutors have victims' interests at heart.

Senators KYL and FEINSTEIN mentioned that some of the victims of the Oklahoma City tragedy support their proposed constitutional amendment. I think the point needs to be made that some of those victims do not support the amendment. They were satisfied with the way that Ms. Wilkinson and her colleagues handled the case, and pleased and relieved with the results they achieved.

One of the victims even testified before Congress in opposition to this proposed amendment. Emmett E. Walsh, who lost his daughter in the bombing, told the House Judiciary Committee the following:

> I know that many people believe that a constitutional amendment is something that crime victims want. However, I want you to know that as a crime victim, I do not want the Constitution amended. . . . I believe that if this constitutional amendment had been in place it would have harmed, rather than helped, the prosecution of the Oklahoma City Bombing case.

In the Timothy McVeigh case, the trial judge got the law of victims' rights wrong in an initial pretrial ruling. Through the normal legislative process, we fixed the problem before the trial began. What that history shows is not that statutes don't work; it shows precisely why they do. If we got the law of victims' rights wrong in a constitutional amendment, or the Supreme Court interpreted a constitutional victims' rights amendment wrongly, a solution would not come so swiftly. That is why Congress should be slow to constitutionalize new procedural rights that can be provided by statute.

Mrs. MURRAY. Mr. President, I rise today to express my strong support of the rights of crime victims and of all Americans. In the last few years, Congress has passed laws to increase the rights of crime victims and their families. Congress has provided crime victims the right to attend and to speak at court proceedings, the right to be notified of a criminal's parole or escape, and the right to receive restitution.

Congress has been able to expand victims' rights by doing what we do often—pass laws. Today, we are asked to do something we do very rarely—to amend the United States Constitution.

I support crime victims. I want to expand their protections, but I don't believe that amending the Constitution is the best way to do it. As the examples I mentioned have shown, we can expand and clarify victims' rights significantly—without tampering with the Constitution. A constitutional amendment is not necessary to help crime victims.

Any time we think about changing the Constitution, we must consider the words of James Madison, its principal author. Madison explained that amending the Constitution should only be reserved for ''certain great and extraordinary occasions,'' when no other alternatives are available.

Despite all the changes in our country over the last 213 years, we've only amended the Constitution on 27 occasions, 10 of which were the Bill of Rights. Most of these constitutional amendments were passed to reflect fundamental changes in the attitudes of Americans such as ensuring the rights of minorities and the right of women to vote.

This is not a ''great and extraordinary occasion.'' In the last 20 years, we in Congress and the states have done a good job of ensuring better and more comprehensive rights and services for crime victims. There are more than 30,000 laws nationwide that define and protect victims' rights. There are tens of thousands of organizations that provide assistance to people who have been victims of crime.

Thirty-two States have passed constitutional amendments in their own state constitutions to protect the rights of crime victims. My own home State of Washington has both laws on the books and provisions in our state constitution that provide crime victims and their families the right to attend trial, the right to be informed of court proceedings, the right to make a statement at sentencing or any proceeding where the defendant's release is considered, and the right to enter an order of restitution. There is no evidence that the laws in my state and others like it are failing to protect victims.

Not only is this not a ''great and extraordinary occasion,'' but this amendment could actually erode the rights of Americans rather than expand on them. Defendants in criminal proceedings in this country are presumed to be innocent. This amendment would

give victims and their families the right to be heard at all critical stages of the trial. This amendment could allow victims to sway the trial against a defendant before they have been convicted, thus seriously compromising the presumption of innocence.

The amendment could also compromise a defendant's right to a fair trial. Judges have enormous discretion in determining which witnesses should be able to attend the proceedings in their courtroom. Many times, a witness' testimony could be compromised if that witness hears the testimony of others. For example, if the victim is allowed to hear the testimony of the defendant, the victim could change his or her testimony based on what the defendant said. Even worse, if a victim attends the testimony of the accused, the trauma or intimidation they experience could damage their subsequent testimony.

The judge should have discretion over who can be excluded from the courtroom at particular stages of the trial to ensure that the defendant has a fair trial. This amendment would give victims the right to attend the entire criminal trial regardless of whether the judge believes their presence could taint the fairness of the proceeding. Judges help ensure that defendants have a fair trial. This amendment would jeopardize that protection.

The amendment could also affect defendants and the prosecutors' ability to present their case. The amendment would give victims a right to intervene and assert a constitutional right for a faster disposition of the matter. In many cases, the defendants and prosecutors need time to develop their arguments. This amendment could force a premature conclusion to cases that may require additional deliberation.

In some cases, the victims are actually defendants. This happens many times in domestic violence cases when the abused victims finally defend themselves from their attacker. In these cases, the abuser could actually be granted special rights that could place a domestic violence victim at greater risk. Why should the abuser get special rights? This is one reason why many domestic violence victims' advocates oppose this amendment.

Finally, the proposed victims' rights amendment could hurt effective prosecutions and would place enormous burdens on the criminal justice system. The amendment gives victims the right to be notified and to comment on negotiated pleas or sentences. More than 90 percent of all criminal cases do not go to trial but are resolved through negotiation. Giving victims a right to obstruct plea agreements could backfire by requiring prosecutors to disclose weaknesses in their case. It could also compromise the ability of a prosecutor to gain the cooperation of one defendant to improve the chance of convincing others. In the end, guilty defendants could better present their case if they are privy to strategy and details of the prosecutions' case. The rights of notification could also result in large burdens on the criminal justice system, compromising resources to effectively prosecute criminals.

An amendment to the Constitution is not the right approach. We should continue to do the things that have worked in the past without taking this drastic step. Current State and Federal laws give victims extensive rights at trial.

For these reasons, I have cosponsored a proposal by Senators LEAHY and KENNEDY. This statutory change would give crime victims the right to be heard and be notified of proceedings and the right to a speedy trial. It would also enhance participatory rights at trial and do other things to give victims and their families a greater ability to get involved in the prosecution of the criminals that harmed them. All of these rights would be subject to the judge's discretion. We in Congress should not be in the business of telling judges how to balance the rights of the accused and those of the victims.

I urge my colleagues to support the Leahy/Kennedy compromise and reject the constitutional amendment that may do more to compromise the rights of Americans rather than expand them.

Before, I close, I want to make one final point. If we really want to do something for crime victims, we should reauthorize the Violence Against Women Act, VAWA, which expires this year. If we do not act, we jeopardize funding and we miss a vital opportunity to strengthen this historic act.

Even using conservative estimates, one million women every year are victims of violent crimes by an intimate partner. We know that one in three women can expect to be the victim of a violent crime at some point in her life. The chance of being victimized by an intimate partner is ten times greater for a woman than for a man. Domestic violence is statistically consistent across racial and ethnic lines—it does not discriminate based on race or economic status. Eighty-eight percent of victims of domestic violence fatalities had a documented history of physical abuse and 44 percent of victims of intimate homicide had prior threats by the killer to kill the victim or self. These are frightening statistics and show us that violence against women is a real threat. How will a Constitutional amendment prevent these crimes or even provide safety and support to the victims?

VAWA changed the entire culture of violence against women and empowered communities to respond to this devastating plague. Since 1995 we have provided close to $1.8 billion to address violence against women. VAWA funding supports well over 1,000 battered women shelters in this country. The National Domestic Violence Hotline enacted as part of VAWA, fielded 73,540 calls in 1996 alone, and in 1998 the hotline fielded 109,339 calls. We have many success stories and we know what works.

There is no reason to delay reauthorization. We still have so much more to do. We know the demand for services and assistance for victims is only increasing. As a result of more outreach and education, women no longer feel trapped in violent homes or relationships. Domestic violence is no longer simply a family problem but a public health threat to the community. While we have seen an explosion in funding for battered women's shelters, we also know that hundreds of women and children are still turned away from overcrowded shelters. We have heard reports that individual states had to turn away anywhere from 5,000 to 15,000 women and children in just one year. I know that limited safe shelter space is a growing problem in Washington state. What can we do for these victims? What rights do they have? The reauthorized legislation, S. 51, provides much greater hope to these victims than even federal and state laws to protect the rights of victims in the court process. The bill currently has 47 cosponsors.

If we are concerned about victims and the rights of victims we should be acting to reauthorize and strengthen VAWA.

SUPPORTING THE CAPITOL HILL POLICE OFFICERS

Mr. WELLSTONE. Mr. President, I have decided now to start speaking about this subject again on the floor of the Senate. I think I will devote only 10 minutes a week on it. But I am going to do it every week. I must say, though, if we continue to operate the way we have been operating, I might as well speak about it much more because while we are dealing with a very serious question now, we are not about the business of legislating. I call on the majority leader to start getting legislation out and going at it on amendments. Let's bring some vitality back to the Senate.

I do want to, one more time, say to my colleagues that most all of us attended a service for Officers Chestnut and Gibson. These were two police officers who were murdered. They were murdered in the line of duty. They were protecting us. They were protecting the public.

I say to my colleagues one more time, I believe Senator BENNETT and Senator FEINSTEIN on the Senate side are very supportive of doing whatever they can. But up to date, including today again, we have stations here where you have one police officer for lots of people coming through. That police officer is not safe. That police officer cannot do his or her job.

We made a commitment to do everything we possibly could to make sure we would never experience again the loss of a police officer's life. We can never be 100 percent sure, but we ought to live up to the commitment to have two police officers at every station.