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Foreign Policy and the Constitution
by Bart Frazier

The following is a transcript of a speech given at The Future of Freedom Foundation's June 2007 conference, "Restoring the Republic: Foreign Policy & Civil Liberties" held in Reston, Virginia.

Jacob Hornberger: Bart Frazier has been the Program Director at the Future of Freedom Foundation since 2001, and is in charge of all our programs including our op-ed program where we send our articles out to thousands of newspapers across the country. He's also in charge of all of our Internet activity including the maintenance and updating of our web site. He's also responsible for putting out every single day, six days a week our FFF e-mail update. He's in charge of collecting the editorial cartoons and then inputting all the articles we put there. So it's a real task that he accomplishes for us. The truth is that we really could not do our business without Bart. Several years ago when he was a graduate student at George Mason University in the Economics Department, which you all know is very free market Austrian oriented, he came to work with us as an intern. Alicia and I, Alicia's been with me some 13 years or so. We immediately recognized that this guy's just great. He's one of those people that just, you know, takes the responsibility to do a job. You don't have to monitor him. We started talking amongst ourselves if only he would leave the graduate program and become full time with us, and sure enough he broached us with that idea. We were ecstatic. He's become indispensable for us. When he goes on vacations he leaves this gaping hole in our operations, and he hasn't gotten the message yet. I keep telling him that even though he's allotted a certain amount of vacation time that doesn't mean he has to take it. Bart's also a great renaissance man. He regaled us with how he tears down his car engine totally, rebuilds it back up. He's one of the most proficient bird watchers you've ever seen as he and Alicia gaze out the window often there's a red tail hawk going by or whatever. So he's a real pleasure to be around. His latest project is he's becoming almost a semiprofessional surfer, which he just picked up from scratch a couple years ago and has already risen, I think, to the top of the surfing world. It's just a lot of fun to have Bart around. We're really, really lucky. The title of his talk is, "Foreign Policy and the Constitution."

Bart Frazier: Thank you. Sharing all my secrets. Before I begin, first I'd like to thank everybody in this room. We've had a wonderful weekend. I think everybody here could agree, and it would not be possible without all the attendees and all the speakers here. So thank you very much. A big round of applause for everybody. Thank you. Foreign Policy and Civil Liberties, the topic of this conference, of course. These are two areas of our lives where most people in this room would agree that the state has a valid role to play. Protecting the country from invasion and securing individual rights are two of the vital functions of the federal government. But at the same time we know that our own government can be the greatest threat to our freedom. It was this problem that the U.S. Constitution was designed to address.

In the United States the Constitution is the primary connection between the individual and the state. It is the law of the land and the document that trumps all others in determining what this state can and cannot do. The Constitution was designed to protect us, the people, from the government. It is the government, however, that has advanced in overactive foreign policy and it is the American people who now feel the adverse effects of the resulting blowback. It is the government that violates our civil liberties, and it is the individual who feels the effects of government surveillance, detention, torture and even murder.

The relationship between the individual and the state is a problem that has been with us since we have had government. Governments have been abusing and killing their citizens since men began to rule over other men. R.J. Rummel, a professor of political science at the University of Hawaii, estimates that between war, genocide, state-induced famines and the like, governments across the globe have been responsible for the deaths of more than 262 million people in the 20th century alone. Two-hundred-sixty-two million people. As Rummel states, if all these people were laid head to toe they would circle the earth 10 times. If the state's treatment of the individual can be described in one word it undoubtedly would be violent. This leaves us, the individuals, with a conundrum. We want the state to protect us from invasion, theft and murder, but we don't want it killing us or sending us to occupy other countries to kill others. The Constitution was the framers' way of solving this dilemma.

The Constitution formed a national government that provided for the common defense while simultaneously protecting the individual from that very government it had just brought into existence. It was acknowledged that individual rights or natural rights precede the existence of the government and are inherent. Any government action that violated these rights was illegitimate. For those who cherished liberty the Constitution was the closest that man had come to perfecting government. It attempted to restrict the power of the government while retaining the rights of the individual. A common misconception is that the Constitution grants us our rights. High school students are routinely asked what rights the First Amendment grants them. This question is absolutely wrong, in error itself. The Constitution does not grant the people any rights. Rights are inherent and inalienable. The Constitution only protects these rights. Rights

that precede all forms of government. Rights that all of us would still retain were we to be living under no government whatsoever.

In order to protect these rights the founders wanted to make it as explicit as possible what the government could and could not do. Article 1 Section 8 of the Constitution lists the powers that Congress could legally exercise. If a power was not enumerated in that list Congress could not legally perform it. The meaning of this enumerated powers doctrine has long been lost on citizens and politicians alike, but there's absolutely no question that this is what the founders intended to do. Thomas Jefferson wrote in 1817, "Congress has not unlimited powers to provide for the general welfare, but only those specifically enumerated." James Madison, father of the Constitution, wrote at the Virginia Convention when trying to ratify the Constitution in June of 1788, "The powers of the federal government are enumerated. It can only operate in certain cases. It has legislative powers on defined and limited objects beyond which it cannot extend its jurisdiction." And even embedded into the Constitution itself was a provision to reaffirm what Article 1 Section 8 already implied, the Tenth Amendment which reads, "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."

The Bill of Rights, of which of course the Tenth Amendment is a part, was not even thought necessary by some of the framers because the enumerated powers doctrine made it clear that the federal government had extremely limited well defined powers, none of which, of course, includes violating our civil liberties. But it was the anti-Federalists who were adamant that the Bill of Rights be adopted, and it is a good thing they did because the concept of enumerated powers implied in Article 1 Section 8 has been a vestigial part of the Constitution for well over a century now. The first ten Amendments to the Constitution have been the bulwark against the government that has allowed us to retain what freedom we still hold onto today. The Bill of Rights clearly specifies what the government may not do to the people. It may not punish us for speaking, or printing our opinion, or for protesting against the government. It may not take away our guns. It may not search us or our homes without a warrant. It may not jail us without a just cause, and it must provide us with a quick trial so that innocent men are set free as soon as possible. The trial a man receives must be by a jury of his peers so that corrupt judges cannot jail him unjustly.

For a detailed exposition on the Bill of Rights I would highly recommend Jacob Hornberger's 11 part series on the Bill of Rights, which started in the July 2004 edition of *Freedom Daily*. And to make it clear that these protected rights were not the only rights that citizens have, because that is why they did not [want to] initially want to have a Bill of Rights as it would imply that these were the only rights that citizens had, the Ninth Amendment states explicitly that this enumeration of rights [quote] "Shall not be construed to deny or disparage others retained by the people."

Now this framework held fast until the beginning of the 20th century. As Richard Ebling noted the 19th century in particular was a time of great innovation, freedom and progress. But as progressivism and eventually the New Deal took the country by storm the federal government began to exercise its power over more and more aspects of everyday life, in the process infringing upon the liberties that the people of the 18th and 19th centuries took for granted. The framers also had a clear idea of how their country should act on the world stage. Fortune had brought them a country separated from most of the world's problems by two vast oceans. They had recently waged a long fought hard won war against an imperial government, and they simply wanted a government that would leave them alone.

Eight years after the Constitution was ratified George Washington gave sage advice on foreign policy in his farewell address. "The great rule of conduct for us in regard to foreign nations is in extending our external relations to have with them as little political connection as possible. Europe has a set of primary interests which to us have none or a very remote relation. Hence she must be engaged in frequent controversies the causes of which are essentially foreign to our own concerns." James Madison knew that warfare, even those started within the government itself could be detrimental to the health of the republic saying, "If tyranny and oppression come to this land it will be in the guise of fighting a foreign enemy." And John Jay warned, in Federalist No. 4, "The safety of the people of America against dangers from foreign force depends not only on their forbearing to give just causes of war to other nations, but also on their placing and continuing in themselves in such a situation as not to invite hostility or insult. For it need [the] not be observed that there are pretended as well as just causes of war."

So how were the framers to protect this nation from unjust war? They knew that too much power concentrated in the hands of any one man, or any group of men, eventually leads to despotism. What provisions did the Constitution have that would attempt to limit the government to only the most necessary of wars? Like so many other functions of the Constitution the powers that were needed to implement foreign policy were divided between the Executive and the Legislative branches. The power to declare war was given to Congress, but the President was the one with the power to wage it. The President may wish to wage war, but he needed to get the declaration from Congress first, and even if a President was successful in getting his declaration Congress had the power to stop the war by cutting off the money that funded it.

The system of checks and balances so highly regarded by historians was supposed to prevent the ascension of a tyrannical government. Instead of enabling one man to determine when the country was to go to war the Constitution saw to it that different parts of the federal government would have to debate and ultimately agree among themselves that war was the proper route. When war fever took the grip of a nation, as it does to every nation, always will, always has, it was hoped that the built in tension between the Executive and the Legislative branches would enable cooler heads to prevail, and avert non-defensive wars. In theory special interests that

were motivated to start war for personal gain would be thwarted by the majority of those in Congress not willing to suffer unnecessary warfare. Unlike the monarchs that ruled most of the civilized countries of the world in the 18th century the Constitution stopped one man from doing that.

When Congress did decide to take the nation to war, when they decided that it was a defensive war worthy of taking the whole nation into battle, the President would then assume the power of Commander and Chief, but that wasn't enough for the framers. They were still afraid of too powerful an Executive. In the event that he began to abuse his power, for example, by invading additional countries, or even turning the army on U.S. citizens, Congress could pull the plug. The Constitution mandates that if Congress raises an army it cannot fund it for any longer than a two-year period. This provides a relief valve in case the army or the President gets out of hand. The Congress simply refuses to renew the spending bill. This system, that is, separating the powers to declare, wage, and fund war served our nation fairly well from its inception through the 1800s. But as the new century dawned Americans found that their government had imperial ambitions and that their army was spread across the globe. U.S. soldiers could be found supporting a puppet regime in Hawaii. With a cry of "Remember the Maine" the government turned George Washington's maxim of disentanglement on its head by declaring war on Spain and sending its soldiers to the Philippines, Guam, Puerto Rico, and Cuba. Seeking a canal across Central America the U.S. military played an instrumental role in Panama's succession from Columbia. And more than 100,000 Americans lost their lives fighting in World War I which, of course, was the war to end all wars.

We have had a few since then. The words of Theodore Roosevelt, Woodrow Wilson, and F.D.R. were a far cry from those of the framers. Instead of observing good faith and justice toward all nations Americans heard that, "They should speak softly and carry a big stick." They heard Woodrow Wilson tell them that, "Armed neutrality is ineffectual at best." And Franklin Roosevelt instructed that, "We must be the great arsenal of democracy." Now, during the period between the Spanish American War and World War II, while the federal government was expanding an imperial foreign policy, at least the declaration of war requirement was still being heeded. In the conflicts of those times the President still asked Congress for declaration because the Constitution required him to secure it, and they were at least paying lip service to the Constitution.

Presidents do not bother with such niceties any longer. Congress has not issued a declaration of war against any nation since World War II, a span of more than 60 years. Yet, since World War II U.S. troops have been deployed over 70 times to over 40 countries with more than 98,000 U.S. dead and 279,000 wounded. The Constitution no longer chained the military or the President as it was designed to do. The chains weakened as the progressive moving gripped the country and as an imperial mindset sent American soldiers far and wide. When the U.S. Government began

to impose its will on nations of the world following World War II the Constitution was eventually ignored and forgotten.

Most people today cannot even name the three branches of government much less explain the separation of powers doctrine. In the span of 220 years our republic evolved from one of enumerated powers narrowly defined by the Constitution to an extremely powerful, highly centralized militant government that is forever extending the boundaries of its power. Today the U.S. military is an imperial behemoth with more than 700 overseas military bases in over a 130 countries. It has an additional 6,000 military bases in the United States and its territories. The budget for the Pentagon is larger than the 20 next largest militaries combined. And as Ron Paul has said, "We are now building an embassy in Iraq that is larger than the Vatican."

As the federal government has become more militant it has taken ever bolder steps in trampling our liberties. On a domestic level it began small. They began inspecting our food, started controlling wages, enacting price controls. Then it became a little bolder. It started tearing apart companies that it thought were too large and too powerful. It razed entire neighborhoods in the name of urban renewal. It started spying on its citizens. It attempted to nationalize complete industries, and now in the 21st century it has moved to depriving us of even the most basic of rights such as right to a fair trial, and torture is now an accepted form of justice. The Constitution was designed to prevent the state from doing these very things, but it has ceased doing so. This does not mean that the Constitution is flawed in design. No Constitution, no matter how well designed, will work as intended if the citizens do not care if their politicians observe it, or even understand how it works.

Now, all of this sounds rather foreboding, and it is true that our government is doing horrible things these days, but there is hope. If you look on the inside cover of *Freedom Daily*, and if you didn't pick one up I highly recommend you do on your way out, you will see a phrase the Future of Freedom Foundation has been committed to since our inception. We don't compromise. We don't compromise our philosophy because we know that ideas do matter. Look at what happened between the 1890s and the 1930s. An idea, socialism, transformed this nation in a matter of 40 years. The 1890s were a relatively wonderful time to live in the U.S. There was no income tax. Regulation was at a bare minimum. But in the span of two generations the country morphed into a socialist transfer society unrecognizable as the republic it once was.

This can happen again. The Future of Freedom Foundation is not out to change policy, though that is the ultimate goal. FFF is here to change minds. Just as socialism swept the nation 100 years ago there is absolutely no reason that the idea of liberty cannot sweep it right back to where it came from. I must say that I agree with Robert Scheer, Daniel Ellsberg and others at this conference. We have an excellent framework in place for a free society. As Sheldon Richman said the other day, "The Constitution is not that piece of parchment down at the

archives in D.C. It's here and it's here. It is when the people again believe that liberty and the Constitution matter that the republic will be restored.”

Before I leave you I would like to say a few words about Jacob Hornberger. He has been our master of ceremonies for this conference and hence has nobody to introduce him, but he deserves an introduction. Jacob is the most dedicated advocate of liberty one can find, and his vision of libertarianism is 100 percent pure. He is the driving force behind the Future of Freedom Foundation and more than anyone else he is the one that we have to thank for this incredible weekend. His talk is titled, "Let's Restore the Republic." He is President and Founder of the Future of Freedom Foundation. Please welcome Jacob Hornberger.