The exclusive jurisdiction of Congress over the District of Columbia and the denial of basic republican liberties to its residents—voting rights and self-determination—are an outgrowth of the constitutional politics of the American Revolution, a revolution whose primary purpose, ironically in this case, was to secure those liberties for British colonists in North America. Often confused with the Revolutionary War, the Revolution spun out over the course of almost forty years, ending at last with the election of Thomas Jefferson as president in 1801.

The First Continental Congress met at Philadelphia in 1774 and spent most of the war there; the city where it met was referred to as the residence of Congress, not as a seat of federal government, and certainly not as the federal capital. During the war and under the first constitution, the Articles of Confederation, the states were supreme over a very weak federal government. Even before the war officially ended certain leaders of the patriot movement, including such prominent names as George Washington, Alexander Hamilton, and James Madison, became convinced that strengthening the federal government was essential to the success of
the Revolution. Their efforts resulted in the Constitution under which we live today.

One of the ways that such centralists, as I call those leaders, thought the federal government could be strengthened was to give it its own territory, an idea that was discussed as early as 1779. By 1782 some congressmen had come to believe that that territory—referred to as a federal town—should be independent of state jurisdiction. Because the revolution was led by decentralists who opposed, and even feared, a central government such an idea had to remain a subject of private conversation. It came out of the closet in the summer of 1783, in the wake of an armed demonstration by continental army soldiers in front of the building in which both Congress and the Pennsylvania state government met. The soldiers had carefully chosen a Saturday for the demonstration because they knew that Congress did not meet that day. They did not want to confront it because, since it had no source of permanent revenue, it could not meet their demands for back pay. Pennsylvania on the other hand did and could. When Alexander Hamilton learned where the soldiers were headed, he had his friend and fellow centralist, the president of Congress Elias Boudinot call an emergency session. Many congressmen attended but not enough to form a quorum. Despite all the references to the “Mutiny at Philadelphia” in the months afterward and all the United States
Supreme Court cases that refer to it as the justification for exclusive jurisdiction, the United States Congress was not surrounded by armed soldiers on 21 June 1783.

Claiming that Pennsylvania refused to protect it and appealing to the American People to support the honor and dignity of Congress, the centralists had enough votes to adjourn the body to small, remote Princeton, New Jersey. While there, it appointed a committee to consider recommending to the states that Congress have a federal town over which it exercised exclusive jurisdiction. Madison served on the committee and sought advice from two Virginians. Thomas Jefferson told him that federal ownership of the land at any federal town, and exclusive jurisdiction over it, were unnecessary and would only create time-consuming problems for Congress. The great Virginia jurist Edmund Pendleton hit the nail on the head: “to make Congress the Legislative for a people who are not concerned in their election, is a violation of fundamental rights, & introduces despotism.” Despite Jefferson’s opinion the committee recommended exclusive jurisdiction. It was easily defeated when it came to the floor because, with the removal of the British threat, the state delegations increasingly came under the control of men who believed in state supremacy and reflected the popular questioning about the continued relevance of the federal government. They would only become stronger as centralists like Madison and Hamilton left Congress to
argue their case for a strong federal government in the press and in the state legislatures.

In 1787 these centralists, having assumed the name “Federalists” for themselves, succeeded in calling a convention to revise the Articles of Confederation. Instead of doing that they tossed out the Articles—now on display at the National Archives for the first time—and produced an entirely new Constitution that made the federal government supreme over the states. All three of the leading centralist members of the 1783 jurisdiction committee attended the convention and it is no surprise that Madison introduced its proposal. Decentralists, soon to be known as Antifederalists, voiced their opposition but, unlike in Congress, they were a distinct and ineffective minority. The Constitution as proposed and ratified declares in Article I, Section 8, paragraph 17, that Congress has the power to “To exercise exclusive Legislation in all Cases whatsoever, over . . . the Seat of the Government of the United States.

During the debate over ratification of the Constitution, the Antifederalists had a vastly more powerful voice and they made the jurisdiction of Congress over its seat an issue. So much so that such an extreme Federalist as Hamilton proposed to the New York Ratification Convention that it ask Congress to amend the Constitution immediately to rectify an oversight: the denial of congressional representation to residents of the federal district. His language assumed that those
residents would remain citizens of the state that had donated the land for the federal district, and that only when the population reached a certain level would the district cease to be part of that state; at that time “provision shall be made by Congress for their having a District Representation in the Body.” The construction of the latter clause indicates that Hamilton meant in both houses. New York did not propose his language to Congress, but not because it was its intent to deny congressional representation to the residents of the District as present-day opponents claim. It was because the Amendment it did propose, and which Hamilton was trying to alter to enhance federal power, assumed that the district would remain part of a state for purposes of representation. Let me stress something here very strongly: anyone who argues that an original intent existed at the time of the drafting and ratification of the United States Constitution has not studied the history of those events. An original intent by definition implies a consensus. There was none in 1776 and there was none in 1787.

The Residence Act of July 1790 that located the permanent seat of the government of the United States on the Potomac River declared that state law within that district would remain in effect “until Congress shall otherwise by law provide.” Residents of the federal district were represented in Congress for more than a decade afterwards; indeed one, Uriah Forrest, served in Congress. It was a decade of violent political rhetoric as more and more Americans became convinced
that the Federalists who controlled the federal government intended to use fear to cower the people and a loose interpretation of the Constitution to diminish the states. The consequence was the so-called “Revolution of 1800” that saw the Democratic-Republican Party take over both houses of Congress and place Thomas Jefferson in the executive mansion on Pennsylvania Avenue. Despite the fears of some Federalists, Jefferson and his party did not attempt to rescind the constitutional counter-revolution of 1787. Instead it brought the Revolution to conclusion be establishing a majority consensus: the federal government was supreme but it would not seek to intimidate citizens or threaten the rights of the states. Nor would Washington, D.C., be the great international capital, funded by the sale of thousands of residential lots, envisioned by George Washington, Peter L’Enfant and Alexander Hamilton. The view of Jefferson and his party that it should be merely a seat of federal government would remain the paradigm until overthrown by the best friend the residents of Washington, D.C., have ever had in the White House, Ulysses S. Grant. From 1870 to 1900 the new Republican Party, under and after his leadership, made the reconstruction of the city—both symbolically and physically—an important part of its agenda. Time and again history has shown us that only when a president steps into the equation does Congress act aggressively on behalf of, as opposed to against, the needs of the residents of its capital.
On 27 February 1801 a lame duck Federalist Congress adopted “An Act concerning the District of Columbia.” As William C. diGiacomantonio has pointed out in “To Sell Their Birthright For a Mess of Potage” [Coming into the City: Essays on Early Washington, D.C., Washington History 12 (2000): 31-48], his thought provoking article on the fight over the adoption of the so-called Organic Act of 1801 (1) there was no consensus about the need for such an act and (2) ultimately it only passed because the Federalists, having lost control of both Congress and the presidency, recognized that the Republicans, who had opposed it on the floor, would never implement the exclusive legislation clause of Article I, Section 8, paragraph 17.

I believe the solution is clear for Americans who wish to grant to the residents of the federal district the same rights of self-determination that they hold dear and for which the American Revolution was fought: call for the repeal of the Organic Act of 1801 and the designation of Washington, D.C., as The National Capital Territory, constitutionally equivalent to the states in all but name. (While “statehood” is a good organizational tool, it is a politically loaded term and supporters should be prepared to drop the term if full rights can be acquired with just a semantic change.) The federal government in 2009 is not the weak government of the Revolution, when the myth of the need for an exclusive jurisdiction was generated in an attempt to empower it. Today the federal
government has all the power it needs to insert itself in the affairs of the states and the territories without having to rely on Article I, Section 8, paragraph 17. Other nations, such as Australia and Brazil, who borrowed the concept from the United States Constitution found it unworkable and abandoned it as the twentieth century neared its close. We should follow their example.

The question of representation is not as easily resolved. But it was clearly not the intent of the revolutionary generation to deny residents of the federal district such a basic republican right. To claim so is to call such men as Washington, Madison, and Hamilton two faced and disingenuous. Whether it can be done by law, or whether it takes a constitutional amendment, as in the case of our right to vote for the president, will ultimately be decided by the federal courts. Whatever approach we take the time to take it is now. In no small part this is because the nation once again has a president who is sympathetic to our needs.

Thank you.