

Constitutional Corner – Fundamental Principles-Equality

What principles do we find embedded in the United States Constitution and other founding documents that might account for America's longevity and status as having the oldest continuously-operating Constitution in the world, used as a model for the constitutions of other countries for at least a hundred and fifty years after it was ratified in 1788?

Last week, in these pages and on "We the People," we examined the principle of self-government, the fourth form of government critical to the American system (operating, to varying degree, along with civil government, church government and family government). Self-government encompasses the idea that to enjoy maximum freedom in a society each citizen must assume the responsibility of governing themselves: obeying just laws and, where there is no law, doing what would be right in the sight of God. All the four forms of government for our system to work well, but self-government can rightfully be viewed as the bedrock principle that makes the system workable. Self-Government is the hallmark of a "moral and religious people," which John Adams insisted that our Constitution was uniquely designed for.

Without individual self-government in full force, the people, through their civil government, have little choice but to enact multitudinous laws designed to bring order and safety to the society. The more laws a society finds it needs, the more reflective this is of a breakdown in self-government; and the greater the potential for onerous, even tyrannical laws to be created. Englishman Edmund Burke, the colonies' greatest champion in the war of words that preceded the American Revolution thought: "Bad laws are the worst sort of tyranny."

There are but four crimes specified in the Constitution, yet today we find more than 4500 federal crimes in the Statutes, many the result of a failure to self-govern or passed in anticipation of such. The first century historian Marcus Claudius Tacitus said: "Formerly we suffered from crimes, now we suffer from laws." Want fewer laws? Learn to self-govern.

This week we will turn to another bedrock principle of American government: equality. But there is great confusion over what the term means and what role, if any, the government has in promoting it. Let's investigate.

The term "equality" does not appear in our Constitution, yet I contend it is a fundamental principle of our system of government, so we must look elsewhere for it. We need not look far.

"We hold these truths to be self-evident:¹ that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness."²

¹ I will forever prefer Jefferson's original words: "We hold these truths to sacred and undeniable."

All men are created equal? Notice that Jefferson did not say that all men are born equal or live their lives as equals, or die in a state of equality. Such is simply not the case. But all men (and women) are created by God as equals, all have equal moral worth and equal potential to follow God's will for their lives.

Many commentators view the phrase as meaning that we have (or should have) equal protection of the laws, but this was certainly not the case as Jefferson wrote the words. Slaves were bought and sold as property and treated as such under the laws of the time. Even as late as 1857, four years prior to the Civil War, the Supreme Court viewed slaves as property, and thus ineligible for citizenship.³ Jefferson himself devoted several pages in his *Notes on Virginia* to discussing the various ways in which blacks were not equal with whites.

In addition, even today we can easily see that all "men" are not "equal;" they are different in infinite ways. So what did Jefferson mean?

He gives a further glimpse in a 1784 letter to George Washington:

"The foundation on which all [constitutions] are built is the natural equality of man, the denial of every preeminence but that annexed to legal office, and particularly the denial of a preeminence by birth."

So, the Constitution recognizes no preeminence at birth, but men are clearly not so equal later in life. Charles-Louis de Secondat, baron de La Brede et de Montesquieu (aka, "The Celebrated Montesquieu") explains:

"In the state of nature...all men are born equal, but they cannot continue in this equality. Society makes them lose it, and they recover it only by the protection of the law."

Now I think we're getting closer: equal protection under the law. John Adams elaborates:

"No two men are perfectly equal in person, property, understanding, activity, and virtue, or ever can be made so by any power less than that which created them ... (However,) all are subject by nature to equal laws of morality, and in society have a right to equal laws for their govern[ance]."

Equal protection afforded by equal laws. But this still does not explain slavery. How could such men, holding such views, still own other men (and women and children), particularly Jefferson?

² For those skeptical of the role of the Declaration of Independence I note that the Supreme Court has declared it the "thought and spirit of our law." Congress has also designated the Declaration as one of four documents which make up our Organic Law.

³ *Dred Scott v. Sandford*, 60 U.S. 393 (1857).

Although black men had been arriving in Jamestown since 1619, along with other indentured servants, each indentured servant normally won rights to land upon serving their indenture. For an Englishman or European of meager means and few prospects in a depressed economy, free passage to America in exchange for what was normally five-seven years work as a servant/laborer, was an attractive option, perhaps their only viable one.

It was not until 1640 that it appears the first indentured servant, one "*John Punch*," was made a slave "*for the time of his natural Life*," after fleeing his indenture and being captured again.⁴ By 1690, slavery had been codified in the law.

One hundred years later, however, indentured servants were largely out and slaves largely in, amidst a flourishing slave trade. It is estimated that 11,863,000 Africans were shipped across the Atlantic from Africa, but only about 6% were landed in British North America (711,800).⁵

In 1757, Peter Jefferson, Thomas Jefferson's father, died and Thomas (14) inherited approximately 5,000 acres of land, including the family's estate at Monticello, and 20 to 40 slaves. Jefferson did not receive complete control of this land (and the slaves) until age 21. In 1772, he married his third cousin Martha Skelton; and with the death of Martha's father the following year, the young couple inherited even more slaves. Over his lifetime it is estimated that Jefferson owned over 600 slaves, about 175 inherited and the rest born on his plantations.⁶

Despite realizing the economic necessity of slavery to maintaining his estate, Jefferson was not blind to the moral conflict it evidenced. Jefferson⁷ included in the draft of the Declaration of Independence a heated denunciation of the slave trade; but the words threatened the sought-after unity of the colonies and it was stricken at the request of Southern delegates. In 1779, he proposed to the Virginia legislature the training and resettling of slaves and three years later drafted legislation allowing owners to free their slaves. In 1784, Jefferson proposed legislation to the Congress to end slavery in the Western Territories beginning in the year 1800 -- it was defeated by one vote. Three years later brought a partial victory: Congress passed the Northwest Ordinance which prohibited slavery in the Northwest Territory.

In 1808, as President, Jefferson had the pleasure of signing legislation banning the trans-Atlantic slave trade, the moment the Constitution's ban on such legislation expired, bringing his denunciation in the draft of the Declaration to fruition.

⁴ <http://www.mythdebunk.com/first-slave-owner-african-american/>

⁵ <https://www.gilderlehrman.org/history-by-era/slavery-and-anti-slavery/resources/facts-about-slave-trade-and-slavery>

⁶ https://en.wikipedia.org/wiki/Thomas_Jefferson#Slavery

⁷ For a fuller treatment of Jefferson's views on slavery, see: "The Jefferson Lies" by David Barton.

Jefferson, trying repeatedly to bring an end to the institution of slavery all his life, nevertheless freed only five slaves in [his will](#).

Jefferson saw the inevitability of emancipation but also saw danger. In his 1821 *Autobiography*, he wrote: "*nothing is more certainly written in the book of fate than that these people [black slaves] are to be free. Nor is it less certain that the two races, equally free, cannot live in the same government.*" Why not? In *Notes on Virginia* (1782), he had earlier postulated:

"It will probably be asked, Why not retain and incorporate the blacks into the State [instead of colonizing them]? Deep rooted prejudices entertained by the whites, ten thousand recollections by the blacks of the injuries they have sustained, new provocations, the real distinctions which nature has made, and many other circumstances will divide us into parties and produce convulsions which will probably never end but in the extermination of the one or the other race."

Unfortunately, Jefferson's conflicted views have resulted in charges of "racist." However, at least one commentator⁸ has rightly pointed out that while judged by today's definition of the term racist (and especially the Left's proclivity to color nearly anything as racist), Jefferson appears to have held racist views; but judged by societal values of his time, he was certainly not.

Jefferson studied and understood natural law. Although I've found no evidence that Jefferson read any of the works of the Roman jurist Ulpian (c. 170 – 223 A.D.) this quote of Ulpian certainly anticipates Colonial views:

"So far as the Civil Law is concerned, slaves are not considered persons, but this is not the case according to natural law, because natural law regards all men as equal."

Predating the Declaration by nearly two months, George Mason (1725-1792), borrowing from John Locke (1632-1704), who borrowed from Richard Hooker (1554-1600), put the thought this way in the Virginia Declaration of Rights:

"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."

⁸ <https://www.quora.com/How-racist-was-Thomas-Jefferson>

In 1780, when John Adams drafted the Massachusetts Constitution, he said it this way:

“All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.”

Adams’ declaration would go on to provide the foundation for declaring slavery in his state: “incompatible with the principles of liberty and legal equality,” leading to its relatively quick end, such that the 1790 census showed no slaves remaining in the state.

Gradually, through war, Constitutional amendment and legislation, equality of the races has been realized, at least in the eyes of the law.

But today’s calls for “equality” have nothing to do with equality under the law, but rather represent a demand for equality of condition, equality of outcome. Instead of abiding Exodus 20:17 concerning covetousness, we look on the wealth of those who have worked harder or been more fortunate than us with envy and demand a “leveling” or forced redistribution of their “excess” wealth; or such were the incessant calls of the “Occupiers.”

Brian Vanyo deals insightfully with today’s calls for “equality” in his book: *American Ideology, Taking Back our Country with the Philosophy of our Founding Fathers*. In the chapter *On Tyranny* he quotes extensively from Alexis De Tocqueville’s *Democracy in America*.

Vanyo warns us: “In any democratic society, a tyrannical, centralized government does not rise by force. Rather, it forms by the assent of the people in their impassioned pursuit of equality.”⁹ Quoting Tocqueville, he points out that “the people’s innate drive for equality can lead a society to two utterly disparate outcomes: “one leads men directly to independence...while the other leads by a longer, more hidden, but also certain path to servitude.”

When people ask the government to “level the playing field,” they invoke the power of government that can only lead to less freedom for all. Conversely “when government is prohibited from leveling all conditions in the name of equality, the people must rely on their own industriousness to satisfy any inclination for parity with others. To match the skills or achievements of those who stand above them, the people recognize that they must independently improve themselves, for they are the masters of their destiny – not some distant centralized power.”¹⁰

⁹ The American Ideology, by Brian Vanyo, Liberty Publishing LLC, 2012, p. 253.

¹⁰ Ibid, p. 254.

The effect of government-facilitated equality is also additive: as equality increases through the force of government, the love of even greater equality flourishes, leading to even greater demands for government intervention; the result can only be tyranny, where all men are equal in every externally-modifiable way, and equal as well in their bondage to government.

Friday morning we will discuss the fundamental principle of equality. I hope you will join the discussion (the call-in numbers are 610-539-8255 or 610-539-1783/1784). If not, you can [download the recorded podcast](#) later that day and listen at your leisure.

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