

## Constitutional Corner – Why Every American MUST Learn Their Constitution

There are multiple reasons why every American should know their Constitution, and they are not hard to discern. I open my Constitution Seminar with a discussion of ten such reasons. One that usually gets a chuckle is when I say: “There are almost 20 Trillion reasons for knowing the Constitution,” which is to say that, if you needed no other motivation, our unsustainable national debt should provide sufficient interest. There is a reason we have \$25 Trillion in official debt, and it has nothing to do with the fact that the federal government spent more than it received in revenue, it is rooted directly in the Constitution and its current interpretation.

Another reason is suggested by the Preamble’s first three words: “We the People.”

“What right had they to say, We, the people?... The people gave them no power to use their name,” boomed Patrick Henry on 4 June 1788 as the Virginia Ratifying Convention picked up steam. Henry was right, of course: “the people” weren’t asked if they subscribed to that opening, it was the brainchild of Gouverneur Morris, who really had no other practical choice. But the words were used and the rest, as they say, is history. Nevertheless, “We the People” conveys great import. “Whose document is it,” I ask my students. “Is it the President’s, the Congresses’, the Courts, or does it belong to each and every one of you – the People?” Certainly something that is ours, something we established and ordained, something we have an ownership right to, as the Preamble suggests, should be known by all its owners, as intimately as we know any of our property.

In 1821, in the case of *Cohens v. Virginia*, Chief Justice John Marshall wrote: “The people made the Constitution, and the people can unmake it. It is the creature of their will, and lives only by their will.” This normally elicits surprise in my seminars. The commonly held view is that the states drafted the document, that it represents a compact of the states. Henry would certainly have wished it that way. But Marshall was right, “the people” made the document. By that he meant that, although the states, acting through their delegates in Philadelphia, drafted the Constitution, it was the people, acting through 13 ratifying conventions (14 if you count both of North Carolina’s) who “breathed life” into the document. Before then it was mere words on parchment; the people made it a living document,<sup>1</sup> just as it is the signature of the testator which brings a will to life. The Constitution is the people’s document, their property, and they should know what it says and means.

Future Federalist writer and first Chief Justice of the Supreme Court, John Jay, was asked to deliver a “charge” to the Grand Jury of Ulster County on 9 September 1777. He said: “Every member of the State ought diligently to read and to study the constitution of his country and teach the rising generation to be free. By knowing their rights, they will sooner perceive when they are violated, and be the better prepared to defend and assert them.” Mind you, this was ten years before the U.S. Constitution was drafted and four years before even the Articles of Confederation went into effect. What “constitution of his country” was Jay speaking of? The same one that Thomas Jefferson referred to in the Declaration of Independence. Jefferson had written the previous year that “(King George III) has combined with

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<sup>1</sup> No, I don’t believe in the “Living Constitution.”

(Parliament) to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation:" (Emphasis added)

By 1776, the American colonies operated under an unwritten constitution that had come together over the previous 157 years of self-government.<sup>2</sup> The features of this constitution can be discerned by studying the complaints Jefferson makes in the middle of the Declaration: taxing only with consent of the people being one of those features. But notice the reason John Jay gives for both reading and studying (two separate activities) the "constitution of (our) country:" you will then be equipped to teach the rising generation to be free. "But isn't this the job of the schools?" you ask. Not according to Jay. "Every member of the State" has this responsibility, not just professional teachers. Frankly, I think parents are better equipped for this job than "professionals." Teaching the rising generation to know, defend and assert their rights is far more effective when taught from a personal than an institutional perspective. We each have a unique story, a unique perspective to bring to this "classroom."

I next point to Article 6 of the Constitution where the document self-proclaims to be the "Supreme Law of the Land." Since the "rule of law" is so critical to republican society, it behooves us to know what the Supreme Law of the Land contains. The Founders knew well the importance of law. In a 1794 essay published in the *American Daily Advertiser*, Alexander Hamilton writes: "If it be asked, What is the most sacred duty and the greatest source of our security in a Republic? The answer would be, an inviolable respect for the Constitution and Laws -- the first growing out of the last. ... A sacred respect for the constitutional law is the vital principle, the sustaining energy of a free government."<sup>3</sup> But is the Constitution "and the laws of the United States which shall be made in pursuance thereof" in fact the "Supreme Law of the Land?" Not according to British jurist Sir William Blackstone, political philosopher Locke and others that the Founders knew well. "This law of nature, being [co-existent] with mankind and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe, in all countries, and at all times: no human laws are of any validity, if contrary to this; and such of them as are valid derive all their force, and all their authority, ... from this original." In Blackstone's view, no civil law, no matter how "constitutional," deserves our obedience if it is not in harmony with natural law. As Blackstone makes clear, Natural Law is the true "Supreme Law of the Land."

The very next clause of Article 6 provides more justification for knowing the Constitution: "The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution..." I normally confess to my classes that when I took this oath as an Air Force officer I had only a vague notion of what I was agreeing to "support and defend." My bad. I should have diligently studied what I was about to "support" and perhaps, ultimately, lay my life down for. Knowing the Constitution better would not have changed my decision to accept commissioning, but it would have definitely made me a better, more informed officer. Many

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<sup>2</sup> Measured from 1619 when Virginia convened the first representative government in the colonies.

<sup>3</sup> You'll search in vain on Brainy Quotes™ for even a single quote on law from the Founders, apparently the views of the likes of Susan Rice and Julian Assange are far more important. Founders' quotes abound elsewhere.

citizens have never been called upon to take such an oath, but many have and many more will in the future.

I next point to the apparent contradiction of the following two statements: in 1788, as James Madison tried to convince the Virginia Ratifying Convention to accept the document on behalf of the good people of the state, he fought desperately to counter the Anti-federalist argument that the Constitution gave the new central government too much power. “[T]he powers of the federal government are enumerated; it can only operate in certain cases; it has legislative powers on defined and limited objects.” Other Founders, in other conventions, echoed this view. Yet in 2010, (former) Representative Peter Stark (D-CA) was asked in a Townhall meeting: “If [Congress] can [pass the Affordable Care Act with its individual mandate], what can’t they do? His answer: “The federal government, yes, can do most anything in this country” was met with jeers and catcalls. But Stark spoke the truth, today the federal government can indeed do most anything it desires. You will understand how this view of a Constitution of limited and enumerated powers changed to one of near plenary power once you begin to study the document, including the 200+ years of Supreme Court decisions which followed.

I conclude my seminar discussion with this question: “How can someone make sense of today’s headlines without an understanding of the Constitution?” “NSA eavesdropping program ruled unconstitutional” read the headline. Was it? Did the NSA’s bulk collection of raw phone numbers called from and to (not the content of each call) actually violate the meaning of the Constitution? A federal court thought so, so that settles it, right? Perhaps, if you believe that the Constitution’s interpretation by the courts is sacrosanct, infallible and immutable. But there were well-informed constitution scholars who came down on both sides of this issue, so I don’t believe it is as clear cut as the headline’s sparse words reveal. Don’t the owners of the document get a say? How can they even form an opinion without first knowing the Constitution?

Our country has never been more fractured, more polarized than perhaps the War for Southern independence. Voices on both the Left and the Right complain of an “out of control” government, one seemingly disconnected from the people it was designed to serve; and certainly our out-of-control debt provides evidence. I’ve yet to meet a citizen who feels they consented to being placed in such economic bondage (or who agreed to place subsequent generations in such debt).

There is a constitutional reason we have such debt. There is a constitutional reason for the opposing views of Representatives Madison and Stark. There is a constitutional reason why we today have more than 4500 federal crimes when the original Constitution describes only four.<sup>4</sup> Do we really need a federal statute making it a federal crime to pretend to be a member of a 4-H Club, or to disrupt a rodeo?

We have lost our way as a people, we have lost our mooring, our anchor. I don’t care how you characterize it, we no longer know what the Constitution says or means. It wasn’t always this way in this country, but it is now – and it must be fixed.

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<sup>4</sup> Counterfeiting, Piracy, Treason, and Bribery.

When I began to consider holding classes on the Constitution, I naively thought I would be turning people away at the door, trying to keep the class size small and manageable – conducive to vibrant discussion. Now it seems no one can be bothered to take time to learn their “Supreme Law of the Land.” This does not bode well for a republic that must be “kept” by the exertions of the people.<sup>5</sup> There are plenty of people today willing to shout and contend for their “rights.” Yet sixty-four percent of those people can’t name all three branches of government.<sup>6</sup>

“Every government degenerates when trusted to the rulers of the people alone. The people themselves, therefore, are its only safe depositories. And to render even them safe, their minds must be improved ...” wrote Thomas Jefferson in his *Notes on the State of Virginia*. The American people need to improve their minds with a knowledge of their Constitution, and soon.

If you can’t make up your mind which reason cited above makes more sense for you, call me.

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<sup>5</sup> Ben Franklin, 17 September 1787: “A republic, Madam, if you can keep it.”

<sup>6</sup> <https://www.washingtonpost.com/blogs/govbeat/wp/2014/09/18/only-36-percent-of-americans-can-name-the-three-branches-of-government/>