

## The Breakfast Club

Constitutional Minute for 15 June 2021

### How Should We Interpret The Constitution? The Role of the Declaration.

Much has been said about how we should interpret the Constitution; Progressives insist it should be interpreted in light of an ever-evolving language and culture, that new meanings attached to words should yield new interpretations: a Living Constitution that “breathes” and takes on new meaning with each new generation.

Conservatives, who favor, well, conserving things, insist just as strongly that the Constitution means what it meant in 1788 when it was ratified by the states. Mr. Madison would agree:

*“I entirely concur in the propriety of resorting to the sense in which the Constitution was accepted and ratified by the nation. In that sense alone it is the legitimate Constitution. And if that is not the guide in expounding it, there may be no security for a consistent and stable... exercise of its powers.”* James Madison, letter to Henry Lee, 1824

Such people are either “Originalists” (the original intent of the drafters should be followed) or “Textualists” (the original understanding of the words used at the time should prevail).

But there is another side of Constitutional interpretation, ignored by both these positions.

*A word fitly spoken is like apples of gold in pictures of silver.* Proverbs 25:11

*“Without the Constitution and the Union, we could not have attained [prosperity]]; but even these, are not the primary cause of our great prosperity. There is something back of these, entwining itself more closely about the human heart. That something, is the principle of “Liberty to all”—the principle that clears the path for all—gives hope to all—and, by consequence, enterprize, and industry to all.*

*“The expression of that principle, in our Declaration of Independence, was most happy, and fortunate. Without this, as well as with it, we could have declared our independence of Great Britain; but without it, we could not, I think, have secured our free government, and consequent prosperity....*

*“The assertion of that principle, at that time, was the word, “fitly spoken” which has proved an “apple of gold” to us. The Union, and the Constitution, are the picture of silver, subsequently framed around it. The picture was made, not to conceal, or destroy the apple; but to adorn, and preserve it. The picture was made for the apple—not the apple for the picture.”* Abraham Lincoln, private note, sometime between November 1860 and March 1861.

Bottomline: The Constitution should not be interpreted apart from the Declaration.

Does the Supreme Court agree? YES!!

- In 1897,<sup>1</sup> the Supreme Court declared that the Constitution is the “body and letter” of which the Declaration of Independence is the “thought and the spirit” of our government: “*it is always safe to read the letter of the Constitution in the spirit of the Declaration of Independence.*”
- At least 100 United States Supreme Court opinions mention the words "Declaration of Independence" somewhere in the opinion.
- The Constitution relates to the Declaration by dating itself in Article VII as being signed in the twelfth year of the independence of the United States of America!
- In 1878, the Declaration, along with the Constitution and two other documents were declared by Congress to be the “Organic Laws of the United States.”<sup>2</sup>

What do we find in the Declaration of Independence that can relate to the concept and operation of constitutional government?

- The *Laws of Nature and of Nature's God* entitle a people to assume an equal station with other nations of the world.
- Immutable, self-evident truth exists; not all “truth” is circumstantial, relative and personal.<sup>3</sup>
- All men are created equal. Nuff said.
- Mankind has been endowed with unalienable rights, among these rights are Life, Liberty and the ability to pursue happiness and safety.
- Government is instituted simply to secure and protect inalienable rights.
- Government derives its *just* power by the consent of the governed. When that consent is withdrawn, the government cannot rule.
- It is both a right and a duty to replace a government when it becomes destructive of the people’s rights.
- Governments should not be changed for light and transient causes. A long train of abuses is necessary.

Reading the “Complaints” section of the Declaration as examples of “bad” government, the Declaration reveals to us nearly thirty examples of what constitutes “good” government. For example, if it is bad that a Chief Executive (The King) would “refuse[] his Assent to Laws, the most wholesome and necessary for the public good,” then when you are writing a new Constitution you don’t make the passage of laws require the positive assent of the President, you make them automatically become law absent his veto.

The Declaration of Independence and the timeless principles it contains must be first understood before an understanding of the Constitution should be attempted.

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<sup>1</sup> GULF, C. & S. F. R. CO. v. ELLIS , 165 U.S. 150 (1897)

<sup>2</sup> <http://uscode.house.gov/browse/frontmatter/organiclaws&edition=prelim>

<sup>3</sup> This truth itself is part of this nation’s Organic Law.