

A USER’S GUIDE TO THE CONSTITUTION – PART I

THE FOUNDATIONAL IDEA AND ITS RAMIFICATIONS

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I. THE CONSTITUTION IS A BLUEPRINT FOR SELF-GOVERNANCE BY A FREE PEOPLE

A. SUMMARY

The Constitution is a working document that functions like a blueprint: it is designed to bring an idea into reality. The idea is Liberty, as it is defined in the Declaration of Independence. The components of the definition were incorporated into the Preamble and is the federal government's legitimacy statement. The ramifications of the Founders' decision to design a government grounded in liberty include the decision to have a representative republic; to make the government durable; capable of accommodating diversity and, by making the ideal of Liberty (in law: political equality) the focus of our aspiration, always capable of "a new birth of freedom". (Lincoln, Gettysburg Address (1863). *See also*, Dr. M.L. King, Jr., "I Have a Dream" speech, (1963)).

B. WHAT IS LIBERTY?

An idea deep-rooted in religious and philosophical thought of Western Civilization to the effect that man needs liberty in order to fulfill God's purpose. *See*, John Winthrop, Speech to the General Court, excerpted in Miller, ed., *The American Puritans*, p. 92 (1956). From the standpoint of the Constitution, the key feature is that the government *does not bestow liberty upon its citizens*. Liberty is an inherent human right. Government's role is to *safeguard* liberty. The Declaration of Independence contains the American definition of Liberty.

II. THE BLUEPRINT: HOW WOULD YOU DESIGN A GOVERNMENT TO IMPLEMENT LIBERTY?

Issues to consider when you are designing a Government:

I. What is Power: A Destructive and Constructive Force

Destructive: Power Unchanneled / unharnessed and chaotic: *e.g.*, Hurricane
Impact on society: Disruptive, "dis-ordered,"
dysfunctional and demoralizing. People discontented and
unproductive; do not experience fairness in dealings with
Government; Government commands little respect.

Voluntary compliance with law is low.

Constructive: Power Harnessed or channeled

Impact on society: Orderly; leads to high-functioning societies that are energetic and productive. People happy; experience fairness in dealings with Government; Government is respected. Voluntary compliance with law is high.

There is a tension between the idea of liberty and the power of government. Liberty cannot exist without order; government is needed to impose order. Governmental power, properly used, achieves 'ordered liberty'.

2. *What does 'Legitimacy to Govern' Mean and Why Does it Matter?*

Government exerts power (force) over its citizens.

When force is viewed as legitimate, cooperation is voluntary and high.

When force is viewed as illegitimate, it is seen as tyrannical and resisted.

3. *What Forms of Government Are There?*

Imagine it was up to you to design a government. How would you do it? First, you must identify the source of the government's legitimacy and, next, select the format of governance (design) that best implements that choice.

What are the available design formats?

(a) Master/Subject relationship: e.g.: Monarchy: (Legitimacy claim: Divine Right of Kings or related theories) (subject has no policymaking input in theory, but in practice may acquire a gradually increasing role: e.g., *Magna Carta*, Parliament, "constitutional monarchy").

(b) Self-Government (Legitimacy: consent of governed to be governed *i.e.*, citizens freely submit to power of government) ("Government of the people, by the people and for the people").

Two forms of self-government:

1. Democracy: direct rule/ policymaking by majority rule.

2. Republic: representative rule of elected on behalf of represented citizens/ policymaking by majority vote of representatives.

NOTE: the legitimizing “idea” is of central significance because the “idea” drives the design.

4. *Do I have Any Role in our Government, or May I Leave All the Work of Governance up to Elected Officials?*

Citizens have most important job of all: to hold elected officials to account to govern soundly on behalf of all citizens in accordance with the Preamble and the requirements of the Constitution.

This means citizens must have a basic understanding of the specific ideas embedded in the Constitution. How can citizens hold public officials to account if they do not know what those ideas are?

Self-governance requires work from each of us! *See* Gettysburg Address (the task the living owe to those who died to keep our form of government intact is to make it work.)

5. *Does a Document That is 200+ Years Old Work in Our Modern Society?*

- (a) Sources of inspiration are timeless:

- i. Ideals of truth rooted in Western Civilization as expressed during the Enlightenment (classical liberal). The focus of our aspiration (Liberty) impels us in the direction of an ever-broadening effort to make reality align with the ideal. *See, e.g.,* Dr. Martin Luther King, Jr. “I Have a Dream” speech (1963).
- ii. Unflinching honesty about our human nature and its tendencies and the need to manage against our lesser behavior and to encourage our better behavior.

Madison: “If men were angels no government would be necessary” *Federalist Papers, No. 51.*

- iii. Because the Constitution is written, (compare, *e.g.*, to England, which has no written constitution), it is always a source for renewal and correction when things get off-course.

See, Marbury v. Madison, 5 U.S. (1 Cranch) 137, 176-178 (1803)(Marshall, CJ).

- iv. Amendment is permitted, but the Founders deliberately made the Constitution difficult to amend. (*Const. Art. V*: supermajorities required to call for convention to consider (2/3 Cong or State Legis.) and to ratify (3/4th of States).

NOTE: The design for governance is more akin to the design of an organism than that of a structure due to its flexibility. The result is our system of government is DURABLE.

III. THE CONTEST: HUMAN NATURE vs. DESIGN

The main consequence of government legitimized by the consent of the governed is that everyone, the good and the bad, the worthy and the unworthy, stands on an equal footing with each other in their relations with the government. In other words, each citizen's political rights are *equal to that of every other citizen*. Citizens must never lose sight of that. (*But see*, for a cautionary note, E. Canetti, "*Crowds and Power*", at chapter entitled "Judgment and Condemnation", 296-297 (Farrar, Strauss and Giroux, 1960) (discussing a tendency of our human nature to arrange human beings into groups; assign a relative value to them and establish a hostile tension between them leading ultimately to violence.)). In sum, tendencies inherent in our human nature work at cross-purposes with the design, unless we consciously manage against those tendencies.