

# ON THE IMPORTANCE OF LEARNING THE CONSTITUTION A MODEST PROPOSAL

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King Solomon, often called the wisest man in history, once said that “without a vision the people perish.” Some 2,700 years later, the great American Patriot Thomas Jefferson said that “the price of freedom is eternal vigilance.”

Yet, as I write this essay, as America enters the 241<sup>st</sup> year of her existence, a dangerous level of pandemic ignorance exists about who we are as a people and what binds us together as the most uniquely-constructed nation in history – namely, the United States Constitution.

Perhaps there’s some basic understanding in culturally idiomatic phrases such as “the land of the free,” or “the flag still stands for freedom,” or whatnot. But beyond a vague notion that the Constitution is somehow tied to freedom, our national collective ignorance of the document itself is troubling.

This ignorance goes on display whenever some politician babbles about “our great democracy.” Actually, the Founders abhorred democracies, which allow rule by majority and, thus, in effect, rule by the mob. Pure democracies self-implode and have no legal checks to stop the majority from crushing the minority.

In a pure democracy, for example, the majority could

decide that it does not like black people, or does not like gay people, or does not like Christians. Then, by majority vote, the majority could vote for laws to steal from people the majority doesn't like, or to crush people who are different, who do not conform to the whims of the "majority rule."

Here's a great truth understood by the founders: A pure democracy, lacking checks-and-balances, is a dangerous and evil enterprise, which eventually will self-implode. The majority, wielding unchecked power by the ballot alone, will eventually turn its base instincts against the minority.

### **We are a Republic Not a Democracy**

Remember this. When we recite the Pledge of Allegiance to the flag, we "pledge allegiance" not only to the flag, but also "to the Republic" for which it stands. We do not pledge allegiance to "the democracy" for which it stands.

Benjamin Franklin, when asked by a lady on the sidewalk as he emerged from the Constitutional Convention in Philadelphia, "what have you given us, Mr. Franklin?" responded, "a republic, ma'am, if you can keep it."

Franklin's answer contains two concrete truths to ponder. First, America is a Republic, not a democracy.

And second, Franklin understood that if we aren't diligent to contemplate and understand our republic, and what a republic actually is, we are apt to lose it, and to lose the freedoms that are incumbent with it. Ignorant politicians

yapping about our “democracy” demonstrate just how close we are to losing our constitutional republic. We cannot possibly preserve something if we don’t understand what we are preserving.

What, then, are the basic differences between a democracy and a constitutional republic?

Well, we’ve already discussed the notion of a pure democracy. A democracy features pure rule by the majority, with no checks to restrain the majority’s unbridled power to harm the minority.

### **Rule-of-law & Checks-and-Balances**

A republic, however, places the rule-of-law over all else. Think two phrases in understanding our Constitutional Republic. First, think “rule-of-law,” and second think “checks-and-balances.”

### **Rule-of-Law**

The notion that we are a nation of laws, and that laws usurp the day-to-day whims of the masses, which could change as quickly as the wind blows, comes from a principle as ancient as the Ten Commandments and the Mosaic law.

In a constitutional republic, for the republic to work, laws must be based upon sublime moral principles, not immoral principles. Consider the words of our second president, John Adams. “Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of

any other." James Wilson, a signer of the Constitution and a U. S. Supreme Court Justice, said, "Human law must rest its authority ultimately upon the authority of that law which is divine."

A constitutional republic can only work based upon moral law. Thus, sublime law based upon morality, and not the whims of the majority, are to govern the affairs of men and women. There must be an extra-constitutional moral compass for the Constitution to work. The Constitution cannot function, independently on its own, free of a moral compass. For example, the time-honored-principle of "Thou shall not steal," first set down by Moses in the Ten Commandments (a great moral compass relied upon by the founders), makes its way today in a variety of statutes, both state and federal, outlawing larceny, robbery and shoplifting.

Even if the majority, by "democratic" vote, were to fixate upon something immoral, say by passing a "law" that it's okay to steal from vagrants, or from illegal immigrants, or to discriminate against Hispanics, in a republic, the morally engrained rule-of-law, preventing thievery and robbery, would prevail over the democratic whims of the masses.

Likewise, in our constitutional republic, while certain democratic principles are set forth within the Constitution – such as direction election of the Congress by the people, the rule-of-law as set down by the Constitution itself prevails above all. The rule-of-law prevails even above the daily democratic whims of the majority, and especially if that majority manifests itself in an immoral way.

## Checks-and-Balances

Second, in addition to thinking “rule-of-law,” also think “check-and-balances.” Our Constitution, which contains seven articles and twenty-seven amendments, features many checks-and-balances to guard against the overconcentration of governmental power. The founders recognized the basic axiom that “absolute power corrupts,” and “power corrupts absolutely.” Borrowing from the writings of the Frenchman Montesquieu, who distrusted centralized governmental power, the founders used Articles I, II and III to slice the powers of the federal government into three co-equal branches.

Article I gave Congress the power of the purse, along with the power to make laws, and the power to declare war. The President, established under Article II, could check Congress by vetoing their laws, and was commander-in-chief of the armed forces. Congress could check back against the President by overriding his vetoes, and cutting off monies to programs he advocates. The electoral college for the election of the president is a check-and-balance to prevent the overconcentration of power to prevent large, corrupt, heavily-populated urban centers from perpetually lording over the majority of the country whose interests are not urban interests.

The Courts, established under Article III, would hear cases involving controversies among the states and among citizens in disputes under federal law. So the Congress and President check one another at multiple levels, and the courts, which are established by Congress and nominated by

the President, hear controversies brought before them. Thus, the founders sliced the federal power structure into a pie with three pieces.

The Bill of Rights, the first ten amendments of the Constitution, placed additional checks-and-balances against an overreaching federal government. While the checks-and-balances of Articles I – III, checked the federal government against itself, the unalienable rights as set forth in the Bill of Rights checked the government against the people. So in Article I – III, the government is checked against itself. In Amendments 1 – 10, the government is checked against the people.

Under the Bill of Rights, for example, the Congress could not pass any law prohibiting Freedom of Speech. Government agents could not search a man's home without a warrant based upon probable cause. Troops could not be quartered in citizens' homes. The right to bear arms and establish a militia against an overreaching government was sacrosanct. All these and more rights in the Bill of Rights check the government from tyrannical rule over the people.

### **The Perfect Picture of the Constitution: The Constitution as a Restraining Device**

If a word-picture could describe the Constitution, imagine a giant seat-belt with shoulder harnesses, complete with handcuffs and harness straps. Now think about this restraining device being wrapped around the federal government in Washington, DC, like a giant net restraining a

huge octopus with far-reaching tentacles. Because at the end of the day, the Constitution, contrary to those who would redefine it day-by-day to fit their latest political whims, does not create some sort of governmental lollipop factory to dole out all kinds of free goodies to the people.

Rather, the opposite is true. The Constitution, at its very core, is a great restraining device, specifically designed to restrain excessive, and potentially monstrous governmental power. It was, and still is, a great restraining device to prevent tyranny from ever ruling over the United States of America.

In Articles I – III, it restrains the federal government against itself through internal checks-and-balances between the Congress, the executive, and the courts.

In the Bill of Rights (The First Ten Amendments), its restraints go even further. Here the Constitution restrains government directly against the people. Altogether, there are some thirty-eight enumerated, “unalienable” rights listed in the Bill of Rights. These “unalienable rights,” freedom of speech, freedom of worship, etc., were considered by the founders to be granted from God, and not from government.

Sadly, most Americans, even most American lawyers, are not only ignorant of the Constitution, but could not list the unalienable or “fundamental” rights in the Bill of Rights if you put a gun to their head.

## **The Litmus Test of Our Constitutional Knowledge: The Five Fundamental Rights of the First Amendment**

Permit me to illustrate my point. Having practiced law for thirty years all over the country, I know a lot of lawyers. To test a basic constitutional knowledge amongst the bar, I have asked dozens of them this basic question:

“What are the five fundamental rights in the First Amendment of the Constitution?”

The answer to this question should be on the tip of every tongue of every third-grader in America – at least if we hope to preserve our Republic.

As you think of my question, consider your own knowledge of the Constitution. If the answer to my question, “What are the five fundamental rights in the First Amendment of the Constitution?” does not roll immediately from the tip of your tongue, then perhaps you, too, find yourself in the position of most Americans, being woefully ignorant, through no fault of your own, of the great document for which our boys spilled their blood at places like Normandy, Iwo Jima, and other battlefields around the world.

Back on point, of the many lawyers to whom I’ve posed this question, not a single one has been able to name all five fundamental rights of the First Amendment on the first go-round!

Some have gotten two or three right. A few, even four.



One lawyer mistook the Right to Bear Arms (set forth in the Second Amendment) as being part of the First Amendment. Wrong answer.

Two questions arise from all this. First, if lawyers, who in theory are supposed to be best trained in American law, can't even name the five fundamental rights in the First Amendment, what went wrong?

### **America's Law Schools' Dirty Little Secret The Constitution Is Not Taught**

Well here's a dirty little secret.

Law schools don't teach the Constitution. At least not directly. That's right. While all bar exams have a section on "Constitutional Law," and while all law schools have courses entitled "Constitutional Law," the truth is that in these classes, the Constitution itself is not required reading, nor required study, in most American law schools. Instead, "Constitutional Law" usually involves required reading of various opinions of the United States Supreme Court. They start with the landmark case of *Marbury v. Madison*, dating back to 1803. From there, law students must read, digest, and dissect all the great Supreme Court cases, and read the majority and dissenting opinions of those cases.

Now there's nothing wrong with that approach at all. By reading cases, law students learn legal reasoning (or in some cases the lack thereof), and the cases sometimes actually refer to parts of the Constitution.

But here's the problem with that case-law approach.

Isolated as the only method for studying constitutional law, the approach misses the forest for the trees, because law schools do not mandate either the study of or the memorization of the Constitution itself as part of the curriculum – but instead mandate only what the Supreme Court says about the Constitution. This would be like a seminary student studying the great sermons of Billy Graham, Peter Marshall and Charles Spurgeon, but never having to read the Bible itself, upon which those sermons are based.

As for me, personally, I've served as a Special Assistant United States Attorney, as a US Navy JAG Officer, as a military prosecutor, as a military lawyer at the Pentagon, and have appeared in state and federal courts in California, Texas, Georgia, South Carolina, North Carolina and Virginia, have appeared before two state supreme courts, the United States Court of Appeals for the 4<sup>th</sup> Circuit, and have filed two cases with the United States Supreme Court. After all that, and after having practiced law for thirty years, not once has my legal training actually required me to even read the Constitution, at least not in its entirety, let alone learn it and study its texts. What I've learned of it, I've had to learn largely on my own.

And yet, I've taken an oath to defend the Constitution, both as an attorney and as a naval officer. Query: How can we defend something if we don't even know what it says?

By the way, many of these politicians who talk about "our democracy," are attorneys by training.

So what are the five fundamental rights of the First Amendment?

Here they are:

Freedom of Worship

Freedom of Speech

Freedom of the Press

The Right to Peaceably Assemble

The Right to Petition the Government for  
Redress of Grievances

If you were able to rattle these five rights off without checking Google, good for you. But you are in an extreme minority. Most lawyers can't, and neither can most Americans. And remember, these are just five of some thirty-eight unalienable rights set forth in the Bill of Rights alone. Most of these Amendments, like the First Amendment, have multiple unalienable rights contained within them.

Here's a hard truth. The teaching of the Constitution has been a failure at every level at most schools, public and private, and in law schools all across the country.

**Learning the Constitution:  
A Modest Proposal &  
Call to Action**

Our national ignorance is inexcusable, and we must do something about it. The five fundamental rights should be as elementary to school children as eenie-meenie-miney-moe. Just as Jewish kids are required to learn the Torah as a prerequisite for Bar Mitzvah, no American student should be able to graduate from high school unless and until the

Constitution has been memorized, all seven articles and all twenty-seven amendments.

To accomplish this will require that we re-think our curriculum, both in public and private schools all across America. We will need to begin teaching the Constitution itself – not what some court says about it – from Kindergarten on upwards. The five fundamental rights, for example, could easily be learned by first graders. Each and every year after that, in the thirteen-year span from grades K-12, the Constitution must be taught, and taught, and taught again, until a rote understanding seeps into our students about who we are as a nation. Students should be rigorously tested on the Constitution each and every year that they are in school, and should learn to recite it.

Understanding the Constitution must be the culmination of a student's high school experience, and a fundamental understanding, through vigorous examination, must be a non-negotiable pre-requisite to graduation.

These steps should be part of the price of eternal vigilance that Jefferson called for to preserve and to keep our freedom. Teaching and learning the Constitution is part of the vision that we, as a nation, must focus upon, or surely we will perish.

President Ronald Reagan once asked a great rhetorical question. "If not us, then who? If not now, then when?" Here is the answer to the President's question. Now is the time, and we are the generation who must re-commit to the Constitution. Our failure to do so will place us on the road to tyranny.

## DON BROWN BIOGRAPHY

Don Brown, former U.S. Navy Jag officer and former Special Assistant United States Attorney is currently Charlotte author and attorney. During the early years of his career, Brown authored legal memoranda for the Secretary of the Navy where he served at the Pentagon.

Drawing from years of military and legal experience, Brown is the author of 12 books. The first nine were published through Zondervan/Harper Collins and are military suspense fiction action thrillers. The 11th was released on May 29 by Rowman & Littlefield. This particular book is Brown's first work of non-fiction....a military exposé entitled *Extortion 17: The Shootdown of Seal Team 6*. Brown's one work of historical fiction was published in 2014 in commemoration of the 70th anniversary of the Normandy invasion during WWII. Brown is also the author of an educational guide to his best-selling novel, *Treason*. The guide teaches basic constitutional principles with a focus on the Bill of Rights and freedom of religion. Two of Brown's novels have reached #1 on Amazon's International Bestseller list....2009 and 2010 respectively. His bestseller, *Treason*, written in 2003, is said to have predicted the Fort Hood terrorist attack which occurred six years after the book was written.

