

ARTICLE FOR
CLE
CREDIT

Constitutional Reflections: A Recurrence to Fundamental Principles and Forming a More Perfect Union, Part Two

BY W. WEST ALLEN, ESQ.

Editor's Note:

This article is part two of a two-part series on the fundamental principles of the U.S. Constitution. Part one discusses the first three fundamental principles of the U.S. Constitution: popular sovereignty, federalism, and separation of powers. This article was taken from comments presented at the 16th annual Tri-State (Wyoming, Idaho, Utah) Federal Court Conference by W. West Allen on March 12, 2021.

In our nation's first capitol, New York, inscribed at the apex of a magnificent arch in Washington Square Park, are these words attributed to George Washington during the Constitutional Convention in 1787:

"Let us raise a standard to which the wise and honest can repair; the event is in the hand of God."

Washington understood that the U.S. Constitution would be paramount to the cause of freedom throughout the world, and that it was only a beginning. What are America's foundational principles of the U.S. Constitution that constitute *the* standard of freedom raised to the world? There are at least five: popular sovereignty, federalism, separation of powers, the Bill of Rights, and the rule of law.¹ In addition to these are many unspoken principles taught by our Constitution and its framers that are awaiting discovery. In Part One of this "Constitutional Reflections" article, I discussed popular sovereignty, federalism, and separation of powers. Here, in Part Two, I will discuss the Bill of Rights, the rule of law, and the additional principles of unity and civic charity.

The Bill of Rights

The people's enumeration of certain unalienable rights must be held inviolable by government. These rights include the freedom of religion, speech, and press, the right to peaceably assemble, and the right to petition government for a redress of grievances. No action by government should ever subvert these rights. A bill of rights consists of statements of freedoms and civil liberties that government cannot take away from the people who live under a government's authority. It prescribes the fixed legal limits on the power of government and prevents state officials from denying to individuals these inviolable freedoms and civil liberties, which they possess on the basis of their humanity.



It may be that Thomas Jefferson is one of the framers most responsible for our Bill of Rights.² While serving as U.S. minister to France in 1787, Jefferson received a copy of the proposed new U.S. Constitution. He approved, generally, but wrote to James Madison in December 1787 voicing concern that the Constitution did not contain an express bill of rights. Jefferson understood the *principle* of a bill of rights and why an unequivocal guarantee of unalienable individual liberties and limits on government was imperative to the success of the new nation. Without such a guarantee, a new government, and certainly those eager to wield its national power, could readily abuse that power, usurp the people's authority and, in time, destroy individual liberties. Jefferson admonished Madison of this critical omission when he famously wrote his friend in December 1787: "A bill of rights is what the people are entitled to against every government on earth ... and what no just government should refuse, or rest on inference."³

Thanks to Jefferson and a popular groundswell of the people in many state-ratifying conventions who understood the significance of a bill of rights, Madison and his congressional colleagues listened. Madison eventually proposed a series of 19 constitutional amendments to the First Congress on June 8, 1789. In time, just 10 were ratified and incorporated into the Constitution, when, more than two years later, on Dec. 15, 1791, Jefferson's home state of Virginia ratified the first 10 amendments to the U.S. Constitution that, in time, would be known as the Bill of Rights.

The Bill of Rights, as declared by the American people in the U.S. Constitution, has providential and inspired purpose. It constitutes the preeminent declaration of freedoms of human dignity based on principles of moral agency and liberty. It transcends politics, party, and government. As nations and citizens honor the constitutional principles of the Bill of Rights, they prosper; as nations and citizens ignore them, they falter.

Individuals and corporations, like governments, should strictly honor the principles of the Bill of Rights. When we as individual citizens, students, civic leaders, educators, politicians, and corporate executives engage in actions that compromise or are antithetical to the inviolable human rights of others, then we too, are acting contrary to principles of

freedom. Madison warned us against this concern as well: “Liberty may be endangered by the abuses of liberty as well as by the abuses of power.”⁴

The Rule of Law

Citizens are governed by and held accountable to laws that are just, publicly promulgated, equally enforced, and independently adjudicated. Vague, incoherent, arbitrary, or unwritten law is no law at all. In America, the highest law of the land is the written U.S. Constitution. Everyone is treated equally before the law and afforded due process and fairness under the law. No one, not even the most elevated and honored official, is above the law. The law alone governs within a just and free society, not individuals. Individual citizens should obey, honor, and sustain laws justly enacted within a society.

Law by itself does not establish justice. It is the proper application of just laws by wise rules and choices based on true constitutional principles that guide, like a compass, the way to justice and happiness within a free society. This process requires government to *equally* guarantee to all individuals the rule of law and security of liberty under the law. Those entrusted to enforce laws within a society must defend assiduously the people’s liberty and the equal application of the people’s law. And allowing just laws of a society to not be observed is worse than having no law at all.

The rule of law is the culminating keystone principle in the constitutional arch that upholds the superstructure of freedom for all people. Without this principle, all other fundamental constitutional principles begin to fracture, and the political superstructure of freedom falls. Without the protection of law, there can be no liberty; for every citizen’s right to enjoy life and property would be subject to the capricious and uncertain acts and will of others. As Montesquieu revealed, “Liberty is a right of doing whatever laws permit, and if a citizen could do what they forbid he would be no longer possessed of liberty, because all his fellow-citizens would have the same power.”⁵ Thus, law enables freedom. Law has the power to both liberate and ennoble. By the rule of law, we draw nearer to justice and engender greater freedom. Indeed, the rule of law is the very means by which freedom, prosperity, and happiness are possible.

Unspoken Constitutional Principles

Many foundational principles taught by the U.S. Constitution are unspoken and await our discovery. Among these are *unity, hope, faith, knowledge, fortitude, respect, resolution, patience, humility, diligence, order, justice, gratitude, and civic charity*. While all of these are worthy of a more careful study, I will close by mentioning just two: *unity* and *civic charity*.

The principle of *unity* is found in every aspect of our U.S. Constitution, particularly its creation and ratification. When the U.S. Constitution was proposed in September 1787, it was far from certain that the states would accept it. At this critical moment in our nation’s history, Washington, America’s “indispensable” man, was serving as president of the Constitutional Convention, and he did something remarkable. He wrote a letter to the president of the Congress that eventually accompanied the Constitution whenever it was presented

and considered by the states for ratification. By the power of his words, Washington conveyed to all what made the “miraculous” Constitution even possible: “[T]he Constitution which we now present is the Result of a **Spirit of Amity** and of that **mutual Deference & Concession** which the Peculiarities of our political Situation rendered indispensable.”⁶

Not long thereafter, at the close of his service to our nation, Washington wisely taught again to every citizen of this Republic the deep connection that exists between unity and civic happiness:

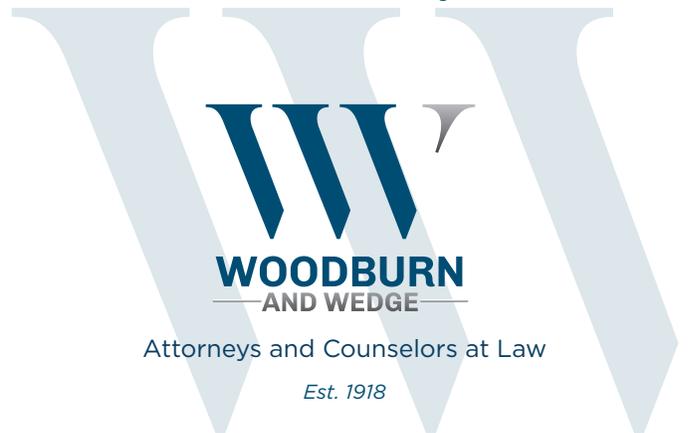
[Y]ou should properly estimate the immense value of your national union to your collective and individual happiness. ... You have in a common cause fought and triumphed together. ... The Independence and Liberty you possess are the work of joint counsels, and joint efforts, of common dangers, sufferings, and successes. ... Your Union ought to be considered as a main prop of your liberty and ... the love of the one ought to endear you to the preservation of the other.⁷

Unity is interconnected with, and leads to, the advancement of liberty. Liberty leads to happiness. Therefore, unity leads to individual and collective national happiness. We should reflect upon this again and again.

Finally, consider the relatively unknown, yet desperately needed, constitutional foundational principle of *civic charity*.

CONTINUED ON PAGE 22

*Woodburn and Wedge is pleased to announce that
Patrick Kealy
has joined the firm as an associate.
Patrick is experienced in civil litigation, probate,
and estate planning.*



More than a century of Nevada law practice.

Sierra Plaza | 6100 Neil Road, Suite 500 | Reno, Nevada 89511-1159 | 775.688.3000

Constitutional Reflections: A Recurrence to Fundamental Principles and Forming a More Perfect Union, Part Two

Washington alluded to this when he referred to “a spirit of amity” and of “mutual deference” in his cover letter with the proposed U.S. Constitution.⁸ Years later in Jefferson’s first inaugural address at a time our nation was split between Federalists and anti-Federalists (Democratic-Republicans), our nation’s bitter election contest of 1800 gave Jefferson pause to consider a different threat to America beyond mere political differences. Now undermining successful self-rule (as Washington had warned) was what Jefferson deemed a dangerous lack of civic charity—or what he referred to as “social love”—among American citizens.

In his 1801 inaugural address, Jefferson famously stated, “We are all republicans: we are all federalists.” Less famously, however, and in some way more importantly, Jefferson also gave us these forgotten words of great wisdom: “Let us then, fellow citizens, unite with one heart and one mind, let us restore to social intercourse *that harmony and affection* without which liberty, and even life itself, are but dreary things.”⁹ In a letter written only weeks later, Jefferson shared his sentiment again: “It will be a great blessing to our country if we can once more restore harmony and *social love* among its citizens. I confess, for myself, it is almost the first object of my heart, and one to which I would sacrifice everything but principle.”¹⁰

America is Inclusive

It is by a recurrence to fundamental principles and their proper application that we are made free. Good government is built upon these principles. Our generation’s responsibility is to maintain, repair, and continue to raise the superstructure of liberty even higher. At this critical time in our nation’s history, we cannot, we must not, descend into political tribalism. America is inclusive. It’s the greatest hope of freedom to the world. Its Constitution is this hope. Here, we build bridges of understanding for liberty, not walls of segregation by tyranny.

I close with a national promise that Washington made in his farewell address based on the enduring and true principles of our Constitution. Washington stated that if, as a nation, we honor the precepts set forth in the Constitution and “resist with care the spirit of innovation upon its principles,” then “Liberty itself will find in such a government, with powers properly distributed and adjusted, its surest guardian.” That is our promise if we remember and honor the principles of the U.S. Constitution.

May we remember, study, teach, and defend the fundamental constitutional principles. Though we may differ in our initial perspectives and backgrounds, our bond forged together for a love of freedom and the Constitution unites us together and must never be broken. Our unity makes us strong as a nation. By the Constitution, we truly understand our nation’s axiom *E Pluribus, Unum*. Out of many, one. By understanding and honoring the Constitution’s fundamental principles, we are free. Together, the fundamental principles of the Constitution protect the rights, privileges, and life of all. They sustain and engender a freedom among nations that may endure forever.

ENDNOTES:

1. The 2020-2021 President’s Messages of the FBA, published online at www.fedbar.org and in The Federal Lawyer, analyze these five foundational principles of the U.S. Constitution in five separate articles. Part One of this Constitutional Reflections article addressed the first three fundamental principles of the U.S. Constitution.
2. James Madison, the principal author of the U.S. Constitution and its Bill of Rights, originally opposed making inclusion of a bill of rights a precondition for ratification of the Constitution. He, along with Alexander Hamilton and others, did not think a separate bill of rights was necessary.
3. Thomas Jefferson, Letter to James Madison, Dec. 20, 1787, <https://founders.archives.gov/documents/Madison/01-10-02-0210>
4. The Federalist No. 63 (James Madison).
5. Montesquieu, The Spirit of Laws, Book XI, Ch. 4.
6. Letter from George Washington to the President of Congress, 17 September 1787 (emphasis added), <https://founders.archives.gov/documents/Washington/04-05-02-0306>
7. George Washington, Farewell Address, (1796) <https://www.ourdocuments.gov/doc.php?flash=false&doc=15&page=transcript>.
8. By way of example that still teaches us today, during the Constitutional Convention, delegates were expected to listen to one another, compromise, and often dine together. These are legislative lessons worth remembering.
9. Thomas Jefferson’s First Inaugural Address (Mar. 4, 1801) (emphasis added) (<https://founders.archives.gov/documents/Jefferson/01-33-02-0116-0004>)
10. Letter from Thomas Jefferson to Elbridge Gerry (Mar. 29, 1801) (emphasis added) (<https://founders.archives.gov/documents/Jefferson/01-33-02-0424>)

W. WEST ALLEN serves as the national president of the Federal Bar Association (FBA). He is an intellectual property litigator and counselor in Las Vegas who represents a wide variety of international clients in federal courts. Allen served as chair of the FBA’s Government Relations Committee for seven years and has served as a member of the FBA’s board of directors for much of the past decade. In 2016, Allen received the FBA’s President’s Award for longstanding service to the FBA and as chair of its Government Relations Committee. The FBA is a professional organization of nearly 20,000 federal judges and lawyers throughout the U.S. who seek to strengthen the nation’s federal legal system and the administration of justice by, among other things, increasing awareness and understanding of our U.S. Constitution.

