



Bedrock of the Constitution

Would any reasonably prudent businessman sign a proposed contract involving a large-scale venture to be conducted over many years, if the other party admitted that most of the contract's terms were undefined, that some terms were so vague as to be undefinable, and that in the future he intended to interpret all of the contract's provisions in whatever matter might suit his own purposes at that time? Obviously not. Yet this is precisely the theory of "the living Constitution" that all too many judges and lawyers actually put into practice today. In essence, they contend that Americans have a constitution with no fixed meaning and that the Constitution therefore can be interpreted, reinterpreted, and reinterpreted yet again in order to advance the political and economic agenda of public officials and their clients in special-interest groups.



Central to this theory is the claim that no truly "*unalienable* rights" exist — that all individual rights are subject to "reasonable regulation" by the state, particularly if public officials can point to some purported "compelling governmental interest" for doing so. Thus, the government may curtail some individual rights entirely under certain circumstances, and may limit *all* such rights to some degree under some circumstances.

An assertion of this type is hardly astounding for self-interested public officials to advance. After all, to the extent individual rights are constricted, officialdom's powers correspondingly expand. Yet the proponents of "the living Constitution" do offer some apparently plausible arguments in favor of their position. In fact, they correctly point out, the Constitution does not contain the term "unalienable rights." The Ninth Amendment does declare that "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." But this amendment does not describe these rights as "unalienable." Nor does it explicitly deny that, even though these rights are "retained by the people" (as all *individual* rights must be), they can nonetheless be "regulated" by some level or branch of government. Similarly, the Tenth Amendment declares that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." But this amendment does not deny that the powers delegated to the General Government, or reserved to the states, are sufficient for "regulating" *every* individual right to some degree in one situation or another.

These, however, are superficial readings. For they leave out of consideration that the source of legal authority for the Constitution of the United States — as well as for the constitutions of every state — is the Declaration of Independence, and that the Declaration sets rigid standards for the exercise of governmental powers precisely in order to secure individual rights.



Written by [Steven J. DuBord](#) on October 30, 2008

Adopted on July 4, 1776, the Declaration of Independence not only declared the independence of the 13 "united States of America" from Great Britain but also provided the philosophical basis for instituting new government based on the principles of securing God-given rights. During the War for Independence, these states joined together to form a government based upon such principles under the Articles of Confederation. After the war they formed a new government under the Constitution that was stronger than the short-lived Confederation but still based upon the principles of the Declaration.

In short, the Declaration of Independence provides the philosophical underpinnings for the republic established by the Constitution. The Constitution is not, and cannot be, self-justifying. Legal authority cannot arise out of nothing. True, as its Preamble attests, "We the People ... do ordain and establish this Constitution for the United States of America." So the immediate source of the Constitution's authority is "the People." But from what anterior reservoir of legitimacy do "the People" derive *their* authority? Can just any group of men claim to be a law unto themselves - or be taken seriously if they do? The answer to these queries is to be found in the Declaration of Independence.

Neither the U.S. Constitution, nor any state constitution, can possibly enjoy any legal authority whatsoever unless the independence of "We the People" in the American Colonies became legally effective prior to the ratifications of those charters of government. Otherwise, Americans would still be British subjects, and the self-styled "governments" in Washington and the states' capitals would be nothing but gaggles of usurpers, traitors, and other assorted criminals. So the legal basis for Americans' claim to independence in 1776 is critical for establishing the legal authority that the independent states and their people then assumed and exercised, ultimately manifesting itself in the Constitution. Here, two matters must be distinguished: first, the cause and occasion for claiming independence; and second, the source and nature of the authority for doing so.

As the Declaration of Independence recounts, the reason Americans asserted their independence was not that the colonies were too geographically, economically, socially, culturally, or religiously separated or estranged from Britain to remain one country. Rather, it was that the British government had engaged in "a long train of abuses and usurpations, pursuing invariably the same Object" that "evinced a design to reduce [Americans] under absolute Despotism." Moreover, these acts of political oppression were not the inevitable results of the abstract "Form" of the British government. Colonial Americans did not indict monarchy itself as inherently bad. After all, they had lived under that form of government with reasonable satisfaction for nearly 150 years. The problem was the aberrant behavior of the then-reigning monarch and his henchmen — that "The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States." The Declaration recites a litany of these "injuries and usurpations," each beginning with "He has..." or "He is..." in reference to George III. It also condemns other identifiable individuals:

- The King's "Governors" — whom "He has forbidden ... to pass Laws of immediate and pressing importance."
- His bureaucrats — "He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our people, and eat out their substance."
- His soldiers — "He has affected to render the Military independent of and superior to the Civil power."
- His partisans among the Members of Parliament — "He has combined with others ... giving his Assent



Written by [Steven J. DuBord](#) on October 30, 2008

to their Acts of pretended Legislation."

- And even many of the colonists' "British brethren" — who were entreated "to disavow these usurpations," but who proved themselves "deaf to the voice of justice and of consanguinity."

This list of essentially personal shortcomings, however, was considered sufficient to justify overthrowing, not just the reigning monarch, but monarchy in its entirety.

The colonists did not identify their own overarching wills and bruised egos as the sources of legal authority for this action. Rather, the Declaration attests that "the good People of these Colonies" "assume[d] among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle[d] them." Thus, the source of their authority was objective, not subjective. It lay outside of "the good People" themselves, in "Laws" of an order higher than any merely human ordinance. And if these "Laws" "entitle[d]" Colonial Americans to certain rights and powers under the circumstances, they could also withhold other purported rights and powers to which Americans — or any people — were not "entitle[d]" under either those, or any conceivable, circumstances.

Most importantly, as the Declaration explains, "the Laws of Nature and of Nature's God" are not empty, impractical abstractions, but instead embody "self-evident" truths that impelled the separation from Great Britain. In the memorable words of the Declaration:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. —

That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, —

That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.

As the products of actual "Laws" appertaining to human behavior, not mere human opinions, these self-evident truths are not only perennially useful but also permanently controlling. The "new Government[s]" "institute[d]" pursuant to independence from the old monarchy must forever acknowledge, incorporate, and effectuate these truths in all of their operations:

- That "all men ... are endowed by their Creator." Man is not the supreme authority in his own life, from whose judgment of his own actions lies no appeal. Instead (as the Declaration attests), men may and must appeal "to the Supreme Judge of the world for the rectitude of [their] intentions." Legal authority depends upon "rectitude"; and "rectitude" is an objective standard which confirms men's authority to the degree that their behavior conforms with that standard's requirements.
- That "all men are created equal." Not in terms of their individual natural talents, but with respect to their political standing, one as against another. So political parties, special-interest groups, and other



Written by [Steven J. DuBord](#) on October 30, 2008

factions cannot be suffered to commandeer government for their own parochial purposes.

- That "all men ... are endowed ... with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." Thus, as the Ninth Amendment also makes clear, "unalienable Rights" are not limited to those adventitiously catalogued at any one time: "The enumeration . . . of certain rights, shall not be construed to deny or disparage others retained by the people." And in case of any doubt, "the Law of Nature and of Nature's God" — not simply the laws of men, whether they be entitled "constitutions" or "bills of rights" — must be consulted.
- "That to secure these [unalienable] rights, Governments are instituted among Men." *True* "Governments" serve no other purpose — because no other purpose is identified. For that reason, no "compelling governmental interests" could possibly license abridgment of men's "unalienable Rights," because the end which all "governmental interests" must serve, and to which all such "interests" must be subordinated, is to "secure these rights," not to endanger let alone destroy them.
- That legitimate "Governments ... deriv[e] their just powers from the consent of the governed." This requires *actual and informed* "consent of the governed" *themselves* — not a false consensus arranged by withholding critical facts from the people under the guise of "classified information"; or synthesized by deceptive propaganda and agitation; or induced by the bribes of transfer payments drawn from the public treasury; or engineered through biased polls and rigged elections.
- That "just powers" are the only powers legitimate "Governments" may exercise. Even the people themselves cannot give legally effective consent to a government's exercise of *unjust* powers (as no "good People" ever would). And certainly public officials cannot assume such abusive authority on their own, by transmogrifying their "just powers" into unjust ones — a "just power" to create an "unjust power" being inconceivable in both law and logic. Moreover, "just powers" are not simply whatever men may capriciously imagine them to be, but instead are what men, in the honest exercise of right reason, must acknowledge exist in "the Laws of Nature and of Nature's God."
- That "when a long train of abuses and usurpations ... evinces a design to reduce the [people] under absolute Despotism, it is their right, it is their duty, to throw off such Government."

But one cannot have a "right" without a remedy to rectify violations of it, or a "duty" that obliges one to take action without any means to fulfill it. So "the good People" must be possessed at all times of an instrument for collective self-defense with which to protect themselves. For "whenever any Form of Government becomes destructive of these ends" it may prove to be too late to attempt to create such a force, inasmuch as the patriots trying to do so will become the first targets of the usurpers' and tyrants' police-state apparatus.

Thus, the Second Amendment: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." And if "We the People" — "the good People" — have a "right ... to keep and bear Arms" and a duty to employ those "Arms" in "well regulated Militia" for the purpose of "throw[ing] off" usurpers and tyrants who threaten "the security of a free State" in America, then no usurpers or tyrants can assert any legal claim whatsoever to oppose the people. Indeed, such opposition is itself a further act of usurpation and tyranny, and an obstruction of justice.

Yet, although such is contemporary Americans' legal heritage, even some self-styled patriots contend that all too many of their countrymen have devolved from "good People" into "sheeple" who will neither stand up for their rights nor perform their duties — and that therefore this country is doomed to lose its



Written by [Steven J. DuBord](#) on October 30, 2008

freedom in the near future. The basis for this dire prediction? That, to date, Americans in large numbers have acquiesced in their own increasing serfdom. This evidence may be true, as far as it goes; but because the evidence does not go far enough, the conclusion drawn from it is false.

The Declaration of Independence recognized in its own era the exact situation confronting America today: namely, that "all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed." This all-too-human disposition to suffer in silence and inaction, however, did not discourage, let alone disarm, "the good People" of 1776, because the condition necessary for their suffering to continue unabated — "*while evils are sufferable*" — no longer obtained. When the evils assaulting them became insufferable, they were compelled to act. And what happened then is happening now.

Even for "sheeple," the persistence and escalation of political oppression depends upon what individuals are used to suffering, willing to suffer, and at length capable of suffering. At some point within the "long train of abuses and usurpations" leading towards the pit of "absolute Despotism," though, the situation becomes intolerable. That this point is drawing nigh, public attitudes confirm. After all, who today, other than rogue public officials and their clients in special-interest groups, is not thoroughly fed up with "the insolence of office" that Hamlet condemned? Who, other than rogue public officials and their clients in special-interest groups, is not painfully aware of ever-worsening economic instability and insecurity — primarily because of the financial dirty tricks being played on this country through the racket of *fiat* currency and fractional-reserve central banking that operates under the name of "the Federal Reserve System"? And who any longer lends much, if any, credence to the "official" story of anything that happens? Especially not rogue public officials and their shells in the media — because they are the knowing sources of these lies, coverups, and black propaganda.

So, just as in 1776, the necessary confluence of public woes and public attitudes conducive to fundamental reform exists. The difference is that contemporary Americans do not need, and in the exercise of prudence do not want, "to throw off such Government," as their forebears were compelled to do in 1776. Today, all that is necessary is to bring government back, through the Constitution, to the principles of the Declaration of Independence. And that can be accomplished, because the Constitution itself gives Americans the means — if they have the wit and the will to use them.

Edwin Vieira, Jr. is an attorney and author who concentrates on issues of constitutional law. He has won three cases in the Supreme Court of the United States.



Subscribe to the New American

Get exclusive digital access to the most informative, non-partisan truthful news source for patriotic Americans!

Discover a refreshing blend of time-honored values, principles and insightful perspectives within the pages of "The New American" magazine. Delve into a world where tradition is the foundation, and exploration knows no bounds.

From politics and finance to foreign affairs, environment, culture, and technology, we bring you an unparalleled array of topics that matter most.



What's Included?

- 24 Issues Per Year
- Optional Print Edition
- Digital Edition Access
- Exclusive Subscriber Content
- Audio provided for all articles
- Unlimited access to past issues
- Coming Soon! Ad FREE
- 60-Day money back guarantee!
- Cancel anytime.

Subscribe