

Some Truths Are Not Self-Evident

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This year Americans are talking about the Constitution but asking the wrong questions, such as, Could the Founding Fathers have done better? That concern is pointless, 200 years after the fact. Or, Does the Constitution provide the framework for a just and democratic society today? That question is also misplaced, because the Constitution, whatever its language and however interpreted by the Supreme Court, does not determine the degree of justice, liberty or democracy in our society.

The proper question, I believe, is not how good a document is or was the Constitution but, What effect does it have on the quality of our lives? And the answer to that, it seems to me, is, Very little. The Constitution makes promises it cannot by itself keep, and therefore deludes us into complacency about the rights we have. It is conspicuously silent on certain other rights that all human beings deserve. And it pretends to set limits on governmental powers, when in fact those limits are easily ignored.

I am not arguing that the Constitution has no importance; words have moral power and principles can be useful even when ambiguous. But, like other historic documents, the Constitution is of minor importance compared with the actions that citizens take, especially when those actions are joined in social movements. Such movements have worked, historically, to secure the rights our human sensibilities tell us are self-evidently ours, whether or not those rights are "granted" by the Constitution.

Let me illustrate my point with five issues of liberty and justice:

- First is the matter of racial equality. When slavery was abolished, it was not by constitutional fiat but by the joining of military necessity with the moral force of a great antislavery movement, acting outside the Constitution and often against

the law. The Thirteenth, Fourteenth and Fifteenth Amendments wrote into the Constitution rights that extralegal action had already won. But the Fourteenth and Fifteenth Amendments were ignored for almost a hundred years. The right to equal protection of the law and the right to vote, even the Supreme Court decision in *Brown v. Board of Education* in 1954 underlining the meaning of the equal protection clause, did not become operative until blacks, in the fifteen years following the Montgomery bus boycott, shook up the nation by tumultuous actions inside and outside the law.

The Constitution played a helpful but marginal role in all that. Black people, in the political context of the 1960s, would have demanded equality whether or not the Constitution called for it, just as the antislavery movement demanded abolition even in the absence of constitutional support.

- What about the most vaunted of constitutional rights, free speech? Historically, the Supreme Court has given the right to free speech only shaky support, seesawing erratically by sometimes affirming and sometimes overriding restrictions. Whatever a distant Court decided, the real right of citizens to free expression has been determined by the immediate power of the local police on the street, by the employer in the workplace and by the financial limits on the ability to use the mass media.

The existence of a First Amendment has been inspirational but its protection elusive. Its reality has depended on the willingness of citizens, whether labor organizers, socialists or Jehovah's Witnesses, to insist on their right to speak and write. Liberties have not been given; they have been taken. And whether in the future we have a right to say what we want, or air what we say, will be determined not by the existence of the First Amendment or the latest Supreme Court decision but by whether we are courageous enough to speak up at the risk of being jailed or fired, organized enough to defend our speech against official interference and can command resources enough to get our ideas before a reasonably large public.

- What of economic justice? The Constitution is silent on the right to earn a moderate income, silent on the rights to medical care and decent housing as legitimate claims of every human being from infancy to old age. Whatever degree of economic justice has been attained in this country (impressive compared with others, shameful compared with our resources) cannot be attributed to something in the Constitution. It is the result of the concerted action of laborers and farmers over the centuries, using strikes, boycotts and minor rebellions of all sorts, to get redress of grievances directly from employers and indirectly from legislators. In the future, as in the past, the Constitution will sleep as citizens battle over the distribution of the nation's wealth, and will be awakened only to mark the score.

- On sexual equality the Constitution is also silent. What women have achieved thus far is the result of their own determination, in the feminist upsurge of the nineteenth and early twentieth centuries, and the more recent women's liberation movement. Women have accomplished this outside the Constitution, by raising female and male consciousness and inducing courts and legislators to recognize what the Constitution ignores.

- Finally, in an age in which war approaches genocide, the irrelevance of the Constitution is especially striking. Long, ravaging conflicts in Korea and Vietnam

were waged without following Constitutional procedures, and if there is a nuclear exchange, the decision to launch U.S. missiles will be made, as it was in those cases, by the President and a few advisers. The public will be shut out of the process and deliberately kept uninformed by an intricate web of secrecy and deceit. The current Iran/*contra* scandal hearings before Congressional select committees should be understood as exposing not an aberration but a steady state of foreign policy.

It was not constitutional checks and balances but an aroused populace that prodded Lyndon Johnson and then Richard Nixon into deciding to extricate the United States from Vietnam. In the immediate future, our lives will depend not on the existence of the Constitution but on the power of an aroused citizenry demanding that we not go to war, and on Americans refusing, as did so many G.I.s and civilians in the Vietnam era, to cooperate in the conduct of a war.

The Constitution, like the Bible, has some good words. It is also, like the Bible, easily manipulated, distorted, ignored and used to make us feel comfortable and protected. But we risk the loss of our lives and liberties if we depend on a mere document to defend them. A constitution is a fine adornment for a democratic society, but it is no substitute for the energy, boldness and concerted action of the citizens.