

THE CONSTITUTION & LIBERTY

The current observance of the bicentennial of the US Constitution has led to a re-examination of that historic document: the intentions of the framers, the politics and economic interests they represented, and the social ideals they held aloft.

The Constitution, beginning with "We, the people...", reflects the ideas Thomas Jefferson embodied in the Declaration of Independence: governments are instituted by the governed in order to secure their "unalienable rights" to "life, liberty, and the pursuit of happiness." Indeed, one of the main purposes of the Constitution is "to secure the blessings of liberty." It is this that singles it out as one of the world's most important political documents.

The power of government over individual liberty is limited in many ways in the Constitution. For example, Congress is denied the power to suspend the writ of habeas corpus except in times of public emergency. This means that persons cannot be held against their will unless they are charged with specific crimes. The Congress is also denied the power to pass ex post facto laws (making an action a crime by passing a law after it happened). The federal government as a whole is limited in the Constitution by the separation of powers among its three branches: legislative, executive, and judicial.

The most notable protection of liberty is the Bill of Rights, the first ten amendments to the Constitution. These were added on to the Constitution in response to objections from some who felt, like Jefferson, that a strong central government was a threat to liberty.

The first amendment mandates separation of church and state, free speech and press, and peaceful assembly. Other amendments guarantee the right to keep and bear arms, security against "unreasonable searches and seizures" of person and property, the right to refuse to testify against oneself and to a trial by jury. The Bill of Rights further denies the power to deprive any citizen of life, liberty, or property without "due process of law", to take private property for public purposes without just compensation, or to inflict "cruel or unusual punishment."

Today, the Constitution is still a major weapon in the struggle "to secure the blessings of liberty." But what is meant by "liberty", and by the specific liberties and rights protected in the Constitution? From the time of the Civil War and abolition of slavery, the definition of liberty and rights, specifically civil liberty and civil rights, has been an ongoing debate. One outcome of this debate is a continuing evolution of the spirit and letter of the Constitution. This can be seen in the additional amendments since the first ten.

One of the most significant amendments to the Constitution is the 14th. Ratified in 1868, it called for equal protection under the law regardless of race or ethnic origin to all US citizens. It put US citizenship paramount over state citizenship. It gave the federal government the authority to prevent states from abridging "the privileges and immunities of citizens", from depriving "any person of life, liberty, or property, without due process of law", and from denying anyone "the equal protection of the laws."

A Constitution alone cannot secure the blessings of liberty. In the end it depends upon "We the people" to see to it that our rights are upheld. But do we all interpret "liberty" the way the Constitution does? Recent national opinion polls reveal some disparities between the rights and liberties enshrined in the Constitution and those enshrined in the hearts of the public. Over 50% of those surveyed said it would be okay for government to: ban speech by an unpopular individual, ban newspapers preaching revolution, ban or censor certain books and movies, have laws against publishing communist literature, and prevent a woman from speaking about family planning. Clearly, the first amendment rights of free speech and press are well qualified by the adults and teenagers who participated in these surveys.

Many civil liberty issues today are first amendment issues: the right to read or publish pornography, for example. The definition of pornography has yet to be agreed upon, if it ever can be, let alone what rights we will allow ourselves to buy and sell it. Other issues of liberty involve other amendments. The increasing battles over the right to use private property versus the interests of the community in protecting its environment involves Constitutional guarantees of "due process" and "just compensation" whenever private citizens are deprived of such rights.

Henry George, writing around the time of the Constitution's first centennial, clearly indicates how important a role liberty has played in human history. His account is an eloquent vision of the rights we have become accustomed to, having embodied them in the Constitution.

"The general tendency of modern development, since the time when we can first discern the gleams of civilization in the darkness which followed the fall of the Western Empire, has been toward to political and legal equality - to the abolition of slavery; to the abrogation of status; to the sweeping away of hereditary privileges; to the substitution of parliamentary for arbitrary government; to the right of private judgement in matters of religion; to the more equal security in person and property of high and low, weak and strong; to the greater freedom of movement and occupation, of speech and of the press. The history of modern civilization is the history of advances in this direction - of the struggles and triumphs of personal, political, and religious freedom."

HENRY GEORGE SCHOOL BRIEFS

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