



# What is the Constitution?

George Wythe University held an interactive seminar with its students where they were asked to rewrite the Constitution. Before beginning their work, Dr. Oliver DeMille, then president of the University, addressed the group speaking as George Wythe. George Wythe was America's first law professor who tutored Thomas Jefferson, signed the Declaration of Independence, and later signed the Constitution of the United States. He wanted to make sure the young delegates understood what a Constitution was and what it was not. Below is an excerpt of his speech.

## **A Constitution is not a law --**

First, it is not Natural Law. There are laws which are above man, which no parliament or tribunal can change. For example, if a workman slips off the beams while building a roof, he will fall to the earth. Perhaps the British Parliament or King Louis or Caesar himself will judge that falling off roofs does much harm to society, that indeed it would better that men did not fall off roofs. Parliament may pass a law or Caesar may issue a decree: "from this time forward, if any man falls from a beam, he will gently float to the ground without injury." Of course such a law is absurd. One may still fall. Caesar may also decree (in fact his heirs did): "a man may now commit adultery or murder and it is moral, good and right." Yet it is not. A just Creator will one day require an accounting for such things. Some laws are above man. They are natural laws.

A Constitution, therefore, is not natural law, because men may write a bad constitution. Did Nimrod get his constitution from natural law? Did Pharaoh? Or did Darius, Plato, Jason or Elizabeth? Did even David or Solomon? It is clear that constitutions are not natural law, though they may be, indeed *should* be, based on it.

Nor is a constitution a man-made law. It is not written to tell the people of a nation how they must act, nor to proscribe penalties or due processes. There have been such documents, some have even claimed to be constitutions, but they are not. Whereas natural law is clearly above any constitution, man-made laws are below it. They answer to it.

## **A Constitution is not a government --**

Rome fell twice because it mistook this point. The Roman *Republic* failed because the Senate thought that whatever laws *it* passed were the constitution; the Roman *Empire* failed because it thought a man, Caesar, was its constitution.

A government is a made up of two parts, the written, which gives it shape and structure, and the people who staff it and provide personality and nuance. A Constitution is one facet of the written government, but they are not one and the same. The Constitution is above all other written parts, which include laws, treaties, traditions and precedents. All of these must *conform* to the Constitution. They are not equal, nor does the Constitution conform in any way to them. It stands alone, separate, itself. And of course the Constitution is above government officials; *they* must conform to *it*.

Every nation which has considered government and constitution synonymous has been pricked by the two-pronged venom of the serpent's tongue--tyranny or chaos: Assyria, Persia, Babylon, Sparta, Athens, Rome, Britain, France, and the United States.

Delegates, from your pen must not flow a government, or you do evil. For to commence with a government is to say that government is the genesis, that it is first, the creator, and therefore above that which follows. It is not. The proper place to begin is with a Constitution. Let it be first. Above the government, the laws, whatever comes after. Then they must always be subordinate. As the Athenian Stranger instructed Socrates--and he indeed needed it--"The state in which the law is above the rulers, and the rulers are the inferiors of the law, has salvation, and every blessing which the Gods can confer."

### **A Constitution is not an enterprise, neither commercial nor charitable ---**

Businesses exist to make a profit, and non-profit corporations exist to provide charitable service. On the contrary, government exists for one purpose: to crush evil. It does not exist to serve nor to uplift, but to destroy any who endeavor to usurp or injure. A constitution likewise has one aim: to restrain government from crushing or destroying anything it should not, anything that is not evil. This role is often commercial. John Locke wrote: "The great and chief end of men united into commonwealths, and putting themselves under government, is the preservation of their property." A government is not--and must not--*become* a business, or it will seek to profit at the expense of its people (like England, France and the European despots of my day) or worse, to dispense charity, for which it is both ill-equipped and must engage in thievery to accomplish.

### **A Constitution is not a contract ---**

Hobbes and Rousseau were wrong. A contract is a two-way agreement which becomes null and void if either party fails to fulfill its part. A constitution is clearly one-sided. It does not authorize the government to disregard it if the people of the nation do not do their duty. *Indeed it is at exactly such times that constitutions are most needed.* A constitution is written by the people to the government, giving it specific, clearly enumerated powers and forbidding all else. The government must obey it no matter what anyone else does. In fact, the *government itself* is the only thing which may be voided if it fails to fulfill or stay within its role.

There have of course been governmental contracts: the Magna Charta, the Mayflower Compact, the Articles of Confederation, even the Mosaic Covenant. But none of these was a *constitution*. Each failed in time because one side or the other breached the contract. A constitution must not fail. If the people fail in their duty, a constitution must still maintain order and chain down the leaders to keep them from tyranny.

### **A Constitution is not a Declaration of Independence ---**

It outlines no abuses. It declares no freedoms. It rather establishes what government can and cannot, or if it is a *good* government, shall and shall not do. This principle is one that makes constitution writing what John Adams called "the *divine* science." Euclid, Copernicus, and Newton's science declares only *theories*, *guesses*. True they aid mankind. But limited are they to *declarations*. In constitutions are laws *established*, not just declared. Still, as Oedipus, Lear and David discovered, evil can be established as easily as good. "Of course, you won't have a problem with pride in this assembly," Iago pledges.

### **A Constitution is not a patriotic speech, a national anthem or a flag ---**

Again it is above all these. Indeed they are the symbols of it. They are not the symbols of government, but of what is above it, of what truly is the nation--its constitution. Just as kings once referred to themselves as "England", "France" or "Denmark", so true kings--be they sovereign or citizen--point to the constitution and call it "Israel", "America", or "Arizona". Pericles did thus in the Golden Age of Athens--that is why it was the golden age. Cicero taught this and was slain. The United States failed and fell because it forgot.

### **Then what is a Constitution?**

I have told you what a constitution is not. One hopes that your minds have yet enough interest to query what it *is*.

A constitution is...A commandment. From God? No. From whom? From the people.

A constitution is born when the people of a society reveal "the commandments" by which the future government of their nation will abide and be judged.

Good commandments are the basis of *all* good things. And no person or government has ever risen above its commandments.

God gives commandments to people: these are called scripture. People give commandments to governments: this is called constitution.

If a person is good, be assured that he has good commandments in scripture.

If a *government* is good, be assured that it has good commandments in a constitution. Likewise, if a person is bad, he either does not follow scripture or his scriptures are deficient. If a *government* is bad, it either disregards its constitution or the constitution is defective.

Your job at this convention is to reveal commandments to your future government. Will you reveal good ones? If you do *not*, your government will fail.

A model for your task is Moses, the world's greatest revealer of commandments. The commandments he revealed, straight from the finger of God, were two: "thou shalt", and "thou shalt not". Tell your government what it shall do. Write each item down. Make it clear and precise. Tell your government what it shall not do. Make this clearest of all.

Of course the hard question, the key question, is "what shall it do and what shall it not do?" When I attended the Philadelphia Convention nearly two-hundred-fifty years past, we debated this question much. We found no easy answer, nor I judge will you. Yet you have the benefit of our experience and the Constitution we wrote, as well as the lessons of more than two centuries under it.