

Law & Storytelling

by

Richard Dooling

Law & Storytelling

The questions and commentaries on the *Preamble* and the *Declaration* are excerpts from [When Words Lose Their Meaning](#), by [James Boyd White](#), and my edits and additions to [Professor Craig Lawson's](#) Handout for his Law & Literature class.

Law AS Literature: The Preamble

How do statutes declare and describe the laws of the land? Why do some novels make us laugh, and others make us cry? How does a passage of prose WORK? What does it convey? Consider this familiar paragraph of a law. First and foremost, it is a writing. But a paragraph so well-wrought that it begs to be read aloud:

WE THE PEOPLE OF THE UNITED STATES, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

The Constitution of The United States, 1787

Reverse Engineering The Preamble

How does the *Preamble* work? This is a question of interpretation. Readers, lawyers, literary critics, they all interpret prose. So be a reader and critique the *Preamble*. Give an account of its meaning.

If it is great literature probably none of us can improve upon it or shorten it. But see if you can explain its literary music— its tone, rhythm, diction, syntax, figures of speech, and other literary characteristics. Are these tools of the writing trade or just attributes of great prose? How does the *Preamble* work?

If this seems like too vague a job, try answering the following specific questions.

Your First Impressions As Readers

What is your first impression of the Preamble's meaning? Your first impression of its function in the Constitution?

Literal Meaning

What main action does the Preamble describe? (Who or what is the subject of the Preamble? What is the subject doing in the action which the Preamble describes?)

Identity of the Subject

What person is the Preamble written in? (first person—I or we; second person—you; or third person—he, she, it, or they?) Does it matter? Rewrite the Preamble in another person; try for example, by starting with “This constitution....” How does that change the Preamble's **connotative** and **denotative** force?

Internal Structure

How many words come between the subject of the Preamble and its verb? What form does this interruption take? How does it affect the force of the Preamble?

Action

What is the main verb in the Preamble? Are there other verbs? How many? How do they function in the Preamble?

Tone

What is the overall tone or mood of the preamble? How does it achieve this tone?

The Preamble Revisited

When you have taken apart the *Preamble* and considered these questions. Reassemble and consider again the questions above. What do you think of its overall literary force? Is it a work of great literature? What does it mean? Does this seem consistent with its legal function as a clause at the beginning of the United States Constitution?

Our interpretive investigation of the *Preamble* is an exercise in the Law *as* Literature—the study of the literary qualities of a legal text.

The Declaration of Independence

This is our first exercise in **SLOW READING**. Please read [the Declaration of Independence](#).

That's right. All the way through. How did that feel?

Now let's take a closer look. Click on the following link and listen to these excellent actors READ the *Declaration* it to you:

<https://www.youtube.com/watch?v=ETroXvRFoKY>

Probably you want to see them do it, but THEN, please close your eyes and play it again. LISTEN TO THE WORDS. How and why do they work?

Is this a STORY? Who is the hero? Who is the audience? Does the storyteller use any of the techniques that we learned about in the Poetics book?

Does the story have three acts?

What is it about the language that makes it seem lofty and sacred? Is it only because we know it's OUR NATION'S Declaration of Independence, or is it something about the rhythm, diction, poetry, movement of the verses that makes it so effective?

Some Inquiries

- In Congress, July 4, 1776
- The Unanimous Declaration of the Thirteen United States of America

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God

entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

Who is speaking? Whose voice is it? Is it a person's voice? A committee's voice? No, it is the unanimous voice of the "thirteen United States" and their people.

Who is the audience? Britain? The citizens of the United States? Talking out loud to themselves? No. The audience is UNIVERSAL. No less than mankind itself. Not located in space or time. This "voice purports to know about "the course of human events" and to discern what "becomes necessary." The voice speaks to 18th Century assumptions about the universal character of human nature and experience.

Voice is removed from passion and particular circumstances and is therefore almost mild. As one commentator (Stuart Tave) put it: the "diction is as little violent as it can be."

Dissolve the bands—not burst asunder the hoops of steel. Not throwing off the chains of tyranny, not shattering the manacles of slavery, instead: a reassuring statement of simple fact. The "separation" was not chosen but instead it was made "necessary," "impelled by certain causes"—as the Declaration itself is not chosen but "required."

It simply "declares" that certain "causes" have produced certain effects, and it does so with no more passionate motive than a "decent respect to the opinions of mankind."

We the audience are to learn the "causes of the separation" and then to maintain a good opinion of the authors. Very mild. High-minded and genteel.

Are we being seduced?

In fact, the audience cannot be MANKIND, for whoever reads the Declaration will be English, French, or American. To the foreigner: it is a claim of maturity. To the Englishman: a performance of reasonableness that undermines the view of the American as uncivilized and uncouth. To the American Royalist: it makes a switch of sides more possible. To the patriot offers something to reassure his critics. And to the undecided American: it is an appeal to join a community.

Look at the structure of the sentence: before the main clause "they should declare ..." there is a LONG SUBORDINATE CLAUSE. Principles of composition would suggest that this subordinate clause is of secondary importance. The reader slides through waiting for a subject and a verb and a main clause, but when the reader finally gets there, he finds that he has acquiesced in an astonishing set of propositions. In fact the CENTRAL propositions that the Declaration is intended to establish. That America is "one people", that "necessity" can justify a unilateral separation and that, once

separated this people is entitled by by law, by nature and by God to an equal station among nations. Fervor: “The Laws of Nature and Nature’s God” But it is checked by “a decent respect. Instead of directly addressing these things IT ASSUMES THEM AWAY.

The next paragraph upsets these expectations by affirming and bringing to our attention the central tenets:

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 shown, 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.

Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. 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. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his

Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our people, and eat out their substance.

He has kept among us, in times of peace, Standing Armies, without the Consent of our legislatures.

He has affected to render the Military independent of and superior to the Civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

For imposing Taxes on us without our Consent:

For depriving us in many cases, of the benefits of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offences:

For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments:

For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large Armies of foreign Mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions. In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people. Nor have We been wanting in attentions to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

WE, THEREFORE, the REPRESENTATIVES of the UNITED STATES OF AMERICA, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be FREE AND INDEPENDENT STATES; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. —And for the support of this Declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

JOHN HANCOCK (and many others!)

Listen again, if it helps:

<https://www.youtube.com/watch?v=ETroXvRFoKY>

Totally Optional Reading

- Many of the questions above are excerpted from [When Words Lose Their Meaning](#), by [James Boyd White](#), as edited and supplemented by Professor Craig Lawson and me.
- *Wall Street Journal: Read Slowly to Benefit Your Brain and Cut Stress At Least 30 Minutes of Uninterrupted Reading With a Book or E-Book Helps*[Read Slowly to Benefit Your Brain and Cut Stress At Least 30 Minutes of Uninterrupted Reading With a Book or E-Book Helps](#). I took the speed reading test. I came out “average” but I also missed a question. I also learned a new term for what I do when I read GOOD stuff. I sub vocalize.