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THE FIRST FUNDAMENTAL PRINCIPLE OF CONSTITUTIONAL INTERPRETATION: YOUR RIGHTS DON'T COME FROM GOVERNMENT

NOTE: This article was first published in [S.W.A.T. Magazine](#), where I write a monthly column called *Enemy at the Gate* which is dedicated to the Bill of Rights - and that means all of it. The publisher and editor of S.W.A.T. are committed patriots (and no, S.W.A.T. Magazine is not just for police. Its readership also includes military and non-military average folks). They have given their consent to my republishing this article online. I think it presents some foundational principles we should always keep in mind. Feel free to pass it on to others if you like, but be sure to give proper credit to S.W.A.T. Magazine.

By

Stewart Rhodes

Ben Franklin reportedly remarked that the Constitution formed “a Republic ... if you can keep it.” Well, you can’t keep it if you don’t know what it is.

So, what is it? As George Mason said, “no free government, nor the blessings of liberty, can be preserved to any people, but by frequent recurrence to fundamental principles.”

What are the fundamental principles of our Republic? Should we look first to Supreme Court decisions for such guidance? Hardly. As Jefferson said:

They [the judges] are ... in fact the corps of sappers and miners, steadily working to undermine the independent rights of the States and to consolidate all power in the hands of that government in which they have so important a freehold estate.

And that was when the ideas of the Enlightenment still reigned supreme, long before the infestation of Marxism among legal elites. No, the Court has long ago gone astray. Let us begin with our Declaration of Independence:

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

There, at the heart of our Republic, are not just the concepts of equality and consent of the people, but also natural rights. The Declaration of Independence is fundamentally a natural law document and the “long train of abuses” that made revolt necessary were not only deprivations of representation (as we were taught in school), but also of natural rights, such as life, liberty, and property, and the abuse of all of the ancient, hard won procedural protections of those rights, such as habeas corpus and jury trial in a civilian court, rather than a court of admiralty. They finally shot back when the government attempted to strip them of the means of resisting the already ongoing abuse of their other natural rights.

Rights come first, and then *government* is created to protect them, not the other way round. This is something modern political and legal elites want us to forget. They don’t believe in inalienable, natural rights that are ours by virtue of ‘nature and nature’s God.’ Instead, they share the view of Karl Marx, that such “rights” are merely artificial political/legal constructs, that man is just an infinitely malleable animal (to be shaped by social engineers), with no inherent rights whatsoever, and your only “rights” are whatever society wants to “give” you. Black’s law dictionary defines this as “positive law” — man made law - as opposed to natural law. Thus, Janet Reno once told a group of federal law enforcement officers “You are part of a government that has given its people more freedom ... than any other government in the history of the world”(emphasis added).

Under this view, which flips the Declaration on its head, on what grounds can you ever rebel? Since your rights are “gifts” from government, and merely whatever the government courts say, with no higher power or law, it is never legitimate for a people to

rebel, no matter how ridiculous the government's "interpretation" of its own powers or how arbitrary and murderous it becomes once its servants in black robes "make it legal" by interpreting your so-called rights out of existence. Without natural rights there is no right to revolt, which is precisely why these elites think it totally illegitimate for you to have effective means of resistance.

Remember that all of the Crown's actions were upheld by the English courts as legal and "constitutional." However, for the Founding generation, that was not the end of the argument because they knew their rights were not just whatever the government robed lawyers said.

In harmony with that timeless, self evident truth, the Bill of Rights does not grant any rights. It is really more a bill of protections of rights. The First Amendment does not say "the people are hereby granted a right to free speech, freedom of the press, free practice of religion, and assembly." Instead, it says "Congress shall make no law respecting ... [those rights]." It is a prohibition on Congress, to protect pre-existing natural rights.

The same is true of the Second Amendment. It does not say "the people are hereby granted the right to bear arms." No. It says "... the right of the people to keep and bear arms shall not be infringed." It is a prohibition on government action, meant to protect a pre-existing right.

Likewise, the Fourth Amendment does not grant us a right to be secure in our persons, houses, papers and effects from unreasonable searches and seizures. It declares that our right to that security "shall not be violated" and then it sets forth procedural requirements to protect that preexisting right. Nor does the Fifth Amendment grant us a right to life, liberty, or property. It merely prohibits the government from depriving us of those pre-existing rights without due process of law, and spells out specific procedural protections for those natural rights. The same holds true for jury trial.

Thus, whenever you hear a judge, politician, lawyer, or talking head in the media speak of what rights you do or don't have under the Constitution, you are hearing at best an ignorant statement, and at worst, a lie. And whenever you find yourself running to look in the Bill of Rights to see whether you have a right to do something, you are making a fundamental error. Your rights are inherently yours by nature and by nature's God.

With that fundamental principle as our background, I will next delve more directly into constitutional interpretation, showing how the Bill of Rights mandates how we must interpret what the people consented to as the means "to secure these rights."

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