

Civic Illiteracy and the Rule of Law

Don Willett is a judge on the U.S. Court of Appeals for the Fifth Circuit and previously served as an associate justice on the Texas Supreme Court. In September, he delivered the annual B. Kenneth Simon Lecture for Cato's Constitution Day symposium to mark the release of the *Cato Supreme Court Review*. He spoke on the importance of civil literacy in preserving the rule of law.

The year 2020 has been a wild ride, and I say that as a former rodeo cowboy. There has been a confluence of overlapping crises: pandemic, recession, impeachment, social unrest. So far, the most normal part of 2020 has been *Tiger King*.

But we look for silver linings where we can. And the turmoil has perhaps sharpened our focus on first principles. According to the 2020 Constitution Day Civics Survey, 51 percent of American adults can now name all three branches of government—up from 39 percent last year (which was the all-time high). But truth be told, our nation still has an abysmal civic IQ. We inhabit an age of miracles and wonders, with access to mankind's accumulated knowledge at our fingertips. Yet it's also an age of staggering civic illiteracy. Our civic temperature may be high, but our civic knowledge is not. There is much to indict. But through commendable events like today's symposium, perhaps we can move from indicting to informing—and better still, inspiring and invigorating.

Two hundred thirty-three years ago today, a throng of Philadelphians waited outside Independence Hall. And like most Philly crowds, it was tense. Our infant nation was floundering. The United States were anything but. The Articles of Confederation had created a loose "league of friendship," but the former colonies had yet to coalesce into a country.

For four sweltering months, delegates to the convention huddled in secret behind closed doors. And those outside were wary of those inside.

On the convention's final day, Benjamin Franklin delivered the last great speech of his life, urging adoption of the new constitution "with all its faults." And Franklin found plenty of faults. He wanted federal judges to be elected, for example. But Franklin, 81 years old, the oldest delegate and the most renowned American in the world, flexed his considerable diplomatic skills and implored his fellow delegates to "doubt a little of his own Infallibility." "The older I grow," said Franklin, "the more apt I am to doubt my own Judgment, and to pay more Respect to the Judgment of others." We could all use a refreshing dose of that intellectual modesty today—more humility and less superiority.

We all know what happened next. A triumphant Franklin was approached by Mrs. Powel, who blurted out, "Well Doctor, what have we got, a republic or a monarchy?" And Franklin delivered his sharp-witted rejoinder, "A republic, if you can keep it."

Franklin's zinger was heartening—"A republic"—no more royal absolutism! But it was also frightening—"if you can keep it"—because it suggested that the survival of freedom depends on people, not parchment.

The duty of preserving our rich civic inheritance falls on us. We must ensure our republic doesn't descend into anarchy or monarchy. This is a job for everyday Americans, like Mrs. Powel, who posed a question for the ages, one that echoes today—"What have we got?" This republic is ours. Ours to keep. And ours to lose.

But Franklin was not the first to recognize whose job it is to build an enduring na-

tion. Eleven years earlier, on the same politically sacred spot, the Declaration—our original birth announcement; the greatest breakup letter of all time—proclaimed that we wanted government, as Lincoln put it four score and seven years later, "of the people, by the people, for the people."

Margaret Thatcher once noted that Europe, unlike the United States, is "the product of history and not of philosophy." America is *sui generis*, she said, because it was "built upon an idea—the idea of liberty."

Our Founders, imperfect yet inspired, aimed for something transcendent: not to enshrine a process—democracy—but to enshrine a promise—liberty. Individual freedom. The essential condition of human flourishing.

Our Founders gambled big, and they hit the trifecta. They had hindsight. They knew the history of kings and dictators, so they insisted on a government of laws and not of men.

They had insight. They knew that government exists to "ensure the blessings of liberty"; that liberty is not provided by government but preexists government; that liberty is our natural birthright, not a gift from politicians.

And they had foresight. They knew that to safeguard liberty, government must be structured to control its power.

Knowing that a bunch of guys dumped tea into Boston Harbor means nothing if we don't know why they dumped it. And if we don't grasp the why of our design, it'll never command affection and reverence. Most Americans now say they do not trust any branch of government.

American national pride is at an all-time low. The Father of the Country would be dismayed. Washington made clear in his first inaugural address that this is on us: "The preservation of the sacred fire of liberty, and the destiny of the Republican

model of Government, are . . . staked on the experiment entrusted to the hands of the American people.” And frankly, Washington was pessimistic, confiding to another delegate, “I do not expect the Constitution to last for more than 20 years.” Thankfully, he was wrong.

But civic illiteracy—obliviousness to the “what” and “why” of America—accelerates disattachment. Because if we don’t know our history, warts and all, we can never understand our history. We’ll have nothing to hold onto. Nothing to ground us.

Amid today’s pandemic is something endemic: a deep misunderstanding of American self-government. Today is Constitution Day. But our confusion also runs to our true founding document: the Declaration of Independence.

The Declaration was high treason. It was a literal indictment of the Crown, in painstaking detail, that married disobedience with eloquence. The first two paragraphs are vacuum-packed. There was no beating around the bush. No gauzy phrases like “irreconcilable differences.” The Declaration is declarative.

The second sentence is the most famous—“We hold these truths to be self-evident. . . .” This line does a lot of heavy lifting. It declares: (1) these rights belong to us as individuals; (2) they are fixed, innate, our natural birthright, unrelinquishable, unwaivable, unsunderable; and (3) they are God-given, so they may not be taken by man.

The Declaration unveiled the American theory of government, and its bottom line is clear: government exists to protect our individual, unalienable rights—rights that are ours by virtue of our very humanity.

It is undeniable that at the Founding, the ideals collided with the reality, America’s original sin of slavery. One-third of the Declaration’s signers were slave owners. We were flawed and stained at the start. Jefferson’s initial draft included an anti-slavery passage, but it was cut. America is imper-

fect, as all human things are.

Even so, the Declaration’s underlying ideals are timeless, and they are winning out. Lincoln would not abandon them even to avoid civil war. At Independence Hall, just before he was inaugurated, Lincoln described equal liberty as a gift “not alone to the people of this country, but, I hope, to the world, for all future time.” The Declaration



DON WILLETT

“
The Framers
were not tinkerers.
They upended
things.”

was a linchpin argument for abolitionists, and the Supreme Court feebly tried to explain it away in *Dred Scott*.

My favorite piece of art in my chambers is an oil painting of Frederick Douglass. In his iconic speech, “What to the Slave Is the Fourth of July?,” Douglass notes that the promises of liberty and equality in the Declaration are eternal, even if America broke those promises. There was a jarring disconnect between the commendable words of the Declaration and the condemnable

deeds of those who adopted it. But those founding ideals still lay the foundation for righting wrongs, including the “new birth of freedom” wrought by our Second Founding and the Civil War amendments that belong at the center of America’s constitutional story.

The quest to live up to America’s ideals is never-ending; it requires constant striving. Even the aspirational Fourteenth Amendment failed to fulfill its promise during its first 75 years. But the central idea of the Declaration—that “all men are created equal”—set in motion an inexorable march.

Dr. King, perhaps the most renowned protestor in our nation’s history, called on his fellow citizens not to tear down America’s heritage but to live up to it. After his own March on Washington, Dr. King demanded not that our founding documents be changed to fit new ideals, but that our government change to fit the enduring ideals of our founding documents, which he called “a promissory note to which every American was to fall heir.” Perfection is elusive in this life. But bit by bit, amendment by amendment, we are drawing nearer to the first enumerated purpose of the Preamble: formation of that “more perfect Union.”

So far, I’ve focused on the Declaration, which lies at the heart of the American project. But it is preserved through the Constitution. The Declaration is aspirational; the Constitution is architectural. The Declaration declared the purpose of government: to secure our God-given rights. The Constitution erected an ingenious structure to achieve that purpose.

The Framers were not tinkerers. They didn’t pledge their lives, fortunes, and sacred honors to fiddle around the edges. They upended things. The Madisonian architecture was infused with Newtonian genius: three coequal branches locked in synchronous orbit by competing interests. “Ambition . . . counteract[ing] ambition,” as Madison put it. A radical structure that divided power to control power.

And the most extraordinary element? These three rival branches derive power from three unrivaled words, supersized on the page for all the world to see: “We the People.” Not “We the Government,” “We the Judges,” or “We the Subjects.” In an era of kings and sultans, this was a script-flipping heresy. Nothing was more radical than the idea that sovereignty resides not in government but in the governed.

Popular sovereignty is a duty, not a mere theory. Shortly after the Constitution was signed, Jefferson wrote from Paris: “Wherever the people are well informed, they can be trusted with their own government.”

But again, We the People’s civic illiteracy is staggering:

- Seventy-one percent of Americans can’t identify the Constitution as the supreme law of the land.
- Sixty-three percent can’t name one of their state’s U.S. senators.
- Sixty-two percent can’t identify the governor of their state.

But there is a ray of hope: naturalized Americans, those who’ve risked everything to help write the next chapter of the American story. When it comes to the U.S. citizenship exam, immigrants “get the job done.” Do you know what percentage of immigrants pass the civics test their first try? Ninety percent. The same 100 multiple-choice questions were given to some American high schoolers. The passage rate: Five percent. The generation with the greatest access to information is also the least informed.

An informed citizenry is indispensable to self-government. But even that is no guarantee of good government. Beyond education, you need engagement. Franklin said “if you can keep it” because he knew the secret sauce: an engaged citizenry.

American citizenship is not a spectator sport. Justice Brandeis put it well: “The only title in our democracy superior to that of president is the title of citizen.” Our

Constitution is an exquisite charter of freedom, but freedom requires patriots, not passersby. It demands fierce defenders, not feeble bystanders.

Last year, the federal judiciary convened its first-ever national civics conference. Article III judges, including three Supreme Court justices, joined with law school deans, bar leaders, and others from Maine to Guam to discuss how the judiciary could help boost civics literacy.

A few weeks later, Chief Justice Roberts wrote in his year-end report on the federal

“
A republic
comes with
responsibility.
”

judiciary, “Each generation has an obligation to pass on to the next, not only a fully functioning government responsive to the needs of the people, but the tools to understand and improve it.” The chief justice was echoing Justice O’Connor, who has devoted her post-Court life to civics education: “Knowledge about our government isn’t handed down through the gene pool.” And she was echoing President Reagan, who warned, “Freedom is never more than one generation away from extinction. We didn’t pass it to our children in the bloodstream.”

They’re right. This isn’t something hardwired into our DNA as Americans. The habits of citizenship must be taught and learned anew by each generation.

And schoolchildren are often center stage in transforming our nation. Take Linda Brown, the schoolgirl at the center of *Brown v. Board of Education*. When the Supreme Court rejected racial segregation, it stressed the importance of education as a crucible for good citizenship. And for many students,

schools may be the only place they are exposed to the American political tradition.

As Jefferson put it, “If a nation expects to be ignorant and free . . . it expects what never was and never will be.” Education, he said, enables “every man to judge for himself what will secure or endanger his freedom.” For popular sovereignty to work, education must underscore, not undermine, our common civic identity. Education should instill in children a respect for American self-government and the tools to achieve it—to equip students not just academically but civically.

Schools, however, shouldn’t bear the full burden. Judges play a role too. As Chief Justice Roberts put it, “Civic education, like all education, is a continuing enterprise and conversation,” and judges, “by virtue of their judicial responsibilities . . . are necessarily engaged in civics education.” We explain our reasoning in written opinions, lead naturalization ceremonies, oversee mock legal proceedings, etc. This past March, the Judicial Conference of the United States affirmed that civics education is a core component of judicial service. And the Administrative Office of the U.S. Courts has developed terrific online resources for judges, teachers, attorneys, and parents.

A republic comes with responsibility. Self-government is not self-perpetuating. It’s tough sledding, and each generation must take its turn. This raucous republic belongs to us all, and its preservation is up to us all. Franklin told Mrs. Powel, “if you can keep it.” A quarter of a millennium later, with every tool laid at our feet, there is no longer a question of capability. There is only a question of culpability.

America boasts the oldest written national constitution on earth. What an extravagant blessing. But preserving that inheritance requires a culture that prizes liberty and public-spirited virtue. For now, We the People are—and through God’s grace, will remain—the world’s oldest constitutional republic.

If we can keep it. ■