Constitution and Civility

Contributed by Wes Riddle
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One of several important breakthroughs in political science our Founding Fathers achieved, is the establishment of an entirely new category of law; namely, the Constitution. The Constitution is the nation’s highest legal and moral authority—popularly accepted as such. Yet its ratification took place over 200 years ago, amongst a generation long since dead and gone. Charles Kesler, professor of government at Claremont McKenna College , says “Thus for Americans, the oldest law is the highest law.” And he continues to point out how unique this is among nations:

> This is not a normal or an automatic outcome of popular government. Most of the time, republics and the people who move their politics tend to think that if they make a law “A” one day, and a law “B” that contradicts “A” the next day, the newer law supersedes the old. What is unusual about the Constitution is that this rule is completely reversed in respect of it. The oldest law is the most authoritative, and is indeed the only law that “the people” as such have ever passed. Other law is statute law, law made by representatives of the people. Thus every other law needs to be adjudged in light of the only law that is genuinely ours, the Constitution.

Clearly, some would prefer that the Constitution evolve and stay up with the times. There is even a modern liberal legal theory that affirms a so-called “living Constitution.” This is another way of saying the Constitution means what lawyers and judges say it means.

Besides the Constitution as a category of law, the Founders also bequeathed an aspect of culture, which helped to give the Constitution stability and its impressive longevity. Historically a part of America ’s democratic culture, the aspect has sadly deteriorated as “living Constitution” theory advances. I’m referring to political civility, the idea that citizens will be civil to one another despite political disagreements. The disagreements are less important than the resolve to remain fellow citizens. Of course, a necessary precondition for this type of civility is that citizens do agree on certain fundamentals, so that disagreements really involve secondary issues. This is possible when the central government remains limited, or when fundamentals are settled at State and local government levels. The War Between the States was a time when folks (rightly and wrongly) disagreed on fundamental issues, which the federal government could not leave to States or localities. With discrete fundamentals settled on the battlefield, we’ve stayed more or less civil since Reconstruction.

Today I wonder about the Founders’ great handiwork. Though altered much, it has survived in large measure. But I worry as civility departs, because government has grown too big and too intrusive in matters belonging outside its scope. I worry as respect for the Constitution itself declines, when citizens fail to distinguish rights from their desires, and political expediency supplants principle. During the last presidential election, people were tempted to say the popular or consolidated national majority (pure democracy) should rule the day—even though the constitutional majority entails both democracy and federalism and is the only majority that may govern the United States as a free country.

What would George Washington have thought of the spectacle? The first president was quintessentially both civil and constitutional, in his personal example and professional conduct. He was also straightforward and literate. The following is taken from his Circular Letter of 14 June 1783, but Washington ’s words ring true today:

> The foundation of our empire was not laid in the gloomy age of Ignorance and Superstition, but at an Epoch when the rights of mankind were better understood and more clearly defined, than at any former period; the researches of the human mind, after social happiness, have been carried to a great extent; the Treasures of knowledge, acquired through a long succession of years, by the labors of Philosophers, Sages and Legislatures, are laid open for our use, and their collected wisdom may be happily applied in the Establishment of our forms of Government; the free cultivation of Letters, the unbounded extension of Commerce, the progressive refinement of manners, the growing liberality of sentiment, and above all, the pure and benign light of Revelation, have had a meliorating influence on mankind and increased the blessings of Society. At this auspicious period, the United States came into being as a Nation, and if their Citizens should not be completely free and happy, the fault will be entirely their own.

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Wesley Allen Riddle is a retired military officer with degrees and honors from West Point and Oxford . Widely published in the academic and opinion press, he serves as State Director of the Republican Freedom Coalition (RFC) and is currently running for U.S. Congress (TX-District 25) in the Republican Primary election scheduled April 3, 2012. His newly released book, Horse Sense for the New Millennium is available on-line and at most bookstores. Visit: www.WesRiddle.com.