

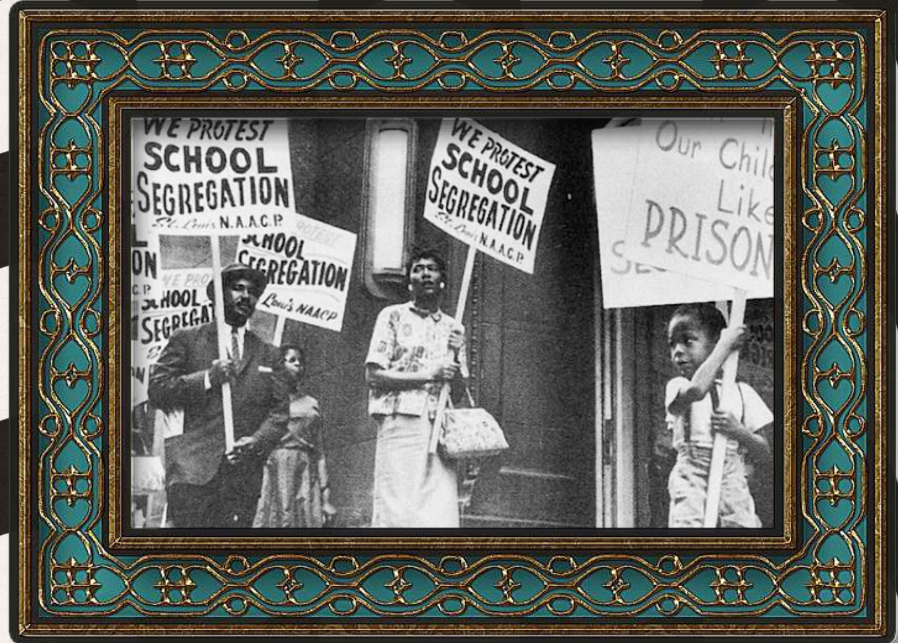
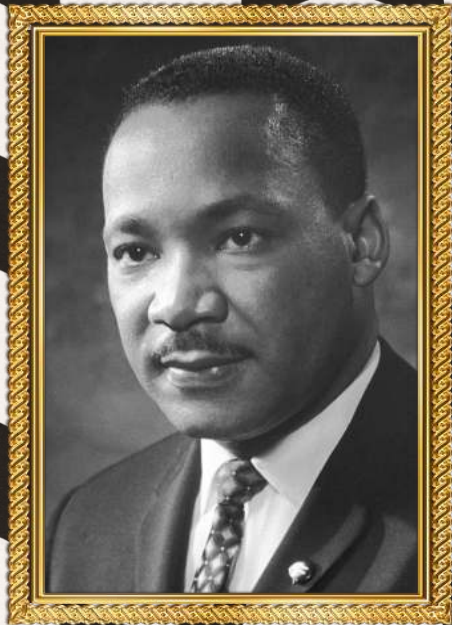
Activism as the American Ethos

a new perspective on america's founding and civil rights

Civil Rights History

11.26.2024

by





1. **Goals / Aims**
2. **Thesis**
3. **The Tracing the Ethos of Democratic Collaboration in America**
4. **Connecting America's Founding to the Civil Rights Movement**
5. **Abolition, Civil Rights, and the American Ethos**
6. **Looking Toward Tomorrow**

Goals / Aims

a good
place to
start

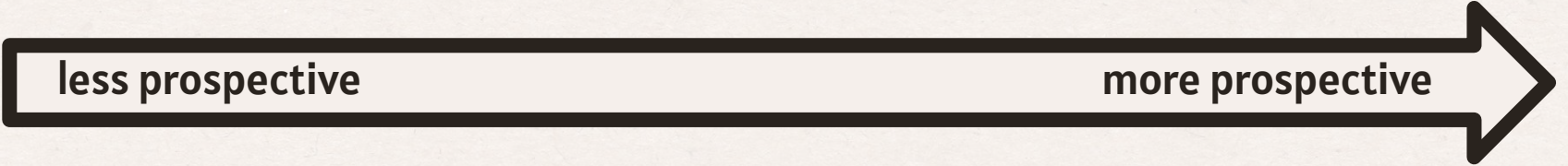
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Goals / Aims

less prospective

more prospective



**Give an accurate
accounting of the
Relationship between
Civil Rights and
America's Founding**

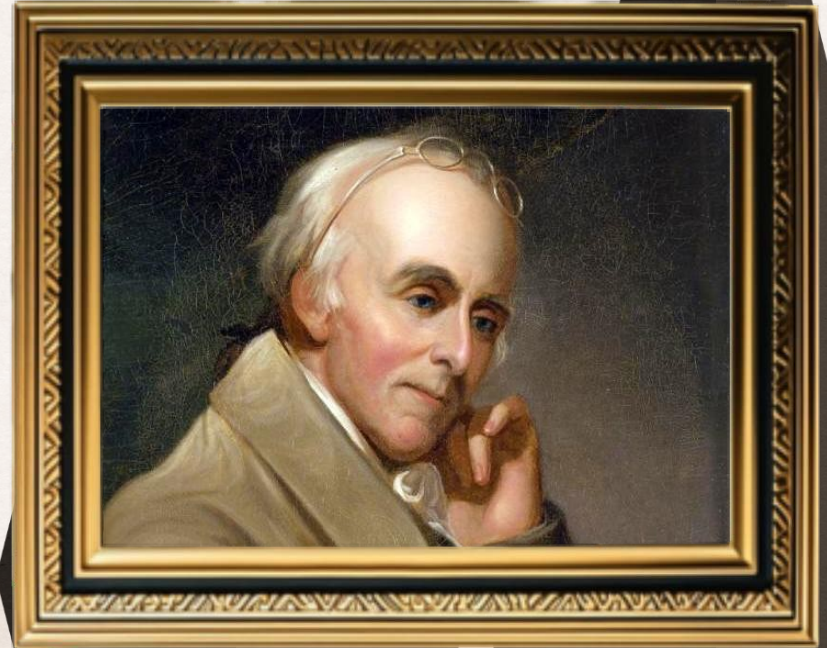
**Strengthen the
Classical Civil
Rights Movement's
claim to the
American Ethos**

**Identify the
underpinnings of the
American Ethos so
future Activists can lay
claim to them.**

Thesis

a few
thoughts
before we
begin

002



Observations —————

1. Discussion aimed at attributing to the United States a foundational ethos

2. Candid results of that discussion frequently divorce the ideology of the Civil Rights Movement from the that of the Founding.

Thesis —————

Civil Rights period activists and thinkers are the natural successors of the "activists" of the American revolution, drawing on the same American Ethos: democratic collaboration.

"Our founding ideals of liberty and equality were false when they were written. Black Americans fought to make them true. Without this struggle, America would have no democracy at all."

- *The 1619 Project*

democratic collaboration?

- Is democracy not by its very nature collaborative? Yes to an extent.
- The societal process by which public policy is engaged with through collaborative discourse, which in turn informs our democratic decisions. Voting is a *part* of democratic collaboration, but does not speak to the broader social mechanism the American Ethos seeks to emphasize.



The Tracing the Ethos of Democratic Collaboration in America

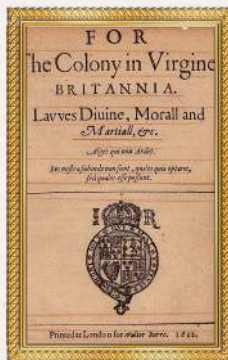
003



Early Colonial History

First Charter of Virginia: April 10, 1606

- Collaborative in Member Makeup
- Appointed Council would govern the new colony



Third Charter of Virginia: March 12, 1612

- "The power to elect all officers of the company and the colony, to admit new members to the company, and to draft company and colony laws was transferred from the council to a so-called General Assembly composed of all investors."



Second Charter of Virginia: May 23, 1609

- Company leaders were now democratically elected from within

The Great Charter: November 18, 1618

- Made in response to *Lawes Divine, Morall and Martiall*
- Created the Council of State and General Assembly. The former's appointed advisors and the latter's elected burgesses would more widely distribute power in the colony

But Wait, There's More!

James Otis, *Rights of British Colonies Asserted and Proved*

Richard Bland, *Inquiry into the Rights of the British Colonies*

Thomas Jefferson, *A Summary View of the Rights of British Americans*

John Adams, *Thoughts on Government*

The Declaration of Independence

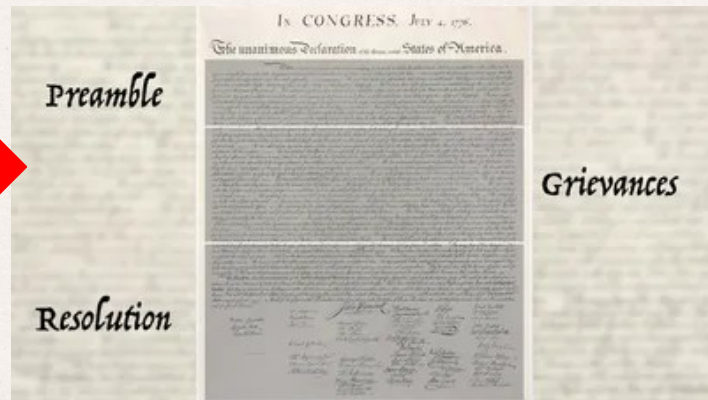
How does the Declaration represent democratic collaboration?

Procedurally:

- Created through an extensive collaborative process
- The product of large amounts of public debate on the topic

Substantively:

- (1) they [the words in the Declaration] recognized that the consent of the community, and the solidarity based on it, can bring new realities into existence
- (2) they stakes a claim to that consent
- (3) they justified that consent
- (4) they won that consent
- (5) they presented the fact of that consent, and solidarity, before the witnessing world as evidence of a new reality
- (6) they ensured that everyone would remember the fact that had changed the world."



The Constitution

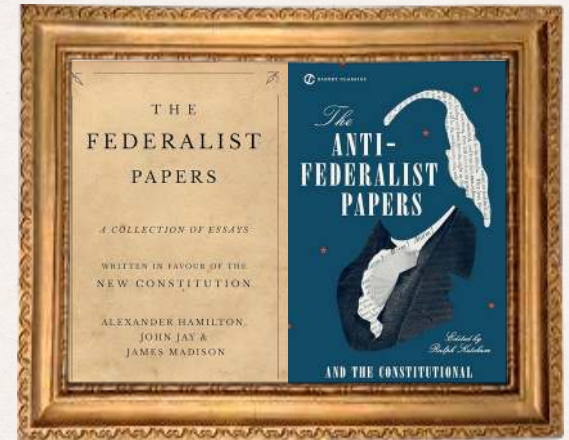
How does the Constitution represent democratic collaboration?

Procedurally:

- The Constitutional Convention of 1787
 - How Delegates Were Chosen
 - Convention Rules
 - The Proceeding Public Debate
 - Ratification

Substantively:

- The Preamble
- Substantive Rights (e.g. First Amendment)



The First Amendment

How does the First Amendment represent democratic collaboration?

"Free speech" jurisprudence is indicative of collaborative democratic values.

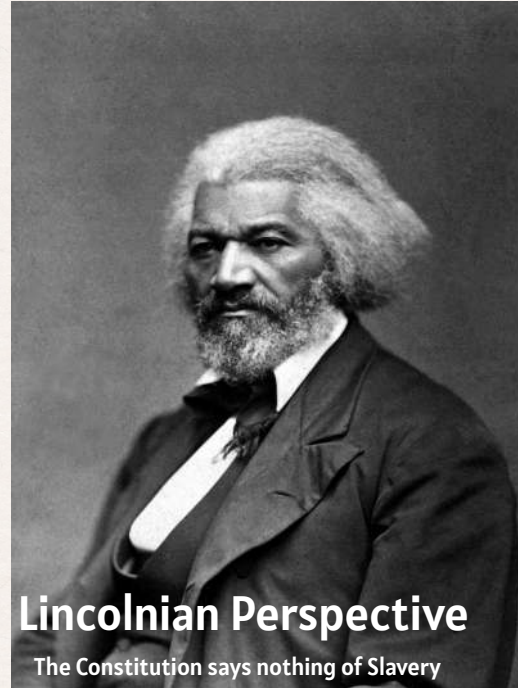
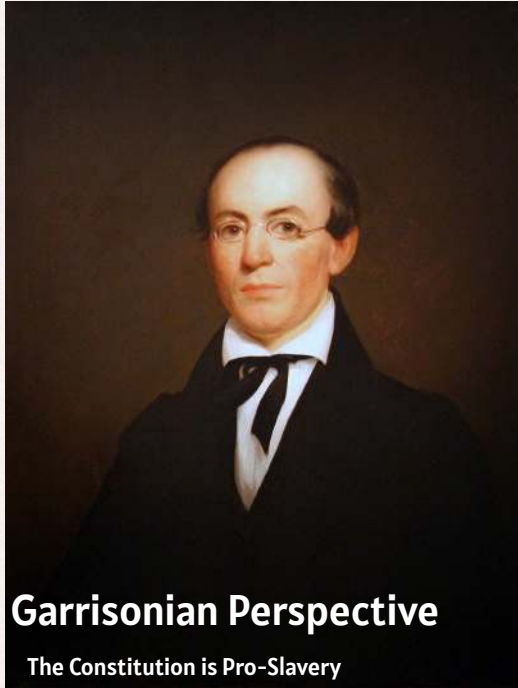
- Some may point to the Alien and Sedition Acts as indicative of a limited early understanding of the First Amendment
- However widespread public outcry following the Acts dispatch this critique.

Schenck v. United States

- The Supreme Court of the United States hinged its holding on the notion that the speech presented a legitimate danger to the nation. The Court's holding appears to accept that had it not been for the war effort, the speech would have been otherwise protected. Here, the exception articulated proves the rule, the government's legislation of speech is limited to that which presents a legitimate danger

This type limitation that has been more so the focus of the First Amendment jurisprudence, rather than content based consideration. Furthermore where limitations are posited, they are generally unsupported when implicating preference of some political speech over others.

Indeed there exists a total bar on the government engaging in viewpoint discrimination when regulating speech.



Three approaches to the Constitution's role in Slavery

The (Neo)-Garrisonians

The Constitution is Pro-Slavery

- Founders sought to protect Slavery
- Clauses of the Constitution directly or indirectly supported the institution
 - 3/5ths Clause, Runaway Slave Clause, African Slave Trade Clause
 - Insurrection Clause, Prohibition on federal or state taxes on exports



The
Constitution
is "an
agreement
with Hell."

The
Constitution
is a
"covenant
with death"

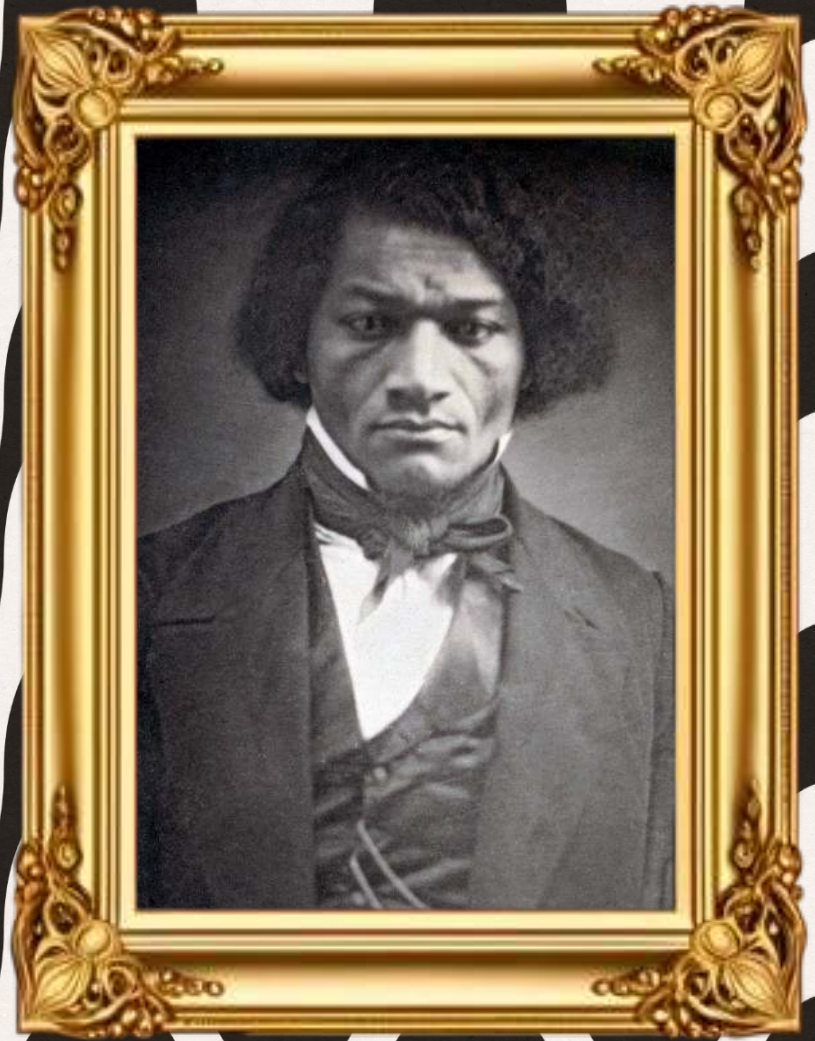


The (Neo)-Lincolnians

Frederick Douglass' approach to Constitutional Interpretation.

- Only the Words of the constitution should be interpreted

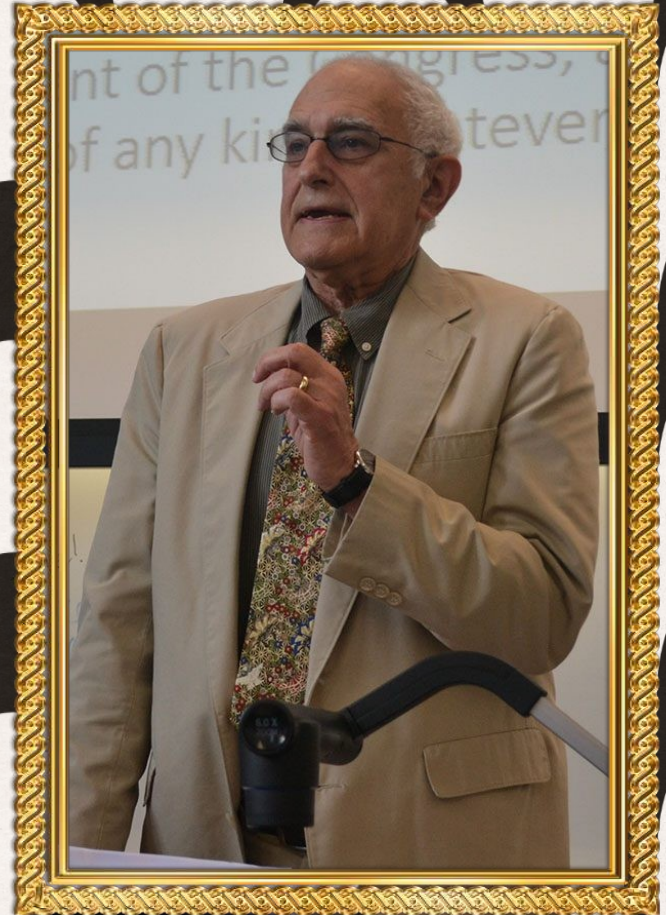
The Constitution makes no mention of slavery or the institution of slavery.



The Madisonian Perspective

Michael Zuckert's approach to Constitutional Interpretation.

- Distinguishes between clauses which directly and indirectly support slavery
- Characterizes slavery as a State institution
 - Addresses slavery only where necessary to ensure peace between states
- Concludes the Constitution makes slavery legal, but not legitimate



Abolition, Civil Rights, and the American Ethos

006



Early Abolition

Early Abolitionist drew upon the same collaborative norms as Revolutionary period thinkers

The first major abolitionist movements sparked around the same time as revolutionary thinking began to develop.

Abolitionists and Revolutionaries were very much aware of the connection between these two topics

- James Otis use the very same language when discussing the movements
- British loyalists critiqued America's stance on separation through slavery

Similar publication methods were used to garner public support

Abolitionists approach critiqued Revolutionaries for falling short of their collaborative goals

- "We have many well-attested anecdotes of as sublime and disinterested virtue among them as ever adorned a Roman or a Christian character. But we are to distinguish between an African in his own country, and an African in a state of slavery in America."



Democratic Collaboration and MLK

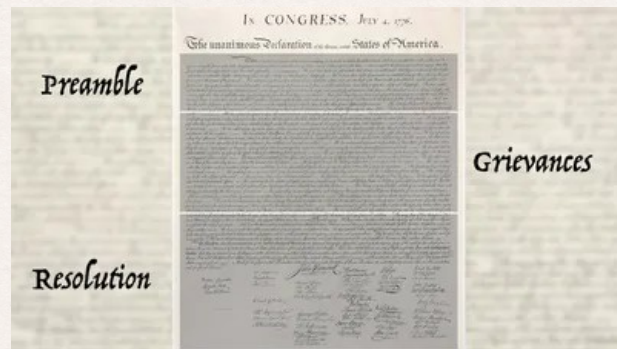
Martin Luther King Jr.'s *Letter from a Birmingham Jail* is ripe with collaborative democratic norms

Substantively, MLK describes the same procedural process that Allen argues legitimized *The Declaration*.

- "In any nonviolent campaign there are four basic steps: collection of the facts to determine whether injustices are alive, negotiation, self-purification, and direct action."
- "We have gone through all of these steps in Birmingham."

Procedurally, MLK is engaging in democratic collaboration through his chosen medium and what he asks the reader to do.

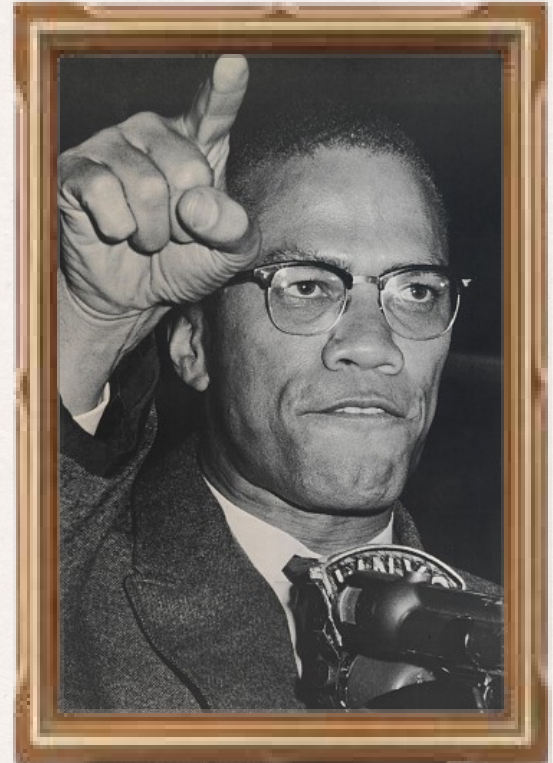
- "While confined here in the Birmingham city jail, I came across your recent statement calling our present activities "unwise and untimely." Seldom, if ever, do I pause to answer criticism of my work and ideas. If I sought to answer all of the criticisms that cross my desk, my secretaries would be engaged in little else in the course of the day, and I would have no time for constructive work. But since I feel that you are men of genuine good will and your criticisms are sincerely set forth, I would like to answer your statement in what I hope will be patient and reasonable terms."



Democratic Collaboration and Malcolm X

God's Judgment of White America

- Malcolm X's solution to the "race problem" involves incorporating the voice of the "black masses."
- Likewise, he is critical of politicians who falsely advocate for civil rights, and asserts they contain the revolution by falsely representing the "black masses."
- Like King's letter, Malcolm's focus centers around public action, and specifically in Malcolm's case, the relationship between genuine action and success.



Democratic Collaboration in Civil Rights Law

Civil Rights Jurisprudence

Procedurally

- NCAAP's Shift in Litigation Strategy

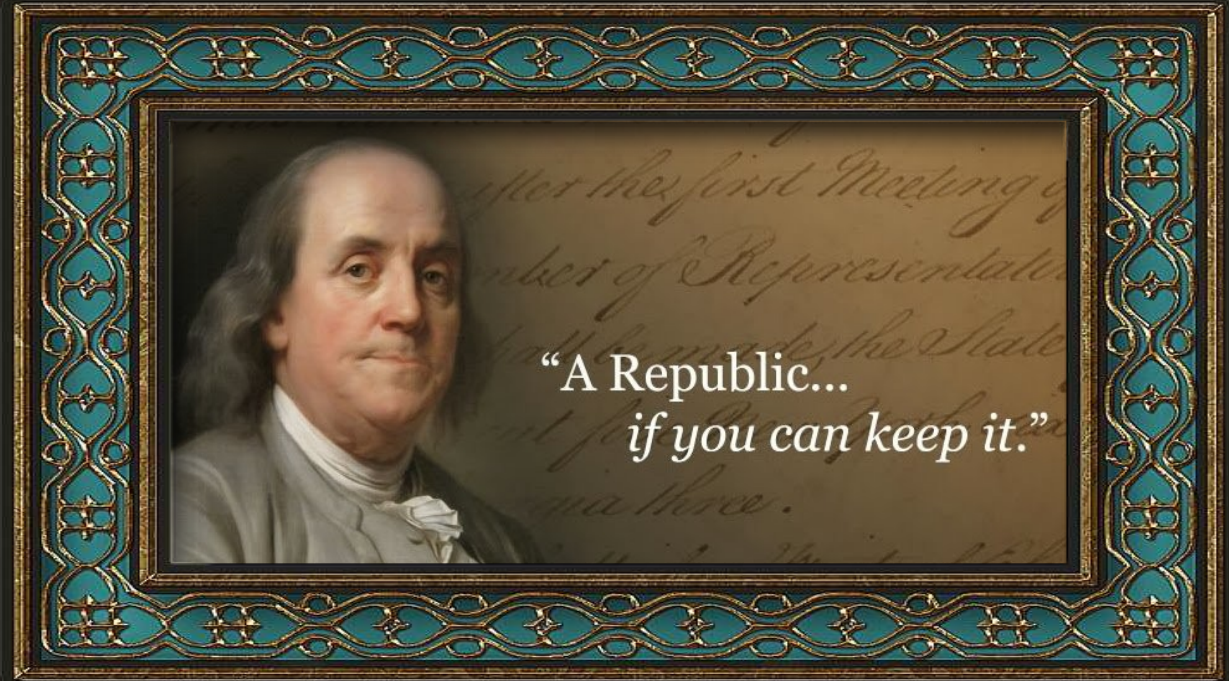
Substantively - *Brown v. Board of Education*

- By focusing on impact on African American students as it relates to their place in society, the Court indicates the important reverence it holds for an individual's view on their place in society.
- This is particularly so in the context of education, which the Court is quick to point out is fundamental to our democracy and the citizenry.



Looking Towards Tomorrow

007





Rise of Originalism in American Jurisprudence

- *Dobbs v. Jackson Women's Health Org.* - Due Process Rights "must be deeply rooted in the Nation's history and tradition and implicit in the concept of ordered liberty."
- Originalism is generally temperamental in its approach to race

How does this analysis approach this issue?

- Civil Rights actors can rightfully lay claim to the collaborative democratic norms essential to the founding of our nation
- Perhaps collaborative democratic norms can be exercised in any instance of response to perceived constitutional injustice. In this way, the American ethos, is inherently, one of activism.



questions?