The Rape of the Constitution

Book Number: _____

The Rape of the Constitution

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Las Cruces, NM

I dedicate this book to my wife and children. May they have the freedom which I believed existed in America. They provide my life with love and cause for living.

And to my parents who gave me this life.....

PREFACE

F.W. Boyle. Jr. was born in El Paso, Texas. He attended New Mexico State University earning his B.S. and M.S. degrees. He attended Colorado State University earning his Doctor of Philosophy degree. He conducted research for 17 years and still passes on his knowledge through his teaching. His biography has been published in Who's Who in the World, Who's Who in the West, Who's Who in Science and Engineering, and Who's Who in Business and Finance. Dr. Boyle was named one of New Mexico's Eminent Scholars in 1989.

Dr. Boyle grew up in southern New Mexico where as a boy he spent many hours roaming the deserts and mountains of this beautiful state. A major pastime was hunting. When in the early 1990s, the federal government, at the urging of fanatical zealots of totalitarian gun control, began to infringe upon individual rights, he took up the cause of freedom and began anew studying the history of the Second Amendment. These studies grew in scope to include the entire Constitution. What he has understood from his studies, he has tried to explain here in The Rape of the Constitution.

It is his firm and unalterable conviction that the law is the law regardless of Constitutionality but that it is the duty of the people to get unconstitutional laws overturned or revoked through the proper channels of our system. If those in power will not do what is right then the people are obligated to remove those officials with the next election.

Dr. Boyle grew up a Democrat. His ideals are true liberal in that he believes that each individual is at liberty to do whatever that individual wishes so long as what is done affects no other without that other's express consent. These beliefs have placed him at odds with the totalitarian liberal ideals of the Democrats and the

tyrannical conservative ideals of the Republicans. He stands by the core ideas of the Framers in terms of a restricted, limited government, instituted solely to benefit all members of society.

He does not expect this work to be accepted without criticism. It is expected that those who read it will think before they open their mouths to criticize. True thinkers will take what is presented within the pages of this book and add it to their knowledge from other sources. Witless individuals will merely dismiss the work since it differs from their desired understanding of the Constitution and our government.

Thank you for reading this work. It is the sincere desires of the author that in the end this work will provide the reader with the desire to study further, to search for truth and justice, and to reject tacit acceptance of what those in all the branches of our government do. "There ain't no good intentions clause in the Constitution."

Contents

Please note that some essays will end with a blank page. This is due to starting all new essays on a fresh righthand page. Each essay stands alone and can be read independently of the others.

A few questions you should ask yourself as you study the Constitution

1. Why, if the United States is a nation and carries the sovereignty associated with a nation, did the Framers see the need to enumerate the powers which the United States was allowed to exercise?

2. Why, if each power granted is so extensive, do overlapping grants of power occur throughout the Constitution?

3. Why, if Congress is empowered under the war power to suspend the Constitution and do whatever is necessary to preserve the peace, did the Framers find it necessary to grant such a simple thing as the power to suspend Habeas Corpus?

4. Why, if the Supreme Court was formed to reinterpret the Constitution as times change, did the Framers spend so much time developing and inserting the amendment process into the Constitution?

5. Why, if the government has the power to ban the ownership or possession of items they deem undesirable, did the 18th Amendment need to be ratified to ban alcohol?

6. Why, since the Constitution does not provide for popular elections of President and Vice President, do we waste the money and time we do having Presidential runs, debates, and elections?

7. Why, if the power to regulate commerce is as extensive as claimed by those in government, are the greatest portion of the enumerated powers directly related to commerce?

8. Why, if none of the Bill of Rights applies to the States, did the Framers select ONLY the First Amendment into which to insert the phrase “Congress shall make no law...”?

9. Why, if the 14th amendment covers all rights, did the 15th and 19th amendments which granted suffrage to all races and women have to be added to the Constitution?

10. Why, if the President has the authority to make law by himself through executive orders, did the Framers bother to create the legislative portion of our government?

For what Purpose?

Purpose - that which all must have. And so with the book you are about to read, there is a purpose.

Freedom! Liberty! Choice! Life!

For thousands of years, men and women have hungered for what those in the United States call freedom or liberty. Various governments arose but in each and everyone, the supremacy of the individual was not grasped. Finally in the late 1700s, a brave group of humans who had settled upon a new and unknown shore came to a fork in the road. They could maintain their ties to the old, being bound and controlled by kings, queens, and despots or they could embark on an experiment in government. They choose to experiment and the unheard of, heretofore unknown, democratic republic of the United States was conceived and born. The central premise of this government was that the individual, not the family, the group, society nor the state, was of paramount importance. Individuals, free to choose of virtue or evil, were the key to a proper society. A government limited in power, only to maintain order within and without, as needed by the people, was formed.

But the framers too forgot the admonition that “Power corrupts and absolute power corrupts absolutely.”

I endeavored to study to the Constitution and the footings upon which the Founding Fathers conceived and gave birth to our country. From these endeavors, I became filled with a desire to use my abilities and knowledge to help others understand what had been lost and to provide a path for the regaining of the ideals upon which our country was founded. Many are confused. They equate the equality spoken of in the Declaration of Independence as meaning that we are all completely equal. This is wrong. We all have equal rights to life, liberty and the pursuit of happiness without restriction, or interference in the name of equalization, by

others, including our governments. Nature's limitations of our rights come upon us whether we believe in God or not. We are free to do as we please so long as what we do does not affect another without their approval.

Those who framed the documents which created our government understood freedom and the greatness and uniqueness of the individual. Society and especially the state were secondary to the individual in importance in life. For a period of a few decades following the creation of the United States these ideals lived on. But power corrupted and there arose persons in power who would coerce others to conduct themselves as those in power desired.

In the long history of man, most of man's time has been spent in some form of bondage. It is my hope that the freedom and liberty found by our forefathers can be regained and live on because of what I teach in this book. There is only one purpose here and that is to return the United States to that state where the individual is recognized as the center of all in the universe.

If what I say touches you, then for the sake of our posterity learn what I teach and pass it on to those who will listen. Do not let powermongers steal away the freedom and rights born of the blood of our forefathers.

I am thoroughly convinced of the truths I speak in this book. But.... We are in the battle of our lives and the government has the bigger guns!! Powerful individuals will control us all if we continue to let them. Learn! Teach! Take charge!

Dr. Bill Boyle

Some Notes About Our Government

What is the purpose of government?

The purpose of government is to exercise those powers which are transferred to the government by the people. Nothing more. Nothing less. When government actions go beyond the granted powers, the government becomes illegitimate.

What is the public trust?

Under the concept of government in the United States, power and right reside in the people. Power and right are granted to individuals by God. The first level of human association is the family. Within the family, members are granted equal power and right by God although in practice power is delegated from family members to the head of the family. It is the absolute duty of the head to use power and right for the benefit of the family. The head is not authorized to transfer the already transferred power and right to any other.

The next level of association is the society which is generally a group of related families. This means the individual human beings who constitute the members of the society. In order to form a structured environment in which these individuals can coexist, governments are formed and to these government are transferred certain powers. These powers form the core of the public trust. The individuals elected to manage the daily tasks of governing are entrusted by the people to care for these powers

Another way of thinking about this is:
Compare the delegation of authority to the government and its subsequent transfer to another body to leaving your children in daycare and coming back only to find the daycare center delegated the daycare authority to another. Your trust in the daycare provider was violated. In a similar fashion, when the government delegates any granted power to another body, the people's trust

is violated. Because delegation involves violation of the public trust, delegation of granted powers is not legitimate. All powers delegated from the people to their government fall into the public trust. The government through its officials, be they elected or appointed, is the only legitimate executor of those powers.

If those elected to serve find they have too many "things" to accomplish, they should reduce what they are doing rather than violate the trust and delegate power. For if they have too much too do, they are most likely exercising powers not granted to them.

One Nation Under God, ... NOT!

How often have you said the pledge of allegiance? How often has your heart pounded out of pride for our country? Now, comes the hardest thing I have to tell you. It's all a lie. There is no nation known as the United States. The United States is not a country. The United States is an alliance, a confederation which started with 13 independent, sovereign nations, sometimes referred to as states. How do I know this? Why do I make such an absurd statement?

In my recent studies I found some interesting facts. In the original Constitution, there existed references to a "national" government and to the "nation". However, during the original constitutional convention, many opposed the use of these terms because they were not forming a nation nor were they forming a national government. The Framers were forming an alliance of 13 separate nations which was to manage certain aspects of dealing with the world and each other. Following a decision in committee to remove "national" in one section, members of the convention removed the words, "national" and "nation", when referring to the United States, throughout the Constitution.

This new cooperative/alliance/confederation was to manage common defense and commerce with the world and among the states. These states however were not states in the concept that we today think of states but states as in the concept of 18th century Europe.

States meant nations and these 13 independent and sovereign nations formed this federal government.

A quote from Mr. Madison taken from the records of the Constitutional Convention writing our Constitution states it like this: "The proposed government cannot be deemed a *national* one, since its jurisdiction extends to certain enumerated objects and leaves to the several states a residuary and inviolable sovereignty over all other objects."

This federal government was granted certain specific powers. It is interesting to note that since no nation was formed, the United States, as an alliance, has no sovereign power, no eminent domain, no position as a nation in the world. I cannot tell you when the concept of the United States as a nation came on the scene but I can tell you it is a bold-faced lie. You and I and the others have been fooled. Since there is no nation, there can be no citizens although the 14th amendment seems to pretend there are. In order to be a citizen of the United States, the United States has to be a separate and sovereign nation. We now know the United States was never intended to be nor has it legally become a nation. The fact that there is no nation known as the United States will be foreign to most. It will shake you to your toes. But when you fully regain your senses, you will realize that this fraud along with thousands of others was perpetrated upon you and I and the others for many years. It is time to wake up. Just claiming the United States is a nation does not make it so. I am not stating that having a nation known as the United States is not “good” for the independent, sovereign nations which make up the Union. I am stating that if this is not a Constitutional formation of government then it cannot and should not be. If one abrogation or extension of the Constitution is allowed then many others will follow. If you are reading this, you know that of which I speak is true.

Proactive Laws and the 14th Amendment

The Congress claims the power under the 14th amendment to

make proactive laws which protect the rights of the citizens of the states when a state fails to pass these laws. The claim is that the enacting clause give Congress this power. Those in Congress have not read the congressional record about the 14th amendment.

Again in recent studies, I found that during the discussion of the 14th amendment another clause, or amendment of the amendment, was offered. In this clause, Congress was to be given the power to enact positive legislation. The overwhelming vote was that Congress should NOT have this power because it infringed upon state's powers. The amendment of the amendment was defeated and Congress' power to provide proactive legislation was washed away. The enacting clause was recognized during the writing and ratification process as providing Congress with the power to negate laws which infringed upon rights BUT NOT to allow Congress enact legislation to protect rights which the state did not protect. For Congress to have the power they now claim, the defeated clause was necessary. If the existing clauses granted proactive power, the Framers of the 14th amendment would never have considered and defeated this additional legislation.

What modifies what?

We are often told the powers of government and the needs of society override the rights of the people. This is so far out in left field as to be ridiculous. The Framers would never have recognized this concept and those who gave us the Bill of Rights would have immediately withdrawn from the Union if they for one minute believed the powers would override rights.

The Constitution proves in itself that this is an invalid understanding of our government. The preamble to the Bill of Rights states that the Bill of Rights are amendments OF the Constitution. Since they are amendments OF the Constitution, the rights listed in the Bill of Rights, and because these rights were listed AFTER the Constitution was written, supersede and circumscribe the powers of government. The powers of government DO NOT and CAN

NOT circumscribe the rights of the people under the system established in the United States. Those of you reading this book know that in actuality, the government has risen out of its shackles has begun its attack on the people. If government is not reshackled it will overrun us all, destroying our freedoms and eliminating our rights through lies. The greatest lie of all will be that they are doing to us for our own protection.

Who is to interpret?

The fact is that no one is authorized to interpret the Constitution. The Supreme Court would be the last body authorized to interpret because the Supreme Court is subordinate to the Constitution. The Court interpreting the Constitution would be like you, the reader, deciding the extent of your boss's job and his power over you. The Constitution can only be understood directly from it's language, the naked text. No interpretive method can be developed for this violates the sanctity of the Constitution as a law for all. No judge has magic tarot cards which enable the judge to better see what the Constitution means. Again, a lie has been perpetrated upon you and I.

And the Constitution cannot change at the whim of the people. If the will of the people, or should I say whim, were all that was necessary for change, the Constitution would be no more than shifting sands. The Framers recognized that the majority might abuse the minority and so made changing the Constitution a chore. Interpretation based upon the desires of the population is equally dangerous as that of judges. The Constitution is a law which stands above all with a single method of alteration, amendment.

It is time to awake and see the Constitution through your own eyes. Read carefully. Study it many, many times.

INTRODUCTION TO THE RAPE OF THE CONSTITUTION

Before you begin, I ask that you put aside all your preconceptions as to what you think you know about the Constitution. I ask that you finish the book, take out your copy of the Constitution, and read over it. Do your best to distance yourself from what you think you have learned and from what I have stated in this book. Read the words, phrases, clauses, paragraphs, sections, articles and then put the entire document together in your mind. Remember, "There ain't no good intentions clause in the Constitution!" You are not to read in what is not there. You cannot read with your personal beliefs controlling your understanding. You must read the Constitution as a child understanding for the first time what amazing design the Framers chose with which to build our government.

Many will attack my opinions. I have purposely left out many of the possible citations to law and other reference materials. There are those, especially among academics, who will argue that the Constitution is an irrelevant outmoded document which was never good for a democratic government. But I shall strike first. It is their opinions which lack support. They grasp at possible intentions of the framers which cannot be ascertained except for a few of those who wrote the papers which have come to be known as the Federalist. The majority of those who ratified the Constitution left no record of why. Even worse, many of these individuals who believe the Constitution to be outmoded exhibit Machiavellian tendencies and although many disguise their plans in democratic principles, an underlying opinion of theirs is that YOU cannot be trusted to do the right thing and to live your own life so the government must be strong enough to make you do so.

As you read my work, I must advise you that the legal community

will likely disagree with what I say. Not because how I read the Constitution is wrong but because understanding the real Constitution begins the transfer of powers, which were once stolen, back to the people where the powers belong. The legal community has transformed America through "interpretation" of laws (Berger, 1976, 1996). The supreme Court should be above reproach but anyone who reads the words of the Constitution can easily see the truth and the manipulations that have occurred. I contend that the supreme Court cannot be empowered to interpret the Constitution because the Constitution is the founding document for the court's existence. Interpretation by the Court violates fundamental law theory. And so we reach the question: why have so many abrogations of the Constitution occurred? The answer lies in one word, Power.

Power. Power exists for three reasons: 1) to be sought after, 2) to be demonstrated, and 3) to be expanded upon. Those in power count on the ignorance or "blindness" of the general population in order to conduct their business of stealing more power. Too many government actions are cloaked in the guise of good intentions, such as fighting crime and protecting the people. The actions of a local school board to push uniforms as a "fix" for violence, federal aid programs for disaster victims, the encroachment of government and even of other individuals into one's every day life are all acts of power. The actions of the school board say "I can make you do something that you do not want to do." The actions of the legislator say "Looky! Looky! I can give you money but you have to keep me elected so that I have the power." The examples are so numerous that it boggles the mind. But each of these acts are the acts of individuals, groups or government entities seeking after power, demonstrating their power and expanding their power. And all this expansion of their power comes at the loss of YOUR power. Lies abound and many laws are claimed to involve "national security". Money is spent fighting crime but more often actions are made crimes at the whim of legislators and the freedoms of the people are eroded. The claim is good intentions. The reality is expansion of power.

The price of liberty is eternal vigilance.

The supreme Court has decided NOT to act in a preemptive manner by analyzing and determining the constitutionality of legislation before it affects the people. Many times I have read that we do such and such in America because a similar power has been exercised in other countries. Preemption as a method is used in France by the French supreme Court. But our Courts have decided that this form of control is not conducive to bringing about the "good intentioned" changes that the justices desire. The members of our Court have decided to act only in response to cases which reach them through the lower courts on appeal. And the Court, with the benefit of Congressional legislation, decides which cases it can and will hear. One must read through the Constitution and the numerous Judiciary Acts to understand that the Court and Congress can stop appeals from ever making it to the top court, or to any federal court for that matter. These supposed guardians of our rights and liberties are accessories to the subversion of the Constitution through inaction and reticence of decision.

Chief Justice Taft directly attacked the judicial process by requesting Congress give the court more power to restrict the types of cases reaching the supreme Court (Judiciary Act of 1925). If the Court would participate proactively (Berger, 1969) by responding to legislation just after passage and not allowing unconstitutional laws to be enforced for even a short period, the issue of unconstitutional laws out of Congress would likely be reduced or eliminated. But in its inaction, the Court has allowed the Constitution to be riddled with holes. And through much of the Court's own actions, the holes have been enlarged. ALL laws Congress passes are NOT Constitutional. The Court has, however, refused to act upon the Constitutionality of the laws until such time as they decide a valid case reaches their doors. In other cases, the Court has opted out of providing justice wherein the Court decides it cannot rule since the case involves a political rather than a legal question.

The effect of the reticence of the Court to be proactive is that the

people tend to believe that ALL legislation passed by Congress is constitutional. The Congress begins to believe that they are empowered with absolute rule over the people and their lives. Challenges to the laws are few and far between since many Americans have no concept of the actual meaning and strength of the Constitution. Many actions are halted because the courts decide the plaintiffs have no standing. Each citizen, because of citizenship, has standing to challenge every law passed by Congress. When the courts rule against this position it is because the Courts fear the people. And, because of a lack of understanding or possibly a skewed understanding at the hands of educators, the people allow many laws contrary to the intent and words of the Constitution to find their way into the lives of the people with detrimental effects on liberties.

If the current nine justices are unable to fulfill their duties in a timely manner, then it may be time to expand the court. There is absolutely no Constitutional number of Justices. Or quite possibly, the justices, in acting proactively, might reduce their loads by slowing or stopping the flood of unconstitutional legislation and the cases that arise from these laws. In either instance, a reduction of the unconstitutional legislation passed by Congress would be welcome.

For any supreme Court action, the various modes of interpretation must be reduced. Honor and truth eliminate the use of prudential, ethical, and doctrinal interpretations. Loyalty to the Constitution requires textual review for understanding. Even the well-meaning use of intent cannot withstand a rigorous examination. No one can know the intent. As Hamilton pointed out in his works, those who framed the Constitution could not remember all the intent and discussion just a short decade later. The people who ratified the Constitution knew only the “naked text” of the document. Even though the Federalist papers were written and printed, at the time of the framing, only a handful could read. The so-called Federalist papers were directed only at those who were actively participating in the creation of the Constitution. Just as today, it is likely that

the average citizen was busy just staying alive. And only those who wrote the papers knew their own private intentions. One must note and wonder why so many spent time hiding their identities with pseudonyms.

Power comes from the people and the government is allowed by the people to exercise only those powers which we, the people, decide are necessary for the function of the government. Under our concepts of government and our Constitution, the government is not all powerful and controlling. In the hands of men, the constitution has been trampled. Educators have failed to teach the truth and have succumbed to teaching politically correct dogma. The freedoms of the people have been lost. It is time to awake and return power to its rightful owners, the citizens of the United States. The following quotes are examples of how far our justices have elevated themselves above the people.

"Soon after Justice Douglas' appointment, Chief Justice Hughes gave the newcomer some surprising advice, "You must remember one thing. At the constitutional level where we work, ninety percent of any decision is emotional. The rational part of us supplies the reasons for supporting our own predilections." Mason, William O. Douglas: A Justice for All, Wash. Post (Book World), Nov. 2, 1980, at 1, Col. 1, Justice Douglas later called for the "watering down" of the second amendment. Adams v. Williams, 407 US 143, 151 (1972) (Douglas, J. dissenting)."

"West Virginia Supreme Court Justice Richard Neely opined that 'lawyers, certainly, who take seriously recent U.S. Supreme Court historical scholarship as applied to the Constitution also probably believe in the Tooth Fairy and the Easter Bunny.' He admitted 'I did elaborate manipulation of history in order to arrive at what I thought were just results.' Waltz, Laying Down the Law: How a Judge Rules, Wash. Post (Book World), Jan. 17, 1982, at 11, col 1." [Dowlut, The Right to Arms: Does the Constitution or the Predilection of Judges Reign?, OK Law Rev.]

Those who believe that the two above quotes are the exception rather than the rule probably believe in the Tooth Fairy and the

Easter Bunny, also.

My advice to the Justices of the world: You are neither God nor King. You are the servants of the people. Only absolute truth will bear you out. All predilections and emotion-based decisions will bear witness against YOU in the next life.

The following simple analysis shows the relationship of people to government. The government exists as a creation of the people. People came together to form society and governmental bodies arise from that society. People existed BEFORE society and society existed BEFORE government. If society and/or government is removed, the people continue to exist. However, if the people are removed both society and government cease. Thus the people are necessary to society and government but society and government are not necessary to the existence of people.

Do not take this book as saying that all the usurpations have been for bad intentions only that any usurpation, even good intentioned usurpations of power, is destructive of all freedoms and protections of the Constitution. I advocate only this: That the people are the only power in this nation that can grant powers to the federal government; That the federal government has improperly stolen powers from the people through creative or inventive interpretation of the granted powers, "the necessary and proper clause", and the "common defence and general welfare" clause; And that the one legitimate, constitutional method of transferring power is through amendment of the Constitution, a method which has seldom been employed in stealing power by our elected officials and representatives. It is my hope that upon completing this book the reader will join me in this understanding of how the federal government has been corrupted by those in power. The power transfers can be perfectly legitimate but only if "the supreme Law of the Land" is followed. The words of the Constitution have not changed since it was written more than 200 years ago. Additions and modifications to some parts have been made over the years. But in the words of Alexander Hamilton:

"In regard to the suggestion, that a proposal was made, and rejected in the convention to confer this very power, what was the precise nature or extent of this proposition, or what were the reasons for refusing it, cannot now be ascertained by any authentic document, or even by any accurate recollection of the members. As far as any document exists, it specifies only canals. (Journal of Convention, p.376) If this proves anything, it proves no more, than that it was thought inexpedient to give a power to incorporate for the purpose of opening canals generally. But very different accounts are given of the import of the proposition, and of the motives for rejecting it. Some affirm, that it was confined to the opening of canals and obstructions; others, that it embraced banks; and others, that it extended to the power of incorporation generally. Some, again, allege, that it was disagreed to, because it was thought improper to vest in congress a power of erecting corporations; others, because they thought it unnecessary to specify the power; and inexpedient to furnish an additional topic of objection to the constitution. In this state of the matter, no inference whatever can be drawn from it. (Hamilton on Bank, 1 Hamilton's Works, 127) But, whatever may have been the private intentions of the framers of the constitution, which can rarely be established by the mere fact of their votes, it is certain, that the true rule of interpretation is to ascertain the public and just intention from the language of the instrument itself, according to the common rules applied to all laws. >>>The people, who adopted the constitution, could know nothing of the private intentions of the framers. They adopted it upon its own clear import, upon its own naked text. Nothing is more common, than for a law to effect more or less, than the intention of the persons, who framed it; and it must be judged by its words and sense, and not by any private intentions of members of the legislature. (Hamilton on Bank, 1 Hamilton's Works, 127, 128.)" >>> Taken from Joseph Story: Commentaries on the Constitution of the United States, 1833, Book III, Paragraph 1263.

Do not accept the legal community's claim of superior knowledge of the meanings behind the words. There are no hidden meanings.

As Hamilton so correctly states, the people accepted the Constitution on its text and not on the intentions nor on interpretations of the words. Even the documentary papers which exist, only provide information concerning the vocal members of the groups. Not every delegate to the convention made statements which were included in the historical database.

The American people have been put in the dark and fed a mushroom diet. Awake and understand that your rights and your powers have been stolen. Reclaim your power through knowledge of the true Constitution. If those we elect wish to expand their power, we the people must require that they follow the one and only allowable method, amendment. Not one law, no matter how good intentioned can be accepted or the hole in the dike will let through a flood. Those who read this book cannot but agree that the flood is already coming. It is time to repair the dam and require constitutionality in our government.

I am a scientist and I read words as does a scientist. Words are used which have specific meaning to convey a specific idea. Interpretation is unnecessary since the words are carefully chosen to lock into place an exact meaning. The Framers used exact words with exact meanings. The Constitution followed on the heals of the Articles of Confederation and "fixed" the errors and weaknesses of that document. But as the quote above states, the good citizens of America had to understand the Constitution in order to accept it as the governing law of their new country. Do not allow yourself to be cheated of your rights by the legal community. Do not allow others to steal powers that belong to the people. We must all stand together or separately we will fall.

Congress and our elected officials have used "salus populi suprema lex" [the safety of the people is the supreme law] to steal powers and usurp rights. At this point in time, I do not believe there is even one politician that is credible and acceptable. All must be replaced and replaced often. Complacency among Americans is leading us down a path to tyranny and despotism.

I often hear Americans say "No amendments. I don't want them messing with my Constitution." This attitude is what has caused much of the sidestepping and Constitution-raping than has occurred. Congress, the President, and the political hacks running our country have chosen to use "interpretation" and lies to lay claim to powers to which the federal government has absolutely no legitimate claim. The "living" side of the Constitution is that it can and must be amended to keep up with the changing times. There is no "interpretive" life. Interpretation is a lie.

"Interpretation" is "salus populi suprema lex", the most dangerous political maxim in existence and one that every dictator and tyrant has used to justify the enslavement of people. I pray that enough Americans read this book AND heed its warnings otherwise our children and their children will be doomed to live under the control of a tyrannical government. May God help us!

Who's to blame for the continued abrogations of the Constitution? You and I and all the other Americans, who sat back and did nothing while it happened or even asked for expansion of the government, are to blame. Without our direct approbation or indirect approval through inaction, the government would likely be less intrusive. The maxim, "salus populi suprema lex", has been most often used to justify these intrusions into powers not granted. The fear of the people of the unknown, of crime, of the future have played significant roles in how the people of this country reacted. Greed has also reared its ugly head. The populace has learned that it can vote itself largess from the public coffers. FDR played this game to the end, using public money to buy his private political power.

All the old sayings, maxims, and other expressions so well known to many of us were warnings from past generations. These words reflect history, that which has occurred before and will occur again without vigilance. The expansion of power by the federal government can only result in the oppression of the people of this

country. First it will come in the name of safety but once the people are conditioned to the omnipresent control, this same power will be used to enslave. Do I sound like a doomsayer? I would hope so and I pray that I am wrong. However, the indicators are there. If one pays attention to the past, one will learn from it. In learning from the past, one grasps the extent and direction of our government's continual power grabs. The words of the Framers speak clearly and plainly to all men, not just to a few educated in legalese. Listen to those words, read them, study them, and keep them with you always. Guard our Constitution, remembering that no one translates or interprets it for you.

I quote from Story's last page.
"Republics are created by the virtue, public spirit, and intelligence of the citizens. They fall, when the wise are banished from the public councils because they dare to be honest, and the profligate are rewarded, because they flatter the people, in order to betray them." (Story, Book III, pg. 760, para. 1907.)

The Rape of the Constitution

Why the rape of the Constitution? The term rape brings to mind the illicit forcing of unwanted actions upon the body of another. Most often it is associated with the attack of a male on a female of a species but rape is much more than the sexual predation that comes to mind. Rape is the stealing away of what rightfully belongs. Our leaders since the beginning of this great country have raped the Constitution whenever the end was justified in their minds. They have forced the Constitution to bend and submit in order to do their bidding, to have their way with those who live under the Constitution. From these actions, I have entitled my book, The Rape of the Constitution.

Just what constitutes rape? - the repeated usurpations of powers not granted by the people. - the misinterpretation of words which need no interpretation. - the Machiavellian attitude that the end justifies the means. - the exercise of controls over the everyday lives of the people through the theft of power never intended to be handed over. - the laxity of the people in not standing up for the rights of themselves and others. -the willingness to do unto others what one thinks is best FOR the others regardless of how the others believe.

All these and many more "rapes" exist. Daily in our lives Congress writes legislation that comes not from their own thoughts but from others, lobbyists, bureaucrats, etc. and since this legislation does not originate from within the legislative bodies of our government it has been and is still considered unconstitutional by many including this author. Presidential decrees, called executive orders or directives, are legislative actions that are not constitutionally permitted but which have gone on for more than 150 years because the people meekly refuse to stand up for what is constitutionally correct. Laws on the environment which exceed Congress' and the federal government's authority are commonly passed and adhered to without remonstration. Today most are

passed under the guise of commerce powers but these are lies since the commerce power is not extensive regardless of the claims of the Court and Congress. Commerce is an act or action. Commerce IS NOT things.

I am constantly amazed that Congresspeople today believe they know so much more about what the Constitution means and the powers it grants than those who wrote the document. Current Congresspeople make illicit claims as to the extent of their powers. This broadening of power came primarily during FDR's administration which I have dubbed the American Dark Ages, for during this time all that was known about the REAL Constitution was lost by the people. Much of what Congress claims has been allowed by the courts in violation of the principles of our government that all power comes from the people with the people's permission. The Courts have become accomplices to the theft of power and rights, primarily to force "good" upon the people, but whose "good" is it? If you don't consider this rape, what do you consider it?

The courts use complex, invented methods of interpretation rather than adhering to the most basic which is the understanding gained by reading the words and text. Here is a quick rundown on the Court's methods.

First, let me say the language of the Constitution is in reality straight forward and unambiguous, regardless of claim of the legal community, there is absolutely no need to interpret any of the Constitution. Read the Constitution and study it carefully. Keep a copy with you while you read this book so that you refer to the words as they are written.

In regard to the Constitution, there are six methods of interpretation in use today. These are textual, historical, structural, doctrinal, prudential, and ethical. In using these methods, one must always begin with the historical viewpoint for defining the words used. Word definitions are an area in which current usage

modifies the meaning for each generation. Without a clear understanding of meaning of specific words at the time they were used, no valid understanding of the Constitution can be had regardless of which of the above methods one uses. Prudential and ethical examinations of the document are especially tenuous as these bring an individual's bias into the discernment process. Structural interpretation also requires a solid understanding of the historical basis of our government and how our government functions.

Textual

The textual method involves reviewing the exact text of the clause, section, and article to determine what is stated in the Constitution. Initially, the clause is to be understood in the broadest sense of its terms. The section in which the clause appears may contain explicit constraints. More commonly, constraints appear only upon reading the entire document. Commonly, clauses of the Constitution are taken out of context in order to create the appearance of constitutionality of a particular law, regulation, or action. Just as in any other reading, taking statements out of context very often leads to an invalid understanding of the entire document. Those who do take statements out of context are often furthering their own agenda.

Hamilton has stated in his works that the Constitution can only be understood on the basis of its naked text since no one can know the thoughts and intentions of the Framers. Even in discussions shortly after the ratification many who helped write the Constitution could not recall the reasons specific parts were ratified or defeated (Story).

Historical

In order to grasp the historical significance of Constitutional clauses, one must delve into the books and writings of the time in which the Constitution was written. The use of historical information to expand one’s understanding of the Constitution is

required but great care must be exercised to read a full balance. Personal biases exist in all writings even or especially this book.

History is an area that is often forgotten or overlooked by many. A famous statement is that those who refuse to learn from history are doomed to repeat it. No greater truism exists. Simply look at your own children then at yourself. Did you listen to the history of your parents? Do your children listen to you? Or, like most of us, did you or do your children simply go along making the same mistakes made by those who went before? I believe most will answer that you have to learn for yourself. Learning the results of your actions first hand often teaches a valuable lesson but it is a lesson free for the taking when one studies history.

However much one does not want to believe it, man does not change with time. The same behaviors which exist today existed previously. The horrible behaviors of our criminal element were met with stringent punishments, usually death. Thus a life long crime spree did not last for a long life.

Structural

This method of interpretation infers structural rules based on the relationships among the various facets espoused by the Constitution. This structural interpretation is not structural as in an extended textual method. The Court's structural mode means using the structure of our system as a guide to understanding the Constitution. This method would be fine and well IF our government had not expanded beyond the constitutional limits. Once the first expansion occurred further expansion is justified by pointing out the past growth. And so the structural method used by the Court is one of self-perpetuation and self-expansion of the federal government. Power exists to be sought after, to be exercised and TO BE EXPANDED UPON!

On the other hand, the structure of the document is highly relevant.

One must understand the use of punctuation. In my personal opinion, the punctuation is the most often ignored portion of the Constitution, especially by those in power. By ignoring the punctuation, clauses and sections can be both combined or separated and interpreted incorrectly.

An example is the absolute ban on taking private property for public use without just compensation. This clause is separated from the due process clause of the fifth amendment by a semicolon (;). The semicolon means that this clause is related to BUT is independent of the due process clause. This is to say that yes, due process must be followed and private property may be taken for public use BUT that the owner of the private property must be justly compensated ALWAYS. This also means the negative that private property may NEVER be taken for private use with or without just compensation.

Many errant commas seem to appear in the Constitution but these are easily explained as we remind ourselves of the method in which the information contained in the Constitution was shared with others. The primary vehicle of disseminating information at the time of the revolution was through speech. A good speech writer marks places for pausing and breathing with commas. Thus if one will "read" the Constitution while mouthing the words, one will find that pauses (commas) exist at points where one would normally stop momentarily. Copies of the Constitution could not be made at Kinko's and handed out to all. The Constitution was read aloud to the Congress and notes taken by all those present.

It is interesting to note that some hand-written copies of the original Constitution do not contain all the errant commas while others do. Again, the simplest explanation is likely the best. The copies with the commas were those used by an individual to read aloud to a group. Copies meant to be read silently or copies written down as the original was read aloud needed no errant commas.

As we move into the next methods of interpreting the Constitution, opinion and individual biases reach a greater level of influence in one's understanding of the Constitution. These three methods often involve a greater understanding of common law which influenced out Founding Fathers. My personal opinion is that these influences are methods of adding more powers to the federal government through legal interpretation of the Constitution rather than leaving the Constitution as it is, a document by the people, of the people, and for the people.

The common law is that by which we live, but it is not, as most believe, the law written by legislative action. These are civil and criminal law. Common law is the collection of judgments and decisions created by the judiciary in the exercise of their God-like powers during the hearing and disposition of court cases. The Constitution makes absolutely no mention of common law except in the Seventh amendment concerning suits at common law where it is stated that in all suits of a value of more than twenty dollars, the defendant's right to a jury trial is preserved.

Doctrinal

The doctrinal method of interpretation delves deeper into the "reasons" behind the creation of various clauses in the Constitution but is based primarily upon precedent. The negative side of doctrinal interpretation is that the Court decides what is and what is not precedent. This method is tightly linked to the historical method but is at times used to extend powers through implication especially when the Court has used its own predilections in deciding past issues. Do not accept any extension of the powers granted beyond their simple scope. There is but one legitimate method of adding more power to the national government and that is through amendment of the Constitution. The Congress, the supreme Court, the President, and all offices, departments, segments, etc. of the federal government created by the Constitution are not empowered to interpret ANY of the Constitution. That which is created by a document cannot interpret the creating

document.

I won't even touch on the prudential and ethical methods. I can only leave you with the following quote of mine: "There ain't no good intentions clause in the Constitution!"

The last two, prudential and ethical, fall into a grey area since these are methodologies developed by the legal community to transfer more power into their own hands. A doctrinal interpretation also requires the student to make judgments about the information being studied. For the reader's information, ethical interpretation uses the ethos expressed in the Constitution, of course, as seen BY the Court, to generate rules of understanding. Prudential considerations are used to balance the costs and benefits to society of particular rules. One can clearly see that the use of ethical or prudential methods is highly subjective.

When studying the Constitution, great care must be made to ascertain the meaning of the words used by those who wrote the words we read today. Discussions about the Constitution and its powers were extensive and often heated. Beyond learning what the Framers meant, one must understand the meaning of words, grammar, and punctuation as they were used at the time the document was written. Then just as today, a word could have several meanings. Thus, words must be understood by what is conveyed in their sentence; and sentences must be studied in relation to their paragraph. And paragraphs understood in relation to the entire document. Nothing should be pulled out of context.

If a word is strong and unambiguous then it will be easily understood by all. Words that have both broad and narrow views should be taken in their broadest sense, IF there are no restrictions listed or implied by other statements in the Constitution, or in the narrow sense if restrictions are given. Still, the same word used in different phrases can and does convey different meanings to the that word. An example is found in Article 1, section 8 of the Constitution of the United States. The word "provide" is different

when used in the context of "providing a Navy" and "to provide for the organizing, arming, and disciplining, the Militia". Similarly, one "provides" a family and after the family exists, one "provides for" that family through various ways, i.e. shelter or food. As is implied by the wording of Article 1, section 8, the militia must have existed prior to the Constitution (there is no mention of creating or forming) and therefore the Militia existed prior to the federal government. And just as one "provides for" one's family, the government was supposed to "provide for" the Militia. Those that fought in the Revolutionary War realized that the militias needed organization, arming, and training (disciplining) and that these needs should be met universally in all parts of this new country. As one studies the Constitution, a copy of Story (1833) is indispensable.

Amendments "of" [we do not make amendments to], let me repeat, [WE DO NOT MAKE AMENDMENTS "TO"], the Constitution, are similar to modifications added to the end of a legal contract. Changes made to the body of a contract affect only the part or parts with which they are attached. Changes made as addenda modify the entire document and so it is with amendments. The Constitution is at the same time inviolable and changeable. It is the ability to be amended that gives the Constitution its life. One must realize that changes can be and have been made as seen fit by the people and that interpretation by executive, legislative, and judicial branches violates the idea of a government of the people, by the people, and for the people.

The Framers of the Constitution were fixing the Articles of the Confederation which were the first attempts to rectify the weaknesses and build on the strengths of the laws of England with which the Framers took issue.

An example is in the area of Arms and governmental control of Arms in the hands of the general population. The English Bill of Rights with respect to Arms left in place many limitations. A commonly held understanding of the framing of the Constitution

was that it corrected the English Law. Contrary to the unsupportable positions argued by many that the American laws on arms came directly out of and followed English law, the Framers of our Constitution knew of the limitations on Arms in the English law and wrote OUR Constitution in a language that removed those limitations. A perusal of the English Bill of Rights versus our own demonstrates this without doubt leaving no room for argument.

And so we move on!

The Punctuation and Grammar of the Founding Documents

The Founding documents are sometimes claimed to be difficult to read and even more difficult to understand since the English language used at the time the documents were written is different from current English. This claim is further from the truth than the idea that the world is flat. Those who honestly read the writings from this time will agree that the only changes are OUR simplification in the words we use and some minor alterations in spellings. The Framers were much more widely read and much more eloquent in their knowledge and use of language.

Through my research I have found that some confusion exists since some copies of the founding documents are punctuated one way while others are punctuated in a different manner. Generally, the differences are in what may be called errant commas. Simply enough these commas can be explained away based on the method of information dissemination of the time. Someone living today with today's automated duplicating systems and rapid methods to disseminate information must rely upon a vivid imagination to reach an understanding of the difficulties which faced the Founding Fathers.

In the days of hand-set type and horse-carried mail, the movement of information was slow, maybe even nonexistent. Individually handwritten copies of documents were commonplace. To share the information, a copy of the document was often posted in the town square. More likely and more often, the document was read aloud to the masses. This allowed for more people to hear the information and for more people to be able to act upon what they had heard. One issue was that many of the masses were not well enough educated to read but they could understand the spoken word. Even in the Congress today, legislation is read aloud to the members long before the information is available in written form.

Documents prepared for reading aloud have added punctuation to provide the reader places to pause to gather thoughts and to breathe. These same pauses allow the listener to reflect ever so momentarily upon what was just said and if so inclined, a place to catch up writing down the information. In the same manner today, documents are modified from their written form into a speech form by punctuating the information in a specific manner.

When reading the written documents, some sections seem to lack completeness and may appear disjointed or choppy. However, in the context of a speech, these same sections flow gently and cleanly from the speakers mouth. They are understood in the context in which the words are/were presented. A speech will at times have shortened phrases rather than complete sentences in order to convey the central idea. This is especially true when an enumeration of separate ideas is made that are linked together to a theme.

So go back and reread those founding documents, there is neither strangeness nor difficulty surrounding every man's understanding of what was written. No translation or interpretation is needed and the English as used then is applicable still today.

THE CONSTITUTION FOR THE UNITED STATES

Because of the great length of the Constitution, it's entirety is not reproduced in every essay but a full and accurate copy may be found as an inclusion in this book. As sections are discussed, they may be quoted for clarification. When reading this section, please refer often to the full document. Nothing within the Constitution requires legal training to understand. It does require an education and an understanding of the English language, including grammar, punctuation, and the words themselves. This is a Constitution, not a compact or a contract. It is at the same time unchangeable and alterable. The Constitution establishes an agreement and transfer of powers from the people, you and I, to a central government under specific conditions. There is no blanket transfer.

Two points of view arose during the debates on the Constitution. The federalist, today viewed as elitist, and the anti-federalist. A comparison of the to can be made thusly: A federalist views the Constitution with the idea that whatever is not exempted is granted, i.e. if it is not prohibited, we can do it. The federalist point of view is the path taken when our elected servants try to decide what's best for us all based on their limited knowledge.

An antifederalist views the Constitution from the perspective that anything not granted is withheld, i.e. if a power is not specifically addressed in the document or its amendments AND given to the federal government, the government does not have the power or the right to exercise the power.

The antifederalist point of view is succinctly stated in the ninth and tenth amendments of the Constitution which are:

Article IX.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Article X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

It is difficult to grasp how anyone could view the Constitution from the federalist point of view having read these two amendments, but often those in power, whether it be government or religion or elsewhere, take words and phrases out of context so that these words and phrases may be manipulated. Only a great lust for power and control could allow one to ignore the statements of these amendments. But power corrupts.

If the Constitution, viewed even in its most general terms and granting the broadest definitions of the words, does not grant a power to the government, then the government may not legitimately exercise that power except by usurpation. Each and every statement in the Constitution has meaning and unless specific limitations are mentioned should be understood to be maximally encompassing. However, great care must be exercised in reading what the words and the accompanying phrases say. Nothing should ever be taken out of context. Limitations suggested by the inclusion of separate powers must be understood to imply that granted powers do not always include every nexus despite the belief and claims of Congress along with the approbation of the courts, to the contrary.

Quite often prudential arguments are made that a particular piece of legislation is in the best interest of the country, regardless of its abrogation of a part of our Constitution. Especially in this century, those we have elected have stepped beyond stretching the words, taking phrases and powers out of context to enhance or substantiate their own view of right. Throughout the history of this country, individuals and groups have usurped bits and pieces of power and the people have allowed this usurpation to go unhindered. Why ? Look at the Declaration of Independence. It discusses this inaction because inaction has commonly occurred throughout

mankind's history. The crucifixion of Christ, the Holocaust in WW II, and many, many other cases of men not speaking up against the evils of others. Those who do not learn from history are doomed to repeat it. Remember, no where in the Constitution is there any mention of prudential or ethical laws which contradict the Constitution, as being acceptable.

The Constitution is called a living document and that it is but an argument ensues which concerns just what being a living document means. There are those who believe that the term, living, as applied to the Constitution means that the words of the Constitution change meaning with time as conditions require. This is a false view by those who would usurp power unto themselves through manipulative and creative interpretations.

The Constitution is a living document not because some individual or group of individuals can reinterpret the meanings of the words in the document but because the Constitution provides in itself the rules and methods by which it can continue to serve the people living under its powers and protections. The Constitution can be amended if and when the majority of the people of this country decide its words are either too limiting or too broad or somehow do not fit the needs of the people. Using the false and unconstitutional method of reinterpreting, the document puts the power in those who do the interpretation rather than leaving the power in the hands of the people. This simple reason is sufficient to negate the claim that the Constitution is living because its meanings change with time. The meanings and designs of the Constitution are the same today as they were more than 200 years ago. Many believe that times have changed but even a quick study of the history of governments of the world will show the reader that the more things change, the more they stay the same. And so there can be but one way to breathe life into the Constitution. That is through the proper and only method of change, the amendment process. Any other method is unconstitutional. Like the ten commandments, the Constitution is not open to interpretation. Some words from past scholars and even the supreme Court are

in order here.

A Quote from an able author and jurist as stated in Tucker:

"The government created by the Constitution is one of limited and enumerated powers, and the Constitution is the measure and the test of the powers conferred. Whatever is not conferred is withheld, and belongs to the several States, or to the people thereof. As a constitutional principle this must result from a consideration of the circumstances under which the Constitution was formed. The states were in existence before, and possessed and exercised nearly all the powers of sovereignty. The Union was in existence, but the Congress which represented it possessed a few powers only, conceded to it by the States, and these of little value. The States were thus repositories of sovereign powers, and wielded them as being theirs of inherent right; the Union possessed but few powers, enumerated, limited, and hampered, and these belonged to it by compact and concession. In a confederation thus organized, if a power could be in dispute between the States and the Confederacy, the presumption must favor the States. But it was not within the intent of those who formed the Constitution to revolutionize the States, to overturn the presumptions that supported their authority, or to create a new government with uncertain and undefined powers. The purpose, on the contrary, was to perpetuate the States in their integrity, and to strengthen the Union in order that they might be perpetuated. To this end the grant of powers to the Confederacy needed to be added to and perfected, the people to be made parties to the charter of government, and the sanction of law and judicial authority to be given to the legitimate acts of the government in any and all its departments. But when this had been done, it remained true that the Union possessed the powers conferred upon it, and that these were to be found enumerated in the instrument of government under which it was formed. But, lest there might be any possible question of this in the minds of those wielding any portion of this authority, it was declared by the tenth article of the amendments that ' The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respec-

tively or to the people.'"

"From what has just been said, it is manifest that there must be a difference in the presumption that attends an exercise of National and one of State powers. The difference is this: To ascertain whether any power assumed by the government of the United States is rightfully assumed, the Constitution is to be examined to see whether expressly or by fair implication the power has been granted, and, if the grant does not appear, the assumption must be held unwarranted. To ascertain whether a State rightfully exercises a power, we have only to see whether by the Constitution of the United States it is conceded to the Union, or by that Constitution or that of the State prohibited to be exercised at all. The presumption must be that the State rightfully does what it assumes to do, until it is made to appear how, by constitutional concessions, it has divested itself of the power, or by its own Constitution has for the time rendered the exercise unwarranted."

Again (citing Ableman v Booth, 21 How. 506, 520; United States v Cruikshank, 92 U.S. 542), he says: "The Congress of the United States derives its power to legislate from the Constitution, which is the measure of its authority; and any enactment of Congress which is opposed to its provisions, or is not within the grant of powers made by it, is unconstitutional, and therefore no law, and obligatory upon no one."

And again (citing Ex parte Milligan, 4 Wall. 2, 120), he says "The Constitution itself never yields to treaty or enactment; it neither changes with time, nor does it in theory bend to the force of circumstances. It may be amended according to its own permission; but while it stands, it is 'a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances.' It's principles cannot, therefore, be set aside in order to meet the supposed necessities of great crises. 'No doctrine involving more pernicious consequences was ever invented by the writ of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy and despotism, but the theory of necessity on which it is based is false; for the government within the Constitu-

tion has all the powers granted to it which are necessary to preserve its existence, as has been happily proved by the result of the great effort to throw off its just authority.'" - Cooley on Constitutional Law Pp. 29-31, 31, 32, 33.

This judicious and comprehensive summary by an eminent judge is a fitting statement of the general principles established by the adjudications of the Supreme Court in a number of cases, and is fully sustained by the language of Chief Justice Waite in United States v Cruikshank (92 U.S. 542-51), in which he says" "The government of the United States is one of delegated powers alone. Its authority is defined and limited by the Constitution. All powers not granted to it by that instrument are reserved to the States or the people. No rights can be acquired under the Constitution or laws of the United States except such as the government of the United States has authority to grant or secure. All that cannot be so granted or secured are left under the protection of the States." And again: " Within the scope of its powers enumerated and defined it is supreme and above the States; but beyond it has no existence." (Tucker, 1899)

Tucker (1899) adds "It may be well here to say that if a written Constitution, adopted by our ancestors in 1789, with their then clear view of the environment of facts which influenced their action, is to be changed radically by an interpretation of what those facts, according to the subtle analysis of a German historian a century later, ought to have meant, then written constitutions are no longer fixed and paramount, but may be set aside and annulled by the fancies and ingenious preferences of subsequent generations. The written Constitution of 1789 must be what those who brought it into being and gave it the sanction of their ratification believed and knew it to be, and cannot be changed by what men a century thereafter choose to think it ought to have been."

Remember the words above. Do not let men who would grab power steal away your internal protections in the guise of giving you protection from external threats. There is more than enough power granted in the Constitution to allow the federal government

to protect us from threats from afar and within. If the people decide a change is to be made then it must be made through the only legitimate process, amendment. Any other method of change including revolution or legislation that stretches the limits of the granted powers is unconstitutional.

Constitution for the United States of America

Note: all spellings as per original.

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 Blessing of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article. I.

Section. 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives.

Section. 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the

Executive Authority thereof shall issue Writs of Election to fill such Vacancies. The House of Representatives shall chuse the Speaker and other Officers; and shall have the sole Power of Impeachment.

Section. 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote. Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that States for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without Concurrence of two Thirds of the Members present. Judgement in Cases of Impeachment shall not extend further than removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgement and Punishment, according to Law.

Section. 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations except as to the Places of chusing Senators.

The Congress shall assemble at least once every Year, and such

Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Section. 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member. Each House shall keep a Journal of its Proceedings, and from time to time publish same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any Place other than that in which the two Houses shall be sitting.

Section. 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place. No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section. 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills. Every Bill which shall have passed the House of Representatives and the Senate shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall

agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section. 8. The Congress shall have the Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with Indian Tribes;

To establish a uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that

Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;

—And To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, on in any Department or Officer thereof.

Section. 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of

Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office or Profit or Trust under them, shall, without the Consent of Congress, accept any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Section. 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports and Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of the Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Article. II.

Section. 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the while Number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or Person holding and Office of Trust or Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States,

directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the house of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation of each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Persons except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person ineligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, of Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation, or Inability, both of the President and Vice President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:-"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Section. 2. The President shall be Commander in Chief of the Army and Navy

of the United States, and of the Militia of the several States, when called into actual Service of the United States; he may require the Opinion in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment. He shall have the Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other Public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law; but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all the Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section. 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section. 4. The President, Vice President, and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of Treason, Bribery, or other High Crimes and Misdemeanors.

Article. III.

Section. 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation which shall not be diminished during their Continuance in Office.

Section. 2. The judicial Power shall extend to all Cases, in Law and Equity,

arising under the Constitution, and the Laws of the United States, and Treaties made, or which shall be made, under their Authority; - to all Cases affecting Ambassadors, other public Ministers and Consuls; - to all Cases of admiralty and maritime Jurisdiction; - to Controversies to which the United States shall be a Party; - to Controversies between two or more States - between a State and Citizens of another States; - between Citizens of different States, - between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and of foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction. In all other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section. 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment for Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Article. IV.

Section. 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof.

Section. 2. The Citizens of each State shall be entitled to all privileges and Immunities of Citizens in the several States. A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand on the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws

thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Section. 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in the Constitution shall be so construed as to Prejudice and Claims of the United States, or any particular State.

Section. 4. The United States shall guarantee to every State in the Union a Republican form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Article. V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by the Conventions in three fourths thereof, as the one or other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of it's equal Suffrage in the Senate.

Article. VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the Untied States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the

Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers; both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

Article. VII.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same. Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lard one thousand seven hundred and Eighty seven and of the Independance of the United States of America the Twelfth in Witness whereof We have hereunto subscribed our Names,

Attest William Jackson Secretary

Geo: Washington - Presidt. and deputy from Virginia

Delaware
Geo: Read
Gunning Bedford junr
John Dickinson
Richard Bassett
Jaco: Broom

Maryland
James McHenry
Dan of St Thos. Jenifer
Danl Carroll

Virginia
John Blair
James Madison Jr.

North Carolina
Wm. Blount
Richd. Dobbs Spaight.
Hu Williamson

New Hampshire
John Langdon
Nicholas Gilman

Massachusetts
Nathaniel Gorham
Rufus King

Connecticut
Wm: Saml. Johnson
Roger Sherman

New York
Alexander Hamilton

New Jersey
Wil: Livingston
David Brearley
Wm. Paterson
Jona: Dayton

South Carolina
J. Rutledge
Charles Cotesworth Pinckney
Charles Pinckney
Peirce Butler

Georgia
William Few
Abr Baldwin

Pennsylvania
B Franklin
Thomas Mifflin
Robt Morris
Geo. Clymer
Thos. FitzSimmons
Jared Ingersoll
James Wilson
Gouv. Morris

ARTICLES in Addition to, and Amendments of, the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.

Article I.
Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; of the right of the people peaceably to assemble, and to petition the Government for a redress of Grievances.

Article II.
A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Article III.
No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Article IV.
The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article V.
No person shall be held to answer for a capital, or otherwise infamous crime,

unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Article VI.
In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; to be confronted with the witnesses against him; to have compulsory process of obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Article VII.
In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise examined in any Court of the United States, than according to the rules of common law.

Article VIII.
Excessive bail shall not be required, no excessive fines imposed, nor cruel and unusual punishments inflicted.

Article IX.
The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Article X.
The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Article XI.
The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Article XII.

The Electors shall meet in the respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; - The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; - The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such a majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote, a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. - The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Article XIII.

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate

legislation.

Article XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for the President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive of judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or lay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and

claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Article XV.

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Article XVI.

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

Article XVII.

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the State legislatures. When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct. This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Article XVIII.

Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States,

as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Article XIX.

The right of the citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex. Congress shall have power to enforce this article by appropriate legislation.

Article XX.

Section 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3rd day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Section 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3rd day of January, unless they shall by law appoint a different day.

Section 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President shall become the President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Section 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Section 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Section 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

Article XXI.

Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Article XXII.

Section 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

Section 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

Article XXIII.

Section 1. The District constituting the seat of Government of the United States shall appoint in such a manner as the Congress may direct: A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and

perform such duties as provided by the twelfth article of amendment.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Article XXIV.

Section 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Article XXV.

Section 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

Section 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Section 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

Section 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of

his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

Article XXVI.

Section 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Article XXVII.

No law varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

THE DECLARATION OF INDEPENDENCE

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.

—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 shewn, 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 migrations 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 harrass 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.

Story (1833) Book III, Pg. 754

"Where is the controversy to end, if we desert both the letter and spirit? What is to become of constitutions of government, if they are to rest, not upon the plain import of their words, but upon conjectural enlargements and restrictions, to suit the contemporary passions and interests of the day? Let us never forget, that our constitutions of government are solemn instruments, addressed to the common sense of the people and designed to fix, and perpetuate their rights and their liberties. They are not to be frittered away to please the demagogues of the day. They are not to be violated to gratify the ambition of political leaders. They are to speak in the same voice now and for ever. They are of no man's private interpretation. They are ordained by the will of the people; and can be changed only by the sovereign command of the people."

J. Story, Book III, pg. 754, para. 1901

The Base Form of the Federal Government

The Constitution first establishes the form of our government. The United States is not a democracy but is a democratic republic. The subtle difference is that in a democracy the people represent themselves and vote on every item of government business. In a democratic republic, representatives elected by the people act in the people's behalf in managing the business of governing. These elected officials are to exercise the people's desires and are not to exercise their own desires. When an elected official stops responding to his electors, it is time to recall that elected representative or to vote that representative out of office at the next go round. The Constitution provides term limits, known as elections. Exercise your vote carefully and thoughtfully. Lemming voting should at all times be abhorred.

In form, the government of the United States is broken into three parts. The separation of powers was a central issue among those who framed our new government. Each part of the government is restricted from exercising powers which are considered central to any other part except in such cases as are authorized in the Constitution.

Each part of the federal government has its own place and powers. These powers DO NOT overlap or imply equivalent powers in other branches. Each branch received the specific powers the Framers desired the branch to have. The Legislative branch, being composed of the direct representatives of the people in the House and, originally, the direct representatives of the States in the Senate was granted the most extensive powers. The executive, for fear of the position becoming that of a king tyrant, was granted but a few powers and the Judiciary were made the weakest branch of all. I will focus first on the legislative branch as that is the order in which the Constitution was formed.

The bicameral ("two chambers") legislature of the United States consists of the House of Representatives and the Senate. Why is the representation separated? As many different answers exist as there are individuals expounding them. Partly, the system is a copy of the English parliamentary system. Partly, our Framers recognized that both the people (the House of Representatives) and the states (the Senate) formed this federal government to deal with world and national interest issues. And partly, the separation provided a hopeful check on governmental tyranny. Majority tyranny, which many liberals fear, is kept in check by the multitude of factions in the House of Representatives and the great expanse of the country maintains this multitude. The Framers feared too much power within the grasp of one group and although the Framers gave the Congress the greatest power, they provided a qualified control through the more limited powers of the President and the Courts.

Why the Framers did not completely follow the example of England is likely summed up as this: The separation was deemed necessary and desirable based on the Framer's past experiences with the English parliamentary form of government. These two bodies are similar to the House of commons and the House of Lords in England. A problem in England was that the members of both Houses were often at the mercy of the King. Not being elected by the people, there was no strong tendency to act in the behalf of the people in a beneficial way.

The House of Representatives was provided to bring the ideas and desires of the people to the federal government. The Senate was created to supply the states with their voice in the federal government. Originally, Senators were chosen by the legislatures of each state. The seventeenth amendment altered that and since the ratification of the 17th amendment the people have chosen both the representatives and the Senators in open elections. The transfer of power of election of Senators from the States to the people altered the proper balance of power. State sovereignty was compromised and reduced with this amendment. Thus both the

Senate and the House of Representatives are directly responsible to the people and not to their own ideals.

The terms of the Senators are three times longer than those of the representatives. The idea was that the representatives should be close to the people and the people should have the power to easily turn out representatives who were not doing the people's bidding. The Senators were seen as being a stabilizing factor. In order to reduce the chances of an elitist Senate arising, the Framers developed the staggered election scheme for the Senate, electing one-third (1/3) every two years. Since the Senate will always have an equal number of members, the vice President was granted a voice and a vote to be exercised whenever the Senate became equally divided on an issue but this vote ONLY is active when an issue is equally divided.

Elections:

Certain limited requirements are placed upon those who would offer themselves as candidates for either house although a number of requirements were suggested. Residency and age were all that were deemed necessary. The question of term limits was posed and rejected on the basis that the people, in the proper exercise of their vote, would place term limits upon elected officials. And, it was generally accepted that those wishing to serve their country in Congress would have to do so only by taking time away from their livelihood and would then return to their lives among the people. Professional politicians would have been viewed on an equal footing with kings and other royalty. And the Founding Fathers had just shown in what manner THAT behavior was to be dealt. But, the framing of the Constitution left the compensation of the elected officials to themselves and over time, professional politicians have arisen by giving themselves more than sufficient compensation.

The importance of the two restrictions to becoming elected cannot be understated. Age often implies competency, knowledge, and

wisdom. And residence assures that the individual electee is not someone from an area that might be competing with the area being represented or from an area with interests in direct conflict with the area to be represented.

A weakness apparent in the reasoning of the Framers is that the requirements only state that the electee must be a resident when elected but says nothing about after being elected. After election, the new representative or senator may change residency. It is sometimes thought that, due to the time spent in the federal capitol, that these elected officials no longer truly reside in their respective areas. However, the two year term in the house allows for the speedy removal of any electee deemed not suitable by the constituency.

The beginning of the census is seen in the first words of the Constitution. In order to fairly represent the changing population of the country, an enumeration was set to occur each ten years. Both representation and direct taxation were controlled by these numbers. An enumeration is not an estimation but is an actual counting of the people. The Constitution does, in weakness, allow for the Congress to determine the manner in which the count is made.

The manner of choosing our elected representatives is not locked into the Constitution. The states may prescribe through legislation the manner, places and times of choosing representative and senators but Congress may, at its will, alter the manner, times and places of elections. Only the place for choosing Senators is not under the control of Congress. This may be seen as a weakness in that Congress could make it extremely difficult for individuals to vote for their representatives thus effectively usurping control.

In the case of the loss of an elected official in the House, the executive authority of the state, i.e. the governor, is required to issue a writ of election to replace the missing official. There is no provision for appointment or any other means of replacement. In

the case of a Senator, the legislature of the State from which the Senator was elected may allow for temporary appointment by the executive of the State but only until a new Senator is duly elected. Congress cannot change the requirements without amending the Constitution.

The Constitution also gives to each house the power to judge the validity of elections, returns, and the qualifications of its members. Qualifications which are part of the Constitution are not alterable except through amendment. But this grant simply allows each house to determine IF the member is or was an acceptable member based upon the qualifications as spelled out in the Constitution. The Congress nor the States may not make additional requirements without Constitutional amendment. The people may not change the requirements State by State since the requirements are set in stone in the Constitution. See the essay on campaign finance reform for more discussion about the limits placed on the power of Congress to control elections.

The Constitution provides that both houses of our government shall maintain a written record of their proceedings but that should national security be necessary, these proceedings could be kept from the public. No other power over information deemed to affect national security is given. Thus much of what is withheld from the people under claims of national security are unconstitutionally withheld, especially with regards to the executive.

The first Senate kept only a skeleton journal but made no report of the hearings on its meetings. All actions were behind closed doors until a rule was passed that the senate meetings be public. While neither of these actions is directly unconstitutional, one must question why these actions were taken by a group of elected public servants.

The only reports of these senate hearings and discussion are the partial diary writings of Senator William Maclay of Pennsylvania. However, the senator became ill during the session and complete

notes are therefore not available. Senator Maclay did note that the six-year class of senators hung together on motions to postpone the hearings on the Bill of Rights. The more things change, the more they stay the same.

Rules of operation:

The rules of operation of each house of Government are decided by each house. I cannot list all the rules here but one in particular is of interest. A common practice in the work place is that of granting a higher level of importance to seniority. This practice stems from the common knowledge that those with experience can best serve in a position where that experience benefits. In most employment situations this is true, in government however, the practice of seniority violates the principles of equal representation and equality among elected officials.

Seniority has no place among the elected. Powerful people have developed, not always through their great leadership but sometimes through their longevity. One of the most powerful positions within the system is that of Committee Chairperson. These positions are handed out based on seniority and "friendship".

The practice of granting more power based on seniority is not unconstitutional. It is extra-constitutional and highly undemocratic. All committeeships should be selected by random processes. Neither party should be able to control committees to the extent that now occurs. Good legislation from an opposing party member often dies without being heard simply because of the power structure. If our elected servants were concerned about our country, they would alter this practice immediately and permanently.

Impeachment:

An often heard term in the American vocabulary is impeachment.

The Framers of the Constitution foresaw the possibility of abuse of the power of impeachment, which is the power to remove the president and other similarly elected officials for improper actions while elected. The sole power to issue an impeachment is in the hands of the House of Representatives. The Senate was granted a bit of judicial authority in that the Senate is the only body that may try a case of impeachment. Thus the likelihood of a conspiracy to remove elected officials for other than honorable reasons is reduced.

Impeachments can only be handed down for offenses which occurred during the time an office is held. The only punishments are removal from office and the inability to again hold public office. Should the "crimes" be greater, the "crimes" must be tried as would be those of any other accused person. Offenses which occur before taking office are not impeachable offenses. Article 2, Section 4 states the ONLY civil officers are subject to impeachment. IN further study I have found NOT that Members of Congress are not civil officers and are not impeachable BUT that the Senate, themselves, decided that members of Congress cannot be impeached. This is contrary to the historical evidence from England where members of the House of Commons and House of Lords weer impeached by their peers. Thus it is unlikely that the Senate's determination is constitutional. For more information concerning the impeachment process the reader is referred to the book: "Impeachment" by Raoul Berger (1973)

Compensation:

The Constitution provides that "for their Services" Senators and Representatives shall receive compensation. I have questioned my representatives about retirement benefits as it is a stretch of the imagination to call these benefits FOR services. If the wording is taken literally, the Congressional pensions are not constitutional. If the retirement monies are investment monies taken from their "Compensation", then I would question how their investment program can provide such generous amounts as

compared to the investment programs of the average citizen. The original second amendment which concerned increases in the compensation of Senators and Representatives, has been finally passed as Article XXVII of the amendments.

In my opinion, this was simply more feel good legislation. The average Congressperson knows that the odds are with them in reelection. The offering and ratification of this particular amendment are unlikely to have any effect on congressional behavior.

Immunity from arrest:

If its often implied and generally believed that elected officials are immune from arrest during the time that their perspective bodies are in action. This is not true. The Representatives and Senators can be arrested for treason, the commission of any felony, and for breach of the peace. In other words, only protections against misdemeanor crimes is protected. This protection was extended in order to keep the elected representatives from being harassed during the time the houses were in session. Without this protection, minor infractions could be used to keep a member from duties.

Another protection was granted concerning statements made on the floor of the respective houses. The protection is that statements made on the floor can only be questioned by that house. The Founding Fathers recognized that honest, open debate was the best safety control for legislation. Power in the hands of certain individual could be used to stifle freedom of speech and so those writing the Constitution inserted language to foster debate and to protect the discussion from outside interference. Each house is left with the power to judge its own members appropriately.

Appointments to civil offices:

Often times, a corrupt individual will create for him- or herself a position of power. The Founding Fathers had lived with this

corruption under the King. The Constitution directly prohibits those in Congress AND those in civil office from dual positions in office and Congress and/or emoluments to that position. An emolument is profit arising from an office or employment usually in the form of compensation or perquisites.

Legislative prohibitions:

The Constitution sets the legalities of introducing legislation in the houses of government. All bills for raising money must originate only within the House of Representatives. The Senate may amend or offer bills of most other natures as long as those bills fall within the grant of powers establish by this document. The legal stature of bills is as so described but the actual nature of the legislative offerings has expanded to cover any subject a Congressperson can discern. Honorable men would never stoop to the level of our Congress by attaching unrelated amendments to the tails of necessary bills. A legislator is duty bound to certify that the action offered in a bill is Constitutional. Here is what Judge Cooley (1898) stated:

On the requirements of a Legislator to remain obedient to the Constitution

185. ..."The case is different with the legislator and executive. He is bound to support the Constitution, - to uphold it as one of the pillars to an edifice. He is under the Constitution, not above it. He cannot support it by doing an act repugnant to it. 'His public office is a public trust.' If he doubts his power to do under the authority of the Constitution, he is bound to resolve the doubt against the act, not in favor of it."

"Mr. Cooley thus states it: 'Legislators have their authority measured by the Constitution; they are chosen to do what it permits, and nothing more, and they take a solemn oath to obey and support it. When they disregard its provisions they usurp

authority, abuse their trust and violate the promises they have confirmed by an oath. To pass an act when they are in doubt whether it does not violate the Constitution is to treat as of no force the most imperative obligations any person can assume. ... A witness in court who would treat his oath thus lightly, and affirm things of which he was in doubt, would be held a criminal. Indeed, it is because the legislature has applied the judgement of its members to the question of its authority to pass the proposed law, and has only passed it after being satisfied of the authority, that the judiciary waive their own doubts and give it their support.'"

"He holds the same views as to the duty of the President, and maintains that the President, even where the judiciary has sanctioned the constitutionality of an act, is not only duty bound to give his approval to a similar act, but may, in consonance with his duty, withhold his approval. It follows from this, that a legislator cannot justify a vote for a law on the ground that as judge he would not declare it void. The legislator crosses no forbidden line when he refuses to enact what he believes is repugnant to the Constitution. The judiciary does cross a forbidden line where it declares a law void, unless it be without doubt repugnant to the Constitution. The legislator is never warranted in voting for a law he does not believe the Constitution sanctions, to support which he has sworn as an affirmative duty, not that he will not pull down the pillars of the edifice, but, as one of the many pillars, he will uphold it."

"In the case of the law-maker, the question to be asked is: 'Have I the right under the Constitution to pass this act ?' The onus is for him to show his authority. In the case of a judge, the question is: 'Is the law clearly unconstitutional ? In annulling the law in support of the Constitution will I transcend my judicial functions and usurp the legislative; or is the repugnancy so strong that I will only act judicially in annulling the effect of the law, and not transcend the boundary of my power ?' The burden shifts in the two cases. The legislator must show that he has the right; the judge must show the legislator was clearly wrong."

"Hence the law-maker may not justify a vote for a measure which as judge he could not declare void; but, if the judiciary declares such an act unconstitutional, it should forbid the law-maker to pass similar legislation. On the other hand, though the judiciary cannot declare a law unconstitutional because not clearly repugnant, it does not justify the law-maker in voting for it."

Now the various departments of the federal government produce their own rules and regulations. This is merely another attempt to steal power and to remove the ability of the people to control the government's actions. The government bureaucrats attempt to make a distinction between "legislation" and "rules and regulations" by declaring the latter not to be legislation. The Constitution makes not distinction like this and in fact an inspection of the entire Constitution proves that legislation, rules, and regulations ALL are under the purview of Congress. Congress is not authorized explicitly or implicitly to delegate power to another agency. Why? These powers granted to Congress belonged to the people. The powers were specifically and unequivocally transferred from the people to the Congress because the people control the Congress through the electoral process. Bureaucrats on the other hand have are not answerable directly to the people as the people do not appoint, hire, or otherwise select these bureaucrats. The transfer of any granted power to anyone or any body other than the one to which it is granted requires approval by the people by way of an amendment of the Constitution. Because the people entrusted Congress with the granted powers, any delegation violates the trust of the people. The Courts in allowing these transfers have proven again that they are not protecting the people but, as they were in England, are part of the problem.

Committees, as the House and Senate are fond of forming, appear to be unconstitutional, regardless of the historical evidence that Congress has always conducted its actions through committees. All representatives are claimed to be equal, i.e. equal representa-

tion for ALL citizens of the United States. However, if a committee composed of certain individuals decides to bring or not bring an action to the entire House or Senate, then those members are carrying greater weight, i.e. unequal representation. It is likely that a different set of representatives on the same committee and hearing the same information might return a different recommendation. Since all members of each house are not able to judge the information for themselves, the use of a committee violates the principle of equal representation. Should each house be unable to function in hearing all actions then I suggest that each house has taken upon itself more powers than granted and should simply reduce heard actions to those which are constitutional.

The executive has one main duty and that is to see that the laws passed by Congress are faithfully executed. Neither the Executive nor any of the executive departmental members are authorized to ignore or not enforce laws. They have no choice but to faithfully execute ALL laws making no judgment calls. If a member of the executive branch makes a judgment call, that civil officer is guilty of violating the trust of the office and may be impeached. For more of the duties and powers of the executive, please see the essay on that topic.

The judiciary, being the weakest of the three branches is restricted in its powers by the Constitution. One might wonder at why an important branch would be made the weakest but only for a moment when one considers the abuses the colonists, who became the Framers, suffered at the hands of the King's judges. The Framers having had their lands taken, their lives disrupted would recognize that the judiciary were part OF the problem and place the entire judiciary under the control of the people through the people's body, Congress. Specific powers were granted and these are listed in Article III, Section 2, Paragraph 1 with restrictions added in the eleventh amendment. Congress may further restrict the Courts under the grants of power to the Congress (Article II, Section II, Paragraph 2). Further discussions on these topics are to be found in essays elsewhere in this book.

Republican Form of Government

Article IV

Section. 4. The United States shall guarantee to every State in the Union a Republican form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Most Americans believe we live in a democracy but this is only ignorance speaking. The United States of America has never been a democracy, for a democracy is a form of government wherein every citizen participates even to the extent of voting on all legislation. The U.S. is a democratic republic, which differentiates the country from a democracy.

And the section above from our Constitution is likely to be misunderstood because Americans are weak in their education concerning the term, republican form of government. Suffice it to say, a Republican form of government does not mean one based upon what is commonly known as the Republican party platform.

A democracy is a form of government wherein everyone participates in the law-making processes. Societies with small number of people can sometimes function as a democracy. But as a society grows the sheer number of members of that society precludes functionality of the system.

In a democratic republic, the people elect representatives. Through these representatives, the government remains "small" because as history has shown, democracies grow and at a point result in "mob" rule where functions halt because too many people are involved in the legislative efforts. If you have ever served on a committee then you have an idea of how well a large group

functions. The Founding Fathers, great students of history that they were, understood the problems and used this understanding to develop their plan for our government.

In Latin the phrase is *res public*, meaning literally the public thing. This became Republic, a government of the people by the people with all societal and governmental powers being granted from the people, individually, to the government, as a whole. In our Republic, the government is restricted to those powers which the people have granted and cannot Constitutionally exercise nongranted powers. However, in our Republic, those elected to serve the people have developed "creative interpretations" of the granted powers and have usurped powers which were not given.

The term, Republic, has been corrupted and today may mean anything from the U.S. to a totalitarian dictatorship such as Cuba. And just as often, the term, democracy, is controverted to apply to every form of government, including that of communist China. Information concerning the general aspects of a democratic republic, democracy, and republics can be found in most encyclopedias.

It's What You Don't Know That Can Hurt You!

How many of you THINK you know what your Constitutional rights are? How many of you believe the Constitution is the controlling law of the land? How many of you believe the Constitution provides protections of you and yours? How many of you believe....

I suspect everyone who has grown up in the U.S. believes that they know. I have news for you. There are absolutely NO constitutional rights. There are, however, natural rights which are yours by virtue of being born and there are privileges and immunities which are given, and can be taken away, by the government.

The Federal Government decided, that is the Supreme Court portion, in 1833 (Barron v Baltimore) that the Bill of Rights does not bind the states and the states were then free to do with you and to you as they pleased. Thus, the constitutional enumeration of rights as protections against governmental abuses of the people does not apply these rights against intrusions by the states. Later the Supreme Court, contrary to the historical records of the 14th amendment (See Berger, 1976,1996), began to incorporate as the court sees fit portions of the Bill of Rights as being binding upon the states. Still today, not all the Bill of Rights has been incorporated and the citizen is left without many protections. Please see the essay on this topic.

The Constitution itself has been subverted and controverted throughout its 200 plus year history. Those in power have manipulated things and have even gone so far as to state that they have the right and the duty to ignore the law (See essay on Jefferson) when THEY deem fit.

Who's involved in the subversion of the Constitution? Everyone in power is and everyone who has ever been in power. Most read the Constitution from the front to the back as one would read a

book. BUT — this is not the proper method since the amendments at the end each modify (supersede) all conflicting preceding clauses. So one must read the Constitution completely then working from the last to the first determine how the amendments modify each other and the original Constitution.

Who's to blame? Each and everyone of the people who don't take the time to learn the true meanings of the Constitutional grants of power and the restrictions the Constitution places on the exercise of those powers is to blame. And even more so, each person who accepts even the slightest abrogation of the Constitution in the name of "good intentions" carries a greater portion of the blame since those persons know better and still allow the violations to go unchecked. A pinhole opens the way for a flood and a flood will destroy the entire dam (Constitution). Eternal vigilance is the price of liberty!

The Congress has passed War Powers Acts numerous times throughout the history of the Country. The Acts passed during the Civil War and continuing on to today are claimed to have suspended the Constitution. I cannot verify nor deny this. The Supreme Court has ruled that the Constitution in not suspendable but based upon the information I have gathered for this book of essays, those in power would not let such a minor detail stop them from doing just this. What is the effect of a suspended Constitution? You can easily figure that one out for yourself. I can tell you that Congress has suspended the power of the Courts to hear specific cases in the past and could legitimately do so again. See the essay: The Most Dangerous Clause in the Constitution.

Take the time to read this book and the Constitution many times. You will not understand until you have studied all of it well. It is not difficult but many times the information is subtle.

Words: The Manipulation of Authority

Words. Those neat little things humans have developed with which to communicate. Those neat little things that can be twisted and manipulated to give the appearance of propriety. Those neat, little things which are used to subvert the Constitution.

There are literally thousands of ways in which the federal government uses words to hide, steal, and lie to the people of the United States. The following is one of the best examples and will hopefully provide the reader some insight into what to look for when studying governmental behavior.

Now we all know how good the Constitution is since there has been need for ONLY 27 amendments in its history. How many of you know that there have been more than 3000 amendments offered during the life of our country? It has proven too difficult and results all too often in failure when the government offers amendment of the Constitution for the people to approve. So, the truth is that the government has simply usurped powers out of expediency.

As most understand, treaties are agreements between nations. The President, by and with the advice and consent of the Senate, is empowered to make treaties. Now this seemed like an excellent method to the Framers. An interesting note is that initially the President was left out as the Framers were of the mind that the power to form treaties was best left to the smaller of the two houses of government. It was thought that the House of Representatives would be too large to act with the necessary dispatch. The experiences with the King kept the Framers from considering the President as sole controller of treaties. So the power was given to the senate, who originally were the representatives of the states, not of the people as it is today. However, at the last minute, the President was added to the power in order to

provide a check against possible abuses by the Senate.

Our treaty-forming process is a bit time consuming and requires what can become tremendous effort to complete since 101 individuals must be dealt with just on our side of the treaty. Over the years since the U.S. was formed, various ideas about making treaties have come and gone. Today, the President uses semantics, in this case renaming a treaty to be an executive agreement, so as to by-pass or circumvent the constitution and the constitutional processes required. The President acts like a King in implementing agreements with foreign countries. And it was a King that caused the Revolution which resulted in our freedom. Are we giving up freedom for expediency? The reader is directed to the sections on executive agreements, executive privilege, and executive immunity (none of which have any textual basis in the Constitution) in The Oxford Companion to the Supreme Court of the United States for more frightening information.

If this does not alarm you, then you should simply put this book down and go curl up in a corner and wait for the end. The use of semantics has allowed our government to sneak through the Constitutional lines of demarcation and exercise powers not granted. As I have stated elsewhere, even a pinhole in the dike of the Constitution is dangerous as soon after a flood may follow. Those who have read much of this book realize that the flood is already here.

If you are alarmed, go back to your studies. Take the time to write your Congressperson. Require them to prove the constitutionality of their acts and to adhere to the requirements of a legislator included elsewhere in this book. If they do not respond, do all in your power to carry the vote against them in the next election. If we turn them out in sufficient numbers, they will come back under our control which is where the government belongs.

When the government fears the people, there is freedom. When the people fear the government, there is tyranny. - Jefferson.

The Shoe Is On The Other Foot

It is important to recognize that our esteemed Founding Fathers almost instantly changed their tune when the shoe was on the other foot. I allude to the facts that leading up to the Revolution and during the War, those battling for freedom spoke in seditious terms and used "free speech" to their own ends. Following the formation of the new government, some of the first laws passed were the Alien and Sedition Acts which made it a crime to speak in the same terms these Founding Fathers were using against the King and England seemingly only a short time before.

I would contend that the Framers were making seditious and libelous statements about the King and England. Then when the Framers gained the power they no longer wanted to allow any other person to denigrate them. If the Framers weren't behaving in a seditious manner then why the revolt?

Other areas of contention arise when people, once elected to a position of power, simply assume that the government controls put into place don't apply to them.

The issue of presidential executive orders or presidential directives is one of long standing contention. The President is not endowed by the Constitution with legislative powers. The above mentioned acts, regardless of the necessity of the act, are legislative powers and as such cannot be constitutionally exercised by the President. Congress is not empowered to delegate any of their powers to the President or any other government official. But when the shoe is on the other foot, expediency overshadows legalities and those in power do whatever they so desire.

Even from the beginning of our new country, questions have been raised concerning the propriety of allowing legislative powers to be exercised by those outside Congress. Congress has accepted legislation written by bureaucrats and elected officers which

technically is a violation of the Constitutional provisions on starting legislation. This is a violation of the trust granted from the people to Congress. So when the new guys moved into power, they decided if it was a good enough method for the old guys, it would work for them too.

For many years, I have questioned the legitimacy of lawyers serving in legislative capacities. Once a lawyer passes the bar, the lawyer becomes an officer of the court and as such is a member of the judicial branch of the government. If as is exemplified in our Constitution, our government is based upon separation of powers, i.e. legislative, judicial, and executive branches, then a member of one branch participating in another branch would violate the separation of powers. How unattached from the judiciary can the people expect a member of that group to be when faced with developing laws? Will the lawyer truly represent the best interests of the people or will the sway of transferring power through legislation cause the lawyer to produce legislation beneficial to other lawyers and the judicial community as a whole. Will the legislation offered and passed by this individual result in more employment for lawyers and such. I have been told that this is splitting hairs but then isn't that what many of our laws do? So when the shoe is on the other foot, we sure tend to measure things differently!

Absolute - Powers or Rights ?

The current "interpretive" methodology for the Constitution establishes that within the sphere of powers granted to the federal government, the federal government reigns supreme. This is to say that any power which the Federal government is granted cannot be exercised concurrently by states. This same methodology is used to restrict the rights of the people by stating that the rights enumerated in the Constitution are not absolute, i.e. that the government may restrict these rights. Of course, only members of the government are knowledgeable enough to know the limitations and restrictions!

The government formed by the Constitution was and is supposedly one of limited and enumerated powers. All restrictions on the powers granted are to be found within the Constitution itself. In understanding a limited government, one must recognize that this means a government restricted to specific actions as indicated by the grants of powers from the people and bound by any and all restrictive phrases found within the document which grants the powers.

The Constitution is like a contract between the people and the government which the people create. To be legitimate, this government must be beneficial to all members of the society equally and cannot legitimately pass any laws which benefit one member of class of members to the detriment of others. And all laws passed by this government must conform absolutely to the supremacy of the Constitution within the confines of its restrictions. The Bill of Rights are a place of differing contentions in the Constitution. The government necessarily wishes to restrict the extent of the rights so that it may exercise power and control over the people.

The Constitution contains the supremacy clause which states "This Constitution, and the Laws of the United States which shall

be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

One can see that there is no exception offered and that the last phrase binds all judges to this obligation to observe the supremacy of the Constitution. Nowhere within the Constitution are there any limitations on the rights which are enumerated within the Bill of Rights. The Courts have, however, followed a pattern of abuse by deciding that the grants of power are absolute, i.e. supreme within their realm, but that the rights enumerated in the Bill of Rights can be restricted by the government as necessary because the powers are supreme. The Courts have decided that even with a recognized limited government system, the granted powers are absolute and the rights retained by the people are not. This contention falls flat on its face when one unbiasedly recognizes that the framers placed no restrictions within the Bill of Rights, that this contention violates all premises upon which our government is founded, and that the contention that rights are not absolute violates the supremacy clause of the Constitution itself. Now the Courts are looking at the Constitution backwards. The Constitution first grants powers and following each grant, restrictions are made which limit certain powers. If one properly reads the Constitution, one notices immediately that the Bill of Rights follows the grants of powers. One can also see that the Bill of Rights contain amendments "of" (see essay on "of" versus "to") the Constitution which makes these amendments restrictions upon on any and all conflicting grants of power which came before the restricting Bill of Rights. No where within the Bill of Rights or following amendments are restrictions on the people's rights enumerated.

Why does the government desire to control the people's rights? The core reason is power. The government, be it the Congress, the Executive, or even the Courts, desires absolute control over

the people. Regardless of the concept of government, government can never be of the people. Government is always a small group of persons who hold a decided advantage over the majority of the people since this small group of people controls the greatest coercive force. The rights of the Bill of Rights were enumerated to prevent the U.S. government from turning rights into privileges but the Courts have done just that. At the state level, the supreme Court removed the protections of the Bill of Rights in an 1833 decision. Following the 14th amendment, the Court has decided the applicability of various rights against the state governments BUT only within the restrictions the Court decides apply. The Court has even added exceptions to the Bill of Rights which do not appear there in the name of "protecting" the people from each other.

Against governmental intrusions, the rights of the people are absolute. The people created government and granted only powers which the people thought necessary to that government. The mindset of the Framers was always one of suspicion against the unfettered abuse of power from which they came and thus the only plausible understanding of the Bill of Rights is that these rights are absolute in their restrictions against the powers of the government.

As long as the government and its officers are free to decide the meaning of the Constitution's phrases under the lie of a "living" document, the people will lose their rights and retained powers. For example, judges have decided that they are immune from retaliation for an incorrect decision. There is nothing in the Constitution to support this lie but it continues. Judges have also pushed to have laws passed that they can use to convict individuals for making threatening statements to the judge, but this same protection is not afforded to the average citizen, is no where to be found in the Constitution, and violates the First Amendment. Speech is protected and there is no valid way for a judge to decide that the spoken word is not speech under the context of the Constitution. Who decided these issues? Why of course, those

in power.

When the government comes to decide virtuous behavior and controls all facets of life, we no longer have freedom. The current behaviors of society are not examples of the exercise of freedoms but are simply examples of anarchistic, uncultured barbarianism brought about by the relegation of the central culture of the United States into the background.

The Scope of the Amendments of the Constitution

Discussions and clarification of the extent of or scope of the amendments of the Constitution is a constant battle ground. I take the view that the amendments are absolute while those in power take the view that the amendments are not absolute.

For the purposes of this essay, one must first recognize the three possible points of view which may arise when reviewing the breadth of the amendments. In terms of amendments, this essay applies most directly to the Bill of Rights. The other amendments are not ignored merely less important in this discussion. The greatest breadth takes the amendments at their words and applies them wholly against the powers granted by the Constitution to the government. This is the absolutist point of view. The minimalist view would state that the amendments have no affect on the powers. The last point of view is that of the non-absolutists and is be that the amendments are not absolute and their limitations fall somewhere between the absolutist and the minimalist points of view.

Let's first look at the minimalist point of view. The minimalist would state that these amendments have no proscribing power on the powers granted by the Constitution to the various governmental entities. If this were the case, then why even offer amendments of the Constitution? If the amendments proscribed nothing, they were wholly unnecessary and were a waste of time. If the minimalist point of view is an accurate measure of the proscription power of the amendments, then offering the amendments perpetrated a fraud upon the citizens which still stands to today.

The second point of view is that of the non-absolutist. This POV takes the position that the amendments modify the powers but they are not absolute in their proscription. This POV holds that the amendments may be themselves proscribed depending upon

circumstances. There is a major flaw in this position. To what point will the line be drawn where proscription of the amendments is not to pass? Who will draw the line? Will the citizens decide? Will the congress decide? Will the President decide? Will the judiciary decide? And when the Congress or the President or the Judiciary or even the attitudes of the Citizenry change, who will then decide? Will this line bounce up and down between the minimalist and absolutist points of view? The middle ground position is on quicksand and cannot hold. Thus the middle ground position is untenable. Agreement cannot be reached as to where the proscription lies.

So we are left with the absolutist position which is defined exactly by the words used. The absolutist point of view states that Congress must at all times and in all situations proscribe their actions, their laws, their behavior to conform to the limitations placed upon them by the amendments of the Constitution. State and local officials must also proscribe their actions, their laws and their behavior to conform to limitations which the Constitution places upon them. The minimalist point of view would place us in a position where there is no need of the amendments. The non-absolutist places us in an ever-changing position where the whims of a few determine the rights of the many.

The only tenable position is that of the absolutist. Under the absolutist position no variation, no interpretation, no proscription of rights is legitimate. The proscriptions the amendments place on the power of the federal government are absolute. Taking any other position on the absoluteness of these rights allows for the government to circumscribe or proscribe the amendments. Without accepting the amendments as absolutes, the majority can then suppress the minority. In a nonabsolutist position, rights become privileges to be granted and removed in the name of the safety of the people, a position wholly against the desires and intentions of the Framers.

Why was it so long before many departments were created?

The United States was formed out of war more than 220 years ago. For nearly 200 years, many of the current federal bureaucracies did not exist. During the painful and dangerous Great Depression of the 30s and following the tumultuous 60s, the United States under went a series of changes. Those elected to represent the people and act in our behalf began to expand their power holds. Step by step new grabs were made and the people, in one instance fearful of the consequences of no work and in the other wanting to correct the perceived ills of the country, accepted encroachments one upon another. During the 70s, departments such as the education department and the EPA were created where none had existed before. What took so long for the government to realize the need for these departments? Did the people finally learn something about governing themselves? The answers are resounding NOs! Government in the past was always attempting to expand the boundaries of power. Fear of the people kept the government from actively appearing power hungry. However, the turmoil of the 60s brought out a new set of voters who were willing to give away liberty for a bit of safety. This voters were ignorant of the past and were not willing to learn from history. These voters were seemingly living in a world not unlike that of teenagers wherein "it couldn't happen to them." And so a vast transfer of power unconstitutionally occurred. The extent of this transfer is only now becoming clear as governmental controls and governmental intrusions have become an everyday part of our lives.

The Constitutional position on departments such as those mentioned above is that they are patently UNconstitutional. The reason they took so long to create is that prior to their creation, those we elected were fearful of grabbing for too much too soon and were working their way into our lives slowly but surely. Then the ignorant masses of our country stepped up and called for the

creation of governmental entities to take care of us. In so doing, the government and these do-gooders threw out the Constitution, or at least what little was left of it. The liberal socialist Leviathan reared its ugly head as our government began to decide what is right for us.

What can we do? We can vote against those who would unconstitutionally burden us. We can ignore and fight in court the illegal regulations. We can continue to battle those who would be our masters and remind them that they are in reality OUR servants.

Why? That's a Good Question!

As you read this series of essays, you will continuously find yourself asking why. Why could and why would our elected servants behave in such a manner? Why are we taught that the Constitution protects us when, in fact, those in power simply ignore the Constitutional restrictions and protections? Why are we so blind as to not see what has been occurring?

Then, once you overcome your amazement, you will need to decide what you will do to help put our country back on track. One of my decisions is to vote against ALL incumbents for a number of elections until those who are elected realize they are our servants and NOT our leaders. Another of my decisions was to write this book. The general lack of education about our form of government and the constitutional restrictions imposed on it is the greatest obstacle of our time. Education is the only way to keep those we send to operate our country from screwing us. I have at times wondered if the people of the United States just aren't deserving of the government they have created.

Yes, I point at the people of the United States because it is they who have elected and retained those in power. It is the people of the United States who have reached to grab what they believe is theirs in the form of handouts and benefits. The federal government has wasted billions of dollars of its citizens' monies in unconstitutional behaviors such as aid to foreign nations, disaster aid, educational funding, welfare, and all the other so-called social programs. Once one understands the limitations of the powers of our government one will understand that our Constitution forbids the government from developing and implementing all socialistic programs. The key point is that the federal government can spend monies only for three items, the debts, the common defence, and general welfare.

The modern human is consumed with an innate laziness. The human today wishes to be entertained and to be taken care of rather than to have to exercise responsibility. And so as programs were offered by the government, seen by many as that great paternal or maternal entity, a large portion of the people accepted the governmental intrusions as an acceptable exchange for security.

Some might attempt to argue that general welfare includes taking care of the people individually but neither the historical evidence nor the text of the Constitution supports that invalid position. "General welfare" means expending monies which benefit ALL, not just one or even many, but ALL. Others may jump up and lay claim that common defence includes natural disasters but again the text and the history oppose that position. Since the expenditure contains restrictions as to who can benefit, they are neither general nor common to all and thus the expenditures are unconstitutional.

Why do not others see this as I do? Why has this been allowed to continue? Many do but they are beaten back. The answers lie in people and their attitudes. Those who gain power refuse to give it up. Those who gain from the redistribution of wealth and caregiving of the government refuse to give up their share of the pie. The historical evidence is there. Even the Court has been negligent in their duties for reasons of practicality or prudentiality.

The system penalizes those who work hard and rewards those who are parasites on the world. As one grows older, one comes to realize that the parasites vastly outnumber the workers.

Delegation of Power

Quite often Congress and the President delegate their powers. However, there is absolutely no provision for the delegation of authority or power anywhere nor for any branch in the Constitution. Transfers of power require a separate grant of power with the approval of the people by way of amendment. But the common cry as to the necessity of these delegations is that the various branches cannot accomplish their workload. However, the workload would be greatly relieved if the federal government would merely reduce it actions to those which are Constitutional.

The grant of powers is made by the people specifically to the Congress or to the President or to the Judicial branch. The trust is from the people to each of these three parts of the federal government. In none of the enumerated transfers of power does there exist even an inkling of indication that any delegation of authority can be made.

We the people give Congress the powers of legislation on certain, limited subjects. If the Congress allows a department or other individual, group or agency to legislate, then Congress is guilty of breach of trust. All such regulations and rules made outside of Congress, and in many constitutional readings even those offered/ authored by anyone other than a member of Congress, are null, void, and patently unconstitutional. If Congress finds itself too busy to handle all legislative needs, then quite possibly it is because Congress has stepped outside the bounds of the Constitutional grants of power and is exercising powers Congress is not intended to exercise. The simple fix is to return to constitutionality in all actions and the problem of overwork, and with it any need to delegate authority, will go away.

We the people give the President specific jobs to do for us. Often, the President claims to be too busy and needs to delegate authority

to another so that the President may handle the more important work. Once again, if the President would restrain from stealing powers not granted, the workload would desist and the President would be able to return to constitutional behavior.

We the people gave certain authorities to the Courts. At this point in time, I am not aware of any delegation of authority from the courts. It is my opinion that the overwhelming desire for power and the aristocratic behavior of the judiciary keep them from delegating any authority in efforts to maintain as much power as they are able.

Some may claim that the necessary and proper clause provides constitutionality to these acts but this is not so. Since the trusts are to each branch specifically to those who are members of each branch and any delegation of power violates the trust. Legislative actions are granted solely to Congress by the people. When Congress allows any agency, and especially an agency of a different branch such as those departments under the executive, to legislate in their behalf, the Congress has violated the people's trust and the Constitution. Too heavy a workload could make delegation necessary but since the grant of power was from the people to Congress, its subsequent transfer is not proper. And the necessary and proper clause applies only to Congress, it is not either directly nor implicitly granted to the other branches. The Framers were careful in their selection of words and their transfers of powers. Each and every necessary power was granted and placed in its own proper position in the Constitution.

If the delegation of powers was proper under the Constitution, Congress could grant the President the power to tax or to write legislation or to exercise any and all of the powers of Congress which, based on the Federalist papers, were specifically and unquestionably powers granted only to Congress. The Constitution provides no power to selectively delegate powers or to delegate at all. The powers were separated in order to protect the people from a tyrannical government. The spirit and the letter of

the Constitution leave no place and allow no question as to the unconstitutionality of delegation. Allowing the delegation of authority would jeopardize our entire form of government and violates the central premise of separation of powers and the granting of specific powers to each branch. The power of delegation makes these specific grants nugatory and wholly unnecessary.

Delegation of authority may be allowed in a corporate entity but even there it comes with only upon the approval of those who own the company. In our government of limited and defined powers, approval can ONLY be in the form of an amendment of the Constitution, with approval of the owners of the country, the people. When the Courts allow delegation of authority, they are complicit in the illegal act and become accomplices after the fact. If the various branches of government find the need to delegate authority then amendments stating so must be offered to the people and approved by the people BEFORE any action is taken.

Rules and Regulations

Court decisions allowing promulgation of rules and regulations by agencies of the government, with or without delegation from Congress, are self-serving.

Within the body of the original Constitution lies definitive evidence that laws, rules, AND regulations fall within the grants of power to the legislative branch. Under the separation of powers established by our Constitution, such grants of power are exclusive to the legislative branch. Regardless of how the various branches conduct themselves in other countries, regardless of how their equivalents in private enterprise function, regardless of the creative interpretations of the Courts of the United States, the Constitution places ALL legislative functions in the hands of Congress. Contrary to popular belief, the Constitution does NOT in any instance allow for the transfer of powers such as law making, rule-making or regulation-making to ANY other branch, department, or officer of the federal government. Even the laws, rules, and regulations for the function of the various departments are under the purview of the Congress. While this may seem in violation of the separation of powers, one need only review the various sections of the Constitution wherein specific discussions about regulation occur. Congress, as representatives of the people are to make ALL laws, regulations and rules. Any legislation not originating, i.e. being requested by, from, or under the desires of any and all persons outside Congress, is questionable as being valid legislation when one takes the text of the Constitution literally.

A review of the Constitution makes possible the statements contained herein. The Constitution directs the Congress to be the only body capable of creating legislation and the following references to the Constitution prove that laws, regulations and rules are all part of the legislative power.

The placement of law-making power is readily apparent from Article I, section 8, paragraph 4 and Article 4, Section 1, as examples.

The placement of regulation-making power is apparent from Article I, section 8, paragraph 3, 5, and 14 and Article III, Section 2, paragraph 2, for examples.

The placement of rule-making power is readily apparent from Article I, Section 8, paragraph 4, 11, and 14 and Article 4, Section 3, paragraph 2, as examples.

Now we might consider whether or not laws, rules, and regulations are equivalent. Following from the text of the Constitution one would conclude that laws, regulations, and rules are different levels of legislative capacity. Laws carry the greatest force with regulations coming in second and rules third. Regardless of the differences in extent of legislative capacity carried by laws, regulations and rules, the implication of the text of the Constitution is that regulations and rules, along with laws, may not be written except by Congress. And we must conclude that ALL laws, rules and regulations of the federal government must be promulgated by the legislative branch.

Now in the current world, the federal government has selectively altered the terms, laws, rules, and regulations, to fit THEIR desires. If regulations are not laws and various departments of the federal government can be granted the power to write their own regulations, then so be it. BUT, by Congress and the Courts taking the position that regulations are not laws, then Congress cannot make laws concerning interstate commerce for the power granted is to regulate and regulations are not laws as per the current definitions purported by the federal government itself. If we then accept that laws, regulations, and rules are legislative actions reserved as powers to Congress only and that there is a separation

of powers within the context of our Constitution, then the exercise of legislative prerogatives by the myriad of executive departments indeed violates the Constitution is a number of ways not the least of which is in the separation of powers.

It is the contention of this author that all regulations and rules not originating in Congress are unconstitutional and as such are not enforceable in the United States. Thus the rules and regulations of the EPA and all other departments of government are exercises of legislative power, a power granted exclusively to the legislative branch, Congress. Why people accept these invalid, unconstitutional actions is unknown to me but I could only imagine what the people or other officers of the government would do if Congress suddenly decided to exercise judicial powers and sit in courtrooms deciding the fate of the citizens. If it is wrong in one instance, it is wrong in all instances.

Separation of Powers
and
Lawyers

For many years, I have questioned the legitimacy of lawyers serving in legislative capacities. Once a lawyer passes the bar, the lawyer becomes an officer of the court and as such a member of the judicial branch of the government. If as is exemplified in our Constitution, our government is based upon separation of powers, i.e. legislative, judicial, and executive branches, then a member of one branch participating in another branch would violate the separation of powers. How unattached from the judiciary can the people expect a member of that group to be when faced with developing laws? Will the lawyer truly represent the best interests of the people or will the sway of transferring power through legislation cause the lawyer to produce legislation beneficial to other lawyers and the judicial community as a whole. Will the legislation offered and passed by this individual result in more employment for lawyers and such. I have been told that this is splitting hairs but then isn't that what many of our laws and legal decisions do?

The governmental design established by the Founding Fathers of the United States of America was one with the major powers separated into legislative, executive, and judicial branches. This separation, based upon the experiences of the Framers, would best protect the people from the government. In the Framers' experiences and in the experience of most of the peoples of this planet, the government was and is most often the cause of human suffering, especially the suffering of its own people. Few countries can ever lay claim to not having violated the rights of its people at one time or another.

Within the Mother Country of England, power was concentrated in too few hands often with the result that power corrupted

individuals and the people suffered. The separation of law making, law enforcement, and legal decisions into separate independent powers was seen as the best way to protect the people from their government.

But power as always has corrupted those entrusted. The Executive branch undertakes the passage of legislative acts claimed as privilege of office and marked as "executive orders". The Judiciary have acted at times in concert with the other branches and at other times in fear of those same branches. Prudential determinations of actions have caused the supreme Court to sidestep their duties at times leaving the people at the mercy of unscrupulous power-mongers.

One of the most common violations of the separation of power is the election and subsequent serving of an attorney in any legislative or executive capacity. An attorney who has passed the bar exam and is admitted to law practice is an officer of the court. As an officer of the court, that attorney is a member of the judiciary. Thus in running for, being elected to , and serving in a legislative or executive office, that attorney violates the separation of powers created in our founding document, the Constitution. That attorney also becomes embroiled in a battle of "Conflict of Interest." What attorney, knowing that tenure in a legislative position is tenuous at best, would not offer and support legislation that benefits the interests of that attorney, especially those interests the attorney may return to after leaving office?

The issue of attorneys in office is similar to the issue of being judge, jury, and hangman. Justice cannot be served when the outcome of legislation can directly effect the actions of those entrusted to protect us. Who among us can claim to be so honest to have never been tempted? Let he who is without sin cast the first stone!

A lawyer is not removed from the bar even upon retirement or the cessation of practice. Only through disbarment could an attorney be lawfully separated from the judicial branch of government.

Only then can an attorney legitimately hold an elected office in the legislative or executive branches. But then one must question whether an attorney, once disbarred, could even be elected to political office.

The corrupting effects of power in America has reared its ugly head in the Courts. The supreme Court has developed “guide lines” which allow the court to step out of any action that the judges deem could end in repercussions to the members of the Court. The Court has in many cases claimed that certain rights violations fall under the category of political rather than judicial scrutiny. In cases where the Court might bear the wrath of the Congress, the justices have opted out through prudential claims, stating that judicial action in such and such a case is not prudent. Another copout by the Court is that while the action is unconstitutional it is not practical to correct it, so the Court will let it be. The judiciary in bending to the powers of the legislative and executive branches does a great disservice to the people. By not taking a proper stand, the rights of the people are trampled upon and the freedoms so many cherish are weakened or even lost.

Fundamental Law Theory

"With this in mind, let us take a look at this essay with the following in mind: the fundamental law theory is based in part upon the proposition that the agencies it creates are subordinate to it and must operate within its confines. To quote Hamilton again, : 'To deny this proposition would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid.'" In defense of the Constitution, Carey (1989).

Canons of Chief Justice John Marshall on the Determination of Constitutionality of Governmental Acts

"1st. The nature of the employed power exercised as a means must be legitimate; in other words, no power will be employed as a means to any end which is not legitimate, that is, not within the powers granted by the Constitution. The ancillary legislation must be a necessary and proper means to accomplish an end which is clearly constitutional. Thus Mr. Hamilton, while maintaining that Congress could create a bank to carry out the fiscal operations of the government, says, "The only question in any case must be, whether is (the corporation) be such an instrument or means to carry into execution any specified power, and have a natural relation to any of the acknowledged objects of government. Thus, Congress may not erect a corporation for superintending the police of the city of Philadelphia, because they have no authority to regulate the police of such city. But if they possessed the authority for regulating the police of such city, they might, unquestionably, create a corporation for that purpose." In other words, the power to create a corporation as a means to and end within the powers of Congress was constitutional; to create it for means not within the powers of Congress was unconstitutional.1"

"2nd. But though the end be legitimate and be within the scope of the Constitution, no means are appropriate which are not plainly adapted to that end. The means must not only be adapted, but plainly adapted, to the constitutional end."

"3rd. No means are appropriate which are prohibited by the Constitution. The express prohibition condemns such a construction of those words; for how could the Constitution expressly condemn what is in it was "necessary and proper" to be done?"

"4th. No legislation can be proper which is inconsistent with the letter and the spirit of the Constitution; hence the trial and

conviction of Milligan to death by court-martial, though claimed to be a means for the preservation of the Union, was held unconstitutional, because such trial and conviction were forbidden by the Constitution;2 and where, taking the whole Constitution in its distribution of powers between the departments of government, and the relation it establishes between granted powers to the Federal government and reserved powers to the states, the act is not in accord with the whole scheme, but inconsistent with it, - it is unconstitutional.3"

"5th. If Congressional legislation be inconsistent with the reserved rights of the States and their autonomy, it is unconstitutional.4"

"6th. If legislation be contrary to the trust nature of the power of Congress - that is, to the duty which Congress owes in respect to the subject matter of the legislation to all the States, or to any one of them, — it would be contrary to the letter and spirit of the Constitution.5"

"7th. If the power be granted for one purpose, it is not proper, and therefore not constitutional, to exercise it for a purpose either forbidden, or not within the scope of its granted powers. This is a fraud upon the Constitution of the United States. It does by indirect what it cannot do by direct legislation, and operates upon a subject which is put beyond its reach by the Constitution itself. Judge Marshall in Gibbons v Ogden6, speaking of the Federal power of taxation, said: "Congress is authorized to lay and collect taxes, etc; to pay the debts and provide for the common defence and general Welfare of the United States. This does not interfere with the power of the States to tax for the support of their own government; nor is the exercise of that power by the States an exercise of any portion of the power that is granted to the United States. In imposing taxes for State purposes they are not doing what Congress is empowered to do. Congress is not empowered to tax for those purposes which are within the exclusive province of the States. When, then, each government exercises the power of taxation, neither is exercising the power of the other." This

shows distinctly that it is an unconstitutional exercise of the taxing power by Congress to use it for any purposes which are within the exclusive province of the States. It thus operates by indirection upon subjects reserved to the States, by exercising a power granted for one purpose to accomplish another, upon which it has no right to exercise jurisdiction. It is fraud upon the Constitution of the United States by an indirect use of a granted power in order to pass the line of demarcation which the Constitution has prescribed between the granted and reserved powers. It is not "proper," for it is a means used by Congress to accomplish an end which is not legitimate because it is not within the scope of the Constitution.7"

"8th. Cases may arise where the power granted to Congress is exclusive; that is, the possession of the power by Congress is absolutely inconsistent with the exercise of the same power by the State. Thus Mr. Hamilton pointed out8 that these exclusive grants to the Federal government might be either from the express term "exclusive legislation;"9 or where the grant of power to Congress in one clause is followed by a prohibition of that power to the States; or where Congress has power to establish a uniform rule of naturalization and uniform laws on the subject of bankruptcy.10 In such cases the establishment of a uniform rule by Congress would exclude and annul the effect of any rule on those subjects enacted by the States."

1. Hamilton's Works, 115-116, 130-31, 136.
2. Milligan's case, 4 Wall. 2, 5th amendment to the Const. US
3. Collector v Day, 11 Wall. 113
4. Id. 3
5. Dred Scott v. Sanford, 19 How. 393, 448-52
6. 9 Wheat 1, 199
7. See Chief Justice Marshall canon ante Para. 195, 4 Wheat 416.
8. Federalist XXXIL.
9. Const. U.S., Art. I, Sec.8, clause 17.
10. Const. U.S., Art. I, Sec.8., clause 7.

*From JR Tucker, 1899, Book I.

Natural Rights

Rights, what are they? We hear of civil rights. We hear of political rights. Some speak of privileges as though these are rights. However, none of what most of us commonly consider as rights are such. Rights, to be properly termed as such, must be natural rights. These are the rights endowed upon man as an intelligent, thinking being by that power which caused the creation of man. All the other rights we hear discussed fall into the categories of privileges or immunities. First what are privileges and immunities.

Privilege is a grant of power to enable one to conduct oneself in a particular manner, i.e. the privilege of driving. As it is granted, so may it be removed as easily. Privilege was separated by the Framers at the founding of our country. From this separation were born rights, rights not subject to the whim of a man or government. Yes privilege still exists but privilege may no longer take from man what is rightfully man's.

Immunities too are grants from the superior to the subordinate. But in the United States, the subordinate was and is the government so the government is in fact not empowered to grant immunities. Immunity is a grant of exemption from a legislative decree. Of interest to note is that the formation of our government is based upon limited grants of power to the government from the people as sovereign beings. Thus how can something that is created by the people with limited powers turn around and grant rights back to the sovereign power from whence it sprang. The fact is that it cannot. To become so powerful the subordinate must steal sufficient power from the superior. The superior becomes then the subordinate and is at the will of that which previously was ITS subordinate. Our government, run by those willing to steal power and by those who unknowingly follow those who did, has become our superior.

When rights are given by that which holds the power, they are not

truly rights. Rights belong to every man by virtue of birth. Rights are not endowable nor alienable nor can they be transferred. Rights exist as does man. Rights belong to man. There are within the realm of natural rights restrictions upon the exercise of those rights.

All men, using the term to mean the species homo sapien sapien, are equally endowed with rights to life and to liberty. Man's rights include all the freedoms associated with maintaining and perpetuating life. The right of self-preservation is paramount among the rights of man. The limits occur when man encounters another man. The basis of natural right is that ALL men share equally of the same rights but these rights may not extend to the 2 point of infringing upon the rights of others. Rights extend only as a shield and only to the point at which one's rights contact the rights of another.

The Framers recognized these natural rights in what has become known as the Bill of Rights. Much ado has been made about these rights but few people at all know that the Supreme Court stole these rights from the people in 1833. Since that time the Court has decided which of the rights it is willing to give back to the people, but in so doing the Court has made our natural rights into privileges.

This judgment was in error. The reader is directed to the essays on Chief Justice Marshall which discuss his failings to fully grasp the Bill of Rights and the intentions of those whose thoughts were not left for the world to know. But taking the words on their naked text and in the context of the body of the Constitution only one understanding can be legitimately made and that is that the Bill of Rights is applicable to ALL governmental bodies in the United States.

The Framers also recognized that they did not know all of the rights of man nor could they list all natural rights. Following their great, intellectual pattern in the Constitution, the Framers added

the Ninth Amendment which protects all rights not enumerated in the Constitution.

Property Rights

It cannot be argued by those espousing Darwinian theory or by those who follow creationism that the Earth which consists of lands and trees and animals does not preexist man. It cannot also be argued against that man predates society and society predates government. Therefore the argument that property rights are a vesture of society is invalid. And following from this same discussion, it can be seen that forfeiture, claimed as the right of society which grants property rights to the individual, is an illegitimate misunderstanding of the truth. The right of society to enact forfeiture laws rests upon property rights arising from society but since property preexists man and man predates society, society cannot be the originator of property rights. Property and man's rights to property predate society and government. Should society desire a man's property for any reason and should society follow due process to obtain ownership of the property, society is required to make just compensation to the owner.

There are literally dozens of books which contain large amounts of discussion concerning property rights but the entire argument is reduced here to it's most basic level. No more need be said or argued. Those who cannot grasp what is stated above are simply too ignorant to understand or are on the side wishing to steal power and with that power to steal property, as commonly occurs today. No more time should be spent in trying to convert them.

Rights

A common assumption and misunderstanding is that the Constitution grants rights to the people. Lawyers, the media, and many of the people mistakenly claim "Constitutional right." This is patently incorrect. The supreme Court has built upon this fallacy through "creative interpretation" of the fourteenth amendment (Berger, 1996). But, the fourteenth amendment is not concerned with rights. The fourteenth amendment IS concerned with privileges and immunities. The rights enumerated in the Constitution come from God as natural rights and are endowed upon all humans, whether in the United States or elsewhere. The Bill of Rights enumerates the most basic rights of mankind and the rights thought of utmost importance by the Founding Fathers as the center of liberty. The list is by all means not complete but all rights not listed are protected under the Ninth Amendment which states:

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

The word, retain, in this amendment also proves that rights existed BEFORE government and did not come FROM government.

The Supreme Court in U.S. v Cruikshank (1876) agreed that the rights enumerated in the Constitution preexisted the Constitution and the formation of the Federal Government, and did not then nor do they now depend upon the Constitution for their existence. One must take this issue to its fullest extent. Since the Constitution grants no rights and no rights depend upon the Constitution for their existence the Congress cannot exercise any legal control over these rights as was determined in US v Cruikshank (1876). The Constitution has not been altered with respect to the basic rights listed within the Bill of Rights since the 1876 ruling.

The Constitution has been changed with respect to voting rights

but one must recognize that voting rights are not rights from God but are actually a privilege of membership in society. As a privilege, voting falls into a separate category from the basic rights listed in the Bill of Rights and respecting the amendments of the Constitution, Congress still has no power over rights.

In short direct terms, this means the Civil Rights Act of 1965 and ALL subsequent civil rights acts, regardless of intent, are unconstitutional and the power to enforce these laws was stolen by Congress from the people. The Courts have misinterpreted the fourteenth amendment in order to force their beliefs and moral values upon the people of the United States. These decisions while coming from our highest court are not binding upon the people since the people are the ultimate and last resort in all cases of controversy (Blackstone, 1765). Neither the Courts nor Congress is empowered to alter the meaning of the words in the Constitution. Intent, along with prudential, ethical, and doctrinal interpretations, have little or no bearing since those who ratify do so only under the color of the naked text. The only legitimate way for Congress to pass and the Courts to empower these laws is following amendment of the Constitution, asking the people for permission to hold and use such power.

All too often rights and two other terms, privileges and immunities, are confused. The Fourteenth Amendment is touted as protecting rights but a close reading of the amendment proves it is about privileges and immunities. Only deep within the Fourteenth amendment does the word, right, occur and that is in conjunction with voting rights. One must ask what privileges and immunities are as compared to rights.

Of utmost importance is that rights come from God while privileges and immunities come from society and also from government. A privilege is an ability granted, i.e. a driver's license. This same privilege can be legislatively or judicially removed from a person. Rights cannot be taken away legitimately except by God. Immunities also are not rights but are grants of freedom from action by

society or government for a particular behavior, belief, etc. Again immunities are not rights for just as they are legislatively given these immunities may be legislatively taken. Had the Framers meant privileges and immunities where they meant rights they would have used the proper words. Distinctions abound in the Constitution showing that privileges and immunities are separate from rights. Read the document, see for yourself.

Our Founding Fathers knew privileges and immunities and that these came from the King or from Parliament. The Founders also knew that these privileges and immunities were taken as easily as they were given. The Framers of the Constitution, in full recognition of privileges and immunities, separated rights from privileges and immunities to protect those rights from governmental tyranny. This conscious decision by the Framers separated us from the rest of the world wherein the rulers held power of every man and brought the idea of a higher power in greater control into the lives of every person.

So what are natural rights and how far do they extend? Natural rights are those rights of man which are his simply by virtue of birth. Central to these rights are life, liberty, and pursuit of happiness. Most people have absolutely no understanding of theses terms. There are incorrect beliefs concerning the meanings of liberty and pursuit of happiness.

Liberty to many means an absolute freedom but this is not the liberty of which the Framers spoke. Liberty in the context of the founding documents is the right to move oneself, family and belongings from place to place without restriction. It had no greater meaning. Even if one takes today's broad reading of liberty, the restrictions placed upon liberty by natural law exist.

These restrictions are such that one's natural rights extend only to the place where one's rights do not interfere with another's. Thus actions by one which impinge upon another are not legitimate and

are not rights granted. All liberties exercised by one individual can only extend to the point where those liberties do not affect others. Natural law and natural right, while granting man the most extensive rights, limit man to do no thing which affects another without the other's permission.

The idea of pursuit of happiness, in the words of the Framers, meant the ownership of personal and real properties. The extensive interpretation which is often given to this phrase today was not known to the Framers. Since the Constitution and other founding documents are not open to reinterpretation but must be recognized as limited by the naked text of the time, this broad inclusion of topics within "the pursuit of happiness" is not to be made. In order to properly expand upon the sense and meaning of the phrase, amendment of the Constitution is necessary. Amendment is what makes the Constitution a living document; interpretation is not.

Civil Rights in the United States

Civil rights in the United States are but a lie clothed in invalid legislation. In 1866 the US Congress attempted to pass the first legislation aimed at ending certain violations of rights which were occurring in the South. The Civil Rights Act of 1866 embodied the core rights of life, liberty and the pursuit of happiness. These are sometimes referred to as constitutional rights. There are, however, no constitutional rights. Those rights so commonly alluded to in the Constitution are not constitutional rights but are natural rights endowed by God. It has been adjudicated in US v Cruikshank (1876) that these rights preexist the Constitution, were not granted by the Constitution, and were not and are not within the scope of the power of Congress upon which to legislate.

So along comes the Congress of the 1960s at the urging of a part of the populace to make the people do "good" and a broad new set of laws are born. These laws are premised upon the power to regulate commerce and a creative interpretation developed by Congresspeople and the Courts in order to steal power. That creative interpretation is that whatever Congress deems to "affect" interstate commerce falls within the power to regulate commerce. This could not be further from the truth. A quick perusal of the 18th amendment and judicial decisions such as Gibbons v Ogden proves that this interpretation is taking the commerce clause beyond the breaking point. A point which must be made is that "rights" granted by fiat, that is by law, are not rights at all. These "rights" are properly termed privileges and immunities. Along with recognizing the correct categorical placement of these "rights" must come the realization that any "right" given can as easily be taken away. The reader is asked to consider what the reader's position on the current law would be HAD the actions of the Courts and Congress been opposite to what they have been. Think about it!

The passage of the Civil Rights Acts of 1965 was also premised upon a convoluted interpretation of the Fourteenth Amendment. A MAJOR point about the Fourteenth Amendment is that is does not speak of rights, except for the right to vote in section 2. The rest of the Fourteenth Amendment is concerned with privileges and immunities, which are discussed in the essay on that particular topic. Privileges and immunities to be exact are grants FROM the government, and not naturally endowed . As such, privileges and immunities given are just as easily taken. Only fools would accept their natural rights under the improper labels of privileges and immunities for this is but a way for the government to control who has and to what extent rights may be exercised. This is contrary to the Framers intent and the clear, concise words of the U.S. Constitution. Berger (1996) also demonstrates that the fourteenth amendment does not extend as broadly to civil rights as is claimed by the Congress and Courts. This book is available from Liberty Fund(tm).

Innocent Until Proven Guilty: The Non-Constitutional Right

In America, most people grow up believing that under our laws, one is considered innocent until proven guilty. This myth is perpetrated upon the people and perpetuated by a legal system that has time and again stolen power from the people to expand its own realm of control.

The Constitution of the United States contains absolutely no guarantee that one will be treated as "innocent until proven guilty." The Fifth and Fourteenth amendments contain phrases protecting the right of the accused to due process. It is this due process that Americans have come to call "innocent until proven guilty." "Due process" is what the Courts say it is.

The concept of "innocent until proven guilty" is built within the confines of common law, that group of laws decided, not by legislative actions, but by judges and based on past precedent and existing legal discussions and societal needs. American common law is all that stands between one and the reverse of "innocent until proven guilty." Changes in the "interpretation" of past laws and current and future societal needs may alter the due process of our legal system.

Within the confines of the civil courts, one is considered neither innocent nor guilty until one proves innocence. This stark difference between our two basic legal systems is why in many instances the government "goes after" its citizens, not for criminal actions, but in civil actions. Once the case is brought forth in a civil court, the defendant must prove innocence. Due process is still adhered to in that court procedures and laws are followed BUT the individual brought into the action as defendant must prove innocence. For those who watched the O.J. Simpson civil trial, this should explain the different finding than that of the criminal trial. In the criminal trial Mr. Simpson was assumed innocent and

the duty to prove guilt fell upon the prosecution. In the civil trial, the prosecution needed merely to present evidence that satisfied the court that standing, the right of the trial to occur, existed. Mr. Simpson's legal team was then required to present proof that Mr. Simpson did not commit the crime.

While current practice, and it is only practice, is to follow a due process wherein the defendant is assumed "innocent until proven guilty" during criminal trials, it is a practice that can be altered. There is absolutely no Constitutional protection of the right of an individual to any trial other than under "due process". And "due process" is a methodology that can be changed. Who has the power to change "due process"? Who holds the power in this country?

Privileges and Immunities versus Rights

A perusal of the majority of texts on the Constitution provide little or no information on the meanings of these two words. The supreme Court has not developed any major decisions about the meanings either. The implication is that the words are so easily recognized and commonly understood that no definitive discussion is needed. This short discussion is only to provide basic definitions and to demonstrate the differences among the terms, privilege, immunity, and rights.

For some, the terms, privileges and immunities, as used in the Constitution are synonymous with rights. However, this understanding, regardless of source, contradicts the clear and concise wording of the Constitution. The Framers chose their words carefully and specifically to fit each clause as it was developed. Carelessness in the use and interchangeability of words was not part and parcel of the writings of the Constitution. Thus, the only logical and the correct understanding of the Constitutional clauses involving, privileges, immunities, and rights is that the three terms apply to different things.

What is a privilege? Webster defines privilege as: “a law for or against a private person” or “a right or immunity granted as a peculiar benefit, advantage, or favor.” The use of the word right within the context of Webster’s second definition is contrary to the natural rights concepts of the Founding Fathers. Rights, in the natural rights concept, come only from the Creator and evidence of the meaning of rights is found directly in the Declaration of Independence.

What is an immunity? Webster defines immunity as: “the quality or state of being immune.” And immune is defined as: “free, exempt” as in “immune from taxation.”

What is a right? Webster defines right as many things. Not a single

definition of “right” in Webster is in direct accordance with the natural rights position of the Founding Fathers. The closest definition is: “ something to which one has a just claim: as a) a power or privilege to which one is justly entitled.”

If the connections as outlined in Webster were accurate then the Framers would have called the “Bill of Rights” the “Bill of Privileges and Immunities” as was used earlier in the Constitution. They, however, chose a specific word to establish the exact meanings of the amendments of the Constitution and that word was and is “Rights”.

Even within Webster’s own definitions one can see the invalidity of the use of privileges, immunities and rights in defining each other. Privileges and immunities are closely related but cover slightly different areas. Rights are totally independent for if 2 rights are privileges and immunities then rights may be granted or taken by government. The idea of natural rights endowed by a Creator is wholly in contrast and in contradiction to the definitions expressed in the dictionary.

Thus, the determination is privileges and immunities versus rights is partly up in the air until one selects a position. If one decides in favor of natural rights then rights and privileges and immunities are distinct as would be understood from the use of the terms in the Constitution and the writings about the Constitution. Otherwise, one must accept that rights are actually privilege to be granted or removed by government at the will of those elected to office.

The monarchial point of view on rights was that the King granted them to his subjects and thus privileges and immunities in England and other monarch-ruled countries included rights. The Framers of OUR Constitution were correcting this egregious theft of rights from man by the rulers. In the development of the Constitution of the United States, rights were separated from privileges and immunities. These rights were returned to their proper owners,

the people.

Following the creation of the federal government, those elected to serve once again began their moves to place rights under the scrutiny and power of the government. The courts acted in concert by returning to the English placement of rights under privileges and immunities and relegating the United States understanding of rights into the deep dark recesses of history. The Courts not only grant themselves more power by returning to the antiquated monarchial system but the Courts also give more power to our elected servants by allowing the legislative control of rights which was at one time (see US v Cruikshank, 1876) recognized as outside the powers of government.

Rights, in the form and understanding as natural rights, are not privileges and immunities. Regardless of the intent of any law, the transfer of rights to, protection of rights by, and/or granting of rights from the federal government violate the letter and spirit of the Constitution of the United States. Those who force this return to the old system are simply tyrants wishing to expand their powers over the people, powers that were hard fought to regain through the Revolutionary War.

The authors of the 14th amendment KNEW of the separation of rights, privileges, and immunities as evidenced from the framing of the Constitution. They also knew of the court decisions which had ruled that Congress had no power over the rights enumerated in the Bill of Rights. Certain members of Congress were desirous of controlling the actions of certain states and people with respect to violations of the rights of other people. Thus it is likely that the framers of the 14th amendment purposely used the terms, privileges and immunities in the older English form, in order to surreptitiously obtain control over rights once again. The discussion of the introduction, modification and passage of the 14th amendment was specifically directed at explaining the inclusions of rights under privileges and immunities even though the Framers of the Constitution had consciously removed them from such

understanding. In my opinion, those who pushed the 14th amendment and its ratification did so under fraudulent conditions. These men argued out one side of their face all the while planning a deeper attack on American freedom.

Privileges are abilities granted by law.

Immunities are exemptions from law.

Rights are god-given not legislatively controllable.

"OF" versus "TO"

As most people recognize, the Constitution of the United States of America provides the plan for our government. This document was the outcome of many man-hours of laborious discussions and replaced the Articles of Confederation. Under the United States Constitution, the central idea is that all power resides in the people. Within the Constitution, certain powers, deemed necessary and proper, were transferred from the people and from the several states to this newly formed government. These powers are enumerated, distinct and limited. During the meeting of the first Congress under the Constitution, a series of amendments were proposed. Originally seventeen amendments were placed in discussion but following the movements through the various committees and both the House of Representatives and Senate, the number of amendments was reduced to twelve.

These twelve amendments were NOT known as the Bill of Rights at the time of their offering. One who reads the original twelve amendments will realize the veracity of this statement since the first two amendments had absolutely no bearing on rights. The amendments were sent to the states for ratification. The first two amendments were not ratified at the time leaving us with ten amendments which altered the original Constitution. Of these ten, only the first eight may be considered specifically a "Bill of Rights". The ninth states the obvious but was a necessarily required disclaimer that the first eight do not cover all rights retained by the people. The tenth, the so-called "State's rights", does not cover rights at all but defines the limits of the powers of the federal government by stating that all powers not granted reside with the states or with the people. States have no rights only powers granted to each state from the people of that state because in the United States only the people are sovereign and all power flows FROM the people to their properly elected and functioning government.

Most importantly the amendments of the Constitution must be recognized for their value and their alteration of the preceding document. A careful examination of the preamble of the amendment provides definitive evidence of the effect of the amendments upon the Constitution. The preamble is presented here.

ARTICLES in Addition to, and Amendments of, the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.

One must read the above clause closely to notice the subtlety of the selected words. Reread it several times before continuing. The Supreme Court in Schick v. U.S., 195 U.S. 65, 68 (1904) stated that it is a well understood rule that the last expression of a lawmaker prevails over the earlier one. Thus in addition to the straight forward wording presented here, we have the Supreme Court substantiating the claim that the amendments supersede all conflicting phrases in the body of the original Constitution.

The word to note is the word "of". The distinction is that usually if not always one hears that we will make an amendment "to" the Constitution but this is not the case. The word, "of", is not a synonym for "to" and in fact changes the effect of the amendments drastically. Had the framers placed the word "to" into the preamble, I could not legitimately state the following but they did and the effect is this.

The word "of" provides indisputable evidence that the Bill of Rights supersedes ALL conflicting phrases within the Constitution and places restrictions upon EVERY power granted to Congress, the President, and all other parts of the federal government. There are no exceptions granted for any reason. The rights are absolute regardless of what Congress, the Courts, or the Executive claims. Their claims are all based on grabbing power, the greatest amount of power they can take and exercise over us. It is in the interest of the federal government to maintain a mythical

understanding and broad claims to their rights, nay "duties", to see that the Constitution is properly adhered to even if the federal government believes itself the only body with sufficient knowledge to know exactly what the Constitution means. I am being facetious here since taking the stance that the only body able to decipher the Constitution is the body it creates violates principle as well as fundamental law theory.

If one looks carefully at what is said in this essay, one can fully understand why those in the federal government are so adamant that the rights in the Bill or Rights are not absolute. The rights are absolute — but the powers of those in the federal AND state governments become highly restricted. Those in power lose their ability to exercise absolute control of the people and so they have laid claim to limitations on these rights, limitations of course which only THEY know and which ONLY they can determine.

Yes, there are some legitimate restrictions on how the rights are exercised and these are easily determined when one understand natural law and natural rights. The primary limitation is that one's exercise of rights may not inhibit or impinge upon another without that other's consent. Thus, natural law and rights establish that one may not yell fire in a crowded theater as others may be adversely affected in their rights — except that one may do so IF the theater IS on fire.

The issue is that Congress and the other branches of the federal government were granted powers. Even from the start, these powers were recognized as being highly limited. The effect of the Bill of Rights was to further restrict these powers in order to protect the people from abuses which the Framers knew to occur in ALL governments. So I contend the selection of the words "amendments of" were careful and deliberate in order to restrict the powers of the new federal government in areas where the people were fearful. This means that in the powers of taxation, of commerce, of naturalization, of bankruptcy, etc, etc (Article 1, Section 8; Article 2, Section 2; Article 3, Section 2), and in

addition to the restriction already placed within the Constitution at the time of its framing, the Framers further restricted the authority of the federal government to interfere with the rights of the people as enumerated in the Bill of Rights.

Thus, federal laws such as the National Firearms Act, which has been claimed to be constitutional under the power of taxation, is not constitutional even as a tax measure since the second amendment supersedes and negates ALL federal powers which infringe upon the individual right to keep and bear arms. Through further investigation one should be able to easily understand that a myriad of federal laws are in violation of the Constitution, including those immigration laws which allow for the stopping and questioning of persons by immigration or other police officials. The Fourth Amendment, discussed more fully in its specific essay, requires ALL stops, searches, and questioning to done under the auspices of a lawfully obtained warrant. Rawle, who wrote the earliest text book on the Constitution substantiates this statement. A close reading of the Fourth Amendment proves that a reasonable search requires a warrant and that the Framers considered ALL warrantless searches as unreasonable. While Congress is granted exclusive power over rules of naturalization, the Fourth Amendment restricts the extent of these rules and places restrictions upon the enforcement of these rules by the government, regardless of intent.

And so armed with this knowledge of the amendments "of" the Constitution, reread the Constitution. Recognize the intelligence demonstrated by the Framers who placed protections for the people in many parts of the document. And who, when faced with the possibility of the break up of the newly formed union through actions of the antifederalists, gave the people the Bill of Rights with its preamble which superseded and modified all conflicting parts of the original Constitution.

If one makes amendments "of" a contract, one alters all conflicting parts of the contract. If one makes amendments "to" a contract,

one adds new points, ideas, or portions to the contract. And so it follows with the Constitution and the Framers selection of words for the preamble. I thank the Framers even though our government has time and time again violated the restrictions and exercised powers well beyond their legitimate authority. But as always, it's the biggest dog that gets the bone!

So go back to the Constitution and study the words carefully. The truth is there for YOU to find. I have hopefully provided pathways. And when I am borne out, others will come to the conclusions and understanding which I have reached.

States & The Bill of Rights

Since the early 1800s when Chief Justice John Marshall made his infamous decision concerning the inapplicability of the Bill of Rights in prohibiting state actions, the people of the United States have in effect had no protection of individual rights against aggressive state-level politicians. In Barron v. Baltimore (1833), Chief Justice Marshall, with the aid of other justices, determined that the leading phraseology of the First Amendment held the key to the limits of action to which the Bill of Rights extended. This decision included some discussion of the intentions of the Framers. However, even a cursory review of the facts and the Constitution prove this to have been a judgement of errors.

After further investigation into this topic, it is my opinion that the judgment of Barron v Baltimore was ill-considered and improperly adjudicated. The following reasons support my position. First, one must only prove one error in the judgment of the Court to show that they were incorrect in their decision. While a Court might not agree, a scientist would since it takes only one proper example to disprove a theory which is all Court opinions truly are.

A perusal of the Bill of Rights demonstrates the failure of the Court to properly evaluate the issue. While it may have been oversight, the history of the Court and especially of Chief Justice Marshall's tenure clearly show propensities of the Court to usurp power at every possible instance. In the case of Barron v Baltimore, the Court appears to have ignored or in the least glossed over the sixth and seventh amendments of the Constitution.

The gist of Barron is that the Bill of Rights is applicable ONLY against infringement by the federal government. One of the key issues is that each state has its own constitution and with the attitudes of the Framers, state sovereignty would have been left alone. This is somewhat true but is also proven false by Article I, Section 10. The Court again ignored the facts and selectively

mentioned that the restrictions and prohibitions in Article 1, Section 10 were only in the areas where grants were made to the federal government and which the states were then forbidden to exercise. This is incorrect. At least two points exist which are direct attacks on state sovereignty. These are ex post facto laws and bills of attainder, of which the states are prohibited from passing and about which there is absolutely no grant of power to the federal government concerning such laws. These prohibitions fit nicely into place under the guarantee of a republican form of government, the same place the Bill of Rights restrictions fit.

My studies have revealed that some scholars view the discussions concerning the First amendment's limitations on prohibitions as being applicable to all the amendments. These same individuals see the phrase, "Congress shall make..." as a lead to the entire Bill of Rights. This is not correct and it is because of a lack of intellectual prowess that others have missed important but subtle clues to the truth. The very first clue is in front of the faces of those who read the original document containing the first amendments of the Constitution.

When the Framers first wrote their possible amendments, they included seventeen different areas. These were whittled down through the various committees to a number totaling twelve. These twelve were submitted to the states for ratification. These amendments were ratified as individual amendments and not as a group. Proof of this lies in the fact that the first two original amendments were not ratified. Additionally, the first amendments were not known as the Bill of Rights until after ratification. Again, one need only read the first two amendments to see that labeling them as a Bill of Rights would have been and still would be ludicrous. And so only ten amendments of these first twelve amendments received approval by sufficient states to be labeled as ratified. Of these ten amendments, the first eight have become known as the Bill of Rights.

More importantly, for the Barron v Baltimore judgement and the

academic interpretation to have validity, the current First Amendment would have needed to be the first amendment of the twelve. It was not. Thus it becomes crystal clear that the Framers selectively notated the original third amendment and that the original third amendment was to be restricted in its applicability ONLY against Congress. Had the Framers intended for ALL the amendments to apply only to the federal government, they would have made it clear as they did in the original third amendment. The preamble and possibly each of the amendments would contain the phrase, "Congress shall make...".

Berger (1996) presents some of the discussion thus: " It has been little noticed that, as Egbert Benson, speaking with reference to freedom of speech and press, said, all the Committee of Eleven to whom the amendments had been referred 'meant to provide against their being infringed by the [federal] Government.' 1 Annals of Congress 732." While Berger continues on with other quotations, they are equally taken out of context to prove his point. A careful read of the above statement provides a clear picture that the discussion pertained only to those topics covered in the First Amendment. Madison and others urged that rights needed to be protected against both the state and federal government. And of course, words in [] are added by writers of today in the hopes of "clarifying" the statements of the past. But one need merely allow the words of the document to speak for themselves to see that of the first ten amendments of the Constitution, one and only one is directed specifically against federal abridgement. The others are open ended and include prohibitions against the states.

Proofs lying in the Bill of Rights amount to this. In the sixth amendment, the right to a jury trial in the State and district wherein a crime had been committed is stated. First , according to US v Hudson and Goodwin (1812) there were no federal criminal common laws in the U.S. Therefore, why would the Framers direct an amendment toward something that was non-existent? And even if there existed federal criminal common law, why would a federal crime be required to be tried in a state and district wherein

the crime was committed? Logic points only in the direction that this amendment, like all others which do not specifically mention the federal or state governments, is directed at all levels of government.

Article VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; to be confronted with the witnesses against him; to have compulsory process of obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Again in the seventh amendment, one is faced with "Suits at common law". Federal civil common law (Wheaton v Peters, 1834) and federal criminal common law (US v Hudson & Goodwin, 1812) did not exist even decades AFTER the Bill of Rights modified the Constitution. Again, the only logical explanation is that the seventh amendment was directed against all governmental bodies. The second clause shows that the appellate jurisdiction of the federal Courts was being restricted. The common law procedure is for State courts to hear cases and following appeals through the state systems, the federal system comes into play. Thus the core of the seventh amendment implies State actions followed by federal actions and the seventh amendment must be recognized in its applicability against state actions.

Article VII.

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise examined in any Court of the United States, than according to the rules of common law.

The above two exceptions to Barron provide proof of its error. Close examinations of the other amendments will substantiate this

statement. The Bill of Rights except for the first amendment are applicable against state AND federal action. All discussions I have found which occurred during the hearings on the original 1791 amendments of the Constitution focus only on restricting what was to become the first amendment. I have yet to find discussions similarly restricting the other amendments. Following from the guarantee a republican form of government and the supremacy clause, the ONLY logical determination is that the original amendments of the Constitution do and always have applied against state and federal actions. Barron v Baltimore stole the people's rights because the judiciary wished to gain power. The judiciary have since then doled out our rights as though they were gods in charge of our lives.

For more discussion of this topic, the reader is referred to the essay on Marshall and to Rawle's "A View of the Constitution of the United States."

Chief Justice John Marshall - A Double Standard Decision

The Constitution for the United States of America established a federal government, conceived by the people as a government of limited, enumerated powers. With a desire to protect the people from tyranny, the Framers devised a system with major powers separated but with checks and balances across the three branches. From the beginning, the supreme Court and the American judiciary, were considered the weakest branch of the government having no legislative or executive powers. As America moved into the 19th century, a power arose as supreme Court decisions were made that transferred power to the judiciary. The most infamous case was that of Marbury vs. Madison. The increase in power was of power not granted by the Constitution but power stolen.

Following the ratification of the Constitution, James Madison held true to his word that a Bill of Rights would be added to the document since many who voted to form the new government had voted ONLY with this prospect in mind. Many in the new Congress felt it totally unnecessary to add a Bill of Rights and many arguments were heard. In the end the Bill of Rights amended the Constitution, the supreme Law of the Land.

Court cases came and went but the one of utmost importance and one of the most damaging to the rights of the people was that of Barron v Baltimore, heard in 1833. In his opinion, Chief Justice Marshall declared that the Bill of Rights was only applicable to the federal government and not to the states. Part of his argument was based on the historical discussion and some based on the first clause of the First Amendment. But regardless of the reasons, the effect was to allow states the freedom to do as they pleased without concern for the basic God-given rights enumerated in the Constitution. Chief Justice Marshall was WRONG!

I quote from Story (1833) Book III, page 104, paragraph 1224.

"The second clause of the sixth article declares that 'this constitution, and the laws of the United States, which shall be made in pursuance thereof, shall be the supreme Law of the Land.' The clause which gives exclusive jurisdiction, is unquestionably a part of the constitution, and, as such, binds all the United States."

Now I ask, Is the section known as the Bill of Rights NOT a part of the constitution and therefore "the supreme Law of the Land"? Simple reading of the document we call the Constitution will prove that the Bill of Rights is indeed a part OF the Constitution and is therefore as much "the supreme Law of the Land" as is any other clause of the Constitution.

So either the Constitution and ALL its phrase, clauses, articles, sections, and words are "the supreme Law of the Land" or they are not. It cannot be both ways. Ah, but Chief Justice Marshall declared the Bill of Rights not restricting the states but only the federal government so therefore the Bill of Rights and by implication ALL other amendments are NOT "the supreme Law of the Land." Or Chief Justice Marshall was wrong.

I say Chief Justice Marshall was wrong and due to his misadministration of justice and the Constitution, Americans have suffered at the hands of political powers at the state and local level. One must also take into consideration Article 4, Section 4 of the Constitution which states:

"The United States shall guarantee to every State in the Union a Republican form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence."

The Framers of the Constitution knew well that other states would be added to the union in the ensuing years. The people who populated those states could come from anywhere in the world and may come with ideas of a government other than a republican

form. The Bill of Rights is a basic list of the rights of man that must be respected by governments in order to be qualified as a republican form of government. Thus when one takes the Bill of Rights at face value and places that Bill of Rights together with Article 4, Section 4, the only valid conclusion is that the Framers were using the Bill of Rights not only for the existing governments BUT to guarantee all new members of the union these same rights.

But how does that work? The people of the state, either independently or through their elected representatives, vote on ratification of the Constitution. Ratification states that the people of the about to be member state accept ALL the provisions of the Constitution and not just selected passages. Chief Justice Marshall had his own agenda and used his power to enhance the power of the judiciary in this country. In so doing, Chief Justice Marshall damaged the work that so many patriots had striven to complete in excellent form. The decision that the Bill of Rights was only applicable to the Federal Government threw out Article 4, Section 4.

Of all the rights enumerated in the Bill of Rights, ONLY the First Amendment, that stating the "Congress shall make no law..." is expressly directed toward the federal government. Indeed, as early as 1833, Justice Story wrote:

...
"1873. It was under a solemn consciousness of the dangers from ecclesiastical ambition, the bigotry of spiritual pride, and the intolerance of sects, thus exemplified in our domestic, as well as foreign annals, that it was deemed advisable to exclude from the national government all power to act upon the subject. The situation, too, of the different states equally proclaimed the policy, as well as the necessity of such an exclusion. In some states, episcopalians constituted the predominant sect; in others, presbyterians; in others, congregationalists; in others, quakers; and in others again, there was a close numerical rivalry among contending sects. It was impossible, that there should not arise

perpetual strife and perpetual jealousy on the subject of ecclesiastical ascendency, if the national government were left free to create a religious establishment. The only security was in extirpating the power. But this alone would have been imperfect security, if it had not been followed up by a declaration of the right of the free exercise of religion, and a prohibition (as we have seen) of all religious tests. Thus, the whole power over the subject of religion is left exclusively to the state governments, to be acted upon according to their own sense of justice, and the state constitutions; and the Catholic and the Protestant, the Calvinist and the Arminian, the Jew and the Infidel, may sit down at the common table of the national councils, without any inquisition into their faith, or mode of worship."

In the new days of the twentieth century, a battle began to extend the First Amendment over the states. Many states already had included in their own Constitutions restrictions similar to the First Amendment. This battle ensued for several decades and through manipulation and deceit the First Amendment was finally creatively interpreted to restrict all state and local governments. The decisions of the Court extending the First Amendment were and are invalid. The Court is not empowered to interpret the Constitution and extend its powers or prohibitions. Only the people through amendment of the document may alter it.

Yes, there is a double standard. The states and local government being closer to the people are under the control and scrutiny of those who live within their boundaries. The states and local communities retain the power to participate in religious concerns. Those who do not agree with the local religious atmosphere are free to move to another locale where their religious position is in the majority. We must not forget that the individual states were established specifically for certain religious sects. Thus religious tests and restrictions were in place before and after the ratification of the Constitution and the formation of the federal government. It is only in the twentieth century that some have conspired to destroy religion as a major factor of government in the United

States.

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Story, Joseph, LL.D., 1833 (1991), Commentaries on the Constitution of the United States, Book III, Pg. 730-731, Section 1873.

The Trust Granted to Congress

The Constitution is the document that created our federal government out of nothingness by transferring powers from the people in their sovereign capacity to a central government. Tucker's introductory pages discuss the relationship of man and government. Tucker explains that this relationship is identical to that of parent and child. The government is entrusted to do only good. Any action which is not good for all is not a valid action by the government. For a full explanation see Tucker (1899).

Congress is granted a trust to act in the people's behalf but only and strictly for the people's benefit. Congress may not act for the benefit of other nations, the world, individuals, corporations, or even specific states. The trust is the contract of the people of the United States acting under their sovereign power. That the people were sovereign is easily shown by reviewing the documents leading up to and including the ratification of the Constitution.

In any instance where Congress violates the trust, Congress acts in a treasonous manner. The people are the keepers of the power and the people decide when and where to remove the servants we have elected. But in order for the people to act properly, each individual must read and understand the Constitution.

The primary list of trusts is provided in Article I, Section 8 of the Constitution. The central trust given Congress is that of the power to legislate, that is to pass laws, rules, and regulations which are "necessary and proper" to carry out the powers granted to them and to the other branches of our federal government. This is a sacred trust for no one other than Congress is granted the power and regardless of what is done in other countries, or in the general operation of a corporation, or the need because of workload, delegation of the power to legislate is not Constitutional and violates the sacred trust of the people.

The supreme Court, however, has ruled differently establishing the Rule-making Power. The Court has defined the power as one of delegation of authority and has allowed the transfer to go unchecked. The reader will find it of interest that this transfer of authority was not developed until this century. While the Court ruled early in this century to allow delegation, the major legislation happened under the auspices of the "New Deal" and during the growth of government in the 1970s.

Even more frightening is the Court's deferment of interpretation of a rule to the agency responsible for the rule. Once again the fox is in charge of the henhouse. The Courts have been absolutely wrong in this matter and have allowed unconstitutional delegation of authority to go unchecked. The result has been excessive abuse of the citizens of the United States, rules and regulations which pry into the very souls of the citizens, and which generally are passed simply to justify the existence of a bureaucracy which functions unconstitutionally. The trust the people gave to Congress is violated most directly by the actions of Congress in delegating authority and by the Courts in not halting this practice.

One must question why the Court would be reticent to call the Congress on these actions but it is most likely that the Courts, as in other instances, fear retribution by Congress. That fear of retribution has brought about many cases in which the courts have refused to review. If the reader wishes to expand upon these Court rulings, an excellent place to start is with "The Oxford Companion to the Supreme Court of the United States."

Sovereign Immunity: Not in the US You Don't

Sovereign immunity is a holdover concept from the age of Kings. The British King, as well as others, could do no wrong, according to law and were not subject to prosecution in the courts. When the colonies were founded, the idea of sovereign immunity came with those who were given positions of authority. This immunity was coded in statutes and incorporated into American jurisprudence. Under sovereign immunity, the government and its agents are immune from suits in a court of law unless the plaintiff is given express permission to sue the government by the government.

In common law, sovereign immunity has been held to protect the federal and state and local governments from lawsuits filed by individuals. However, Constitutionally, there are absolutely no provisions which grant sovereign immunity to the government. As immunity applies to government agents, ONLY the members of Congress acting in specific instances are immune from prosecution. This protection is found in Article I, Section 6, Paragraph 1: Section. 6. "The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place."

The Supreme Court in Gravel v US (1972) has extended these protections to Congressional aides and support staff. This is NOT legitimate regardless of the intentions of the Court. The Constitution is not open to any interpretation which extends or restricts the words except by other phrases within the Constitution itself. The naked text of the Constitution does not provide this understanding of these protections. But because OTHER nations exercise sovereign immunity, the Courts have ruled that this form

of immunity must exist in the United States and that this immunity must be applicable so that the United States might take its position among the powers of the world.

Neither sovereign immunity nor executive immunity ever Constitutionally existed in the United States. The idea that the government or an elected official cannot be punished for its actions is contrary to the democratic principles upon which this country is founded. But when the Congress enacted legislation (the Federal Tort Claims Act) which "allowed" the suing of the government in specific instances, [How condescending of the Congress to pass a law granting us the rights we already had!] the supreme Court ruled to destroy much of the act through interpretation, interpretation of course protective of the government and not protective of the people the supreme Court is supposedly serving (Dalehite v US, 1953). Due to the actions of the supreme Court, the FTCA has not been beneficial even to persons injured or killed by actions of the federal government or its employees. And so in America, sovereign immunity, the government can do no wrong, still reigns.

The allowance of immunity builds an oligarchy among those granted such immunity. And those who grant this immunity act as an aristocracy. So although the intent of the formation of the American government was to eliminate the ills of the system from whence the people came, the ills have reared their ugly head and reestablished themselves here.

To prove that no immunity exists in our government, one need merely look at the history of and the premises upon which our government was founded. Prior to the formation of our form of government, leaders of old world countries were generally accepted as having derived their powers directly from God. This means that all power flowed from the leaders, i.e. Kings and Queens, down to the people. Those in power could and did decide just what rights, powers, and what have you could be exercised by their subjects. The U.S. experiment was opposite this belief.

Under our form of government, all power is in each of the people and is granted by God to all individuals. In forming societies and governments, these individuals transferred certain, specific, limited powers to others. This transfer was and is for one purpose only and that is to protect these individuals and the society they have formed from enemies within and without the country. The key to all this is that sovereignty lies in each individual in the United States. Each individual, in the beginning by participating in the formation of our new government and today by becoming a citizen of and accepting the government of the United States as one's government, transfers from themselves to the whole those powers enumerated in the Constitution of the United States of America. No where in the Constitution do the people transfer any sovereignty. All ideas of sovereignty are hold-overs from our preceding history and were not transferred to our system. However, those in power seldom wish to give up what they have and so our elected servants and our Courts will make claims to and hold onto any power they can.

"Clothe men with public authority, and almost universally they consider themselves, as liberated from the obligations of moral rectitude, because they are no longer ammenable to justice." 1 Amer Mus. 200 (Story, pg.341).

Legislation under the Constitution

"Article. I."
"Section. 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives."

The foregoing Article and Section explicitly state that "ALL legislative powers herein granted shall be vested in a Congress...". No where else in the Constitution is any power granted which allows the transfer of these or any portion of these legislative powers to any other office, department, or governmental agency other than Congress.

Two types of legislative action occur outside of Congress. The first is the executive order. The second type is regulations prepared and placed into function by the various regulatory agencies of the federal government. Expediency is the most likely culprit behind the closed eyes to these flagrant violations of the Constitution. Even the "necessary and proper" clause does not grant to Congress the power to transfer legislative capacity in any way, shape, or form.

The question as to the extent which the "necessary and proper" clause allows Congress to act can be answered by understanding that so long as Congress can exercise the granted power WITH-OUT the passage of a particular law, especially one transferring legislative powers then that law is NOT "necessary and proper." The "necessary and proper" clause is not included for expediency or to simplify the methods of the passage of legislation but it is included only to provide Congress with Constitutional support in the passage of laws. If the "necessary and proper" clause were all inclusive then the inclusion of other powers in the Constitution would be unnecessary and nugatory. Therefore the "necessary and proper" clause must be of limited scope.

All too often singular phrases are taken out of context and restrictive phrases found elsewhere in the same document are ignored for prudential or ethical or doctrinal reasons. I contend that so long as a restriction exists no law may be drawn that acts in violation of that restriction. Thus the first article in its first section states "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives" and nowhere in the rest of the Constitution does there exist any phrase or clause which alters the "all" statement.

If one responds to these statements by claiming these changes/ expansions are necessary given the increase in legislative actions which now occur, I reiterate that if Congress and the federal government were held to constitutionality in their actions, many if not most of the current legislation actions would not be occurring.

Who's to enforce Federal Laws?

Today the United States is a land permeated with laws, regulations, and rules. These laws, regulations and rules are the outgrowth of a massive buildup of federal bureaucracies many of which in and of themselves are unconstitutional. The Federal government is granted a listing of powers, called enumerated powers, in the Constitution of the United States. This listing is limited and the Federal Government is Constitutionally, though not in practice, limited to those enumerated powers.

Under laws, regulations, and rules, the Federal Government has come to touch upon the lives of every citizen of this vast country. In order to make sure that the laws, regulations, and rules are enforced, the Federal Government has created it's own agencies to execute these Laws of the Union. So just what does the Constitution have to say about this.

Many point to the necessary and proper clause and exclaim, "Aha!, Congress can make 'all laws necessary and proper'." These same people fail to read ALL the Constitution and even fail to read the complete phrase which they quote. The phrase continues with "for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, on in any Department or Officer thereof." Thus laws which are necessary and proper can only be based upon the Constitutional grants of power and not upon what one believes is necessary and proper. The laws which are necessary and proper cannot expand the powers nor replace the granted power with another equivalent power. Even laws which are good intentioned are not legitimate because "There ain't no good intentions clause in the Constitution!"

So let's attempt to ascertain just what the Constitution has to say about execution of the Laws of the Union. At the time of the framing of the Constitution, the massive bureaucracy of today was

foreseen. And with such foresight, the Framers determinedly locked into place the mechanisms by which the Federal Government is legally supposed to function. It is not difficult to see that the Framers covered the point of execution of the Laws of the Union very emphatically. The following grant from Article 1, Section 8 sets in stone the one and only method by which the Laws of the Union are to be executed and who is to execute those laws.

"To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;"

This clause involves 3 independent reasons for the calling forth of the Militia.

The Militia are to be called forth to execute the Laws of the Union

The Militia are to be called forth to suppress Insurrections.

The Militia are to be called forth to repel Invasions.

The inclusion of this clause excludes all other methods (Tenth Amendment). Since Congress is required to use the Militia in these three instances, Congress is prohibited from using any other means. Thus not the army, not the navy, nor any other agency of the federal government may be Constitutionally used for these three purposes.

Only a myopic individual cannot see that the Constitution prescribes the only legitimate method for executing the Laws of the Union and that is through the use of the Militia. The Federal Government is not given a choice of creating their own bodies of enforcement officials, i.e. the FBI, the ATF, the EPA, the INS, and on and on and on. The Framers knew that the interests of the people were best served by the people themselves and in their infinite wisdom Constitutionally locked the Congress and the Executive into place. Combining the above clause with the Tenth Amendment, the only legitimate determination is that the Congress is granted, by enumeration, one option for executing the Laws of the Union and that is through the use of the Militia. These

same Militia are under the command of the President during this period. However, their ties to the home state are never severed because the Framers hammered out a workable solution to that problem and placed it too in the Constitution.

Many will argue that today, this is an unworkable solution. My response is that is irrelevant. If you want it changed, the Congress must offer an amendment of the Constitution and the people in 3/4 majority must approve. Else no change is allowed.

There are no qualifying clauses which alter the simple understanding of this grant of power. The Constitution no where limits the Militia to which laws it is to execute. Thus only one meaning can be ascribed to the clause, that the Militia is to be used to execute ALL laws. And because the Militia is to be used, the Tenth Amendment precludes the use of any other agent to execute the laws. Whether one likes this or not is not relevant. Whether or not this is the easiest method by which to accomplish the tasks of government is not relevant. What is relevant is that the Framers so limited the Federal Government and that is what the Constitution requires today for Constitutional actions.

So why would the Framers limit the Federal Government in such a manner? Primarily, the thoughts of the Framers was that this new government was a government of limited and enumerated powers. Because of these limitations, the Framers did not expect the Federal Government to become a massive bureaucratic Leviathan. The only Constitutional laws, regulations, and rules are those which conform to and are made under the authority of the United States as proclaimed and limited by the Constitution. The Framers acted in the hopes that the people in executing the Laws of the Union would rebel against executing oppressive and unconstitutional laws while those who owe their allegiance to the Federal Government might not.

And so as we move into the future, it is my fervent hope that those who read this will continue to review the Constitution and to study

the how and why certain provisions were put into place. Once these are understood, then the move toward a Constitutional government in the United States will continue.

Any and all persons involved in the execution of the Laws of the Union must therefore be members of the Militia. These persons must then be called forth under the provisions made by the Congress and must at completion of the execution be returned to the states.

The negative impact of this is that the Congress is thus empowered to require the members of the state Militia to execute the Laws of the Union. The positive aspect is that all federal law enforcement officers are unconstitutional in the employ of and executing the Laws of the Union.

Question: Are state "police" officials members of the Militia? If so then under this clause, the Congress can pass Constitutional laws and cause those officials to execute them. If not then is it not unConstitutional for these officials to execute the Laws of the Union since the Constitution expressly states the Militia are "to execute the Laws of the Union..."

Question: Since all federal employees are technically executing the Laws of the Union, are they all then members of the Militia? If they are members of the Militia, are not the "officers" to be selected by the States and NOT the Federal Government? If they are not members of the Militia, then is not their existence a violation of the Constitution and thus unConstitutional?

The Necessary and Proper clause is claimed by some to expand the ability of Congress to carry out the granted powers through means which are not enumerated. But that would not alter the affect or effect of this clause. The necessary and proper clause says Congress may make all Laws necessary and proper for carrying into effect the powers granted in the Constitution. This clause STILL states that the Militia are to be used to execute the laws.

Nothing in the necessary and proper clause transfers the power to execute the laws of the Union from the Militia to another government body.

The true reading of the necessary and proper clause is that it simply states the fact that laws which are both necessary, i.e. needed, and proper, i.e. within the authorities granted by the Constitution, may be passed by Congress in order to accomplish the tasks set forth by the formation of the Federal Government. It is not in and of itself a grant of power to pass any law necessary and any law proper. All laws must be BOTH necessary and proper. The necessary and proper clause is an explanatory clause which was used by the Framers to reduce the bickering which was expected to occur. Without such a clause, the Framers feared that the Federal Government would never be able to function as some would raise objections to every action which was not explicitly stated in the Constitution. This clause has, on the other hand, given many would warp the intent a quick response to those who wish to restrain the government to its lawful purposes. Do not let them sway you. The necessary and proper clause is not wide open. It merely eases the way for implementing the powers granted and does not grant more.

The Most Dangerous Clause of the Constitution

The Constitution of the United States of America is a well developed, functional plan for a federal government. As an aside let me point out that ours is NOT a national government. There is a difference. See the essay on national versus federal for clarification. All serious students of the Constitution recognize the greatness of the document and the intellect of those who framed it. Those who wish to steal power from the people simply ignore the Constitution and conduct their affairs as though they were above the law. However, great the Constitution is, it does contain some minor errors in judgment by the Framers.

One such error occurs in Article III, Section 2, Paragraph 2 which states:

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction. In all other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Framers granted too much power to Congress in that Congress may Constitutionally eliminate ALL appellate jurisdiction should they so desire. Thus Congress can Constitutionally eliminate the last bastion of judicial protections for the people of the United States. The question arises, "Would they?"

The answer is "Yes, they would and they already have at least once." Following the close of the civil war, the Union passed numerous legislative actions which affected the states and citizens who had seceded. In a number of instances, individuals were arrested and held without trial. In others, citizens were tried in military courts and hanged even though the use of a military court was deemed unconstitutional by the supreme Court. In the case

of one McCardle, the defendant prayed a habeas corpus relief to the supreme Court. The Court concurred that the writ should be issued but an annual break in the court ensued. During the break of the Court, the Congress passed the Drake Act which removed the ability of the supreme Court to hear Habeas Corpus Writs and Mr. McCardle was left to the punishments of the Congress. The supreme Court was forced to step aside. Can it happen again? Your guess is as good as mine but I suspect that should the battle between them and us become enraged that the Congress would have no qualms about eliminating the ability of the Court to protect the people. Thus the people are left to other means of protection, the palladium of which is the right to keep and bear arms. I suspect that Congress will at some point restrict the ability of the supreme Court to hear any appeals on arms legislation.

“common Defence and general Welfare”

The following excerpt from JR Tucker(1899) provides the basis for the discussion of “common defence and general welfare.”

“222. We come now to a question which has excited great contention. It will be perceived that the clause under consideration has an important clause interposed between the first and last provisions of it, that we have not as yet particularly noticed. The language is,’to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States.’ The words which we have not yet considered are ‘to pay the debts, and provide for the common defense and general welfare of the United States.’ The question arises, Do these words grant a distinct power, or do they declare only the object of the tax power proceeding?”

“To the first branch of the question we give a negative answer; to the second an affirmative answer for the following reasons:”

“1st. The structure of the sentence requires this interpretation. To ‘pay the debts, and provide for the common defense and general welfare of the United States,’ if a distinct power from the power to ‘lay and collect taxes,’ etc., should not have intervened between the power to lay and collect taxes, etc., and the qualification of that power by the words, ‘but all duties, etc., shall be uniform,’ etc. The latter branch of the sentence as a qualification of the first should not have been separated by words which grant a distinct and independent power. Such a framing of the sentence so interpreted would be a vice in grammar of which the pen of Gouverneur Morris should not be held guilty where any other construction is open. The grammatical construction is vindicated by holding that the words, ‘to pay the debts,’ etc., do not enumerate an independent power, but only declare the object of the proceeding tax power.”

"2nd. To pay debts can hardly be said to be a political power. TO lay and collect taxes is a power, and a proper power; where its object is to pay the debts of the government; and, as these words 'to pay the debts' are indissolubly connected with the words to 'provide for the common defense,' etc., it follows that these latter words must share the fate of the words to 'pay the debts,' and be taken to declare the object of the preceding power and not the creation of a distinct power."

"3rd. This is confirmed by the report of a committee in the Federal Convention, which proposed to add the words "to lay and collect taxes," etc., the phrase following: 'for payment of the debts and necessary expenses of the United States,' etc.1 Later it was proposed to add to the tax clause "for the payment of said debts, and for the defraying the expenses that shall be incurred for the common defense and general welfare;' which last, though disagreed to at the time as unnecessary, was incorporated in the clause thereafter, as now found in the Constitution.2"

"4th. Mr. Madison3 meets the charge that these words contain a grant of unlimited power to provide for the common defense and general welfare in the following terms:"

'Some, who have not denied the necessity of the power of taxation, have grounded a very fierce attack against the Constitution on the language in which it is defined. It has been urged and echoed that the power 'to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States,' amounts to an unlimited commission to exercise every power which may be alleged to be necessary for the common defense and general welfare. No stronger proof"

"1 3 Madison Papers, 1398.
2 Id. 1426-7, 1549
3 Federalist No. XLI"

"could be given of the distress under which these writers labor for objections than their stooping to such a misconstruction.'

'Had no other enumeration or definition of the powers of the Congress been found in the Constitution than the general expressions just cited, the authors of the objection might have had some color for it; though it would have been difficult to find a reason for so awkward a form of describing an authority to legislate in all possible cases. A power to destroy the freedom of the press, the trial by jury, or even to regulate the course of descents, or the forms of conveyances, must be very singularly expressed by the terms 'to raise money for the general welfare.'

'But what color can the objection have when a specification of the objects alluded to by thee general terms immediately follows; and is not even separated by a longer pause than a semicolon? If the different parts of the same instrument ought to be so expounded as to give meaning to every part that will bear it, shall one part of the same sentence be excluded altogether from a share in the meaning; and shall the more doubtful and indefinite terms be retained in their full extent, and the clear and precise expressions be denied any signification whatsoever? For what purpose would the enumeration of particular powers be inserted if these and all others were meant to be included in the preceding general power? Nothing is more natural and more common than first to use a general phrase, and then to explain and qualify it be a recital of particulars. But the idea of an enumeration of particulars which neither explain nor qualify the general meaning, and can have no other effect than to confound and mislead, is an absurdity which, as we are reduced to the dilemma of charging either on the authors of the objection or the authors of the Constitution, we must take the liberty of supposing had not its origin with the latter.'

'The objection here is the more extraordinary, as it appears that the language used by the convention is a copy from the Articles of Confederation. The objects of the union among the States as described in Article III, are, ' their common defense, security of their liberties, and mutual and general welfare.' The terms of Article VIII are still more identical: 'All charges of war,

and all other expenses that shall be incurred for the common defense or general welfare, and allowed by the United States in Congress, shall be defrayed out of a common treasury,' etc. A similar language again occurs in Article IX. Construe either of these articles by the rules which would justify the construction put on the new Constitution, and they vest in the existing Congress a power to legislate in all cases whatsoever. But what would have been thought of that assembly, if, attaching themselves to these general expressions, and disregarding the specifications which ascertain and limit their import, they had exercised an unlimited power of providing for the common defense and general welfare? I appeal to the objectors themselves, whether they would in that case have employed the same reasoning in justification of Congress as they now make use of against the convention. How difficult it is for error to escape its own condemnation.'

"5th. The eighth article of the Confederation is in these words: 'All charges of war, and all other expenses that shall be incurred for the common defense and general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury," etc. . . . 'The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several States,' etc. In that instrument the language as to common defense and general welfare clearly conferred no power. It simply sets forth the objects to be provided for by the treasury of the government, which was to be supplied by the requisitions upon the several States, and, under the present Constitution, by taxation by the government itself. The mode of raising the revenue is different, but the objects for which it is raised are precisely the same. So we are forced to conclude that the words used in the Articles of Confederation and transferred to the new Constitution were intended in both to be merely declaratory of the object for which revenue should be raised, and not as the object of raising revenue in the one and a declaration of power in the other."

"6th. What means 'common defense'? It is common, not general - the defense of each and all; defense, a duty to each particular State - not generally as to the total are of the States united, but a defense

of each. For the Constitution provides: 'The United States . . . shall protect each of them against invasion; and on application of the Legislature, or of the Executive (when the Legislature cannot be convened), against domestic violence.'1 What is 'general welfare'? General (not common); welfare of the Union as a totality, not of each state; the welfare of the whole is the function of the Union; the welfare of each is a function of each. Upon this point the opinion of the writers on this subject are uniform. Judge Story, after asking the question with which this section begins, says:'

'If the former be the true interpretation, then it is obvious that, under color of the generality of the words, to 'provide for the common defense and general welfare,' the government of the United States is, in reality, a government of general and unlimited powers, not withstanding the subsequent enumeration of specific powers; if the latter be the true construction, then the power of taxation only is given by the clause, and it is limited to objects of a national character, 'to pay the debts, and to provide for the common defense and general welfare.'

'He says this latter is 'supported by reasoning at once solid and impregnable;' that it is as it read, 'the Congress shall have power to lay and collect taxes, etc. in order to pay the debts and to provide,etc.: that is for the purpose of paying public debts, and providing for the common defense and general welfare of the United States.'2 He quotes the argument by Mr. Jefferson in favor of this construction with strong approbation.1"

"1 Const. US Art IV, sec 4. 2 Story on the Constitution, secs 907, 908."

"223. But this clause was interpreted first, perhaps, by Secretary Hamilton in the Report on Manufactures in 191. He says, in speaking of these words, 'common defense and general welfare' are not to be construed as a distinct grant of power, but are qualifications of the objects of the taxing power;' and adds, 'the terms 'general welfare' were doubtless intended to signify more than was expressed or imported in those which preceded; otherwise numerous exigencies, incident to the affairs of the nation,

would have been left without a provision. The phrase is as comprehensive as any that could have been used, because it was not fit that the constitutional authority of the Union to appropriate its revenue should have been restricted within narrower limits than the general welfare, and because this necessarily embraces a vast variety of particulars which are susceptible neither of specification nor of definition. It is therefore of necessity left to the discretion of the national legislature to pronounce upon the objects which concern the general welfare, and for which, under that description, an appropriation of money is requisite and proper. And there seems no reason for doubt that whatever concerns the general interests of learning, of agriculture, of manufactures, and of commerce, are within the spheres of the national councils, so far as regards an application of money. The only qualification of the generality of the phrase in question which seems to be admissible is this: that the object to which an appropriation of money is to be made must be general and not local, - its operation extending in fact, or by possibility, throughout the Union, and not being confined to a particular spot. No objection ought to arise from this construction from a supposition that it would imply a power to do whatever else should"

"1 Story on the Constitution, sec. 926, Accord: Madison's Rep. of 1798-99; Madison's Letter to Stephenson, 4 Madison Papers 120, 126, 131; Hare's American Constitutional Law, Lecture 15.; Miller on the Constitution, 229, note 2."

"appear to Congress conducive to the general welfare. A power to appropriate money with this latitude, which is granted in express terms, would not carry a power to do any other thing not authorized by the Constitution, either expressly or by fair implication.' This view seems to have been followed in the message of President Monroe, May 4, 1822, on the subject of repairs for the Cumberland road. The doctrine is endorsed by Mr. Madison in an elaborate report in 1798-99, and in a message vetoing the bill for internal improvements on the 3d of March, 1817, the last day of his Presidential service, from which the following extract may be

made:"

For the time being, I have opted to close Tucker's quotation here. I will add this:

Debts, common Defence and general Welfare

The general Welfare phrase is one of the most abused phrases in the Constitution. Taken out of context, it is claimed to provide power to do anything "for the general Welfare." There are several problems associated with this argument.

The first is that the general Welfare clause appears ONLY in the context of stating the reasons for which Congress may tax and spend money. No where else does a general Welfare clause exist. Now many would say okay, Congress can tax and spend for the general welfare which means social programs are okay.

WRONG! A closer look shows that the power to tax and spend for the general Welfare is restricted to the general Welfare "of the United States." Now the Constitution makes it perfectly clear that "the United States" is an entity created by the Constitution and that "the United States" is an entity apart from the States and the People. Both States and People are recognized in separate instances in the Constitution. Thus the power to tax and spend for the general Welfare of the United States is different from the power to tax and spend for the general Welfare of the States or the general Welfare of the People. Congress is not empowered to tax and spend for the States or for the People. That power was left to the States and to the People themselves.

Why Can't the Government Control the People using Military Force

It is often thought that the government is granted full power to do whatever our so-called leaders decide is in the best interest of the country. The government-run schools and government- controlled media continually reinforce this myth in the minds of the people. Thus the average person sits back and lets those in power go about their merry way.

Much fear has been expressed about prophecies which portend death and destruction on the world. Coupled with the fears of Armageddon are fears the government will utilize martial law to control the people. The government has often in the past resorted in illegal behaviors and the use of martial law in the United States may simply be another in a chain of unconstitutional actions by the government.

The primary point is that the government of the United States is empowered only with those powers enumerated in the Constitution. Under the central idea of our form of government, a grant of power in one area negates all similar powers, i.e. according to Tucker (1899) the grant to take, following due process AND just compensation, private property for public use, makes it unlawful and unconstitutional to take private property for private use. This is not directly stated in Constitution however once one understands the form of the US government and from whence the government derives it's powers, one will then understand the concept that a grant of one power eliminates all implicit grants of similar powers. The final authority on this is the tenth amendment. And, yes, I am a tenth amendment absolutist, just as I am a first and a second and an all amendment absolutist.

Within the Constitution are grants of powers from the people to the government. These powers are enumerated because under the

US system all power resides in individuals who come together and grant (transfer) some portion of their individual powers to a central authority for the benefit of organizing society. Some would have you believe that any and all powers which might be associated with these powers also belong to the government while others would have you believe that if the Constitution does not prohibit an action then it is "constitutional". Both of these concepts are incorrect and are expressed 1) by those who are simply ignorant and 2) by those who wish to steal power.

One grant of power is that Congress is "To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;". This is a very interesting grant of power. Think about it! The federal government is to use the Militia "to execute the Laws of the Union, suppress Insurrections, and repel Invasions." This is a transfer of power from the people as individuals to their elected servants to provide a method by which the Militia, a civil body of the people, is to be used to manage their own affairs.

Now most national government have their own military forces with which "to execute the Laws of the Union, suppress Insurrections, and repel Invasions." The United States is not much different in except that there is supposed to be no standing army and no appropriations for land-based forces which occur for more than two years. This is not exactly the case. We have reached a point where by hook and by crook, the federal government maintains a large standing army even in times of peace.

I reiterate there are fears among the people that the government might use these military forces to suppress the people. These fears are not unfounded as throughout history examples may be found where governments have used their military forces to control their people, most often to the detriment of the citizenry.

So what's the big deal? The point is that the federal government

is granted the power to use the "Militia to execute the Laws of the Union, suppress Insurrections, and repel Invasions;". Thus the use of any other groups, forces, or what have you is NOT granted. The use of the army or the navy or the police or "you name it" violates the Constitution of the United States. Once the power was granted all vying powers were negated. This is not a deep or difficult concept to grasp. It is merely fact, that fact that ours is a government of granted powers as expressed in the tenth amendment.

Thus while many fear, and rightly so, that the federal government will declare martial law because of some great catastrophe, it is not Constitutional for the federal government to use any forces other than the Militia to do so. The idea is that the people are themselves best suited to deal with their own problems.

In another essay, I demonstrated that the National Guard was not and is not the Militia. All court rulings to the contrary are not valid but are simply acts of those in power trying to manipulate the system to their own benefit. The Framers of the Constitution discussed and defeated the proposal to have a "national" or "select" Militia and thus stopped for all time, without an amendment of the Constitution, the separation of the armed populace into an organized Militia and an unorganized Militia as is currently claimed.

Thus the use of National Guard or any other "professional" soldiers violates the Constitution. The government has simply failed in its duty to assure that the true Militia of each state of the United States is maintained and ready. The federal government cannot legally use any body other than the "Militia" "to execute the Laws of the Union, suppress Insurrections, and repel Invasions;" to do so violates the Constitution, the supreme Law of the Land.

None of what is said here should be misapplied to State governments. State powers are restricted by portions of the Constitution and within the areas granted to the federal government, but within

which states may act, the federal government is supreme. However, the federal government is not legitimate when it acts beyond the powers enumerated in the Constitution.

As an aside, one can see that the government has a vested interest in getting the National Guard declared by the Courts as the "Militia". With such a decision, the federal government places at its use a vast army of individuals separated from the common people which are the real "Militia" in the minds of the Framers and the words of the Constitution.

Who is to protect our shores?

In Article 1, Section 8, Congress is granted the power:

"To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;"

"To provide and maintain a Navy;" "To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;"

The question becomes, "Which group or more directly Who is to protect our shores?" How, in light of these particular grants of power, does one determine the answer to such a question?
The Constitution of the United States is a Constitution of granted and enumerated powers. The underlying theory is that all power resides in the people. The people gather together and transfer some of their power to a common entity, the government. The Tenth Amendment of the Constitution expresses the concept concisely:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Each grant of power is complete and without duplication. This means that the specific enumeration of a power, explicitly removes or negates all implicit reading into other powers of any similarity. In example, Tucker (1899) explains that the power to take private property for public use upon just compensation negates the power to take private property in any other manner and for any other use.

The responsibility to repel Invasions, to suppress Insurrections, and to execute the Laws of the Union is unequivocally placed in the hands of the Militia. Congress is to provide for setting the method to get the Militia into the action but Congress is not

granted the power to use the Navy or the Army to repel Invasions, suppress Insurrections, and to execute the Laws of the Union.

So what is the necessity of having a Navy? Naval forces, of course, function on the seas and would thus be used to protect the shores against incoming attacks. This is not repelling an invasion because invasion by definition occurs ONLY when the foreign "invaders" are upon our shores and lands. Thus the purpose of the Navy covers all actions to which a naval force would normally be associated except "to repel Invasions" once those intent on invading are upon our land.

Well, what about our Army? This is a very important question. One must grasp the situation of an Army in the United States. The Framers knew that standing armies were dangerous to the general welfare of the people. Throughout history, standing armies were used to suppress freedoms and to make tyrants. The historical evidence of the framing of our Constitution contains ample evidence that no standing army is to ever exist in the United States. The Congress was empowered to raise and support an Army but the necessary monies can not constitutionally be appropriated for any period more than two years. So why do we have a standing army on our shores today? How can individuals spend more than two years in this army, even to the point of having a professional soldier career and retiring from the army? You find the answer. Based upon my reading of the Constitution, those in power are manipulating the words of the Constitution and playing with power. However, the intent of the Framers is easily ascertained by the words chosen.

The key to understanding is in the proceeding terms used in this clause and in the terms used in the grant of power concerning a Navy. The underlying intentions are crystal clear. In regard to an army, the words are "to raise and support" while with respect to the navy, the same Framers stated "to provide and maintain". Thus the key point is that the Congress is not authorized to "maintain"

an army. It may raise an army and support it but not for more than two years at a time. This must necessarily mean that the army cannot continue, that individuals cannot become professional soldiers, and that individuals cannot serve for more than two years nor can these individuals "retire" from service. The army must by the words of the Constitution be disbanded every two years and a new army raised to replace it. Now some might think this dangerous to the common defense of the United States. But the Framers through the Constitution provided for this contingency.

The "common Defence of the United States" should be well established under Constitutional means. IF Congress had not been derelict in their duties, the common defense would be properly in place. The Constitution explicitly grants Congress all the powers necessary to protect the country. It does not grant Congress the power to protect the country through their choice of means. The actual protections is to come from the people themselves. This becomes strikingly clear in reading through the various clauses.

1) "Section. 8. The Congress shall have the Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;"

2) "To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;"

3) "To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;"

First Congress is "to provide for the common Defence" but this is

clearly NOT a military exposition in the Constitution but is a clarification of the restricted purpose of Congress' power to tax and spend. Thus "to provide for the common Defence" is merely the purpose for which money can be spent. If those who read this literally and take the phrase out of context did so within the meaning of the words themselves, one would have to conclude that Congress is to go out and do all the fighting. The phrase "to provide for the common Defence" is not a power in and of itself but is a restriction upon taxation. The Framers so hobbled the Congress because the unlimited power of taxation is the power to destroy and so the Framers restricted, at this point only on paper, the purposes of taxing and spending. The reader is directed to the essays on the abuses of the power to tax elsewhere in this book.

Next, since Congress is ONLY to tax and spend money "to provide for the common Defence", the question arises, "Who is to provide the common Defence?" This question is clearly answered in part two above. The Militia is "to execute the Laws of the Union, suppress Insurrections, and repel Invasions." Congress is to makes the rules as to how the Militia is called forth in response. The President is given command of the Militia forces when called for national duties. And Congress is to provide for "organizing, arming and disciplining" the various Militia.

Some would at this point attempt to argue that the National Guard of each state are the Militia. However, the Framers actions at the First Constitutional Convention prove this to be fallacious. Several options were offered wherein a "select Militia" would be formed. Every offering was defeated. Thus the concept of a "select Militia", i.e. the National Guard, is an invention of revisionists. The Militia was and is all persons capable of bearing arms in defense of themselves and their country. Many today fear this proposition and so support "select Militia" and even unconstitutional standing armies. These people will not protect their own country. They want others to do it.

One might ask why the Framers would want the Militia "to execute

the Laws of the Union, suppress Insurrections, and repel Invasions;" The answer lies in that the Framers recognized that the people themselves have the greatest stake in what occurs. The people themselves could be counted on NOT to take part in tyrannical activities of a government go astray. The Militia is the people. Thus the people could be counted upon NOT to act improperly. In contrast, standing armies have always been used to abuse the people and to force the will of the "leaders" upon the helpless and defenseless population.

So why would we have need of an army? The discussions surrounding the framing of the Constitution provide answers to this question. The Militia's duties at a federal level are restricted by the Constitution to three things. The Militia re not for use in actions outside the boundaries of the United States. So should pursuit of a retreating foe be necessary, the United States can put together an army in order to accomplish the needs of finalizing a confrontation. Still the Constitution is explicit in the limits placed upon this type or any action. The action can only be "to provide for the common Defence and the general Welfare of the United States;" Not that this phrase is used or applies to all the grants of power in the Constitution but because Congress may never Constitutionally raise monies or spend monies for any other reason. Since raising of taxes and the expenditure of monies would be necessary for fighting a war or conducting any of the business of the federal government, these restrictions on taxing and spending must then restrict ALL other actions of Congress and the Federal government.

Today, we have become for the most part that defenseless, helpless population. The majority of members of society have no familiarity with firearms and could not respond to protect themselves. They have become wholly dependent upon the "goodwill" of their government. These same people blindly follow along believing that "it could never happen here" that the government could never become suppressive. But history holds the answer for

these people. Those who ignore history are doomed to repeat it. The price of liberty is eternal vigilance.

And so the Constitution proves once again that we are well beyond the constraints written onto its pages. The people have failed in their duty to be vigilant. The Congress and other "leader" have proven that power corrupts. And the United States moves closer and closer to that which the Founders of this country tried to eliminate.

The War Power of Congress
and
The War on Drugs

In a recent thinking bout, I came upon a thought that required putting it to pen and paper or in this case computer and printer!

My reading of the Fifth Amendment of the Constitution is that private property cannot be taken without due process AND even after due process, just compensation must be made. The key to understanding the limitations placed on our government by the Fifth Amendment is in the Framers' punctuation. One will note that the punctuation between the due process clause and the just compensation clause is a semicolon which is a soft period. The semicolon means the two clauses are related but fully independent of each other. Due process is required before any taking and just compensation must be paid regardless of due process. The Eighth Amendment insures that takings are not excessive because it bans all excessive fines and a taking without just compensation is an excessive fine. The Fifth Amendment makes absolutely no concessions on just compensation and the government is always required to pay just compensation for all takings, regardless of how small the taking appears to be. Now the government might fine an individual and take property but again the Eighth Amendment steps in and restricts the extent of those fines. Additionally, the amendments OF the Constitution circumscribe all conflicting prior clauses as can be understood by reading my essay on the difference between "to" and "of".

Recently while reading some court cases of forfeiture during and following the War of Northern Aggression, I noted that these takings appeared not to be made under the Fifth Amendment but rather under the Captures clause of Article I, Section 8, Paragraph 11 which states Congress has the power "to declare war, grant letters of Marque and Reprisal, and make Rules concerning

Captures on Land and Water;" The power of Congress to take property during times of war was upheld in the Supreme Court in many cases, with the restriction in Article III, Section 3 which states:

Section. 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment for Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

In these "war" cases, the Court held that the taking of properties from certain individuals who had born arms against or aided the enemies of the United States was legitimate under the War power of Congress. As a general rule, a sovereign entity does hold the power to enact such laws and to set rules of capture on land and water.

As an aside to these ideas on the extent of the war power, I offer the following conjecture and opinion based upon my extensive studies of the Constitution, Constitutional law, and the behaviors of Congress, the Executive, and the Courts.

An interesting revelation which came upon me when reading these court cases was about the current use by Congress and the media of the term of art, "War on Drugs".

Consider if you will, What is a "War on Drugs"? Who declared the "War on Drugs"? What I realized sitting there pondering these cases was that our Congress had declared the "War on Drugs" and that these sneaky bastards were using what they considered their war powers against the people of the U.S. Under the Fifth Amendment, Congress, and the states since Barron v Baltimore was an invalid decision, cannot take property without just compensation. However, IF there is a declared war and the "Enemies

of the State" shall commit treason, as defined above, Congress could pass laws which cause the forfeiture of property. Congress, by declaring War, may do as it please because the drug dealers, carriers, producers, etc are belligerents. Thus under this section of the Constitution Congress is of the opinion that they can declare war against any group they please and steal the property of those with whom they disagree.

The War Power means ONLY the power to declare war and all other powers normally associated with war must be individually granted. Even the paragraph granting the war power proves this position because following the grant of power to declare war, the Framers listed other powers normally associated as being UNDER the war power such as the power to make rules concerning captures, etc. The war power is so proven to be a limited power that does not encompass the broad spectrum of that commonly recognized as part of a sovereign's power over war.

By using the media to get the people on the government's side of the "War on Drugs", the government subliminally gets the tacit support of the people to do whatever the government desires to those with whom the government is at war. The negative side to this is determining who will be the next group with whom the government is at war.

Back to reality!

One must consider for a moment the magnitude of war power clause. It was quite forward thinking of the Framers to place the awesome war power in the hands of the federal government because the United States surely did not need one of the smaller member states starting a war. Because the numerous states or nations which make up the United States could possibly subject be to attack from outside the Union or from within, the Framers set in place limited powers over war.

The extent of Congress' war powers differ between actions

outside the Union and those inside the Union. In dealing with battles which continue outside the realm of the Union, I must agree that the forces of the United States are totally under the power of the Congress and that the powers concerning captures and such are fully operable. If a foreign power so desires to attack the combined nations of the United States, the United States are then in such a position to continue battle until such time as the foreign power succumbs. However, one must also realize that the mere granting of these powers proves the United States is not a sovereign entity with the full powers of a nation. It is a Union of free and independent nations and the Union has only the granted powers fully within all restrictions explicit and implicit.

The Court through a number of decisions has extended the power of the Congress to make the rules of captures and allowed this power to apply in the cases of internal strife, i.e. rebellion. And in fact one might agree that the Congress, under the power to set rules of capture, could claim forfeiture of property without compensation as one of the rules. However, this shows a great lack of logical thinking on the part of those who believe this way. The Constitution can never be read one phrase, clause, or paragraph at a time. It must be taken as a whole, interlinked document.

Now, a careful review of the granted powers proves that Congress was never and is still not empowered to pass laws forcing the forfeiture of property even in times of war. The Supreme Court screwed up supremely with their decisions at the time of the War of Northern Aggression. I'll explain the logic.

If one accepts the claims that the federal government has the power under the war powers act to pass forfeiture laws, one must accept that the United States is sovereign within that sphere of action. The problem with the U.S having sovereign power to do as needed under the war power is the fact that the Framers saw the need to grant to Congress the simple power to suspend Habeas Corpus. Habeas Corpus is a minor issue with respect to the other

issues of war.

Wait! Think!

If Congress is empowered under the war power to act in any manner it so chooses during times of war including ignoring the just compensation clause with respect to forfeiture of properties within the United States, why was an enumerated, specific grant of power to suspend Habeas Corpus felt necessary by the Framers? Could it be that, even with the war power clause, Congress and thus all segments of the federal government, lacks the legitimate power to enact legislation which suspends or overrides any portion of the Constitution under any condition? I submit that answer is affirmative. The only logical determination which can be made in the light of the grant of the power to suspend habeas corpus is that Congress was granted no power to suspend or override any part of the Constitution under the power to declare war. The War Power means ONLY the power to declare war and all other powers normally associated with war must be individually granted. Even the paragraph granting the war power proves this position because following the grant of power to declare war, the Framers listed other powers normally associated as being UNDER the war power such as the power to make rules concerning captures, etc. The war power is so proven to be a limited power that does not encompass the broad spectrum of that commonly recognized as part of a sovereign's power over war.

Congress' war power gives Congress ONLY the power to defend against attacks (Article 1, Section 8, paragraph 1).. Within the Union, the entire Constitution is in full effect at all times, including war time, except that Congress is allowed to suspend Habeas Corpus under certain conditions. The Court reaffirms my position in Ex Parte Milligan. Although broad in nature, Congress' war power is otherwise circumscribed by the controls placed upon it by the Constitution. The forfeiture laws which carry effect within the Union and which are used in time of war or following a war, be it the Civil War or the current War on Drugs, are unconstitu-

tional because these actions are not among the enumerated powers granted to the federal government by the People and the States. The simple fact that the Constitution had to explicitly allow for the suspension of Habeas Corpus proves beyond a doubt that Congress is granted no powers to suspend other Constitutional provisions under any conditions within the Union.

The above discussion applies to "war" within the boundaries of the 50 free and independent nations which comprise the Union known as the United States. Of course, such restriction on the war power does not occur in areas outside the protections of the Constitution such as in other nonmember nations. Thus should Congress declare war in defense of the states or any one of them, and that war should venture onto foreign soils, the rules of captures would take affect. In no case are rules of capture valid within the 50 free and independent nations which make up the Union known as the United States.

For more discussion on the limitations of the federal government's powers, please see my essay concerning the fact the United States is not a nation.

Powers not granted .....

All too often the function of the Constitution is entirely misunderstood. The concept of government in the United States is one of limited, granted powers from the sovereign, the people, to each level of government. This means that all power resides in the people, these are the individual citizens which compose the body-politic. In order to come together as a society, each citizen agrees to transfer some power to that body which "manages" the business of government. This transfer is limited in the grants made.

Our Constitution separates these granted powers into three supposedly distinct departments, the legislative where all laws are written, the executive whose duty it is to faithfully execute ALL laws which are passed, and the judiciary whose only legitimate power is to make determinations of the constitutionality of laws. Laws which are not clearly in sync with the grants of power and controls of the Constitution are not law regardless. This point has been well made by a number of those involved in the framing of the Constitution.

I find Marshall, though quite often disagreeable, very enlightened upon a certain point. Marshall stated that unless the grant is explicitly or implicitly distinct then it cannot be exercised by the federal government. I quote: "the words of the Constitution are not to be 'extended to objects not... contemplated by its Framers', let alone to those which unmistakably were excluded." Berger (1996). Chief Justice Marshall also stated:

"the powers of the legislature are defined, and limited; and that those limits may not be mistaken or forgotten, the constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed in writing; if these limits may at any time, be passed by those intended to be restrained?" - Marbury v. Madison (1803) The powers of ALL branches of our government are clearly, and unmistakably outlined in the Constitution. Each branch is granted those powers which were and are

necessary and proper for the function of that particular branch. The three branches in order of power are 1) the legislative, 2) the executive, and 3) the judiciary. This is the Constitutional standard. In actuality, the executive and especially the judiciary have stolen powers through manipulation and deceit. The people have, through their lack of understanding of the limits and restrictions of our form of government, allowed these illegal activities to continue unfettered. Today, we gasp at every innuendo of the Courts and the executive. The lack of intelligent questioning of the extent of the powers of the federal government is frightening. The blind acceptance of behaviors by our elected servants is cause to fear the loss of freedoms and sovereignty. What can be done? Very little but the start is through the educational enlightenment of the individual.

Let's address the powers of each branch. The best way to do this is simply to review the Constitution for the United States of America. After reading through the Constitution, sit back and consider that what you have just read is the extent of powers granted to the federal government, no more and no less. Under fundamental law theory, no subordinate part of the federal government, especially including the Courts, is authorized to "interpret" the Constitution. The limits are to be enforced by the people in their sovereign capacity and through their elected representatives.

The Case Against Implied Powers

Quite often those in power make some claim as to the extent or the embodiment of their power. While there are many claimed powers which have no basis in fact, one currently in the news is that of executive privilege, the power to withhold any information the president deems necessary. The source of this power is not the Constitution since the Constitution provides no direct grant of any such power. However, the news today fails to elucidate the truth concerning the so-called "executive privilege." "Executive privilege" would be an act wherein the president refuses to supply information to CONGRESS. The acts coming under scrutiny now do not fall even close to this category. The special prosecutor DOES NOT work for Congress but works for the President. Thus any information the president withholds is simply information akin to that a boss might withhold from an employee. This is NOT "executive privilege". If the special prosecutor were under the control and employee of Congress, the President would be obliged to supply ALL requested information. It is my contention that the entire special prosecutor investigation is subterfuge aimed at keeping the people's minds off the actions of Congress and the President as they subtly eliminate our freedoms one by one. What occurs is that, primarily in the executive and judicial branches, the two weaker branches of our government, those in office wish to expand their power. Under the guise of interpreting the Constitution, these branches look at the powers granted to the Congress or to the other branch and "imply" the existence of equivalent powers. This is so far from the truth as to be ludicrous. An additional way in which members of the various branches extend their power is in claiming that a similar power exists in the government of other countries.

Ours is a special government, an experiment in duality. The Framers created a part national and part federal government to which were given a few limited powers. All other powers were retained by the states and the people.

The Framers made specific grants to each branch of the federal government. Only those powers necessary and proper were placed into each branch. If the "grant by implication" method were true then no enumeration of powers would have been necessary and no separation of powers would exist. For if one power may be implied from grants to another branch, then all powers granted to each branch must be so implied as to be active in the other branches. One cannot pick and choose like a buffet. The only true understanding is that which is not granted is withheld regardless of how much benefit the grant would provide to a particular branch. Indeed, the Framers recognized that many of the powers granted were commonly exercised by the equivalent branch in other countries and if such implication of grant existed then the Framers wasted time and effort and defrauded the people of the United States with the enumeration of the grants of power. No "grant by implication" following from the powers of government in other countries exists in the powers of the federal government of the United States. One must recognize that the Framers were FROM these foreign countries and were "fixing" the problems of the governments in those countries. Our form of government is unique in the world. No other country then or now has matched our experiment. Some may have the separation of powers to halt government tyranny. Some may have a split legislative body. But only in the United States do we still have multiple levels of government with each exercising those portions of authority they are best suited to exercise. Each of our levels of government is sovereign within its own realm.

Congress is granted the exercise of certain powers. The President is granted complimentary and in some cases nugatory powers. The Judicial branch was made the weakest of them all with only the power to review laws for compliance with the Constitution. All claims to "implied" grants of power are simply government tyranny, attempts to steal power from the people or other branches and to consolidate that power in the hands of despots.

One might ask why the Courts haven't stopped the other branches from conducting themselves in these unconstitutional manners. I can only state that my opinion is that the Courts themselves have been participating in these same unconstitutional actions since early on in attempts to expand their powers outside those granted by the Constitution. One need only read the historical documents to find how the Courts and other governmental bodies have manipulated information and creatively interpreted the Constitution to justify their actions. And why would those in Congress, each with plans to possibly be the next president, jeopardize their chances of exercising more power than the few minor powers given by the Constitution.

Constitutional Jurisdiction of the Supreme Court of the United States

The Constitution of the United States enumerates the powers of the supreme Court and the cases to which the court has original jurisdiction and appellate jurisdiction. Since theses jurisdictions are constitutionally set, Congress has no power to expand upon the enumeration. Congress, under Article III, Section 2, is authorized to legislate exceptions and regulations as to the appellate jurisdiction but no such grant of power is given concerning original jurisdiction power. Congress is in no way empowered to expand the cases to which the Court has jurisdiction.

The eleventh amendment was ratified early on. This amendment removed much of the jurisdiction given to the supreme Court in the original Constitution. Historical records evidence an ongoing battle between the Antifederalists and Federalists. At the beginning of the nineteenth century, the supreme Court was the only branch of government under the control of the Federalists. It was during this time that one of the major struggles and the greatest theft of the people's rights occurred. Within this time period, Chief Justice Marshall altered the methods of the court from one of seriatim or separate opinions to one of a majority opinion. Justice Marshall also made some of his most critical decisions. Decisions which have haunted the people since. In each decision, Marshall removed more rights and liberty from the people and the states and placed it in the hands of the strong federal government which he so desired.

It is interesting to note that many of his decisions went contrary to the general understanding of the extent and power of the Constitution as is shown by a reading of "A View of the Constitution of the United States of America" by William Rawle, LL.D.

The Supreme Court IS NOT empowered to interpret the Consti-

tution and to elucidate its meaning for the people. The Supreme Court is empowered merely to review laws and to determine whether or not the law meets ALL Constitutional tests. The Court may then state their opinion as to the Constitutionality of and act or the lack thereof but the Court is not authorized to state more than this. The Court is not granted the power to extend, create, manipulate, or otherwise develop law through the use of dicta and opinions. That the Court does so does not make the Court's actions legitimate but only serves to prove that the judiciary of this country are as prone to the corruption of power as are others. One need only read fundamental law theory to understand that the subordinate is not empowered to determine the meaning of the superior.

All should also take note that the judiciary have granted themselves judicial immunity from any consequences which might arise from the effects of their decisions. The judiciary hold that since there is nothing in the Constitution holding them responsible for their actions they must therefore be immune from prosecution from the effects of their decisions. This is contrary to the core theme of our form of government. In our theory of government, all power lies with the people and only that granted specifically is proper. Implicit and/or inherent powers are not Constitutional. Thus the judiciary are not immune from prosecution merely because they so claim. Unless and until the people grant immunity to the judiciary, they are not immune from prosecution for the effects of their decisions.

The Constitution: A Living Document

The Constitution for the United States of America is often referred to as a "living" document. A document, which through the great powers of the omniscient and omnipotent U.S. Courts, changes with the times to reflect new meanings and understandings in the same old words. The Constitution was referred to as a Constitution for all times by the Framers. As time passed, an elite, who, of course, are the ONLY ones with the knowledge to understand just how the Constitution changes, arose in the United States. Only they are given the power to know what that complex web of words can be twisted, er interpreted, to mean. This elitist group is the federal judiciary.

Our current Constitution was the outgrowth of experience with many forms of government. The Framers were fully aware of the dangers of a monarchy or other forms of government based upon divine grants of power. In the early U.S., we had the weak Articles of Confederation. The Constitution for the United States of America is our second form of government. The Articles of Confederation contained many shortcomings and one of its greatest was its lack of alterability. The new Constitution was given "life" because it was made alterable. The Constitution became a document for all men for all time.

Power exists for three reasons: 1) to be sought after, 2) to be demonstrated or used, and 3) to be expanded upon. Those given the power to adjudicate and to legislate and to execute the laws of the United States are no exception to the rule that power corrupts. As time passed, the discussion about the life given by the Framers became more and more an issue of semantics. The "life" as meant by the Framers became a "life" as decided upon by the "rulers". Now, more than two centuries later, the particular "life" of the Constitution placed there by the Founding Fathers is dead and a Phoenix of Power has arisen in its place. This Phoenix is interpretation.

The common belief today about the "living" Constitution is that the Courts, along with the other government agencies, hold mystic

powers to see beyond the mere words and into the hidden meanings of the Constitution. And each successive Court is given powers to see what prior Courts had missed. The "living" document changes with time because those in power say it does. The government schools inculcate the peoples of the United States with the new age understanding of our founding documents. The minds of the students are moulded to the understanding that those in power can see much more in the Constitution than mere mortals such as the people can hope to see or understand.

In order to accept the current "living" document postulations, one must first believe that the Framers were sneaking hidden meanings past the people, meanings ONLY understandable and recognizable by an elite group of "officials". If one accepts the position or claim that the Constitution is a "living" document with "living" meaning reinterpretable as times change, then one must also accept that the Founding Fathers perpetrated a great fraud upon the citizens of the United States. And one must accept that the amendment process as set forth in the Constitution was wholly unwarranted and unnecessary. Either the Framers themselves misunderstood what a "living" Constitution was when they wasted time and energy by developing and placing an unnecessary and irrelevant process in the Constitution OR the claims of "life" through reinterpretation are lies. I take the stand that the current claim to "life", as stated by those in power, are lies and frauds perpetrated upon the peoples of the United States. These lies were created and continued in order to steal more power from the people by corrupted leaders.

The ONLY "life" of the Constitution is in its ability to be amended. All claims otherwise are lies and frauds. Those who make these claims are either involved in the theft of power or are so ignorant as to be unable to fully understand the consequences of such a transfer of power to the government. This transfer makes the government much more powerful than the limited, enumerated government formed and established by the Founding Fathers. And this new "life" and these newly found governmental powers would be wholly unrecognizable to the Founding Fathers

Methods of "Interpretation"

Since the language of the Constitution is in reality straight forward and unambiguous, regardless of the claims of the legal community, there is absolutely no need to interpret any of the Constitution. Read the Constitution and study it carefully. Keep a copy with you while you read this book so that you may refer to the words as they are written.

In regard to the Constitution, there are six methods of interpretation in use today. These are textual, historical, structural, doctrinal, prudential, and ethical. In using any methods, one must always begin with the historical meanings for defining the words used. Word definitions are an area in which current usage may modify the meaning of a specific for each generation. Without a clear understanding of the meaning of specific words at the time they were used, no valid understanding of the Constitution can be had regardless of which of the above methods one uses. Doctrinal, prudential and ethical examinations of the document are especially tenuous as these bring an individual's bias into the discernment process. Structural interpretation also requires a solid understanding of the formation and form of our government. It is not as one might think an interpretation on the current and historical usage of language.

Textual

The textual method involves reviewing the exact text of the clause, section, and article to determine what is stated in the Constitution. Initially, the clause is to be understood in the broadest sense of its terms. The section in which the clause appears may contain explicit constraints. More commonly, constraints appear only upon reading the entire document. Commonly, clauses of the Constitution are taken out of context in order to create the appearance of constitutionality of a particular law, regulation, or action. Just as in any other reading, taking statements out of

context very often leads to an invalid understanding of the entire document. Those who do take statements out of context are often furthering their own agenda.

Hamilton has stated in his works that the Constitution can only be understood on the basis of its naked text since no one can know the thoughts and intentions of the Framers. Even in discussions shortly after the ratification many who helped write the Constitution could not recall the reasons specific parts were ratified or defeated (Story, 1833).

Historical

In order to grasp the historical significance of Constitutional clauses, one must delve into the books and writings of the time in which the Constitution was written. The use of historical information to expand one's understanding of the Constitution is required but great care must be exercised to read a full balance. Personal biases exist in all writings even in or especially in this book.

History is an area that is often forgotten or overlooked by many. A famous statement is that those who refuse to learn from history are doomed to repeat it. No greater truism exists. Simply look at your own children then at yourself. Did you listen to the history of your parents? Do you children listen to you? Or, like most of us, did you or do your children simply go along making the same mistakes made by those who went before? I believe most will answer that you have to learn for yourself. Learning the results of your actions first hand often teaches a valuable lesson but it is a lesson free for the taking when one studies history. However much one does not want to believe it, man does not change with time. The same behaviors which exist today existed previously. The horrible behaviors of our criminal element were met with stringent punishments, usually death. Thus a life long crime spree did not last for a long life.

Structural

The Court views structural analysis not as an interpretation of the structure of the document BUT as an interpretation taking into account the structure of our government. My view of structural analysis would be one that looks at the organization of the document and its impacts upon the federal government. So within this sphere I would disagree with the Court in the structural effects on understanding the Constitution. The Constitution sets the structure of our government in concrete. Thus no room is left for interpretation. The only visible use of this method would be to develop a method which places implied powers in their respective positions. However, since implied powers are ALL based upon one's predilections, a method of interpretation that deals with using the structure of the government, something created by the Constitution, as a guide to interpreting the Constitution is like putting the cart before the horse.

This is MY structural method. Though the following may not completely discuss all aspects of structural interpretation, it covers those aspects I deem most important.

The structure of the Constitution is highly relevant. One must understand the use of punctuation. In my personal opinion, the punctuation is the most often ignored portion of the Constitution, especially by those in power. By ignoring the punctuation, clauses and sections can be both combined or separated and interpreted incorrectly. An example is the absolute ban on taking private property for public use without just compensation. This clause is separated from the due process clause of the fifth amendment by a semicolon (;). The semicolon, a form of soft period according to Webster, means that this clause is related to BUT is independent of the due process clause. This is to say that yes due process must be followed and private property may be taken for public use BUT that the owner of the private property must be justly compensated ALWAYS.

Many errant commas seem to appear in the Constitution but these are easily explained as we remind ourselves of the method in which the information contained in the Constitution was shared with others. The primary vehicle of disseminating information at the time of the revolution was through speech. A good speech writer marks places for pausing and breathing with commas. Thus if one will "read" the Constitution while mouthing the words, one will find that pauses (commas) exist at points where one would normally stop momentarily. Copies of the Constitution could not be made a Kinko's and handed out to all. The Constitution was read aloud to the Congress and notes taken by all those present.

It is interesting to note that some hand-written copies of the original Constitution do not contain all the errant commas while others do. Again, the simplest explanation is likely the best. The copies with the commas were those used by an individual to read aloud to a group. Copies meant to be read silently needed no errant commas.

As we move into the next methods of interpreting the Constitution, opinion and individual biases reach a greater level of influence in one's understanding of the Constitution. These three methods often involve a greater understanding of common law which influenced out Founding Fathers. My personal opinion is that these influences are methods of adding more powers to the federal government through legal interpretation of the Constitution rather than leaving the Constitution as it is, a document by the people, of the people, and for the people.

The common law is that which is created out of the decisions of judges. The Constitution makes absolutely no mention of common law except in the Seventh amendment concerning suits at common law where it is stated that in all suits of a value of more than twenty dollars, the defendant's right to a jury trial is preserved.

Doctrinal

The doctrinal method of interpretation delves deeper into the "reasons" behind the creation of various clauses in the Constitution. This method is tightly linked to historical but is at times used to extend powers through implication. The Courts use precedent to build their case but it is the Courts who create that precedence in the first place. Thus the use of doctrinal methods can be seen to be highly self-serving. Do not accept any extension of the powers granted beyond their simple scope. There is but one legitimate method of adding more power to the national government and that is through amendment of the Constitution. The Congress, the supreme Court, the President, and all offices, departments, segments, etc. of the federal government created by the Constitution are not empowered to interpret ANY of the Constitution. That which is created by a document cannot interpret the creating document.

I won't even touch on the prudential and ethical methods. I can only leave you with the following quote of mine: "There ain't no good intentions clause in the Constitution!" The last two, prudential and ethical, fall into a grey area since these are methodologies developed by the legal community to transfer more power into their hands. A doctrinal interpretation also requires the student to make judgments about the information being studied.

When studying the Constitution, great care must be made to ascertain the meaning of the words used by those who wrote the words we read today. Discussions about the Constitution and its powers were extensive and often heated. Beyond learning what the Framers meant, one must understand the meaning of words, grammar, and punctuation as they were used at the time the document was written. Today, a few words have different meanings than they did two hundred years ago. However, most words have changed little. The greatest change has been in the vocabulary of the common man with larger, more complex words becoming less well known. When the Constitution was written

just as might have occurred today, a word could have several meanings. Thus, the meaning is established for each word by what is conveyed in the sentence in which they are placed; and sentences must be studied in relation to their paragraph. And paragraphs understood in relation to the entire document. Nothing should be pulled out of context.

If a word is strong and unambiguous then it will be easily understood by all. Words that have both broad and narrow views should be taken in their broadest sense, IF there are no restrictions listed or implied by other statements in the Constitution, or in the narrow sense if restrictions are given. Still, the same word used in different phrases can and does convey different meanings to the that word. An example is found in Article 1, section 8 of the Constitution of the United States. The word "provide" is different when used in the context of "providing a Navy" and "to provide for the organizing, arming, and disciplining, the Militia". Similarly, one "provides" a family and after the family exists, one "provides for" that family through various ways, i.e. shelter or food. As is implied by the wording of Article 1, section 8, the militia must have existed prior to the Constitution (there is no mention of creating or forming) and therefore the Militia existed prior to the federal government. And just as one "provides for" one's family, the government was supposed to "provide for" the Militia. Those that fought in the Revolutionary War realized that the militias needed organization, arming, and training (disciplining) and that these needs should be met universally in all parts of this new country. As one studies the Constitution, a copy of Story (1) is indispensable.

Amendments "of" [we do not make amendments to] the Constitution, are similar to modifications added to the end of a legal contract. Changes made to the body of a contract affect only the part or parts with which they are attached. Changes made as addenda modify the entire document and so it is with amendments. The Constitution is at the same time inviolable and changeable. It is the ability to be amended that gives the Constitution its life. One

must realize that changes can be and have been made as seen fit by the people and that interpretation by executive, legislative, and judicial branches violates the idea of a government of the people, by the people, and for the people.

The Interpretation of the Constitution

The current path of the Supreme Court has followed a long established tradition of interpreting the Constitution. The Constitution is stated to be a living document and a document for all time. In shifting power away from the people, the Court determined that "living " implied interpretable based on current needs. But this determination is fallacious as is evidenced in the following quote from Story (1833):

"Where is the controversy to end, if we desert both the letter and spirit? What is to become of constitutions of government, if they are to rest, not upon the plain import of their words, but upon conjectural enlargements and restrictions, to suit the contemporary passions and interests of the day? Let us never forget, that our constitutions of government of government are solemn instruments, addressed to the common sense of the people and designed to fix, and perpetuate their rights and their liberties. They are not to be frittered away to please the demagogues of the day. They are not to be violated to gratify the ambition of political leaders. They are to speak in the same voice now and for ever. They are of no man's private interpretation. They are ordained by the will of the people; and can be changed only by the sovereign command off the people."

J. Story, Book III, pg. 754, para. 1901.

This essay recognizes that ANY reading and subsequent understanding of what has been read can be denoted as being an "interpretation". One must be able to read the language and language has its center definitions as evidenced by our "dictionaries". This sets in stone or at least print the understanding of the general or common meanings of words.

Any student of the Constitution recognizes that there is no place within the document that grants the courts or anyone else the

power to interpret the Constitution. The true reason the Constitution is a document for all time and a "living" document is that the Framers included within the Constitution the power to alter the Constitution as societal needs require.

The Framers recognized that this power could be abused and added a requirement that all amendments be passed and ratified with a large majority. The Legislative passage requires two-thirds majority while the ratification requires three-fourths majority for the amendment to become effective.

Because of the difficulties associated with amending the Constitution, alternative ideas as to how to accomplish these changes surfaced. Thus the idea of interpretation was born. If words only need to be changed in their meaning and a new, creative understanding of the Constitution can accomplish the needed change, then by all means that must be how the Framers meant for us [the leaders] to manage the affairs of them [the people].

The Framers could not have conceived of how twisted our Constitutional understanding could become. Or could they? Prior 2 to the Constitution and following the Declaration of Independence, the Articles of Confederation were written to form our first government. These Articles however turned out to be extremely weak in many areas. The newly formed government was forced to act by implication and necessity. During the Constitutional writing and ratification process, those framing the new government spent many hours mulling over what to include and what not to include. The Framers paid special attention to the granted powers and the wording. They also added the ability of the people to modify the Constitution as times change, the ability to amend the Constitution. One of the goals of the Framers was to assure that the new government did not need to nor could it legitimately claim implicit, ungranted powers as had occurred with the Articles of Confederation. This is the basis for my statement that interpretation is not an allowable method of altering the understanding of the meaning of the words in the Constitution. There is only one

method of alteration and that is amendment. If we allow continuous and varied interpretations based upon the predilections of the day as occur now, then the Constitution is a powerless, valueless and unnecessary document held high merely to assuage the people's fears.

The Illegitimate Interpretation of the Constitution

The American justice system has developed to a state where the Supreme Court renders decisions based on its interpretation of the Constitution. This interpretation is premised in several modes of understanding.

The modes of interpretation are 1) original intent, 2) historical perspectives, 3) structural reading, 4) doctrinal, 5) ethical, and 6) prudential. The last three lend themselves to modifications based upon personal agenda and ideals. Ethical and prudential considerations are plainly legal methodology designed to expand the hold of legal departments upon the control of the federal government and of the people of America. The Framers of the Constitution never intended the Courts to carry the power current day Americans have allowed. The passage of the Eleventh amendment proves this point as it was shortly after the ratification of the Bill of Rights that Congress reduced the powers of the supreme Court to less than the few that were in the Constitution originally.

I take offense to the Supreme Court believing that it is the interpreter of the Constitution. The Supreme Court cannot interpret the Constitution as the Supreme Court was created by the Constitution. It's entire existence is dependent upon the Constitution. The development of interpretational constitutional law came about because Chief Justice Marshall was displeased with the relative weakness of the Court with respect to the other divisions of government. However, his reach exceeded that offered by the Constitution. Had Marshall been more proactive and established the Court validly, the powers it exercised would have been as great and Marshall would have maintained autonomy of the Court. At the same time, the public's view or opinion of the Court would have been enhanced. A proactive stance which required legislation to be compared against the straight forward language of the Constitution without bending (sometimes called interpreting) the text would likely reduced the power grabs which

have become so prevalent in this century.

By comparison, many state Constitutions create various state agencies and boards. Similar to the Supreme Court interpreting the document that founded the Supreme Court would be one of these other agencies "interpreting" the founding documents of that agency. Allowing the interpretation of a document by a group which lies entirely at the mercy of such document is akin to putting the fox in charge of the henhouse.

Suppose for an instance that a police force created by a city council were to decide internally what the meaning of that police force's founding documents held. This force might run rampant over the people, doing at their will, whatever they discerned that the documents meant. Some would say that it is the "job" of the Courts to interpret laws. I respond that I agree BUT who is to stop the Courts from deciding in their own favor just what these documents mean. Where should logic end and emotion begin? I steadfastly refuse to allow any point in law where emotion should rule over logic. And logic should always and forever bow to truth. Thus, the statement that power corrupts and absolute power corrupts absolutely was likely talking about judges equally with all other power mongers of the world.

The supreme Court is empowered to simply review laws which have been passed, comparing these laws to the simple English statements of the Constitution. If the law is repugnant to the Constitution, then it is unconstitutional. The Constitution is a legal document but it is written in the language that the people who formed our country could all understand. If the wording was ambiguous and required interpretation, the Constitution would never have passed muster and the United States of America would likely not exist. There are no hidden meanings requiring an individual learned in law to translate.

The Constitution was not written by lawyers for lawyers but by the people for the people. It is not written in legalese but in the

common language of men. The words had to be understood by the people or the document would never have been ratified. Thus there is no need to interpret any of the Constitution nor are there any hidden meanings. The interpretations being bantered about in today's legal community and among the many federal offices and departments is strictly for usurping powers from the people without following the proper amendment procedure. I beg that those who read my work do all they can to pass on the understanding gained from this action to others and to share the logical understanding of the words of our Founding Fathers.

I quote from Hamilton. "But, whatever may have been the private intentions of the framers of the constitution, which can rarely be established by the mere fact of their votes, it is certain, that the true rule of interpretation is to ascertain the public and just intention from the language of the instrument itself, according to the common rules applied to all laws. The people, who adopted the constitution, could know nothing of the private intentions of the framers. They adopted it upon its own clear import, upon its own naked text. Nothing is more common, than for a law to effect more or less, than the intention of the persons, who framed it; and it must be judged by its words and sense, and not by any private intentions of members of the legislature. (Hamilton on Bank, 1 Hamilton's Works, 127, 128.)"

The fox cannot be left in charge of the henhouse or all the hens will suffer.

The Judicial Branch

The judicial branch is established in Article III of the Constitution. The powers of the judicial branch of our government are limited in a manner similar to those of the other two branches. The Constitution, being a document of grants, states emphatically the areas where the federal courts have jurisdiction. These restrictions apply to ALL federal courts, except those in areas where Congress has exclusive legislative power. The eleventh amendment of the Constitution strips much of the powers granted in Article III, Section 2. Congress, too, may set exclusions and regulations concerning the Courts. Again, in my opinion, the granting of such power of the Congress over the Courts is a weakness of our Constitution. I believe the Framers inserted such statements out of fear, fear based upon experiences with the mother country, England. There are numerous essays in this book in which the powers of and expansion of powers by the judiciary are discussed.

Judicial Decisions

Scientists are highly trained experts in evaluating information and coming to a conclusion concerning its apparent meaning. These conclusions are generally known as theories. Until a theory is verified by numerous other scientists it remains a theory. After verification, a theory becomes known as a law.

The Judiciary hold themselves much higher in esteem. Similarly to a scientist, a judge will evaluate information presented to the judge and a decision will be reached. However, any similarity ends here. The judicial decision becomes law even though it is in reality nothing more than one person's theory. A judicial decision is of the same strength as a scientific theory but as many recognize, these judicial decisions are known as "common law". In the judicial system even a mistaken theory or law holds as other investigators passively accept "stare decisis", which means let the decision stand. Only under great circumstances are these judicial decisions reviewed for validity and their theoretical holdings tested.

Thus incorrect or mischievous decisions may be carried forward as though they were the word of God and law. Have the people explicitly granted this great power to the judiciary? The plain and simple truth is NO. The judiciary have usurped powers through claims that if it is not explicitly prohibited then it must be implicitly granted. But this notion is 180 degrees out of phase with the basics of a republican form of government wherein all power flows from the people and that which is not granted is withheld and remains with the people. It is also contrary to the idea of government held in a republic wherein all governments are of limited power.

In a proper system of justice, legal decisions would undergo scrutiny as do scientific theories and would need external substantiation before being placed into use by other judges and the general legal system. Should a scientist act so recklessly as to claim a

theory as a law without verification, the remainder of the scientific community would ostracize that scientist. Such is as it should be with the Judiciary. But following the example of the scientific community would mean giving up power and returning that power to its rightful owners, the people. Our aristocracy, the Judiciary, would have to lower themselves to the same level as the rest of the people by recognizing their own fallibility and weaknesses. Power is not so easily given up once obtained.

Judicial Revisionism

For those who have little idea what judicial revisionism is and the damaging affects of this unconstitutional action, I would like to refer you to Carey (1995) "In Defense of the Constitution" for deeper detail of what I discuss here.

Our country was founded upon basic principles of equality of rights. The core rights to which this equality applies are life, liberty, and pursuit of happiness. The pursuit of happiness amounts to ownership of real and personal property. Too many including our judiciary have decided to expand these core rights without benefit of modification of the Constitution through Constitutional means, i.e. amendment. Thus, the Courts, in a massive expansion of ungranted power, have developed their own form of Constitutional modification known as judicial review which has in fact amounted to revisionism.

Judicial revisionism begins with judicial review of laws but its reach extends beyond the valid power of simply declaring a law contrary to or in compliance with the Constitution. Based on the powers granted to the Courts in the Constitution, one can conclude that the court is the weakest of the branches of government. The Framers, regardless of what modern day activists claim are found in the discussions in the Federalist papers, did not expand the intent of these limited powers. The Court is merely to sit upon specific cases and make a justified, constitutional decision. Beginning in 1803 with Marbury v Madison, the supreme Court began the climb that has brought about massive social and behavioral changes in the United States. This decision was followed by other minor decisions but the supreme Court's big chance came in the 1833 Barron v. Baltimore decision. Once again Chief Justice Marshall acted to build the power of the Court, only this time rather than taking power from the legislative and executive branches, Marshall stole power from the people. Barron

v Baltimore placed the Court in the position of deciding the relationships among the states, the people and the Bill of Rights. The outcome of this terrible and incorrect, and judicially revising decision, was to remove the protections of the Bill of Rights as restrictions against both the federal government and the states, leaving the Bill of Rights as only a restriction on federal action. This decision was 180 degrees out of phase with the understanding which was taught using the only major constitutional text of the time, Rawle (1829).

The judiciary utilized each and every chance to move power from all others to themselves but none so much as has occurred in this century. Our judiciary have invented reasons to support the need of expansive judicial review which has lead to judicial revision of the truth. Much of the revision comes at the hands of activist judges who use 90% emotion and 10% manipulation of fact 2 to create the society THEY believe we should be (Dowlut 1983 footnote [1]). The federal system has become more and more controlling through the Congress, the Executive and especially the Courts. Today, the Courts pass legislation out of decisions although they only have the legal power to review the law for constitutionality. All decisions which force some sort of "legislative" action are not constitutional. The Court is empowered ONLY to decide if a law is Constitutional or not and to declare so but no where is the Court granted the power to force actions beyond the elimination of the particular law from enforcement. One only needs study the historical records to find where the judiciary have taken out of context statements and manipulated the information to fit THEIR moral position. A review of the Constitution shows that almost none of the current positions and powers in the judiciary exists.

Quite often the state of affairs in legal matters leads people to decry our jury system and to request a system of sitting judges. What amazes me is that this system of sitting judges is that from which our Founding Fathers ran away. As the Framers well knew, too much power in the hands of ANY group becomes oppressive. The

historical evidence of the entire world points to this same result when those who are permitted to operate our government begin to permit us to live under our government.

Regulation runs rampant, regulation with no Constitutional grounds. In some cases the Courts simply fail to protect the people's rights by keeping Congress within the express restrictions of the Constitution. In other cases, the Court strikes down Constitutional laws which the people through Congress have enacted. Our judiciary have risen to the point of believing themselves to be all-knowing, i.e. God. Many decisions are made on what the judges believe to be good. And as I state emphatically to many "There ain't no good intentions clause in the Constitution." As to our jury system, it is fine. It is cracked because the judges and lawyers have imposed their will and rules upon the system. Historically, one had to know and be aware of what a case was about in order to be accepted to sit upon the case. Of course today, the judicial system has decided that knowledgeable people are a threat to the system [and to the "greatness" of the judges and lawyers] and require a lack of knowledge in order to serve on juries. It is the judiciary and the attorney system that has run afoul. It is the judges and lawyers who should be eliminated and the common people should be put back into place to make decisions.

Judicial Review - Constitutional?

The Constitution spells out an extremely limited list of powers for the supreme and other federal courts (Article III, Article VI, and Amendment Article XI). Without amendment of the Constitution, these courts cannot legitimately exercise ANY other powers. The power of judicial review is not directly stated in the Constitution. Documentary evidence in the form of The 78th Federalist paper is scant but does appear to provide a limited intent to have the court review laws. However, one must question how widespread the knowledge of the intent of the Framers was at the time of ratification of the Constitution.

Chief Justice Marshall in his Marbury v. Madison (1803) decision took the power of judicial review to its maximum coverage. The chief justice proclaimed the power to be the court's and from that time forward the court has exercised its power with impunity and often against the actual wording of the Constitution. It was the taking of judicial review as a power which turned the justices into an aristocracy in the United States. The Chief Justice, three decades later in Barron v. Baltimore (1833), stripped the people's protections against state abuse, the Bill of Rights, out of the Constitution, leaving protections of the rights of the people from the states to the whim of the courts. Why? We can only assume but since Chief Justice Marshal was a federalist and was determined to make the supreme Court equal to the other federal branches, I contend that he stole power to accomplish his personal desires and that his actions were not those of a benevolent judge but actions of a tyrant.

I cannot fault the courts for participating in judicial review. I believe it to be an important part of our system. I do fault the justices for believing themselves to be more intelligent, of higher moral character, and better meaning than the people. These justices have illegitimately altered the course of our lives and our government. These justices have used judicial review to deter-

mine the moral direction of our country and the extent of government intrusions into the private lives of our citizens.

The power of judicial review is not a power so overwhelming that is can legitimately sway the course of history. The power has been abused regularly by the courts and the people have suffered for it. The power of judicial review is actually limited to determining whether legislation passed by the federal and state governments is constitutional and striking it down or letting it stand as the case may decide. Beyond this easily understood limit, there exists no legitimate power of judicial review. The courts are not empowered to determine whether an individual's actions are Constitutional since the Constitutional restrictions apply only against governments. The courts are not to 2 "interpret" legislation to determine what it means and how it is to be applied. The courts are but to read the legislation then compare it to the easily understood Constitution, disregarding all manners of interpretation of the Constitution save textual, and determine the legislation's Constitutionality. We cannot use intent for the intent of all those who ratified the document is not known now nor was everyone's intent known at the time. The Constitution was breaking with the old so that historical precedence also fails as a test of meaning. And the other modes of interpretation, i.e. doctrinal, prudential, ethical, and structural, are all legalese for stealing power illegitimately.

The restricted power of judicial review implied by the intent of some of the Framers and the power of appellate jurisdiction is one of simple review of laws for compliance with the Constitution of the United States, nothing more. All handwaving and claims of superior knowledge of what powers the court claims to have is not substantiated by the Constitution. And the Court itself can make no claims or judgments as this is like putting the fox in charge of the henhouse. No more chickens and one fat fox!

Due Process

Due process is a term of art employed by legal strategists. The exact definition is clouded in centuries of historical legal mumbo jumbo. One must ask why something as important and as simple as "due process" must be clouded in this manner. The answer lies in power.

To a lay person, "due process" would imply the following of a legitimate method of application of the law. And true it is that at its core "due process" means just that. However, the edges of "due process" extend into a darkness created by the Courts. That darkness covers the manipulations which occur in the name of justice.

The phrase "due process" supplies us with the "innocent until proven guilty" belief. This is not however true "due process" but is merely the current position and definition used by U.S. courts. The courts decide the extent of "innocent until proven guilty" and just as easily as the courts accept this position, the courts could turn "due process" into a system wherein one must prove one's innocence. In fact, within our civil justice system the courts have decided that "due process" starts with the defendant not being innocent and in need of proving innocence. The final outcome is based upon a "preponderance" of evidence, which is of itself another mysterious term.

The courts have also pulled "ex post facto" laws out of civil "due process" stating that the Constitutional prohibitions on "ex post facto" (after the fact) laws apply ONLY to criminal law and not to civil law. Thus the retroactive income tax, being civil law, was forced upon the people. Many cried that this was a violation of the ex post facto prohibition not knowing the court had selectively decided that U.S. "due process" included "ex post facto" in criminal law but not in civil law.

So yes, in our system, "due process" is a complex phrase but only because the judicial system cloaks it in darkness manipulating it to suit their desires for power. Often the court uses historical basis for its definition of "due process" and the greatest history comes from England. It must be recognized that OUR country was founded in opposition to how laws were enforced in England. So upon proclaiming our freedom from the English, the historical record of England went by the wayside. Our system should have developed of its own accord.

The common interpretation/understanding of the grants of power is that they are as broad as can be with respect to any and all restrictions found within the rest of the Constitution. It is interesting to note that the courts have not applied this same interpretation to the restrictions. The clause in the Constitution which prohibits ex post facto laws contains absolutely no reference that it applies to criminal law only. That limitation was drawn from English precedent. If the court followed the same procedure in interpreting restrictions as they do in interpreting powers, ex post facto would apply to all laws in the manner that the simple, naked text of the Constitution states. Under a broad interpretation, the government would have to give up powers which it uses to abuse its citizens.

The only acceptable definition of "due process" is the one the people give to the phrase. The Courts are not above the people in our country. Blackstone stated it aptly:
"For whenever a question arises between the society at large, and any magistrate vested with powers originally delegated by that society, it must be decided by the voice of that society itself. There is not upon earth any other tribunal to resort to."

The Courts are reticent to give up this stolen power for all the common reasons. Those in power do not wish to have their powers reduced or restricted. The excuse is that "due process" is a legal

term of art, of which the average person could have no understanding. Thus those in power must make the big decision for the people. The actions of the courts have proven that they cannot be trusted to set the definition since they are not an uninterested party. The Courts, by making “due process” a complex phrase, maintain their power base.

“equal protection under the law”

The first section of the Fourteenth Amendment of the Constitution ends with: “nor deny to any person within its jurisdiction the equal protection of the laws.” There are those who question what the phrase “equal protection” truly means. On one side, the opinion exists that “equal protection “ is a positive protection only but nothing in the rest of the Fourteenth Amendment implies such a limitation. I too would desire the clause “equal protection of the laws” to mean positive protections. However, one must understand that protections of society can and do result in oppressive laws for individuals. In following with the more common understanding of the Constitution, one must give this phrase its full and unfettered meaning. Thus “equal protection” merely means that the law must be nondiscriminatory, i.e. it must act equally upon all persons. A law may be equally oppressive to all and still be Constitutional under “equal protection”.

As to the nexus between equal protection and the privileges and immunities clause, please see the essay on privileges and immunities versus rights.

An Admonition to the Supreme Court

Since the ratification of the Constitution and throughout the history of this great country, the Courts have been looked to as the great protectors of the people from government usurpations of power and abusive actions. The Courts have, however, taken it upon themselves to "interpret" the Constitution when in actuality the Courts are simply to compare laws, rules, and regulations to the straightforward text of the Constitution to verify consistency of these laws, rules, and regulations with the letter of the Constitution. The Courts have embellished with creative "interpretations" the phrases and clauses of the Constitution.

Most commonly the Courts have taken the position of expanding the powers of the government and restricting the rights of the people; actions not unexpected since the Courts are a central part of the government and positions within the Court system are dependent upon government fidelity. The Courts must awaken to the desires of the people. The actions of the Courts must come into line with the powers the people have granted to the government. And with the restrictions placed upon the government in the Constitution and the amendments of the Constitution.

The Courts are guilty of causing much undue grief to the people of the United States by not standing their ground squarely against the great theft of power by zealots and tyrants. Many times, the Courts have acted properly but in as many other instances, the Courts have ruled improperly. The people, acting as sheep, have followed and allowed these actions. The driving force behind this blind acceptance has been ignorance.

Our education system has failed to teach a valid program of historical facts. The system has succumbed to the reinvention history and revision of true historical fact. Misguided individuals, ignorant of history themselves, have embellished our nation's history in order to make people "feel good" about themselves and

the past. In the government schools, that which is old is discarded and replaced by the new. One must question as to how the information presented today is derived. Surely, those who wrote of the Constitution during the time of its birth understood well beyond any of us today the meaning of this great document. Those who lived with and were the progeny of the Framers well knew the extent and limits of the newly formed government. And they knew of the rights and powers retained by the people and the individual states. Readers of the Constitution today can easily see that few, if any, of the powers granted to Congress have been increased by subsequent amendments. Congress, but not the Courts nor the civil Officers of the United States, have received added powers through amendment but these powers are restricted by their respective amendments (XIII, XIV, XV, XVIII (repealed), XIX, XXIV, XXVI) and that the majority of these amendments deal 2 specifically with voting rights. The powers of the government are as limited as when the people of this country formed this government.

The Courts and the supreme Court, specifically, have been part and parcel at the center of the theft of power. Creative "interpretation" has run rampant among "do-gooders" with "feel-good" legislation. The most flagrant violations began with FDR following the great collapse of the stock market in 1929. However, as far back as Jefferson, violations of the Constitution's restrictions have occurred. It is time for the Court to revisit the issues and correct the usurpations of power. The battle will be long and difficult since power once transferred is seldom relinquished.

Security: That guaranteed versus that granted by the Court

The Fourth Amendment of the Constitution for the United States of America reads:

Article IV.

The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Upon close inspection, it is readily apparent that the above paragraph states that no search and seizure without a warrant is reasonable. That all, including our children, are protected from unlawful search and seizure. Recently the Supreme Court ruled that two young girls strip-searched by school officials did not have a constitutional right to be protected against such actions at the time the actions occurred. THE COURT WAS WRONG!

The prohibition against search and seizure is absolute. For anyone, including the authorities to take such action, A WARRANT IS ABSOLUTELY AND UNEQUIVOCALLY NECESSARY. A copy of Cooley's discussion of the Fourth Amendment follows this essay.

The SC has arbitrarily and capriciously violated the Fourth Amendment protections beginning in 1925 with the Automobile Exclusion. The powers that be desired to fight crime and criminals, powers that did not and still do not belong to the federal government (See Story on police power). In order to fight what the government perceived as criminal activities, certain exclusions were granted by the court by creatively interpreting the Constitution. In the case of the Fourth Amendment, entire phrases were

lifted and transposed in order to develop law with which the Justices could live.

As in the above case, the decisions protect themselves and their partners in power against the people. In another case a few years ago, an Oregon boy was denied individual rights when the Justices declared that individual rights must give way to the needs of society. The case involved involuntary drug testing, which violated both the Fourth and Fifth Amendments under protection from unreasonable search and seizure and self-incrimination (See US v. Boyd, 1886). Today, profiles of "criminals" are developed and used to detain, question, and otherwise harass individuals whether or not they are citizens.

As the Fourth Amendment inarguably states, probable cause must be shown. BUT the probable cause is needed to obtain the warrant and the warrant is needed to conduct the search and seizure.

Suspension of the Constitution

There is talk of a 1930s war power act which suspended the Constitution because of World War II. I have not personally verified this information. In theory, the Constitution is not suspendable for ANY reason. The following quote from the Supreme Court decision in Ex parte Milligan, 4 Wall 2, 120 will set straight the truth behind the Constitution. However, actuality does not always follow truth and theory may bend to the will of zealots and despots such as FDR. (Note: for those who wish to know more about the despotism exhibited by FDR, please obtain and read the book, "The Roosevelt Myth" by John T. Flynn.)

"The Constitution itself never yields to treaty or enactment; it neither changes with time, nor does it in theory bend to the force of circumstances. It may be amended according to its own permission but while it stands, it is 'a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times and under all circumstances'. Its principles cannot, therefore, be set aside in order to meet the supposed necessities of great crises. 'No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy and despotism, but the theory of necessity on which it is based is false; for the government within the Constitution has all the powers granted to it which are necessary to preserve its existence, as has been happily proved by the result of the great effort to throw off its just authority.'" If and when the government passes laws which violate and acts to suspend the Constitution, then all people of America will have had their rights stolen away and the democratic republic of the United States will vanish. As Ex parte Milligan states the Constitution stands for all time, changing only through the single, approved method of amendment. But the thinking reader knows that this is no longer

true. The supreme Courts, Congresses, the Presidents, and other federal bureaucrats randomly "interpret" the Constitution to suit their ideas. The ends justifies the means has become the credo of America. Damn the Constitution, full speed ahead!

What is to be done? Every US Citizen should learn the Constitution, not the revisionist version of today but the words of the founders. Every US citizen should vote for those who support the Constitution 100% and every US citizen should vote against anyone who would bend the Constitution even in the slightest regardless of intent. Citizens of the United States must return to an attitude of America, love it or leave it. America must be put first in every citizen's mind. Self-serving ideas and attitude must disappear.

The idea of amending the Constitution must become acceptable. Those who say I don't want them messing with my Constitution are the root cause of the idea that a living Constitution is one that can be interpreted based upon the changes of society. The Constitution is not to be interpreted. The naked text is the truth. All interpretation is merely zealotic and despotic manipulation of our Country and our Country's destiny. Regardless of good intentions, the Constitution recognizes only one form of alteration, amendment. Somewhere during or following the moves of FDR to repair the damage of the Great Depression, the Constitution was lost. A prime example are the anti-drug laws. Before the reign of King FDR, Congress and the government recognized the limits of the powers granted under the Constitution. In order to prevent the people from abusing alcohol, a prohibition amendment was made of the Constitution. This amendment was later repealed when it was found to be ineffective. Many in the United States became rich because of the ridiculousness of prohibition. But at least the government at that time still knew the truth. The power to regulate commerce did not nor does it yet encompass bans or prohibitions. FDR was one of the first to ban private ownership of substances when he banned the private ownership of gold coins and bullion in 1933. This was done under the color of protecting

the country. It was also done without legitimate Constitutional power and merely through the theft of power by the federal government. It is amazing that the ex post facto portion of the Constitution was followed but that the rest of the protections were tossed out the window. If, in 1918, a Constitutional amendment was required to prohibit alcohol, then WHY in 1933 was no amendment needed to prohibit the private ownership of gold? And continuing, WHY are no amendments needed to prohibit the private ownership of "illegal" substances, i.e. the so-called drugs?

Truthfully, Constitutional amendments ARE required; they just aren't expedient. AND Constitutional amendments require the people to be involved, an act those in power are not willing to meet since having to ask the people's permission to exercise powers proves the limits of the granted powers of the federal government.

Suspension of the Constitution is Unconstitutional

Much discussion occurs among groups fearful of the government intrusions into our everyday lives. This frightening aspect of suspensions of the Constitution has been caused by the past behavior of our own government. Here are some excerpts from the Oxford Companion to the Supreme Court of the United States.

"Ex parte Milligan (71 US 2 (1866), argued 5-13, Mar, 1866; decided 3 Apr, 1866 by a vote of 9 to 0; opinions released 17 Dec, 1866; Davis for the Court, Chase joined by Miller, Swayne, and Wayne concurring. The Milligan case grew out of restrictions on civil liberties in the North during the Civil War and presented the Court with fundamental questions concerning military authority over civilians in time of war. In late 1864, United States army officials in Indiana arrested Lambdin P. Milligan and several other prominent antiwar Democrats, charging them with conspiracy to seize munitions at federal arsenals and to liberate Confederate prisoners held in several northern prison camps. Indiana was not in the theater of military operations and the defendants could have been tried in federal courts for treason. Nevertheless, army officials doubted the reliability of Indiana juries and elected to try the defendants by military commission. This tribunal found the defendants guilty and sentenced them to hang. When Milligan challenged the conviction in the United States Circuit Court in Indianapolis, the two judges disagreed, sending the case to the Supreme Court. Although the Court announced its decision in April, 1866, opinions were not released until December. All nine justices agreed that the military court lacked jurisdiction and that Milligan and the other two prisoners must be released. There was a sharp disagreement among the justices, however, on the grounds for the decision. Writing for the Court, Justice David Davis emphasized that the Constitution was not suspended in time of emergency, eloquently noting that it was "a law for rulers and

people, equally in time of war and peace" (pp.120-121). Therefore, he concluded that military trial of civilians - which violated constitutional guarantees of indictment by grand jury and public trial by an impartial jury - was impermissible where the civil courts remained open. Although the Court that had tried Milligan had been established by executive authority, Davis asserted that neither the president nor the Congress could authorize the trial of civilians by military commission as long as the civil courts were open. A concurrence by Chief Justice Salmon P. Chase, joined by three other justices agreed that Milligan should be released. Chase, however, rested his conclusion on statutory grounds, arguing that The Habeas Corpus Act of 1863 (which stipulated that civilians detained by the military must be released if grand juries failed to indict them) had been intended to guarantee trial of civilians in the civil courts. Moreover, Chase disagreed with Davis' assertions that Congress could not authorize military trial of civilians if the civil courts were functioning. Under the War powers, Chase argued, Congress could enact legislation necessary for prosecution of the war. If it concluded that civil courts were incapable of punishing treason, Congress could authorize the military to try offenders. The Court's opinion was controversial. By late 1866, when the opinions were released violence against southern African-Americans was growing, and most Republicans believed that military courts were essential to afford the slaves security. Consequently, when President Andrew Johnson used Milligan as justification to reduce military authority in occupied states, Republicans denounced the Court. Moreover, Davis' opinion led many Republicans to fear that the Court would declare unconstitutional the Reconstruction Act of 1867, which authorized military trial of civilians in rebel states. In the twentieth century many commentators have viewed Milligan as a constitutional landmark, and the Court has not repudiated it. Nevertheless, some have criticized Milligan, arguing that by categorically prohibiting imposition of martial law when civil courts are open, it unduly limits the government's ability to protect national security. The Court itself has not always followed Milligan. In Duncan v Kahanamoku (1946), a case challenging the imposition

of martial law in Hawaii during World War II, the Court ruled against the government, the majority, however, rested its decision on congressional legislation governing Hawaii rather than on the constitutional principles established in Milligan. Moreover, in acquiescing in the governments internment of Japanese-Americans during World War II, the Court ignored the limits on the government's emergency powers suggested by Milligan." - Oxford Companion to the Supreme Court of the United States, 1992, Pp. 549-50.

Although the Supreme Court has stated emphatically in Milligan that the Constitution of the United States CANNOT be suspended even in times of crises and a reading of the Constitution by any individual supports the decision in Milligan, the Supreme Court, our Congress, and other elected leaders have ignored this decision numerous times. By ignoring the Milligan decision, our government, including the Court, have proven their willingness to violate the people's rights.

The president cannot call forth the Militia. The Congress cannot call forth the Militia, they can only provide for calling forth the Militia. Had the Framers of the Constitution wanted the president to be able to call forth the Militia to "execute the Laws of the Union, suppress Insurrections, and repel Invasions'" the Constitution would contain that provision. Thus even though Congress is to provide for calling forth the Militia for three specific functions the Congress CANNOT grant to the President powers not enumerated in the Constitution even though the power might appear through implication.

In Perpich, the SC held that the National Guard (NG) was a part of the Militia but that the NG was raised under the power to raise and support armies. Regardless of the Court's position, this is an invalid decision. The Framers enumerated the power to raise and support armies separately from the power to provide for calling forth the Militia. During the debates on the Constitution, the idea of select militia was offered and defeated. The Militia in the

Constitution is not and cannot be a select militia. If the NG is based under the power to raise and support armies, then they cannot be a militia but are an army. In addition the Framers offered that the Congress be given the power to regulate the militia. These offerings as part of the Constitution were also killed in the debates. At one point, it was offered as an amendment during the debates of the Constitution that Congress be given the power to regulate the force permitted to be kept in each state as a militia but this too was defeated. Thus the arguments of those who claim the Militia to be a select militia and that the words well regulated mean that Congress controls are easily proven to be simply smoke and mirrors pulled out of the air in an attempt to obfuscate the truth. There was and still does not exist any Congressional power to regulate the militia of the states.

On the requirements of a Legislator to remain obedient to the Constitution.

185. ..."The case is different with the legislator and executive. He is bound to support the Constitution, - to uphold it as one of the pillars to an edifice. He is under the Constitution, not above it. He cannot support it by doing an act repugnant to it. 'His public office is a public trust.' If he doubts his power to do under the authority of the Constitution, he is bound to resolve the doubt against the act, not in favor of it."

"Mr. Cooley thus states it: 'Legislators have their authority measured by the Constitution; they are chosen to do what it permits, and nothing more, and they take a solemn oath to obey and support it. When they disregard its provisions they usurp authority, abuse their trust and violate the promises they have confirmed by an oath. To pass an act when they are in doubt whether it does not violate the Constitution is to treat as of no force the most imperative obligations any person can assume. ... A witness in court who would treat his oath thus lightly, and affirm things of which he was in doubt, would be held a criminal. Indeed, it is because the legislature has applied the judgement of its members to the question of its authority to pass the proposed law, and has only passed it after being satisfied of the authority, that the judiciary waive their own doubts and give it their support.'"

"He holds the same views as to the duty of the President, and maintains that the President, even where the judiciary has sanctioned the constitutionality of an act, is not only duty bound to give his approval to a similar act, but may, in consonance with his duty, withhold his approval. It follows from this, that a legislator cannot justify a vote for a law on the ground that as judge he would not declare it void. The legislator crosses no forbidden line when he refuses to enact what he believes is repugnant to the Constitution. The judiciary does cross a forbidden line where it declares a law void, unless it be without doubt repugnant to the Constitution. The legislator is never warranted in voting for a law he does not believe the Constitution sanctions, to support which he has sworn as an

affirmative duty, not that he will not pull down the pillars of the edifice, but, as one of the many pillars, he will uphold it."

"In the case of the law-maker, the question to be asked is: 'Have I the right under the Constitution to pass this act ?' The onus is for him to show his authority. In the case of a judge, the question is: 'Is the law clearly unconstitutional ? In annulling the law in support of the Constitution will I transcend my judicial functions and usurp the legislative; or is the repugnancy so strong that I will only act judicially in annulling the effect of the law, and not transcend the boundary of my power ?' The burden shifts in the two cases. The legislator must show that he has the right; the judge must show the legislator was clearly wrong."

"Hence the law-maker may not justify a vote for a measure which as judge he could not declare void; but, if the judiciary declares such an act unconstitutional, it should forbid the law-maker to pass similar legislation. On the other hand, though the judiciary cannot declare a law unconstitutional because not clearly repugnant, it does not justify the law-maker in voting for it."

The Constitution of the United States: A Critical Discussion of its Genesis, Development, and Interpretation, John Randolph Tucker, LL.D., 1899. ISBN 0-8377-1206-8

Cooley on Constitutional Law, Pp. 153-54. 161-63., Treatise on the Constitutional Limitations which Rest upon the Legislative Power of the States of the American Union, Judge Thomas Cooley, 1868.

Thomas M. Cooley, LL.D., General Principles of Constitutional Law in the United States of America, (3rd ed. 1898).

The Electoral College and Congressional Control

Over the decades since the ratification of the Constitution, Congresses of the United States have passed legislation concerning electoral procedures. Article I, Section 4 provides the following powers to Congress.

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations except as to the Places of chusing Senators.

Article II, Section 1, concerning the election of the President and vice-President, provides:

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No other clause in the Constitution grants any other powers to Congress concerning the processes of elections except in the case of the right to vote, wherein Congress is granted power to protect the right of the citizens of the United States to vote regardless if race, creed, sex, and age over 18.

Congress' power is to affect state-passed legislation concerning the election of representatives and senators. Congress may set the time of choosing the members of the electoral college and the day upon which the vote will fall but Congress is legally powerless to pass legislation beyond these limited scopes. Each set of state electors MUST meet within their respective states to cast their votes. Any other place of voting would invalidate the votes of that state.

The Constitution sets the mode for the process of the electoral college. The only proper method of alteration therefore is an amendment of the Constitution. The current laws prescribing and effecting the mode of election of President and vice-President are

unconstitutional and have been so for many decades.

It is a fact that the people have absolutely no Constitutionally enumerated right to elect either the President or the vice-President. The system in use now is simply a pacification for the people. The electors on the electoral college are not bound by the vote of the people nor is the people's vote required for the election. The Constitution provides no place for a general election of President and vice-President. The method prescribed by the Constitution is one wherein electoral representatives are selected according to state legislative prerogatives and meet within their own states to independently vote for President and vice-President. State Constitutions or laws may prescribe regulations concerning those selected to the electoral college but any state action contrary to the U.S. Constitution is null and void under the U.S. Constitutions supremacy clause. Since Congress is granted no power over the electoral process other than what is provided in the above cited sections, no law altering the electoral process is valid that is not specifically confined within these restraints. Neither can Congress grant to any other body its legislative capacity concerning the election of President and vice-President for this would be a violation of the trust of the people. It is noted that none of the enumerated powers contains a grant to delegate authority concerning the enumerated powers. Powers not vested in Congress are not within the scope of their powers in any way, shape, or form.

Within Article I, Section 8, where Congressional powers are enumerated, there are no grants of power which carry nexus to legislate with respect to the electoral college. Congress has, under the guise of regulating Commerce, claimed some connection of the electoral process and "effects" on interstate and foreign commerce. These claims by Congress have no basis in Constitutional fact but became the status quo through the expansive use of the Commerce clause in this century. Following the Judicial Acts of 1925, the Congress and the Courts have developed plans wherein powers are taken and no legitimate recourse is left to the people to challenge these thefts.

The entire purpose of being for the Electoral College is to independently select the President and vice-President of the United States. The method by which this is done is also stated in Article II, Section 1 with some modification made in the Twelfth amendment of the Constitution. Modifications by Congressional fiat to use the popular vote in any way, shape or form, while prudential, is unconstitutional. The members of the electoral college are under no constitutional obligation to vote in the same manner as the people of their state. Of more interest is the electoral college is constitutionally granted the power to vote for ANY legitimate candidate of their choosing. The Constitution limits the choices only by the restrictions on who may hold the office of President. The use of limited ballot currently from popular elections, if used in the electoral college, or any restricted ballot is unconstitutional.

One might attempt to use the Congressional power to regulate interstate commerce as an sidestep into the modification of the election of the President and the vice President. This sidestep might be acceptable if the Constitution were silent as to the method of choosing the President and vice President or if the "necessary and proper" clause were not included as a control of the granted powers. The "necessary and proper" clause was added in order to maintain a balance on the powers. All legislation must be relevant to the power under which it is being exercised, i.e. "proper." All legislation must also be "necessary" for the government's exercise of the particular power. The "necessary and proper" clause is not nor has it ever been an expansive, independent grant of power in its own right. Please see the essay on the "necessary and proper" clause for a more detail discussion.

It would be ludicrous to think that the people would argue with the current method but it is illegal and unconstitutional. So long as violations are allowed to go unchecked in one area, violations will occur in other areas. The end NEVER justifies the means. The law IS the law!

Who are the Electoral College?

Article II, Section 1 states:

"Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the while Number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector. The Electors shall meet in their respective States and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate."

The twelfth amendment modifies the method slightly is requiring separate votes for the President and vice President rather than simply voting for two people and making the top choice President and the second choice vice President.

So who are these mysterious people we call the electoral college?

The election of President and vice-President of the United States is Constitutionally by the vote of certain electors. The members of what has become called the Electoral College are appointed under the control of each state legislature. There is only one restriction on membership and that is "no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector." Thus the members of the electoral college are appointees as determined by the law of each state in numbers matching the particular state's representation in the House and the Senate. There are no other Constitutional restrictions and Congress is not authorized to alter a state's laws except as noted concerning the time of choosing and the day of voting.

States have manipulated the power to appoint the members of their respective electoral college designees. In certain states, the designee must take an oath to vote for the candidate with the most votes in the popular election (which by the way is merely a smoke screen to appease voters). Following from the supreme Court decision concerning "term limits" passed at the state level, these restrictions which extend beyond the basic restrictions of the Constitution would also be unconstitutional. This is to say that if only an amendment of the Constitution can "term limits" to Congresspeople, then the same logic must be used and placed places the same restrictions upon the states with respect to the electoral college members. The States may not Constitutionally make any greater restriction on membership than that set in the Constitution. The requirement to take an oath to vote in a certain manner, regardless of the intentions, is a restriction not required by the Constitution and is invalid.

If the logic displayed above as concerns the selection of electoral college members, is not valid then consider the following. If a State legislature were to desire, noncitizens, citizens of other states, criminals, or what have you would be Constitutionally allowable as members of the electoral college. The say of the people concerning their electors is wholly dependent upon their own legislatures. Doubts exist as to how far the legislatures of the several states could take their actions with respect to the electors but there would hen be no Constitutional limits should one decide to ignore the position that once restrictions are set into the Constitution, the only way to alter those restrictions is through amendment of the Constitution.

Campaign Finance and Congress

Recently Congress has tackled campaign finance proposing reforms to how our electoral process works at the campaign level. While laws have existed for many years concerning campaign finances, these laws are outside the domain of congressional authority. Only the campaigns for President and vice President are truly interstate commerce and thus controllable under the power to regulate interstate and foreign commerce. The elections of Representatives and Senators cannot be properly considered interstate commerce as persons in one state are absolutely ineligible to vote for candidates in other states..

The original Constitution in Article I, Section 4 states:

"Section. 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations except as to the Places of chusing Senators."

Outside the powers granted in certain amendments to provide proper legislation to remedy obstruction of the "right to vote", Congress is granted no other authority over elections of Representatives, Senators or any other elected official. The States and the people have retained the right to control the selection of their representatives. Congress is granted powers to alter or make regulations as to the times and manner of holding elections. While the Congress may not alter the "place" of choosing a Senator , the people are left in a dangerous situation since Congress can Constitutionally alter the "place" of electing our own representatives. How difficult it could be if the place were set to some far away land!

No direct grant of power was or has since been made wherein Congress is to control the campaign for the elected position. However, by stretching the various "right to vote" amendments, one might create a power for Congress to control campaign

finance. This would be a stretch capable of breaking the boundaries of the actual amendments but, based upon past Court decisions, this stretch would likely be approved of by the Court under ethical considerations as well as under the desire to continuously expand the central powers of the federal government.

One might wonder why there is no mention about the choosing of the President and vice President but that is an easy answer. The people were not and are still not empowered to constitutionally vote for the two highest offices in the land. The President and vice President are elected by the electors, known to the people as the electoral college, appointed under the color of the law of each state. These electors are a body independent of the people and dependent ONLY upon the law of each of the several states. Please see the essays on the electoral college.

Limitations of the power to regulate commerce

The Constitution of the United States: A Critical Discussion of its Genesis, Development, and Interpretation John Randolph Tucker, LL.D. (1823-1897)

Edited by Henry St. George Tucker (1853-1932)

Published 1899 by Callaghan, Chicago, IL Reprinted 1981 by Rothman, Littleton, CO

Volume 2, Pp. 525-6, Para. 254

"(d) By later cases the power gas been extended to embrace contracts as to things in commerce, as correspondence by telegraph, etc. These telegraphs were long since invented, but as they were new means of commerce of persons and things, the power embraces commerce through those means as it had done through the old and superseded means. The power is not changed by the increase of its domain by reasons of the advance of scientific investigation.1 In regulating commerce, therefore, Congress regulates traffic in things, vehicles of transport, and things !in transitu!, but not the things themselves. Before and after the !transitus! they are beyond this power of regulation. The production and use of things in the !terminus a quo! and the !terminus ad quem! are not subjects of the commercial power, but of the law of the State or country from which and to which they are transported.2

1 Mobile v. Kimball, 102 US 690; W.U.Tel.Co. v. Alabama, 132 id. 472

2 Brown v. Maryland, 12 Wheat 419; Waring v. Mayor, 8 Wall. 110; In re Nagle 135 US 1; Royall v. Virginia, 116 id. 572; Nashville v. Alabama, 128 id. 100.

The Congress, the President, and other officials of the United States have continually stretched the powers enumerated in the

Constitution, which were granted by the people, in order to achieve the ends desired by those in power. Most often phrases are taken out of context in order to "prove" meaning. A broad interpretation of the words is necessary so long as there is no conflict with or reduction in the need of other clauses in the Constitution. Every clause is of important or the clause would not have been included in the Constitution. Still, no single phrase of the Constitution can stand alone. The Constitution interacts within itself to provide all the information necessary for the average person to understand what is granted, what is not granted, and the limitations to that which is granted. Logic is the dictator when studying the Constitution. Claims that a particular power "would have been" granted to the federal government are not sufficient for the actual transfer and exercise of that power by the federal government. If times have changed such that new powers need to be transferred from the people to the federal government then only one avenue is open. The Congress must review the powers, prepare and pass legislation in the form of amendments of the Constitution, and send these amendments forth to the people to approve. If not approved, the federal government cannot legitimately exercise the new powers.

Congress has opted not to follow the Constitution provision of amendment in many instances, thus only a few amendments have been made. Rather, Congress, with the complicity of the supreme Court and other federal officials, have "extended" the meaning of words and phrases well beyond any legitimate understanding, claiming intent of the Framers. But the intent of the Framer's is easily found within the Constitution's phrases.

One of the mostly over-stretched clauses is the so-called "commerce clause" which has been used to build a massive, unconstitutional bureaucracy in Washington. Congress simply makes the claim that a particular action or sequence of events might, could, should, will, maybe will if I cross my fingers and spit into the wind, affect interstate commerce and passes legislation which usurps jurisdiction. This claim was used to pass the 1964

Civil Rights Act because Congress knew that following the 1876 supreme Court decision in US v Cruikshank that the rights expressed in the Bill of Rights preexisted the Constitution, were not granted by the Constitution, and were natural rights for or against which the federal government was not empowered to act. Following legal challenge of the Civil Rights Act, the supreme Court determined the racial discrimination has a profound affect on interstate commerce and that Congress, under the power to regulate commerce, has the connected power to pass the Civil Rights Act.

Congress has gone so far as to restrict individuals such as a farmer who raises feed for his/her own cows rather than buying since this might, could, would, "affect" interstate commerce.

More recently, in the fall of 1996, Congress passed a bill concerning "gun free" school zones under the commerce clause. The claim goes through a number of machinations to finally say that the fear of violence from gun-toting individuals affects the ability of the children to learn and this affects their ability to become productive citizens which will somehow affect interstate commerce. This is so far from the power to regulate commerce that even Congress had to strain to get this one. But strain they did and as part of a large appropriations bill. This law was rewritten after the first instance of it was tossed out as unconstitutional by the supreme Court.

This section proves beyond a shadow of a doubt that the "commerce clause" is a limited power strictly over the buying, selling and transporting of goods across state lines, to other countries, or to Indian tribes on their reservations, which does not apply to subjects which are intimately connected to commerce and thus cannot possibly apply to less intimately connected powers.

While many will not agree with what I have to say, I can state emphatically that I am correct in my understanding. At issue are many of the major powers exercised by our federal government.

These are powers which have been stolen from the people and will be extremely difficult to return to their rightful owners. Once a power is in the hands of one desirous of that power giving it up is nearly impossible.

"Clothe men with public authority, and almost universally they consider themselves, as liberated from the obligations of moral rectitude, because they are no longer amenable to justice." 1 Amer Mus. 200 (Story, pg.341).

The federal government was never meant to be all powerful. The central government was simply needed to manage specific problems which faced and still face our country. Yes, there is a need for these same basic powers in the hands of a federal government. But the federal government needs to be returned to Constitutionality. A return to a constitutional government will fix many of the problems facing America today. One of our greatest problems is that of deficit spending. If the government returned to constitutionality, the deficit spending would be eliminated since a large portion of the federal government expenditures are for unconstitutional departments and acts.

If you can point to the clause in the Constitution that states Congress has the power to pass laws concerning anything that affects commerce, I'll gladly shut up. The clause in the Constitution is that congress has the power to regulate commerce NOT that Congress has the power to regulate all things related to commerce. Following from Hamilton's "naked text" discussion, the clause does not lend itself to the expanded interpretation rampant among our Congresspeople today.

The Federalist No. 42 and Article I, Section 8 of the Constitution for the united States of America are used to prove that the power to regulate commerce absolutely does not include the power to regulate actions or activities which affect or are linked intimately to the regulation of commerce regardless of the stand taken by Congress or the Supreme Court.

"It is, whether congress has a right to regulate that, which is not committed to it, under a power, which is committed to it, simply because there is, or may be an intimate connexion between the powers. If this were the admitted, the enumeration of the powers of congress would be wholly unnecessary and nugatory." Story, Sec.1075, Book II, pg.521.

First for your consideration, I offer the Federalist #42 and the sections of the Constitution which are commerce or commerce related.

FEDERALIST No. 42
"The Powers Conferred by the Constitution Further Considered
From the New York Packet. Tuesday, January 22, 1788.
MADISON
To the People of the State of New York:
THE SECOND class of powers, lodged in the general government, consists of those which regulate the intercourse with foreign nations, to wit: to make treaties; to send and receive ambassadors, other public ministers, and consuls; to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations; to regulate foreign commerce, including a power to prohibit, after the year 1808, the importation of slaves, and to lay an intermediate duty of ten dollars per head, as a discouragement to such importations. This class of powers forms an obvious and essential branch of the federal administration. If we are to be one nation in any respect, it clearly ought to be in respect to other nations. The powers to make treaties and to send and receive ambassadors, speak their own propriety. Both of them are comprised in the articles of Confederation, with this difference only, that the former is disembarrassed, by the plan of the convention, of an exception, under which treaties might be substantially frustrated by regulations of the States; and that a power of appointing and receiving "other public ministers and consuls," is expressly and very properly added to the former provision concerning ambassadors. The term ambassador, if taken strictly, as

seems to be required by the second of the articles of Confederation, comprehends the highest grade only of public ministers, and excludes the grades which the United States will be most likely to prefer, where foreign embassies may be necessary. And under no latitude of construction will the term comprehend consuls. Yet it has been found expedient, and has been the practice of Congress, to employ the inferior grades of public ministers, and to send and receive consuls. It is true, that where treaties of commerce stipulate for the mutual appointment of consuls, whose functions are connected with commerce, the admission of foreign consuls may fall within the power of making commercial treaties; and that where no such treaties exist, the mission of American consuls into foreign countries may PERHAPS be covered under the authority, given by the ninth article of the Confederation, to appoint all such civil officers as may be necessary for managing the general affairs of the United States. But the admission of consuls into the United States, where no previous treaty has stipulated it, seems to have been nowhere provided for. A supply of the omission is one of the lesser instances in which the convention have improved on the model before them. But the most minute provisions become important when they tend to obviate the necessity or the pretext for gradual and unobserved usurpations of power. A list of the cases in which Congress have been betrayed, or forced by the defects of the Confederation, into violations of their chartered authorities, would not a little surprise those who have paid no attention to the subject; and would be no inconsiderable argument in favor of the new Constitution, which seems to have provided no less studiously for the lesser, than the more obvious and striking defects of the old. The power to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations, belongs with equal propriety to the general government, and is a still greater improvement on the articles of Confederation. These articles contain no provision for the case of offenses against the law of nations; and consequently leave it in the power of any indiscreet member to embroil the Confederacy with foreign nations. The provision of the federal articles on the subject of piracies and felonies extends no further than to the establish-

ment of courts for the trial of these offenses. The definition of piracies might, perhaps, without inconveniency, be left to the law of nations; though a legislative definition of them is found in most municipal codes. A definition of felonies on the high seas is evidently requisite. Felony is a term of loose signification, even in the common law of England; and of various import in the statute law of that kingdom. But neither the common nor the statute law of that, or of any other nation, ought to be a standard for the proceedings of this, unless previously made its own by legislative adoption. The meaning of the term, as defined in the codes of the several States, would be as impracticable as the former would be a dishonorable and illegitimate guide. It is not precisely the same in any two of the States; and varies in each with every revision of its criminal laws. For the sake of certainty and uniformity, therefore, the power of defining felonies in this case was in every respect necessary and proper. The regulation of foreign commerce, having fallen within several views which have been taken of this subject, has been too fully discussed to need additional proofs here of its being properly submitted to the federal administration. It were doubtless to be wished, that the power of prohibiting the importation of slaves had not been postponed until the year 1808, or rather that it had been suffered to have immediate operation. But it is not difficult to account, either for this restriction on the general government, or for the manner in which the whole clause is expressed. It ought to be considered as a great point gained in favor of humanity, that a period of twenty years may terminate forever, within these States, a traffic which has so long and so loudly upbraided the barbarism of modern policy; that within that period, it will receive a considerable discouragement from the federal government, and may be totally abolished, by a concurrence of the few States which continue the unnatural traffic, in the prohibitory example which has been given by so great a majority of the Union. Happy would it be for the unfortunate Africans, if an equal prospect lay before them of being redeemed from the oppressions of their European brethren! Attempts have been made to pervert this clause into an objection against the Constitution, by representing it on one side as a criminal toleration

of an illicit practice, and on another as calculated to prevent voluntary and beneficial emigrations from Europe to America. I mention these misconstructions, not with a view to give them an answer, for they deserve none, but as specimens of the manner and spirit in which some have thought fit to conduct their opposition to the proposed government. The powers included in the THIRD class are those which provide for the harmony and proper intercourse among the States. Under this head might be included the particular restraints imposed on the authority of the States, and certain powers of the judicial department; but the former are reserved for a distinct class, and the latter will be particularly examined when we arrive at the structure and organization of the government. I shall confine myself to a cursory review of the remaining powers comprehended under this third description, to wit: to regulate commerce among the several States and the Indian tribes; to coin money, regulate the value thereof, and of foreign coin; to provide for the punishment of counterfeiting the current coin and securities of the United States; to fix the standard of weights and measures; to establish a uniform rule of naturalization, and uniform laws of bankruptcy, to prescribe the manner in which the public acts, records, and judicial proceedings of each State shall be proved, and the effect they shall have in other States; and to establish post offices and post roads. The defect of power in the existing Confederacy to regulate the commerce between its several members, is in the number of those which have been clearly pointed out by experience. To the proofs and remarks which former papers have brought into view on this subject, it may be added that without this supplemental provision, the great and essential power of regulating foreign commerce would have been incomplete and ineffectual. A very material object of this power was the relief of the States which import and export through other States, from the improper contributions levied on them by the latter. Were these at liberty to regulate the trade between State and State, it must be foreseen that ways would be found out to load the articles of import and export, during the passage through their jurisdiction, with duties which would fall on the makers of the latter and the consumers of the former. We may be assured by past

experience, that such a practice would be introduced by future contrivances; and both by that and a common knowledge of human affairs, that it would nourish unceasing animosities, and not improbably terminate in serious interruptions of the public tranquillity. To those who do not view the question through the medium of passion or of interest, the desire of the commercial States to collect, in any form, an indirect revenue from their uncommercial neighbors, must appear not less impolitic than it is unfair; since it would stimulate the injured party, by resentment as well as interest, to resort to less convenient channels for their foreign trade. But the mild voice of reason, pleading the cause of an enlarged and permanent interest, is but too often drowned, before public bodies as well as individuals, by the clamors of an impatient avidity for immediate and immoderate gain. The necessity of a superintending authority over the reciprocal trade of confederated States, has been illustrated by other examples as well as our own. In Switzerland, where the Union is so very slight, each canton is obliged to allow to merchandises a passage through its jurisdiction into other cantons, without an augmentation of the tolls. In Germany it is a law of the empire, that the princes and states shall not lay tolls or customs on bridges, rivers, or passages, without the consent of the emperor and the diet; though it appears from a quotation in an antecedent paper, that the practice in this, as in many other instances in that confederacy, has not followed the law, and has produced there the mischiefs which have been foreseen here. Among the restraints imposed by the Union of the Netherlands on its members, one is, that they shall not establish imposts disadvantageous to their neighbors, without the general permission. The regulation of commerce with the Indian tribes is very properly unfettered from two limitations in the articles of Confederation, which render the provision obscure and contradictory. The power is there restrained to Indians, not members of any of the States, and is not to violate or infringe the legislative right of any State within its own limits. What description of Indians are to be deemed members of a State, is not yet settled, and has been a question of frequent perplexity and contention in the federal councils. And how the trade with Indians, though not members of

a State, yet residing within its legislative jurisdiction, can be regulated by an external authority, without so far intruding on the internal rights of legislation, is absolutely incomprehensible. This is not the only case in which the articles of Confederation have inconsiderately endeavored to accomplish impossibilities; to reconcile a partial sovereignty in the Union, with complete sovereignty in the States; to subvert a mathematical axiom, by taking away a part, and letting the whole remain. All that need be remarked on the power to coin money, regulate the value thereof, and of foreign coin, is, that by providing for this last case, the Constitution has supplied a material omission in the articles of Confederation. The authority of the existing Congress is restrained to the regulation of coin STRUCK by their own authority, or that of the respective States. It must be seen at once that the proposed uniformity in the VALUE of the current coin might be destroyed by subjecting that of foreign coin to the different regulations of the different States. The punishment of counterfeiting the public securities, as well as the current coin, is submitted of course to that authority which is to secure the value of both. The regulation of weights and measures is transferred from the articles of Confederation, and is founded on like considerations with the preceding power of regulating coin. The dissimilarity in the rules of naturalization has long been remarked as a fault in our system, and as laying a foundation for intricate and delicate questions. In the fourth article of the Confederation, it is declared "that the FREE INHABITANTS of each of these States, paupers, vagabonds, and fugitives from justice, excepted, shall be entitled to all privileges and immunities of FREE CITIZENS in the several States; and THE PEOPLE of each State shall, in every other, enjoy all the privileges of trade and commerce," etc. There is a confusion of language here, which is remarkable. Why the terms FREE INHABITANTS are used in one part of the article, FREE CITIZENS in another, and PEOPLE in another; or what was meant by superadding to "all privileges and immunities of free citizens," "all the privileges of trade and commerce," cannot easily be determined. It seems to be a construction scarcely avoidable, however, that those who come under the denomination of FREE INHABITANTS of a State,

although not citizens of such State, are entitled, in every other State, to all the privileges of FREE CITIZENS of the latter; that is, to greater privileges than they may be entitled to in their own State: so that it may be in the power of a particular State, or rather every State is laid under a necessity, not only to confer the rights of citizenship in other States upon any whom it may admit to such rights within itself, but upon any whom it may allow to become inhabitants within its jurisdiction. But were an exposition of the term "inhabitants" to be admitted which would confine the stipulated privileges to citizens alone, the difficulty is diminished only, not removed. The very improper power would still be retained by each State, of naturalizing aliens in every other State. In one State, residence for a short term confirms all the rights of citizenship: in another, qualifications of greater importance are required. An alien, therefore, legally incapacitated for certain rights in the latter, may, by previous residence only in the former, elude his incapacity; and thus the law of one State be preposterously rendered paramount to the law of another, within the jurisdiction of the other. We owe it to mere casualty, that very serious embarrassments on this subject have been hitherto escaped. By the laws of several States, certain descriptions of aliens, who had rendered themselves obnoxious, were laid under interdicts inconsistent not only with the rights of citizenship but with the privilege of residence. What would have been the consequence, if such persons, by residence or otherwise, had acquired the character of citizens under the laws of another State, and then asserted their rights as such, both to residence and citizenship, within the State proscribing them? Whatever the legal consequences might have been, other consequences would probably have resulted, of too serious a nature not to be provided against. The new Constitution has accordingly, with great propriety, made provision against them, and all others proceeding from the defect of the Confederation on this head, by authorizing the general government to establish a uniform rule of naturalization throughout the United States.

>>>>>>>> NOTE THE FOLLOWING SECTION >>>>>>>>

The power of establishing uniform laws of bankruptcy is so

intimately connected with the regulation of commerce, and will prevent so many frauds where the parties or their property may lie or be removed into different States, that the expediency of it seems not likely to be drawn into question. The power of prescribing by general laws, the manner in which the public acts, records and judicial proceedings of each State shall be proved, and the effect they shall have in other States, is an evident and valuable improvement on the clause relating to this subject in the articles of Confederation. The meaning of the latter is extremely indeterminate, and can be of little importance under any interpretation which it will bear. The power here established may be rendered a very convenient instrument of justice, and be particularly beneficial on the borders of contiguous States, where the effects liable to justice may be suddenly and secretly translated, in any stage of the process, within a foreign jurisdiction. The power of establishing post roads must, in every view, be a harmless power, and may, perhaps, by judicious management, become productive of great public conveniency. Nothing which tends to facilitate the intercourse between the States can be deemed unworthy of the public care. PUBLIUS."

The following paragraphs are from Article I, Section 8 of the Constitution. Notations as to separate "commerce-based" powers are given to aid in understanding the true meaning of the Commerce clause.

"Section. 8. The Congress shall have the Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide - (intimately linked to commerce, especially with respect to the Duties, Imposts, and Excise) for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States; To borrow Money on the credit of the United States;

- linked to commerce

To regulate Commerce with foreign Nations, and among the several States, and with Indian Tribes;

- commerce

To establish a uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

-intimately connected to commerce

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

- intimately connected to commerce

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

- intimately connected to commerce

To establish Post Offices and post Roads;

- linked to commerce

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

- intimately linked to commerce

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

- linked to commerce

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like

Authority over all Places purchased by the Consent of the Legislature of the State in which same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;
—And To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, on in any Department or Officer thereof."

Please note that the above paragraph specifically states "the foregoing powers" and not powers which are simply connected powers to those granted.

"Section. 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person." - intimately linked to Commerce since at the time slavery was still rampant in the country.
"The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.
No Bill of Attainder or ex post facto Law shall be passed.
No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.
No Tax or Duty shall be laid on Articles exported from any State.
- Intimately linked to commerce.
No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another."
- Intimately linked to commerce.

The above exceptions to the taxation and commerce powers imply that the granted powers have limits to their extent. If the granted

powers were unlimited, then the Framers would have needed to expand upon the restrictions noted here or these restrictions would be without use or effect.

"No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.
No Title of Nobility shall be granted by the United States: And no Person holding any Office or Profit or Trust under them, shall, without the Consent of Congress, accept any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State."

"Section. 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility."

The above section contains several points which are intimately connected to the regulation of commerce. Again, if the simple power granted in Section 8 is as broad as is currently claimed by Congress this paragraph of the Constitution is unnecessary and nugatory.

"No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports and Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress."

Once more the Framers found it necessary to state explicitly restrictions on powers that are inarguably part of and linked

intimately to the power to regulate commerce. The broad interpretation expounded today makes this paragraph also unnecessary and nugatory.

"No State shall, without the Consent of the Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay."

Article. IV.

"Section. 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof."

This section of the Constitution also relates to the power to regulate commerce. Why does this paragraph exist if Congress are correct in their current ASSumption of the meaning of the power to regulate commerce? Because Congress is dead wrong!

"Section. 2. The Citizens of each State shall be entitled to all privileges and Immunities of Citizens in the several States. "

The above paragraph is subtly linked to commerce but is as closely linked to commerce as are many of the actions to which Congress has responded with legislation. So, the above paragraph must be wholly unnecessary and nugatory and the Framers must have been unaware of what they truly meant in the original grant of the power to regulate commerce.

"A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand on the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime. No Person held to Service or Labour in

one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due."

Service and labor cannot be separated from commerce. Nor is it any easier to separate fleeing across state lines to escape justice from commerce regulations. If the power to regulate commerce was so entirely inclusive of all related functions, activities, or what have you, then once again an unnecessary and nugatory set of paragraphs were added by those framing the Constitution.

The Congress of the United States has stretched the commerce clause well beyond its breaking point by passing legislation to control any and all activities which the Congress deems to have an impact upon interstate commerce. The Federalist No. 42 and the Constitution itself prove that Congress was not nor has Congress ever been granted such blanket power. The Constitutional grant to regulate commerce is restricted to regulations of the actions which are distinctly commerce, and not actions which are related regardless of the intimacy of the connection.

It cannot be argued that all the powers noted above are not linked, and many linked intimately, to commerce. Yet the understanding of the Framers of the Constitution was that each part of the total commerce power had to be, and those parts the Framers thought necessary were, granted to Congress. Within Section 8, the list of powers granted to Congress is enumerated. The Framers of the Constitution listed a number of powers, separately, which are part of the broader power to regulate commerce. One must ask why.

If the power to regulate commerce was intended to be as broad as it is interpreted today, the Framers would not have made individual grants of other powers which are intimately linked to the regulation of commerce. Under an unrestricted power to regulate commerce, the separate grants of powers linked to and profoundly

affecting commerce would be wholly unnecessary and useless. That is, should the truth be that the power to regulate commerce is as broad as is currently claimed the other parts of the Constitution are simply fluff and meaningless banter about commerce-related powers.

It is stated and accepted as fact that not a single phrase in the Constitution is unnecessary and without meaning. No where in the Constitution are powers or restrictions duplicated. Thus any and all understanding of the Constitution must include the fact that each grant of power is wholly necessary to the operation of the federal government. The fact that intimately linked powers, all related to commerce, were thought necessary to grant independently proves beyond a shadow of a doubt that the power to regulate commerce is limited to specifically those actions which are truly commerce and not to actions which merely or even profoundly affect commerce. The individual grants sever all nexus to unspecified commerce-related powers since the tenth amendment states that all powers not granted to the federal government and not prohibited to the states are reserved to the states or to the people.

By definition, commerce is traffic and intercourse in the buying, selling and moving of goods especially between nations, states, and tribes. The power does not include determining what goods can be involved in interstate commerce only the rules and regulations by which all products are bought, sold, traded, and transported. The power is to regulate commerce and not to regulate actions which are not part and parcel commerce. The commerce power does not include subjects under nexus which are covered under other granted powers for to do so would make the grant of the commerce power unnecessary and nugatory. The major limitation on the Commerce power is that is covers commerce “among” and not commerce within the boundaries.

There is no body of law established to support the statements made within this document. The thinking, reasoning individual will have

no trouble grasping the points herein made. The Congress has attempted to steal powers from the states and the people by altering the interpretation of the Constitution. These actions are in themselves unconstitutional. Congress is granted only a single option to alter the Constitution and that is through amendment which then must be approved by the people of this country. Too many of our elected officials take a Machiavellian attitude that the end justifies the means. The Courts have supported this agenda to force social changes upon the country in order to create a country of THEIR design.

Those who fail to see the limitations proven here must believe the Founding Fathers to be ignorant of the content of their creation, the Constitution. If a power which is granted covers all other powers which have nexus to that power, then the individual granting of the separate powers was simply duplicity and a waste of time. I suggest that those who do not agree with this discussion spend time rereading the Federalist and Antifederalist papers. The intelligence and foresight shown by these great men prove that the Founders of our great country stood above all men who have lived since. These men knew and understood from both study and experience the failings of prior governments. They recognized the tyranny that arises in all governments. In all their efforts, restraint was placed upon the new Federal Government they were creating. Thus their acts providing separate grants of powers, even those linked intimately, were acts of cognitive beings. There was a madness in their methods. It is there for all who look with open minds.

The implication of recognizing and accepting the proof shown herein is the determination that a major portion of the legislative codes passed in this country, especially this century, is unconstitutional, invalid, and flat out illegal. Those who violate the constitution are guilty of horrendous crimes against the people of this country regardless of the intent of their actions. Ignorance of the law is not an excuse. Ignorance of the Constitution is the

greatest ignorance conceivable.

In US v Cruikshank, the Supreme Court stated the opinion that Congress could not pass laws to protect the rights enumerated in the Bill of Rights since these rights did not come from nor was their existence dependent upon the Constitution. Following the 1964 Civil Rights Acts, the Supreme Court ruled the acts constitutional since “racial discrimination has a profound effect on interstate commerce”. While these laws are good intentioned, "there AIN’T no good intentions clause in the Constitution." The approbation by the Supreme Court of the Congressional action does not make the Court’s determination correct. If the Supreme Court is correct and the power to regulate commerce includes the power to regulate racial discrimination or any other action because of some nexus to commerce, then the Supreme Court has determined that the other commerce-linked powers enumerated and granted in the Constitution are unnecessary and nugatory. The Supreme Court decision negates the Framers understanding of the limitations of the power to regulate commerce and makes large portions of the Constitution merely excess language.

It is sometimes argued that granted powers in the Constitution must extend to subjects not in existence at the time the Constitution was framed. The argument, that the particular necessity to exercise a power could not exist and could not be granted prior to the existence of the reason for the necessity, i.e. the public education system, and therefore extension of a granted power to include power over the new subject through a supposed or acknowledged nexus, does not hold water. This is a “good intentions” interpretation of the extent of the clauses of the Constitution. And “There ain’t no good intentions clause in the Constitution.”

The only powers belonging to the federal government are those granted by the people in the Constitution. The power to control something not in existence at the time of the Constitution was contemplated by the Framers of the document but the method

decided upon by those great men was that of amendment of the Constitution. There is no provision in the Constitution for interpretations which extend granted powers and these extensions are fallacious. If the people wish to add powers to the federal government, then the one and only method is through amendment of the Constitution to transfer the power. Interpretation of the Constitution and extension of the granted powers over subjects not in existence at the time of framing is simply tyranny, the theft of power. It does not make a theft of power right simply because the people desire and accept this theft of power. The only correct way is amendment of the document and ratification by the method provided for in the Constitution.

I repeat an earlier quote.
"Clothe men with public authority, and almost universally they consider themselves, as liberated from the obligations of moral rectitude, because they are no longer amenable to justice." 1 Amer Mus. 200 (Story, pg.341).

Consider for a moment that outside the power to regulate commerce, the Constitutional grants of power expressly provide for the transfer of specific commerce-controlling powers to Congress. In evaluating the extent of these powers, one notices that some of the other commerce powers are specific to certain things, i.e. coining money. Thus IF the framers had intended for the "power to regulate commerce" to include the power to regulate things, that extension would have been specified. The power "to regulate commerce" is simply and only that, a power to control commerce and NOT to control the specific things undergoing commerce. The extension of the power "to regulate commerce" is a twentieth century invention of those in power, in attempts to usurp power without offering to properly amend of the Constitution with subsequent approval by the people. The judicial interpretations and extensions (Scarborough v US 431 US 63, 1977)(Katzenbach v McClung, 379 US 294, 1964) are invalid since the Constitution itself proves that the Framers recognized the difference between an activity, commerce, and the articles that

move in commerce. The power "to regulate commerce" is applicable ONLY to the activity. And the power to regulate must preclude the power to ban for if the activity cannot occur then the activity cannot be regulated.

In the early days of this century, the Congress and the people recognized that the power to regulate commerce was limited. In 1916, a movement arose which pushed the government to prohibit the manufacture, transport and sale of a particular material, alcoholic beverages. What is important to note is that at this time, the Congress and the people knew they had to give the power to the federal government to prohibit the manufacture, sale and transport of alcohol by way of an amendment. Since the repeal of this amendment, the government has undertaken to simply legislate prohibitions. These legislative prohibitions, even though sanctioned by the Courts, are NOT constitutional.

Section 9 of Article I grants a restrictive power to Congress over the migration and importation of persons. No extension of this power can be legitimately extended to things. Amendments 9 and 10 of the Bill of Rights provide proof of the veracity of this statement. Again one must always review the Constitution as a whole and not attempt to circumvent its protections and restrictions by taking clauses and phrases out of context as is commonly done in courts. Out-of-context quotes are used by those in power to extend their powers in the disguise of constitutionality.

A final note is that in granting the power to regulate commerce, the Constitution excludes all power to raise revenues under its auspices. Revenue is a separate power. There are clear and concise proofs of the separation of these powers in the Constitution. Thus licensing fees, etc. which are charged by the government for the purpose of controlling commerce are not to be for the generation of revenue.

Repressive fees for licensing are beyond the constitutional control

of Congress. Regulations of commerce are to be "necessary and proper". The statement is NOT "necessary" OR "proper". So regulations must fit into both categories or they are not Constitutional. The "necessary and proper" statement was used to clarify that Congress is entrusted with the granted powers for bonafide purposes only. Repressive fees require stretching the bonafide purposes.

"To regulate Commerce with foreign Nations, and among the several States, and with Indian Tribes;"

Does the above phrase imply the creation or destruction of Commerce? No. It presupposes the existence of Commerce to be regulated. In order to regulate Commerce, Commerce must occur thus the power to regulate commerce among the several state cannot be a power to destroy or halt or prohibit Commerce in any thing.

Section 9 restrictions are linked to the naturalization power and the commerce power. The issue was a measure to mollify the fears of the slaveholding states in dealing with the more populated antislavery states so that a union could be confirmed. Since the Constitution is one of granted, enumerated powers, the power of prohibition DOES NOT extend to things since things are not mentioned within the document. But both immigration and importation, using the SC weak claim that export means to foreign countries and not to other states, imply movement from outside the country and into the country. Thus any prohibitory power held within the enumerated powers of Congress may only apply to things and persons of foreign origin.

The power to prohibit the immigration of persons falls within the naturalization process.

One might say that the power to regulate commerce was inclusive of the power to prohibit and that this limitation was added to cover only a minor detail. But one might also view this addition as an

attempt by those who wished to end slavery as the first step and a separate grant of power rather than an extension or limitation upon the other. Or most likely the power to prohibit does not exist in the power to regulate commerce and thus a specific power to prohibit was provided.

The power is not a power to decide in what or in or by who is commerce is occurring. It is an extensive power but it is a power to regulate Commerce specifically with foreign Nations, among the several States, and with Indian Tribes.

First, one can recognize the importance of having a single set of laws to deal with commerce with foreign nations. Should each state, even when there were only, create a separate, disparate agreement with a certain foreign nation, the whole might then suffer. The people and the states formed the federal government to provide for such issues. The duty of the federal government is to do what is necessary and proper, bona fide, for all the people of the United States.

Individual egos being as they are, one can also see the need for a supposed impartial arbiter in matters that occur between and among states. Of course it can be expected that the people of each state will pass laws and act primarily in behalf of and to protect the people of their state. Should each state be allowed to legislate concerning commerce in things and people from other states, it would be only natural for the laws to reflect protections for the internal products and people of the state. The Framers of the Constitution, having made a first attempt in the Articles of Confederation, knew this first hand. The alteration of the power to regulate Commerce "among the several States" was transferred to the federal government so that once again ALL of the United States would benefit from the association.

The key word is benefit. Federal legislation has often surpassed the intent of the Framers and the naked text of the Constitution. Bans and prohibitions have been placed upon things which the

American people desire. No where in the Constitution and specifically not within the Commerce clause is Congress granted the power for these actions.

The actions of Congress are often associated to things "which substantially or materially affect" interstate commerce. But the word affect does not appear in the Constitution. The use of "Congress finds" that this or that or somethingelse "affects" interstate commerce and thus comes under their power is an invalid, unconstitutional usurpation of power not granted. The issue of affect comes down from Gibbons v Ogden, wherein Chief Justice Marshall (yes, him again) made a statement concerning things in-state which affect interstate commerce. Lord help us if not everything including breathing, which by the way is part and parcel of the government clean air act, cannot be linked to commerce through affects. It is the necessary and proper clause that restricts the extent of the federal power to a level which does not infringe upon that which is internal to a state. Remember, the Constitution was approved by a large number, if not a majority, of individuals who were states' rights advocates. These states' rights advocates would surely not have agreed to give up the level of sovereignty which has been stolen today.

Interstate commerce is specifically that commerce which occurs with one end of transit within the boundaries of one state and the other end within the boundaries of a different state. In no way, regardless of the affect, are the actions of man to man or area to area within a single state open to federal usurpation of state power. Only those actions of the state or individual or individuals which specifically and directly impact an exercise of interstate commerce by another state or individual or individuals fall within the realm of power transferred from the people to the federal government, regardless of good intentions. These actions would include state laws restricting interstate commerce and interference by individuals with items or people in interstate commerce.

Only responses which are "necessary and proper" are Constitu-

tional. Blanket findings of affect do not follow the definitive specifics of an enumerated and restricted Constitutional grant of powers. The basis of American government and all truly democratic governments is limited power in the hands of the central government and that power only to be used for the benefit of all concerned. Congress is not empowered with unlimited control of the United States. This amount of power would have stopped the ratification and left us a hodge-podge of individual states.

Had the Framers of the Constitution meant for the power to regulate Commerce to extend beyond that which was interstate to reach that which is intrastate they lied to the people and thus perpetrated a fraud upon the country since the historical documentary evidence is that the phrase was known to all to be limited in scope. In actuality, they were truthful and the extent of the power was and is still limited. Congress' power begins where the things or persons enter into interstate commerce and ends where the things or people reach the terminus of interstate commerce. Before and after the interstate portion, the things and/or persons are subject to the individual state laws.

Inherent Powers

Inherent power - that power associated with a specific position in life. Each of us wields some level of inherent power based upon our position in life, from the newborn infant to God. Inherent powers are those powers which come unto one simply by being. A corporate president, once hired, is endowed with powers specific to the job. A policeman is endowed with certain powers. In many instances powers are listed somewhere in a job description, but those that are listed are not inherent. True inherent powers are those which society associates with a position merely from the existence of the position.

Often men in power make claims as to their inherent powers. The Kings of Europe laid claim to divine gifts of power just because of who they were. These claims by the Kings usually ended up having to be supported by wars and conquests. These Kings ruled as absolute monarchs, abusing their own people. These abuses resulted in many revolutions, the greatest of which was our own.

In the United States, there are those who claim inherent powers in the positions of our government such as that of President. The logic used is that in an equivalent corporate position, the "president" or King or leader of another country might have the power so for our guy to be equal, the President of the United States must also have the power. Either those who make these claims are ignorant or they are tyrants. The government of the United States is one of granted powers. ALL powers granted are listed in the Constitution. There are no other constitutionally "inherent" powers. The proof of this is simple.

All governments exercise the powers granted in the Constitution. If one adheres to the claim of those who advocate "inherent" powers, then all the efforts and time spent by the Framers to include grants of power were wasted and of no need. The Framers

merely needed to state "We form a Congress of such and such". This simple act would then vest all the necessary powers, those exercised by other governments, in our government. Similarly, the President and Judiciary would have been formed in the same manner. Following the twisted logic of those who believe in "inherent" powers, there was not then, nor is there now, ANY need for an enumeration of powers.

A commonly claimed "inherent" power of the President is one that enables the President to make "executive agreements" with other countries. Those who perpetrate this lie are attempting to extend Presidential powers beyond their Constitutional limits. "Executive agreements" are simply semantics equal to treaties. The so-called proof comes from the Constitutional prohibition on States to make "treaties, alliance, or confederation" or to enter into "agreements or compacts". The gist is that these terms are not equal and so there exists different kinds of "agreements". And since the Constitution ONLY requires senate advice and consent for "treaties", the President must, under "inherent" powers, be able to make agreements without the Senate, since these are "executive agreements" and not "treaties". This is, however, not the case. (See essay on Executive Agreements.)

The truth is that the Constitution demonstrates by its very being and by its very letter that there are no "inherent" powers in the government of the United States. Those who would have you believe so are despots, and tyrants, stealing power for themselves. The President of the United States has a few, enumerated powers. The President is not given unlimited power for if the President was unlimited in power, there would be no need for elections or the other trappings of a democratic republic.

Inherent powers - a lie perpetrated upon the people of the United States by power-hungry rulers.

Limitations on Congressional Expenditures

The Constitution of the United States of America in Article I, Section 8 provides Congress with the power to levy duties, excise, imposts, and taxes and to spend said monies. This same section restricts the Congress to appropriation and expenditure "to pay the debts and to provide for the common Defence and general Welfare of the United States." Outside debts, Congress have no power to levy duties, excises, imposts, or taxes for ANY reason other than "the common Defence and general Welfare" AND Congress have no power to spend money for anything other than "the common Defence and general Welfare."

Some "interpreters" of the Constitution claim this is a separate and substantive grant of power but it cannot be for several reasons. The main reason is that if this was a separate and substantive grant of power all other enumeration of powers would be unnecessary thus relegating ALL the major powers of the Constitution into nothingness. Tucker (1899) states it this way.

"222. We come now to a question which has excited great contention. It will be perceived that the clause under consideration has an important clause interposed between the first and last provisions of it, that we have not as yet particularly noticed. The language is, "to lay and collect taxes, duties, imposts and excises, to pay the debts, and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States." The words which we have not yet considered are: "to pay the debts, and provide for the common defense and general welfare of the United States." The question arises, Do these words grant a distinct power, or do they declare only the object of the tax power proceeding?"

"To the first branch of the question we give a negative answer, to the second an affirmative answer, for the following reasons:"

"1st. The structure of the sentence requires this interpretation.

To "pay the debts, and provide for the common defense and general welfare of the United States," if a distinct power from the power to "lay and collect taxes," etc. should not have intervened between the power to lay and collect taxes, etc., and the qualification of that power by the words, "but all duties, etc. shall be uniform", etc. The latter branch of the sentence as a qualification of the first branch should not have been separated by words which grant a distinct and independent power. Such a framing of the sentence so interpreted would be a vice in grammar of which the pen of Gouverneur Morris should not be held guilty where any other construction is open. The grammatical construction is vindicated by holding that the words "to pay the debts," etc., do not create an independent power, but only declare the object of the proceeding tax power."

The Hamiltonian construct is that Congress may spend upon whatever object it deems to fit into these three categories while the Madisonian construct is that Congress is limited to taxing and spending related only to the powers granted to Congress under the Constitution and subject to such restrictions and prohibitions as exist within the Constitution. The holding of the Supreme Court is that Congress is not authorized to tax and spend for objects left within the powers of the States thus supporting the Madisonian model and rejecting the Hamiltonian attitude. One also could not legitimately conclude that Congress is authorized to appropriate monies for powers within the hold of a foreign government which too aids in rejecting the Hamiltonian claim. It is important to note that Hamilton had offered a broad power of appropriation which was soundly defeated by the Constitutional Convention. However, the holding that the power follows the Madisonian model seems to be all but forgotten as Congress taxes and expends monies at their whim regardless of Constitutionality.

The constitutionality of Congressional expenditures hinges upon the definitions of debts, common defence, and general welfare. First, what is a debt? To the common man, a debt is money owed to another in payment for goods or services. The same is true for

the government. Thus only those things which are goods or services required by the country as a whole may be paid for by appropriations from the federal treasury. Claims against the United States by other countries must have been proven in an international court of law to be binding debts. Offers through treaty become subject to the preexisting Constitutional restrictions and treaties which violate the Constitution are not law nor are they binding upon the government or the people of the United States. Thus debts allowed by the President and Senate under a treaty are not constitutional. Even more so since ONLY the House of Representatives may appropriate monies for the purpose of carrying into action the powers enumerated in the Constitution.

The word, common, is defined and discussed in many Constitutional books including Tucker (1899). Common means "not general" and "common defence" means in defense of each and all. Thus Congress are restricted to expend monies only on defense which is, on its face value, for each and ALL of the United States. The Constitution specifically states what actions are under the power of Congress in terms of "common defence."

Last, the word, general, is applied to welfare. Many in our great country believe that this is a blanket power to expend monies to help the people. This is not so. These expenditures must fall within the category of general, which means "not specific." Expenditures which target certain groups or certain areas, regardless of the claims or intent of Congress, do not fall into the "general" category. Tucker (1899) and Cooley (1898) provide case law which shows that expenditures which target private interests are unconstitutional. Under this guise would fall, monies for individual and family welfare, monies for disaster relief, and virtually all of the expenditures which are now known as entitlements. It can be claimed that many specific welfares amount to a general welfare but the questions then begs, how many specific welfares constitute a "general" welfare? One, a hundred, a thousand, 250 million? There can be no answer but that general welfare requires a national character since no two persons can agree upon a number

less than the whole.

It is interesting to note that the first request for a power of line item veto was requested by President U.S. Grant in response to Congress' continual appropriation for "works" which were not clearly national, national meaning "general welfare". One can see that not only today but even 120 years ago, Congress were in the habit of doing what THEY desired rather than following the "naked text" of the Constitution. Power corrupts!!!!!

Following the Great Depression, Congress began spending monies in social programs. The programs were and are unconstitutional since the monies expended are not expended for the general Welfare but are expended for the specific welfare of certain individuals or groups of individuals. In fact, ALL expenditures which take monies generated by duties, excise, imposts, and taxes upon the people and which go for any program that does not affect the entire population, regardless of intent or the fact that anyone may participate, is unconstitutional. Why did the people allow these infractions to go unchallenged? One answer is a good as another but I content that the 1930s should be termed the American Dark Ages where knowledge of the Constitution was treated as suspect akin to the dangers faced in Europe to those who read the Bible. Another facet is the innate laziness of humans and their desire to be given their needs rather than to work to meet them.

Foreign aid and the current controversy over the IMF (International Monetary Fund) are good examples of unconstitutional expenditures. Congress have no enumerated powers to aid foreign countries and especially to take monies from the people of the United States and use those monies for other than the three cited instances above. Congress is given only direct powers and cannot do by indirect means that which it is not empowered to do by direct means. Again, the stretch is applied that these expenditures either aid the "common defence" or the "general welfare" but without substantive proof that in the absence of these expenditures

the “common defence and general welfare” of the people of the United States would suffer.

The following are a few other unconstitutional expenditures.

Pork spending in which federal monies are allocated unproportionately to certain states also fall into the unconstitutional category.

The provision of monies for special education programs and in actuality for ALL education programs since the federal government is overstepping its bounds by exercising a power left to the states, the power over education. The federal government has absolutely no Constitutional power to be involved in ANY education action. This excerpt from Tucker (1899) will better explain.

When Congress act to appropriate monies to provide help to another individual or group of individuals which does not include ALL citizens, the expenditure becomes specific and not general. No one would argue that Congress have not the power to take the home of A and give it to B. And yet when Congress take money from A and give it to B, many seem not to grasp the equivalence of these acts.

Today, our federal government spends money on private purposes to an extent which is not fathomable. Public welfare, Medicare, Medicaid, Social Security, and FEMA disaster aid are just a few of these programs. In fact, the majority of monies spent by he federal government appear to be in these areas. The following except from “The Constitution of the United States” by John Randolph Tucker, 1899, should stir emotions and thoughts. These expenditures, regardless of the good intentions, are not constitutional. In spending even one cent of tax monies for private purposes, of which all of these are classed, the government is literally stealing from one citizen to give to another. Many feel the need to aid needy and helpless victims but most would not want

to provide aid those who are not in need. However, if a line is drawn between the two then the aid given becomes no longer general welfare, as you will understand after reading below. These thefts are made under the "common Defence and general Welfare" phrase but the placement is not legitimate.

"232. Let us now consider some of the forms to which this question has presented itself."

"1st. Can bounties on products be paid, in the form of appropriations, to aid one or more of the interests of private persons? Does the fact that such industries aid partially the general welfare justify the public aid through taxation to mere personal industries? Is it proper to make appropriations for the unfortunate victims of overflows, fire, grasshoppers, and the like, in order to promote the general welfare? Does help by public money to individuals who may need it elevate such a case to the promotion of the general welfare? Do a number of such particular cases constitute general welfare? If so, how many such is required to make it general? Some one says that the general welfare is made up of the welfare of private individuals; but are not these appropriations for private benefit the principal object, while the public welfare is merely incident?"

"Let us examine this question in light of judicial authority. In Fletcher v Peck1 Chief Justice Marshall said: 'It may well be doubted whether the nature of society and of government does not prescribe some limits to the legislative power. And if any be prescribed, where are they to be found, if the property of an individual fairly and honestly acquired may be seized without compensation.' And Chief Justice Chase adds in the Legal Tender Cases2, 'And if the property of an individual cannot be transferred to the public, how much less to another individual.' In accord with these declarations, the late Mr. Justice Miller, in Loan Ass'n v. Topeka3, speaks with great force in these words:"

"'The theory of our governments, State and National, is opposed to the deposit of unlimited power anywhere. The executive, the legislative, and the judicial branches of these governments are all of limited and defined powers. There are

limitations on such powers which grow out of the essential nature of all free governments; implied reservation of'"

" 1 6 Cr. 135 2 12 Wall. 581 3 20 Wall. 655"

"'individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name. No court, for instance, would hesitate to declare void a statute which enacted that A and B, who were husband and wife to each other, should be so no longer, but that A should thereafter be the husband of C, and B the wife of D. Or which should enact that the homestead now owned by A should no longer be his, but should be henceforth the property of B.'"

"'Of all the powers conferred upon government, that of taxation is the most liable to abuse. Given a purpose of object for which taxation may be lawfully used, and the extent of the exercise is in its nature unlimited. It is true that express limitation on the amount of tax to be levied or the things to be taxed may be imposed by constitution or statute, but in most instances for which taxes are levied, as the support of government, the prosecution of war, the national defense, any limitation is unsafe. The entire resources of the people would in some instances be at the disposal of the government'"

"'The power to tax is therefore the strongest, the most pervading, of all the powers of government, reaching directly or indirectly to all classes of the people. It was said by Chief Justice Marshall in the case of McCulloch v. State of Maryland, 4 Wheat. 431, that the power to tax is the power to destroy. A striking instance of the truth of the proposition is seen in the fact that the existing tax of ten percent, imposed by the United States on the circulation of all other banks than the national banks, drove out of existence every State bank of circulation within a year or two after its passage. This power can as readily be employed against one class of individuals and in favor of another, so as to ruin the one class and give unlimited wealth and prosperity to the other, if there is no implied limitation on the uses for which the power may be exercised.'"

"'To lay with one hand the power of the government on the property of the citizen, and with the other to bestow it upon

favored individuals to aid private enterprises and build up private fortunes, is none the less a robbery because it is done under the forms of law and is called taxation. This is not legislation. It is a decree under legislative forms.'"

"'Nor is it taxation. A 'tax' says Webster's Dictionary, 'is a rate or sum of money assessed on the person or property of a citizen by government for the use of the nation or state.' 'Taxes are burdens or charges imposed by the legislature upon persons or property of raise money for public purposes.'"

"'Coulter, J. in Northern Liberties v. St. John's Church, 12 Pa.St. 104, says very forcibly: 'I think the common mind has everywhere taken in the understanding that taxes are a public imposition, levied by the authority of the government for the purpose of carrying on the government in all its machinery and operations - that they are imposed for a public purpose.'"

"'We have established, we think beyond cavil, that there can be no lawful tax which is not laid for a public purpose. It may not be easy to draw the line so as to decide what is a public purpose in this sense and what is not.'"

"'It is undoubtedly the duty of the legislature which imposes or authorizes municipalities to impose a tax to see that it is not to be used for purposes of private interest instead of public use, and the courts can only be justified in interposing when a violation of this principle is clear and the reason for interfering cogent.' .... 'But in the case before us, in which the towns are authorized to contribute aid by way of taxation to any class of manufacturers, there is no difficulty in holding that this is not such a public purpose as we have been considering. If it be said that a benefit results in the local public town by establishing manufactures, the same may be said of any other business or pursuit which employs capital or labor. The merchant, the mechanic, the innkeeper, the banker, the builder, the steamboat owner, are equally promoters of the public good, and equally deserving of the aid of the citizens by forced contributions. No line can be drawn in favor of the manufacturer which would not open the coffers of the public treasury to the importunities of two-thirds of the business men of the city or

town.’”

“223. Several cases are cited by the justice in illustration of this. A town meeting voted the town’s credit to the amount of ten thousand dollars to certain individuals if they would invest twelve thousand dollars in certain mills, etc., to be built in that town by them. Provision was made to secure the town by mortgage on the mills. The Supreme Court of Maine held that this was not a public purpose, and the town could levy no taxes in aid of the enterprise, and could issue no bonds for the purpose, though an act of the legislature had ratified the vote of the town.1 The disastrous fire in Boston in 1872 gave rise to the passage of a law by the legislature of Massachusetts which authorized the city to issue its bonds which were to be loaned under proper security by the city to owners of the ground on which the buildings had been destroyed by fire, to aid them in rebuilding. The court held the law unconstitutional as authorizing taxation for what was not a public purpose.2"

“These decisions of the States, sanctioned by the high authority of the Supreme Court in reference to the limitations upon State power are, a fortieri, applicable in principle to the limited and enumerated powers of the federal government. Besides, the fifth amendment of the Constitution, which vested Congress with the power to take private property for public use upon just compensation, involves the negation of power to take private property for private use without compensation. Judge Cooley3 takes the same view, and cites a case where a tax was laid to supply with provisions and seed, such farmers as had lost their crops, which was held unconstitutional.4”

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THE FED'S HAVE NO LEGITIMATE BUSINESS IN EDUCATION

The Constitution of the United States

John Randolph Tucker (1899) Vol. 1, Pg. 497

"234. A question has of late years arisen as to the power of Congress to appropriate money to aid public schools in the States. And it is sought to sustain it on the ground that, an appropriation to each State is a local benefit, yet an appropriation to all the States would make a general welfare. It is conceded that the government itself could not establish an educational institution in the State, that being a power reserved to the State itself. About this there would seem to be no doubt. And yet under the general welfare clause, while not claiming to exercise the power, yet it is claimed to be within the Hamiltonian Doctrine for the appropriation of money. It is too obvious to escape observation that the appropriation of money must be followed, as was proposed, with some supervision over its expenditure, and as to the system of education to be pursued. Indeed it is clear that Congress ought not to appropriate money for a useless system of education; and if Congress intervenes as to the system, because of the appropriation of money for the purpose, it would be claiming in some degree the right to exercise denied power - denied to Congress, and reserved exclusively to the States. In such a case the language of Chief Justice Marshall in Gibbons v Ogden2 is applicable: 'Congress is not empowered to tax for those purposes which are within the exclusive province of the States.'"

The last statement taken from Gibbons v. Ogden contains within it the meaning that in order to appropriate monies for public education the Congress would have to tax for that purpose. If Congress were to then follow the appropriations with mandates, i.e. as they do today, Congress would then be exercising a power reserved to the States by indirect means. Congress is NOT granted

the Constitutional power to do by indirect means what they are not granted to do by direct means.

The limitations of the Power of Taxation

In Article I, Section 8, Congress are given the power to tax and spend.

Section. 8. The Congress shall have the Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

Now just what are subjects of the power to tax? And what, if any, are the limitations on the amount of tax which can be placed upon any particular subject?

In the first instance, certain restrictions as to taxes, duties, imposts, and excises are placed upon Congress elsewhere in the Constitution. (See my exposition on taxes upon exports.) But a more general restriction occurs which stems directly from the trust underlying the grant of power. This is to say that Congress' powers of laying and collecting taxes, duties, imposts, and excises are restricted by the wording of the grant to the generation of revenue in order to accomplish specific tasks also spelled out in the Constitution. The use of the powers of laying and collecting taxes, duties, imposts, and excises for any purpose other than revenue is unconstitutional.

A plot of the tax rate versus the generation of revenue from taxes forms a curve in which increases to a point wherein the tax rate become prohibitive and thus reduces consumption. The reduction in consumption causes a drop in revenue and as such is not a power of Congress. Congress may not legitimately tax beyond the point of maximum revenue generation. Punitive taxes are not authorized. Now why would the Framers limit the federal government in such a manner? The Framers knew that taxation must be a power of the federal government or the government would fail as it had in the Articles of Confederation. BUT, the framers also

recognized from experience that the most often abused power was that of taxation. And so the reasons for taxation were restricted to three, paying the debt, and providing for the common defence and general welfare of the nation. Since the federal government is one of limited and granted powers, and since the broad power to expend monies as Congress sees fit is not part of the grant, Congress is constitutionally restricted to ONLY those reasons listed in the Constitution.

In today's Congress and upon the political scene, taxes are seen as a method for restricting "evil", i.e tobacco, alcohol, big business, etc. And while Congress may enact laws which cause a reduction in consumption, these laws are not valid. The refusal of the supreme Court to act to control these unconstitutional abrogations of law makes them accessories after the fact. In no case does the fact that the Courts have failed to properly exercise their controls on legislation make these laws legitimate. In the case of tobacco and other products, Congress has massively overstepped the bounds of the Constitution.

As an aside and with the idea that the reader will move on to the essay on the commerce power, let me state that Congress may pass no taxes under the commerce power. Proof of the separation of taxation out of the commerce power is readily apparent in Article I, Section 9, paragraph 6. This clause would be wholly unnecessary and nugatory if the power to regulate commerce included ANY taxation power.

The reader is directed to Tucker's work for a more expansive discussion of the relationship between taxation, revenue, and the reduction of consumption.

TAXATION TO AID INDIVIDUALS HAS NEVER BEEN CONSTITUTIONAL

Today, our federal government spends money on private purposes to an extent which is not fathomable. Public welfare, Medicare, Medicaid, Social Security, and FEMA disaster aid are just a few of these programs. In fact, the majority of monies spent by he federal government appear to be in these areas. The following except from "The Constitution of the United States" by John Randolph Tucker, 1899, should stir emotions and thoughts. These expenditures, regardless of the good intentions, are not constitutional. In spending even one cent of tax monies for private purposes, of which all of these are classed, the government is literally stealing from one citizen to give to another. Many feel the need to aid needy and helpless victims but most would not want to provide aid those who are not in need. However, if a line is drawn between the two then the aid given becomes no longer general welfare, as you will understand after reading below. These thefts are made under the "common Defence and general Welfare" phrase but the placement is not legitimate.

"232. Let us now consider some of the forms to which this question has presented itself."

"1st. Can bounties on products be paid, in the form of appropriations, to aid one or more of the interests of private persons? Does the fact that such industries aid partially the general welfare justify the public aid through taxation to mere personal industries? Is it proper to make appropriations for the unfortunate victims of overflows, fire, grasshoppers, and the like, in order to promote the general welfare? Does help by public money to individuals who may need it elevate such a case to the promotion of the general welfare? Do a number of such particular cases constitute general welfare? If so, how many such is required to make it general? Some one says that the general welfare is made

up of the welfare of private individuals; but are not these appropriations for private benefit the principal object, while the public welfare is merely incident?"

"Let us examine this question in light of judicial authority. In Fletcher v Peck1 Chief Justice Marshall said: 'It may well be doubted whether the nature of society and of government does not prescribe some limits to the legislative power. And if any be prescribed, where are they to be found, if the property of an individual fairly and honestly acquired may be seized without compensation.' And Chief Justice Chase adds in the Legal Tender Cases2, 'And if the property of an individual cannot be transferred to the public, how much less to another individual.' In accord with these declarations, the late Mr. Justice Miller, in Loan Ass'n v. Topeka3, speaks with great force in these words:"

"'The theory of our governments, State and National, is opposed to the deposit of unlimited power anywhere. The executive, the legislative, and the judicial branches of these governments are all of limited and defined powers. There are limitations on such powers which grow out of the essential nature of all free governments; implied reservation of'"

" 1 6 Cr. 135 3 20 Wall. 655"

" 2 12 Wall. 581"

"'individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name. No court, for instance, would hesitate to declare void a statute which enacted that A and B, who were husband and wife to each other, should be so no longer, but that A should thereafter be the husband of C, and B the wife of D. Or which should enact that the homestead now owned by A should no longer be his, but should be henceforth the property of B.'"

"'Of all the powers conferred upon government, that of taxation is the most liable to abuse. Given a purpose of object for which taxation may be lawfully used, and the extent of the exercise is in its nature unlimited. It is true that express limitation on the amount of tax to be levied or the things to be taxed may be imposed by constitution or statute, but in most instances for which taxes are

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"'The power to tax is therefore the strongest, the most pervading, of all the powers of government, reaching directly or indirectly to all classes of the people. It was said by Chief Justice Marshall in the case of McCulloch v. State of Maryland, 4 Wheat. 431, that the power to tax is the power to destroy. A striking instance of the truth of the proposition is seen in the fact that the existing tax of ten percent, imposed by the United States on the circulation of all other banks than the national banks, drove out of existence every State bank of circulation within a year or two after its passage. This power can as readily be employed against one class of individuals and in favor of another, so as to ruin the one class and give unlimited wealth and prosperity to the other, if there is no implied limitation on the uses for which the power may be exercised.'"

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"'Nor is it taxation. A 'tax' says Webster's Dictionary, 'is a rate or sum of money assessed on the person or property of a citizen by government for the use of the nation or state.' 'Taxes are burdens or charges imposed by the legislature upon persons or property of raise money for public purposes.'"

"'Coulter, J. in Northern Liberties v. St. John's Church, 12 Pa.St. 104, says very forcibly: 'I think the common mind has everywhere taken in the understanding that taxes are a public imposition, levied by the authority of the government for the purpose of carrying on the government in all its machinery and operations - that they are imposed for a public purpose.'"

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not be easy to draw the line so as to decide what is a public purpose in this sense and what is not.'"

"'It is undoubtedly the duty of the legislature which imposes or authorizes municipalities to impose a tax to see that it is not to be used for purposes of private interest instead of public use, and the courts can only be justified in interposing when a violation of this principle is clear and the reason for interfering cogent.' .... 'But in the case before us, in which the towns are authorized to contribute aid by way of taxation to any class of manufacturers, there is no difficulty in holding that this is not such a public purpose as we have been considering. If it be said that a benefit results in the local public town by establishing manufactures, the same may be said of any other business or pursuit which employs capital or labor. The merchant, the mechanic, the innkeeper, the banker, the builder, the steamboat owner, are equally promoters of the public good, and equally deserving of the aid of the citizens by forced contributions. No line can be drawn in favor of the manufacturer which would not open the coffers of the public treasury to the importunities of two-thirds of the business men of the city or town.'"

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"These decisions of the States, sanctioned by the high authority of the Supreme Court in reference to the limitations upon State power are, a fortieri, applicable in principle to the limited and enumerated powers of the federal government. Besides, the fifth amendment of the Constitution, which vested Congress with the power to take private property for public use upon just compensation, involves the negation of power to take private property for private use without compensation. Judge Cooley2 takes the same view, and cites a case where a tax was laid to supply with provisions and seed, such farmers as had lost their crops, which was held unconstitutional.4"

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" 4. State v. Osawkee, 14 Kan. 418"

So how does such a manipulation and violation of the Constitution come about. For one thing, it comes from "good intentions". It also comes about because those in power see these manipulations as extensions of their power. Power exists to be sought after, demonstrated, and expanded upon. Why don't the Courts protect the people? The most probable answer lies in the effects of power on the justices. Power corrupts!

TAXATION TO ELIMINATE CONSUMPTION HAS NEVER BEEN CONSTITUTIONAL

In today's U.S., the Congress constantly and consistently places restrictive taxes upon goods to "provide for the general welfare" and to protect its citizens from their own weaknesses. Examples are the high consumption taxes on cigarettes and products such as Freon-12. The purpose is to reduce consumption. This purpose, however, is not a Constitutional purpose. The theory of government in the U.S. is one of specific, limited, granted powers. A close review of the enumerated powers , for what else can one call the listing in Article I, Section 8 than an enumeration, provides a clear picture of the central theme of federal powers. The federal powers are seen to be primarily associated with balancing trade with foreign countries and among the states and with supplying military defense protection to the member states of the country. The use of the word, among, is not in as ignorant a manner as used by Chief Justice Marshall in his open attempt to expand federal powers at the expense of State powers. "Among" in the Constitution is merely the proper term for all things which involve more than two. The term, between, applies only to two while "among" is the only term allowable for to more than two. Marshall manipulated the word, and extended federal commerce powers well beyond that provided both by the clear, naked text of the Constitution and that based upon the intentions of the Framers. The urge to take more power is clearly seen in actions like those of Chief Justice Marshall in his easily recognized expansion of the definition of words. But this it better discussed in the essays on commerce and word manipulations.

The following discussion is taken from "The Constitution of the United States by John Randolph Tucker (1899).

"235. 2d. Can the power to tax be used for other than revenue

purposes? It has thus far been shown that both schools of construction hold it to be a revenue power - a power granted to raise revenue; and the divergence of opinion has been on the question of the power of appropriation. We come now to consider the question whether this power of taxation for revenue purposes can be used, not to raise revenue, but, by pretending to raise revenue from a particular subject of taxation, to lay a prohibitory duty upon that which may be imported in order to give a monopoly to the product made at home." "A protective duty on an article may be differentiated from a revenue duty by this course of reasoning. The revenue raised by a duty on Article A is a result of two factors - the rate of taxation and the amount imported. The formula may be thus stated: R(revenue) = D(duty) x I(import). As the duty increases, the import will decrease, because the increase of price will decrease consumption. When the duty is nothing, the revenue will be nothing, however great the importation. And as importation falls off with the increase of the rate of the duty (until the duty becomes prohibitory), by so increasing the price of the import as to prevent any consumption, it follows that between the point of no duty and the prohibitory rate there will be an ascending scale of revenue to a maximum point of revenue, and a descending scale of revenue from that maximum to the point of prohibition. So that on either side of that duty which raises the maximum revenue on any article, there will be a lower and a higher duty which will raise the same amount of revenue." "Therefore, as no higher duty ought to be laid than is needed to raise the requisite revenue on a particular article, it follows that the true revenue duty is the lowest duty which will bring the required revenue. To lay the higher duty to raise the required revenue, instead of the lower, which will achieve the same result, is an oppressive violation of right, in making the burdens heavier than the needs of the government require for its support. Such higher duty is not a revenue measure, but is a needles limitation on consumption, oppressive to the citizen, and an improper restriction upon freedom of commerce. In other words, the lowest rates of duty which will secure the required revenue may be termed a revenue tariff; the highest rates securing the same will be a protective tariff. The former enlarges

consumption, the latter diminishes it, and both bring the same amount of revenue. The one decrease the comforts of the people by decreasing ability to consume; the other increases their comforts by enlarging their capacity of consumption. If the power to lay and collect duties be, as its terms import, a power to raise revenue, and Congress can only pass laws necessary and proper to raise revenue required from that article, then it is clear that it is neither necessary nor proper, but the reverse, to lay the higher duty on the article rather than the lower duty, when both produce the same revenue." "But is there is a power to lay the higher duty rather than the lower, because thereby a class in the community who are manufacturing the product which is being imported subject to the duty is encouraged and benefited? The difference between the lower duty and the higher duty, both of which produce the same revenue, is the measure of taxation laid upon the consumer, not for the purpose of revenue, but for the purpose of giving to the domestic producer to that extent the advantage over his foreign competitor. It is additional taxation laid upon the citizen, not to furnish revenue to the government, but to give a benefit and advantage to the domestic producer of the article. Can such legislation be justified under the revenue power? Is that the exercise of the power of taxation to raise money to pay the debts and provide for the common defense and general welfare?" "It is obvious it cannot be, for the same revenue would be raised by the lower duty. We are forced to conclude, therefore, that duty was laid for the private benefit of the producer of the domestic article."

Tucker's discussion provides a clear and concise demonstration of the unconstitutionality of taxes used to reduce consumption or availability of products to the people. Each person is in charge of his or her own life. Children are to be protected by parents. Parents who fail to provide proper guidance to their children are guilty of the most heinous child abuse. The Constitution clearly provides proof that specific welfares of individuals was not part of the grant of power to the federal government. State and local government were left with the power and the responsibility to their

citizens. Some amendments afford protections to the citizens of the United States against state abuses but none state that the federal government is empowered to provide for specific welfare. Please see the essay on common defense and general welfare.

Bills of Attainder

From Story, Book III, Pg.209, Para. 1338

"1338. Bills of Attainder, as they are technically called, are such special acts of the legislature , as inflict capital punishments upon persons supposed to be guilty of high offences, such as treason and felony, without any conviction in the ordinary course of judicial proceedings. If an act inflicts a milder degree of punishment than death, it is called a bill of pains and penalties.(1) But in the sense of the constitution, it seems, that bills of attainder include bills of pains and penalties; for the Supreme Court have said, "A bill of attainder may affect the life of an individual, or may confiscate his property or both."(2) In such cases, the legislature assumes judicial magistry, pronouncing upon the guilt of the party without any of the common forms and guards of trial, and satisfying itself with proofs, when such proofs are within its reach, whether they are conformable to the rules of evidence, or not. In short, in all such cases, the legislature exercises the highest power of sovereignty, and what may be properly deemed an irresponsible despotic discretion, being governed solely by what it deems political necessity or expediency, and too often under the influence of unreasonable fears, or unfounded suspicions.

Such acts have often been resorted to in foreign governments, as a common engine of state; and even in England they have been pushed to the most extravagant extent in bad times, reaching, as well to the absent and the dead, as to the living. Sir Edward Coke (3) has mentioned it to be among the transcendent powers of parliament, that an act may be passed to attaint a man, after he is dead. And the reigning monarch, who was slain at Bosworth, is said to have been attainted by an act of parliament a few months after his death, notwithstanding the absurdity of deeming him at once in possession of the throne and a traitor.(4) The punishment has often been inflicted without calling upon the party accused to answer, or without even the formality of proof; and sometimes, because the law, in its ordinary course of proceedings, would

acquit the offender.(5) The injustice and iniquity of such acts, in general, constitute an irresistible argument against the existence of the power. In a free government it would be intolerable; and in the hands of a reigning faction, it might be, and probably would be, abused to the ruin and death of the most virtuous citizens.(6) Bills of this sort have been most usually passed in England in times of rebellion, or of gross subserviency to the crown, or of violent political excitements; periods, in which all nations are most liable (as well the free, as the enslaved) to forget their duties, and to trample upon the rights and liberties of others.(7)

1 2 Woodeson's Law Lect., 625.

2 Fletcher v Peck, 6 Cranc, R. 138; S.C. 2 Peter's Cond. R. 322; 1 Kent's Comm. Lect. 19, p.382.

3 4 Coke. Inst. 36,27.

4 2 Woodeson's Law Lect., 623, 624.

5 2 Woodeson's Law Lect., 624.

6 Dr. Paley has strongly shown his disapprobation of laws of this sort. I quote from him a short but pregnant passage. " This fundamental rule of civil jurisprudence is violated in the case of acts of attainder, or confiscation, in bills of pains and penalties, and in all ex post facto laws whatsoever, in which parliament exercises the double office of legislature and judge. And whoever either understands the value of the rule itself, or collects the history of those instances, in which it has been invaded, will be induced, I believe, to acknowledge, that it had been wiser and safer never to have departed from it. He will confess, as least, that nothing but the most manifest and immediate peril of the commonwealth will justify a repetition of these dangerous examples. If the laws in being do not punish an offender, let him go unpunished; let the legislature, admonished of the defect of the laws, provide against the commission of future crimes of the same sort. The escape of one delinquent can never produce so much harm to the community, as may arise from the infraction of the rule, upon which the purity of public justice, and the existence of civil liberty, essentially depend."

7 See 1 Tucker's Black. Comm. App. 292, 293; Rawle on Const. ch. 10, p119. See Cooper v. Telfair, 4 Dall. R. 14.- Mr. Woodeson,

in his Law Lectures, (Lect.41), has devoted a whole lecture to this subject, which is full of instruction, and will reward the diligent perusal of the student. 2 Woodeson's Law Lect. 621. - During the American revolution this power was used with a most unsparing hand; and it has been a matter of regret in succeeding times, however much it may have been applauded flagrante bello."

After reading the above passage, one can understand the relationship of bills of attainder and most especially bills of pains and penalties to current laws involving taxation penalties and "drug" prosecutions. These acts of Congress which take property through legislative rather than judicial determination of guilt and without just compensation are ALL bills of pains and penalties, regardless of court decisions and the good intentions of the law. In theory, the constitution protects the citizens from each other and the government but despots arise in the guise of the demagogue and lead the people into a trap. One cannot give an inch lest they take a foot. The Constitution restricts the behavior of even the majority over the minority. Congress has flagrantly defiled the Constitution through the constant passage of unconstitutional laws, even and especially those passed as "salus populi suprema lex".

The most egregious of these legislative acts, which are but bills of pains and penalties, are those acts which proclaim the guilt of the party without benefit of judicial review. In fact, the entire civil judicial system in the United States falls under this prohibition. Common law practice in criminal proceedings declares the defendant innocent until proven guilty. This same common law declares that the civil defendant must prove innocence by a preponderance of evidence. This is a blanket bill of pains and penalties.

In US v Boyd (1886), the SC determined that the forced production of a person's papers even in a civil suit violated the Fourth and Fifth Amendment protections. Forcing a defendant to produce

personal papers which determine the guilt or innocence of the person places the papers of the person under an unreasonable search and seizure and causes the person to provide testimony against himself. In civil cases, the penalties faced are often criminal and thus while the common law practice is that one is guilty until proven innocent in a civil action, the fact that the guilty part faces criminal sanctions brings forth the full effect of the Constitution to bear on the case. Thus when the IRS attempts to require a person to produce papers to "prove" anything, the IRS violates the Fourth and Fifth Amendments. (The reader's attention is directed to the recent Hubbell decision.)

Couple this with the blanket prohibition on bills of attainder which includes bills of pains and penalties and the fifth amendment's requirement that private property taken for public use must include just compensation to the owner and the federal government tax agents stand on legal quicksand.

The Excise Taxes

In Article II, section 9, one finds the following:

No Tax or Duty shall be laid on Articles exported from any State.

This clause is tightly linked to the clause which follows in the same section. Arbitrarily, the two clauses have been separated because it is easier to assail an opponent when the opponent is divided. The Congress has applied excise taxes upon various manufactures in the U.S.A, among these firearms and automobile tires. The above prohibition proves beyond any doubt that these excise taxes are unconstitutional.

Those who favor and impose excises upon manufactures will likely attempt to use the term excise independently of the term, tax. These individuals will point to the separation of terms in the grants of powers where Congress is granted the power "to lay and collect Taxes, Duties, Imposts, and Excises". However, a quick look in a dictionary shows that an excise is: "an internal tax levied on the manufacture, sale, or consumption of a commodity within a country." Note the word tax within the definition of an "excise." Also note that the word, Tax, in the clause currently under discussion is not restricted by any other word in the clause. And following from the position of the grant and the prohibition, one must conclude that the prohibition applies to the grant since the prohibition comes AFTER the grant. Thus an "excise", which is by definition and function a type of tax, falls within the broad meaning of the word, Tax, as written in the limitation shown above.

Blackstone (Book I, Pg.318) and Story (Book II, Pp. 423-423) are in agreement that "Taxes, Duties, Imposts, and Excises" are ALL TAXES with the particular word used only to describe a particular tax form.

One might suppose that in the choice of the word, export, the Framers restricted the meaning to those goods or articles sent to

another country. At the time of the framing of the Constitution, and before the formation of the federal government through the ratification of the Constitution, the states WERE individual "nations", each vying for its position in the world. Individual states were competing with each other in imports and exports. So intent as determined from the historical record show that imports and exports include items transferred from one state to another. In addition, a basic reading of the prohibition and in following the understanding that the "interpretation" of the Constitution must take the broadest meaning of all words unless explicit restrictions are written within the document brings one to the same conclusion since absolutely no restrictions on the restriction are given.

The term, export, means things, goods, products, etc. transported from a state, region, place, or country to any other region, place or country. At the time the Constitution was written, the Framers were focused upon the fear of the people of a new powerful government. The smaller states feared that the larger, more powerful states would undermine their economies. A number of limitations upon this absolute prohibition were offered but failed to be accepted. This phrase expressly and absolutely prohibits ANY tax or duty upon ANY export from ANY state, regardless of the location to which the export is to be transferred. The history of the Constitutional Convention, the framing and ratification of the Constitution, and the entire history of the individual colonies proves beyond ANY doubt that the states were and are individual sovereigns and that because of this status, exports are items shipped to ANY location outside their borders.

Thus, in limiting the Commerce clause, the Framers carefully chose to absolutely limit the power of the new federal government to pass tax or duty laws which might restrict products of one state from being shipped to the other states.

The Supreme Court has however determined that exports mean items shipped out the boundaries of the United States. This does not fit with the form of government in which the United States is

on one side with the individual states on the other. The formation of the Union was to provide protections against individual states forming alliances with each other or with foreign countries at the expense of other states. The Framers recognized the sovereignty of the individual states, especially their separation from each other as equal and independent powers. As an outgrowth of this position, the Constitution, developed by the Framers, recognizes the individual sovereignty of the states and thus as individual sovereigns exports would include any and all items sent from within the borders of the state to any and all locations outside the border of that same state, including destinations within other states. So, why did the supreme Court rule in this manner? Simply because such a ruling allowed for an increased transfer of power to the federal government without having to go the trials and tribulations of amending the Constitution.

Although the supreme Court has seen fit to establish a rule of law that the term, export, means out of country, the clause following the prohibition on duties or taxes on articles exported provides direct proof that the supreme Court determination is invalid.

The next clause states: "No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another."

A tax or duty upon articles produced in one state which are not produced in ALL other states would be a preference of ports in the sense of the above clause. Thus the supreme Court errs once again by taking clauses and phrase out of context in order to justify usurpations of power.

Interstate Commerce is composed of the buying and selling of goods across the boundaries of states. Congress is granted power over foreign and interstate commerce. And for what reason, if exporting does not include commerce of goods to other states, would Congress be granted a power to regulate commerce among the states.

Importing and exporting can easily be understood from the relationship of the US to foreign countries. The acts of importing and exporting to foreign countries thus come under the power to regulate commerce with foreign nations as granted in the Constitution.

Now, either the transporting of products from one state to another would fall into the categories of importing and exporting or they wouldn't. The act of bringing items into a state from another state falls under the definition of "import." Then, however, the act of sending the items out of the other state must fall under the definition of "export." But the SC has ruled that Congress may tax items shipped from one state to another because to "export" means only to a foreign country. Then if items sent out of one state to another state are not exports, the bringing into another state of these products is not "import." So without import or export, there is no "interstate" commerce as no exportation nor importation occurs, implying that the states are one in the same. If there is no "interstate" commerce, then the movement of items among states does not fall under the power of Congress to regulate.

So, the Supreme Court in determining that the movement of goods from one state to another does not constitute exportation nullifies the power of Congress as no "interstate" commerce can occur when importation and exportation do not occur.

Taxes on tobacco, firearms, alcohol, tires, and EVERY other thing manufactured in one state and sold in another are unconstitutional. Federal taxes on items used within a state are unconstitutional as those taxes violate state sovereignty and the restriction that all taxes, duties, excises, and imposts must be uniform throughout the country. The approval or allowance of these taxes, etc by the Courts are just one more incidence of judicial revisionism and usurpation of power. The Framers would consider these acts of the Judiciary as treason, placing the judges who ruled so in position for impeachment.

Ex Post Facto - Article I, Section 9, Paragraph 3.

No Bill of Attainder or ex post facto Law shall be passed.

Our Constitution prohibits ex post facto, after the fact, laws. According to Story, originally many learned minds recognized that this applied both to criminal and civil laws. As I have stated in other parts of this text, once the shoe was on the other foot and the new government in place, those who were elected to serve began to violate the Constitution in the name of "good intentions." Following this lead, the Courts however have decided in their infinite wisdom that the phrase applies only to criminal laws. This is contrary to due process as covered under the 5th and 14th amendments and runs counter to the Framers' intentions. But in America, common law controls what is recognized as "due process" and thus due process in a criminal case has become different from that in a civil case.

In England, both civil and criminal laws were passed ex post facto. These laws were used to abuse the Americans at the time of the Revolution. As an outcome of these abuses, it is highly improbable that the Framers would consider allowing one form and not another. Just having been abused by such laws, would YOU work for a prohibition of one form, leaving another form readily available for abuse? I think not, and so why would the Framers have been so careless to have left this door open? The bare text of the prohibition does not give this same understanding. The prohibition is absolute and general not expressing restrictions of the prohibition in any form. The "interpretation " of the courts as to its allowance of civil laws is simply another theft of power by a developing elite in America. And this theft occurred early on in the development of Constitutional "interpretation."

What could be the reason for claiming ex post facto applies only to criminal law? An excellent example of ex post facto legislation occurs in our tax codes. For instance, Congress continually

modifies the laws concerning retirement accounts. If the restriction on ex post facto laws were followed Constitutionally, Congress would be in violation and these changes would not be Constitutional. Once a retirement account was created, changes in the law could no longer affect that account. But this is civil law, and those in America who make our laws wouldn't, no couldn't, allow this protection to extend to every facet of life. That would place a burden on THEM to behave and follow the Constitutional protections that the people placed upon them more than 200 years ago.

Within this same prohibition is a restriction that no Bill of Attainder shall be passed. To most people today, the phrase, Bill of Attainder, has no meaning. A Bill of Attainder was a legislative, as opposed to judicial, finding of guilt, in most cases used against persons in disfavor with the current ruling elite. A Bill of Attainder was a capital punish or death sentence for supposed offenders. Not so deadly but equally destructive were Bills of Pains and Penalties whereby the lands or property were taken by the state without benefit of a trial by jury, [Sounds familiar, doesn't it?] At the time Story wrote, the Supreme Court had ruled that Bills of Attainder may affect the life of an individual, or may confiscate his property, or both. Thus Bills of Pains and Penalties are part and parcel included within the prohibition on Bills of Attainder. Thus, current forfeiture laws which steal away property are to be considered Bills of Pains and Penalties, and violative of this and other Constitutional protections against the arbitrary use or abuse of power by the government.

It might be presumed that within this section of the Constitution the prohibitions were strictly against the federal government. The bare text does not indicate this as this is a separate sentence with no restrictive clause. And the Constitution contains a supremacy clause which would override any "interpretation" which unduly limits the prohibitions as expressed. To the credit of the Framers, and in order to alleviate any possible claim that these prohibitions were not universal, these same restrictions are repeated in Section 10, under the restrictions on states.

The Powers of the President

Article II, Sections 2 and 3 explicitly state the powers of the President of the United States. Again, recall that the federal government and its officers are limited to the powers granted by the people and that powers not granted cannot be legitimately exercised. There are no phrases in the Constitution which provide for exceptions. The Constitution restricts changes so as to protect the weak from the strong, the minority from the majority. Only through a properly organized and orchestrated procedure can the Constitution be changed to reflect the new desires of the people of the country. That proper procedure is amendment of the Constitution.

It is this ability to be changed with the needs and wants that makes the Constitution a living document. Too often, men state that the Constitution is out of date and out of touch with America. If this is true, it is the failure of our elected representatives to amend the Constitution and not that of the Framers or the Constitution itself.

"Article II, Section. 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into actual Service of the United States; he may require the Opinion in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have the Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other Public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be estab-

lished by Law; but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The best thing about the way treaties are handled in America is that treaties are legislative. Thus future Congresses have the power and the right to alter or completely discard treaties through simple legislative means. So should America fall prey to an unscrupulous President and Senate who sign away rights and powers, a new Congress can reverse the treaty through legislation. All treaties, even those approved by the President and the Senate, do not become legitimate law if their provisions are contrary to the supreme Law, the Constitution.

Next, the President shall have Power to fill up all the Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section. 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States."

The President has minor powers over Congress in that the President may force Congress into meeting. And in the event of a disagreement as to adjournment, the President may adjourn the bodies as he sees fit.

The list of powers granted from the people to the President is short and limited. First and foremost, the President is in charge of our

military forces. But as a safeguard, the Framers placed the power to declare war in the hands of Congress. Hair-splitting has occurred in recent years between Congress and the President in controlling the Armed Forces.

Our esteemed President Lincoln violated the Constitution on a number of occasions. Lincoln illegally declared the beginning of the Civil War and simply refused to recognize the determinations of the supreme Court that he was acting beyond the scope of the law. For more on President Lincoln, I refer the reader to Tucker (1899).

The President has the power to veto legislation after it has passed the Congress. In 1996, the Congress modified this veto power and extended the power to what is known as "line item veto", which is directly primarily at budget issues. The Congress is NOT empowered to make this change through simple legislation regardless of the intent or need. The modification passed by Congress is not Constitutional and can only be Constitutional when formed and offered as an amendment of the Constitution. [Note: On June 25, 1998, the Supreme Court of the United States ruled, using the same understanding as presented here, that the line item veto power was unconstitutional.]

The Constitution does not provide for the President to be able to partially veto legislation, including budgets. The argument that Governors of many states have this power is irrelevant to the issue since the Constitution does not grant this power. Congress has once again violated the Constitution. If "line item veto" power is desired, the people must grant it through acceptance of an amendment of the Constitution. Had the Constitution been silent upon the exercise of the veto and contained only the following statement —And To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, on in any Department or Officer thereof.

Congress would have been lawful in their modification of the President's power to veto. However, leaving the entire power to the Congress would have resulted in a President without power. The act of setting the method of veto in the Constitution restricts Congress' ability to modify the power except through the proper means, amendment. Why did the Framers so restrict the power of Congress, because the Framers were intimately aware of how men, once in power, grow to abuse those powers which were granted.

The following passage is included for review.

"Every Bill which shall have passed the House of Representatives and the Senate shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law. Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill."

Reread the last paragraphs. Note that the President may partially disagree with but is not empowered to partially veto a bill. Congress has once more stolen powers not granted. And the issue is worse, since the Courts refuse to allow action by the people unless the people can prove standing.

For more information concerning the Line Item Veto power and why Congresses have not passed this power before, see H.R. 1779, 49th Congress, 1st Session. When President Grant asked for Line Item veto power, he at least knew to ask for an amendment of the Constitution since simple legislation was not capable of legitimately conferring power upon the President. Only the people have the right and the power to give the President a new power.

The Courts have forgotten Blackstone.
And I add a quote from Blackstone,
"For whenever a question arises between the society at large, and any magistrate vested with powers originally delegated by that society, it must be decided by the voice of that society itself. There is not upon earth any other tribunal to resort to."

The President has absolutely no legislative powers. Congress may not expand the President's powers by legislating it so. The Powers of the President can only be expanded with the assent of the people through amendment of the Constitution. The power is ours. We must exercise it or it will be stolen away. The issue of presidential executive orders or presidential directives is one of long standing contention. The above mentioned acts, regardless of the necessity of the act, are legislative powers and as such cannot be constitutionally exercised by the President. And regardless of the necessity, it is not proper for Congress to delegate any more power to the President than that stated in the Constitution.

The President is not endowed by the Constitution with legislative powers.

Recently, due to the senate's failure to grant consent for an

appointment, the President has called up what has been stated to be an eighteenth century law allowing for a temporary appointment without consent or appointment while Congress is out of session. While I have no proof of the existence or nonexistence of this law, the fact is that the law is invalid. Congress may vest only the appointment of "inferior officers" in any manner other than that established by the Constitution. The appointment of anyone which is determined by Article II, Section 2, Paragraph 2 is unalterable except by amendment of the Constitution. There are no exceptions of necessity or good intentions. Thus, though a law may exist and may date to the eighteenth century it is nonlaw, repugnant to the Constitution and therefore invalid regardless of the years it has been allowed to be active. The existence of this law does provide more evidence that once the great men of the United States came into power, the shoe was on the other foot and the laws they established and ordained were in some cases ignored to further their own agendas.

Presidential Veto:

The Constitution allows for the President to halt the actions of the majority should the President believe that certain legislative acts are detrimental to the country. This ability of the President to aide in protecting the people was seen as highly important by the Framers. Still, the Framers restricted the power and allowed for the people to overcome any misuse by a zealous President through a congressional override of the decision. But, the Congress can only override the President's decision with an overwhelming majority.

Recent legislation was passed Congress and was signed into law by the President granting the President Line Item Budget Veto Power. This is a power to eliminate the so-called pork that finds its way into federal budget legislation. The President simply "vetoes" the line item which he alone deems unnecessary. This law is unconstitutional. The Constitution provides the one and only method of veto for any legislation. Any alteration of the method requires a change to the Constitution which requires an amend-

ment of that document. Simple legislative action cannot legally alter the Presidential veto power. See the essay on presidential powers for more information.

At times, people have spoken of a pocket veto wherein the President sits on legislation and doesn't sign it in order to "kill" the legislation. This action can only occur in one situation. The Congress must adjourn while the President has the bill. Otherwise, all bills presented to the President become law after ten days whether or not they are signed by the President.

Bills can become law without Presidential signature if ten days from when the bill is presented to the President, excluding Sunday, pass without the President returning it to Congress. Congress is prevented from sending a bill and adjourning since any bill that is left unsigned while the Congress is not in session does not become law. Many people believed that the Assault Weapons Ban of 1994 fell into this hole of being not law. The catch is that the ten days do not start until the bill is presented to the President, not the day the bill is passed.

Congress can override a Presidential Veto with the vote of two-thirds of the members of each house. This is 67 Senators and/or 290 Representatives. While it is possible, the mix of members in Congress does not often allow for overrides to occur.

Executive Orders

Much ado has been made about the issuance of executive orders by the President of the United States. Quite often the claims of those in favor of the power to give orders and those against the power to give orders seem to parrot each other. The issuance of executive orders is a function of the office of the president, whether it be the president of a corporation or the United States of America. The question arises as to the extent of the content of executive orders issued by an elected President of the United States.

The President is by all means allowed to and even required to issue executive orders to assure that the laws of the country are faithfully executed by those subordinate to the president. The President must issue such orders even to carry into effect laws with which the President may disagree since the President is not granted the power to exercise legislative or judicial powers. And this is the point where the limits of executive orders come into view. The President's executive orders may not, nay cannot, constitutionally extend to the creation of law, i.e. the President is not granted power to legislate. Orders issued which are not the direct and explicit support of Congressional legislation are illegal. For instance, the President has issued orders prohibiting the importation of certain firearms but this is foreign commerce and as such falls under the auspices of the Congress. At other times, the President has issued orders which violated constitutional protections of the citizens of the Untied States (ex parte McCardle). So it is to be recognized that the President, in the position of top executive of the country, is granted the implied power to issue executive orders which carry into effect Congressional legislation and to issue orders to executive departments and the employees of those executive departments but those orders may not transcend the boundary which separates legislative and judicial powers from executive powers.

The key point is that the laws must be faithfully executed. ANY executive order which violates this premise is illegal, unconstitutional, and places the president in a position of committing dereliction of duty. The President is not empowered by the Constitution and cannot be empowered by the Congress to halt any Congressional action. A close look in the book, "Impeachment" by Raoul Berger, demonstrates that behavior such as reappropriating monies or spending monies for other than the intended purposes was cause for the first impeachments in England and lays precedent for impeachments in the U.S.

Congress may not give the executive ANY powers or choices NOT already enumerated in the Constitution. Congress is not empowered to grant the President limited authority to pass legislative acts to be followed within such and such a time frame with Congressional actions. Not only does this amend the Constitution without proper amendment, it usurps authority not legally in the hands of the Congress. Thus while the President may issue executive orders to faithfully execute the laws, EXACTLY as passed by Congress, the President cannot Constitutionally issue orders which circumvent the laws of this country. If the President fails to faithfully execute the laws of this land then he has committed dereliction of duty and should be immediately impeached and dealt with.

Executive Privilege

I could write paragraphs about this nonexistent power but instead I refer the reader to the book of the same title by Raoul Berger. Prof. Berger published his book in 1973 at documents the history of executive privilege or more exactly the lack of executive privilege. The book may still be available from Harvard University Press or through various used book sellers.

The point is that there is no such thing as a constitutional power or an historical basis for executive privilege in the United States. The opposite is the case in that since Congress is granted the power to impeach the President, Congress is thus empowered to review every item of information concerning such a proceeding. The idea of executive privilege was created during the 1950s by Eisenhower's attorney general. Allusions to prior acts by president's are bald-faced lies stemming from the 1950s attorney general's writings. It is incredible that so many so-called constitutional scholars have fallen for this lie. The answer lies in "good intentions" but once again I say, "There ain't no good intentions clause in the Constitution."

Some might argue that the separation of powers precludes Congress from any information the President deems falling under executive privilege but this too is false. Separation of powers is a simple concept that selected powers are granted to each branch of government and these selected powers cannot be exercised by another of the branches. The power to require the President to respond and supply information in no logical or even twisted way violates the principle of separation of powers. The Constitution provides that the branches oversee each other and thus the Constitution requires compliance with these requests.

It was best said in 1741 by Sir William Pitt: "The enquiry, Sir, will produce no great information if those whose conduct is examined, are allowed to select the evidence."

The use of executive privilege was in response to McCarthyism but in the words of Raoul Berger, “Recoil from the McCarthean excesses has engendered a cure that is worse than the disease.”

So please buy or borrow a copy of Berger’s work and learn for yourself that executive privilege is a Constitutional myth.

Jefferson: Leader or Tyrant?

Thomas Jefferson is often looked upon with great esteem. Tales are told of how his leadership benefited the United States. Jefferson was involved freeing us from British rule, forming our new government and in framing the Constitution. Too often though, the darker side of Jefferson is not presented. Why should we live with knowing only one side of the story when Jefferson himself documented his seamier side in his letters?

Many remember Jefferson as he who purchased Florida from Spain and made the great Louisiana Purchase from France, expanding the boundaries of the newly United States. However, few have paid attention to his own remarks recognizing that these purchases were unconstitutional, that is not part of the Presidential power (Story, Book III, Pg.159-160, footnote). And his following remarks that sometimes one has to do what is necessary although those actions may not be legal.

Probably the most egregious attack on the rights, liberties, and powers of government came in the early 1800s. In Jefferson's own works there is a letter written to Mr. Colvin in 1810. (4 Jefferson's Corresp. 149, 151.). In this letter, Mr. Jefferson "enters into an elaborate defence of the right and the duty of public officers to disregard in certain cases, the injunctions of the law." (Story, Book III, Pg. 749, footnote). "On that occasion, he justified a very gross violation of this very article (the 4th Amendment) by General Wilkenson, (if, indeed, he did not authorize it,) in the seizure of two American citizens by military force, on account of supposed treasonable conspiracies against the United States, and transporting them, without any warrant, or order of any civil authority, from New Orleans to Washington for trial. They were both discharged from custody at Washington by the Supreme Court, upon a full hearing of the case. (Ex parte Bollman 4 Swartout, 4 Cranch, 75 to 136). Mr. Jefferson reasons out the whole case, and assumes,

without the slightest hesitation, the positive guilt of the parties. His language is: 'Under these circumstances, was he (General Wilkinson) justifiable (1.) in seizing notable conspirators? On this there can be but two opinions; one, of the guilty, and their accomplices; the other, that of honest men!!! (2.) In sending them to the seat of government, when the written law gave them a right of TRIAL BY JURY? The danger of their rescue, of their continuing machinations, the tardiness and weakness of the law, apathy of the judges, active patronage of the whole tribe of lawyers, unknown disposition of the juries, an hourly expectation of the enemy, salvation of the city, and of the Union itself, which would have been convulsed to its centre, had that conspiracy succeeded; all these constituted a law of necessity and self-preservation; and rendered the salus populi supreme OVER the written law.!!!' Thus, the constitution is to be wholly disregarded, because Mr. Jefferson has no confidence in judges, 2 juries, or laws. He first assumes the guilt of the parties, and then denounces every person connected with the courts of justice, as unworthy of trust. Without any warrant or lawful authority, citizens were dragged from their homes under military force, and exposed to the peril of a long voyage, against the plain language of this very article; and yet three years after they are discharged by the Supreme Court, Mr. Jefferson uses this strong language." Story (1833)

Money: What it is and What it is not!

Money! The greenback! Those bills folded neatly or just stuffed into your pocket! But wait a minute, is this really money? The astounding and simple answer is NO! This is not money. These paper notes we are so found of calling money are properly termed Bills of Credit. Money in the United States is only silver and gold coin. Silver and gold coin are the only items that the individual states can make acceptable for the payment of debts. All the other coins and especially the paper bills we often call money are not constitutional forms of money.

The following are the two clauses of the Constitution which provide for money. As the reader may well see, paper notes are NOT money under the Constitution. These notes which we call money loosely are actually bills of credit, i.e. you the holder have a loan credit from your country. The value of the bill of credit is based strictly upon the value of the country there are no precious metals or other solid backing for these paper loans. The only legal money in the United States is gold and silver coin since states may not make anything but gold and silver coin legal tender in payment of debts. The reader shall also notice that the federal government is not granted the power to require or request that the states accept any other form of payment.

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

Section. 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

So why was paper money such a concern to the Framers? The King, the colonies, and others issued paper notes which often were replaced without notice. What was of value one day became valueless the next. And those holding the valueless money had no

recourse often being left destitute. So the Framers prohibited the use of paper money in the United States. When did things change? The change occurred at some short time after the new government formed its national bank. But paper bills of credit of the United States was still backed by gold and silver up until the 1970s when Congress and President Nixon took us off the gold standard. However, citizens of the United States were denied their right to own gold in 1933 when, after causing the Great Depression, the federal government under FDR stole the gold from the people through an unconstitutional ban of private gold ownership.

So how did this all happen? When did paper "money" become used in the United States when the proof that paper bills were not legal is so clearly established? The bills were issued during the Civil War. A series of cases came before the Supreme Court that flip-flopped back and forth over the issue. Finally when the Court had made up it's mind, the decision came in what is now known as the Legal Tender Cases, that it was not practical to eliminate paper money even though it was and still is unconstitutional. So how many other cases have been and will be determined because of practicalities? Hopefully, not the one that decides you life or the lives of your loved ones!

So today, we use bills of credit for money. These bills have only the backing of our government which the Framers knew was insufficient in the long run. The fault lies with the Court. They failed the people by not standing fast and using the Constitution and the historical documents to tell Congress no. Expediency can never be an acceptable reason to violate the Constitution.

A last point, there is no prohibition on individuals developing their own form of money and exchanging it among themselves as long as the "money" that the individuals create and use is not a copy of ANY other monies of the world. Thus a set of completely original designs and names would have to developed so as not to be charged with counterfeiting.

The Militia of the United States of America

The Select Militia DOES NOT exist in America. Gun control advocates, whose true agenda is to remove the power of the people to defend themselves against the improper rule of an elitist group, often cite the Militia clause of the Second amendment as proof that there is no individual right to keep and bear Arms. These same revisionist leftists make the claim that the militia of the United States is now the national guard, a select militia. The words and actions of the Framers of the Constitution lay to rest the claim of a select militia in this country. The discussions also prove that the Framers were very concerned that any transfer of power over the militia to the federal government could lead to the elimination of the militia as they knew it.

The following excerpts from the listed text will prove my claims that there is no select militia in the United States under the Constitution regardless of the claims of anyone else.

The Growth of the Constitution
William M. Meigs
JB Lippincott Company Philadelphia 1900 Pp. 153-156
NOTE: I have added <<<< >>>> to accentuate certain points in this discussion.

"ARTICLE I., SECTION 8, CLAUSE 16.

'To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;'

Charles Pinckney's speeches show that his draft gave the federal powers the exclusive right to establish regulations for the government of the militia, and Randolph's committee draft conferred a legislative power 'to regulate the force permitted to be

kept in each State' but the draft reported on August 6 contained nothing upon the subject. On August 18, however, Mason introduced the subject of regulating the militia, and thought such a power necessary to be given the general government. He supposed there would be no standing army in time of peace, and considered it impossible that thirteen states would agree upon any one system. <<<< He suggested that, if they would not give up the power over the whole, they might do so over a part as a select militia.>>>> He accordingly moved that an additional power be conferred on Congress 'to regulate the militia', and later in the same day varied this so as to read 'to make laws for the regulation and discipline of the militia of the several States, reserving to the States the appointment of the officers.' Ellsworth thought the proposal went too far, and proposed the following - 'that the militia should have the same arms and exercise, and be under rules established by the general government when in actual service of the United States; and when States neglect to provide regulations for militia, it should be regulated and established by the legislature of the United States.' Dickinson rather approved of giving the general government the control of a part of the militia, and then Mason returned to his suggestion of a select militia, withdrew his already made motion, and moved a power 'to make laws for regulating and disciplining the militia, not to exceed one-tenth part in any one year, and reserving the appointment of officers to the States.' Mason's original motion was then renewed by Charles Cotesworth Pinckney, and there was some little discussion of the subject, and various opinions were expressed. Finally, both motions were referred to the grand committee appointed that day, and on August 21 Livingston reported the following clause upon the militia from that committee:-

'To make laws for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States; reserving to the states, respectively, the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by the United States.'

This proposal was taken up by the Convention on August 22 and continued on the 23rd, and considerable difference of opinion appeared. Some thought the clause took from the States the control of the militia to too great an extent, and made motions to remedy this, while others wanted still further to limit the control exercised by them. Madison, for instance, wanted only to reserve to them the appointment of officers under the rank of general officers. Quite a little temper was displayed, Gerry saying ironically that we had best go one and destroy the States at once and have an executive for life; he wondered at the attempts made that really tended to this result. <<<<<<The amendments were all defeated>>>>>, and the section as reported agreed to in separate parts, and later referred to the Committee on Style; they made merely a verbal change, and reported it as follows:-

'To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the [service of the] United States - reserving to the states, respectively, the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by Congress;'

On September 14, during the comparison by the Convention of the report of the Committee on Style with the articles agreed on, Mason moved an amendment to this clause intended to lessen the danger from standing armies in time of peace, which belongs rather in this work to the clause giving the power to raise armies, and there is considered (Article I., Section 8, Clause 12)."

Later in the first Congress, amendments of the Constitution were to be taken up. Many felt the new government had not been given sufficient time to prove itself. James Madison, true to his words, brought the amendments to the floor and much discussion ensued.

The original Constitution granted some power over the Militia to the federal government. Since the grant came from the people to the federal government, the militia must have pre-existed the Constitution. How else could a transfer of some powers be made? Since the Militia predate the formation of the federal government and complete power over the Militia is not transferred to the

federal government, following the legal logic stated in US v Cruikshank (1876), the federal government cannot possibly have full control over the Militia. And states cannot have full control over the Militia unless the Constitution of each state shall so transfer the power from the people. This logic follows from the fact that all government flows from the people through a transfer of powers which originally belonged to the people as individuals.

The Framers discussed the three possible scenarios that might occur with the federal government exercising power over the Militia. These can be found in many documents prepared during the first Constitutional conventions. The scenarios follow:

1) The government would do its duty and properly provide for the organizing, arming and disciplining of the Militia.

2) The government would do nothing and thus let the Militia "die" for lack of attention.

3) The government would develop a select, restrict Militia under its own control.

The key words in the Constitution are "provide for". This pair of words is not interchangeable with "provide", as in the navy clause. And the statement of power in the Constitution does not imply exclusive power over "providing for" the Militia. Thus the states and the people may exercise concurrent "provision for" the Militia, with or in lieu of the federal "provisions for" the Militia.

Even the calling forth of the Militias clause is only "to provide for" and is not the power to call forth the Militia. The Congress may set the terms as to the method by which the Militia is to be called forth but cannot actually call forth the Militia. The President is Commander-in-Chief of the Militia WHEN in actual service of the United States. A question of difficult determination arises at this juncture. Is the Congress able to grant to the President the power to call forth the Militia, a legislative grant of power unequaled anywhere else in the Constitution or is Congress under this grant only to prescribe the method by which the Militia are to be called out leaving the actual control and/or calling out to the state authorities? Without an amendment of the Constitution, the

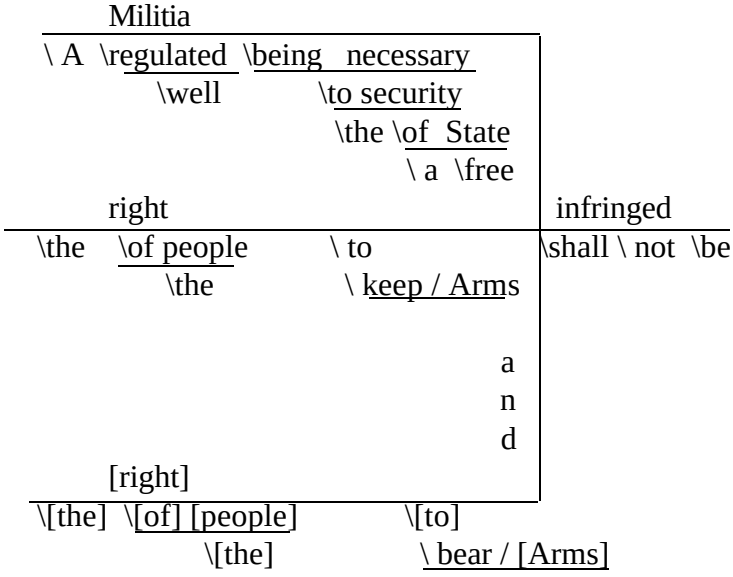
question as to whether Congress can or cannot transfer the power to call forth the Militia remains to be answered. Currently, the power lies in the hands of the States and Militia leaders. Those who discussed the Militia clauses of the Constitution remained fearful that the federal government would do or not do the people's will so one must be doubtful that they planned to give full control to the federal government over the local militia.

The birth of the second amendment occurred to protect the Militia and the people of this country from capricious actions of Congress. During the passage of what was to become the Second amendment of our Constitution, many changes were made to the statements therein. The Constitution is written in a terse form adding no superfluous statements to clutter the meaning of the words. Madison's original proposal was somewhat complex and included exemptions for those religiously scrupulous against the bearing of Arms. Fear that Congress might act to eliminate ALL except their own select members through legislation concerning religious scruples were rampant in the talks. In each committee review the wording was rearranged into more readily understood statements and the religious sections were removed. The final form has confused those who cannot truly comprehend the English language, a group which is comprised of even many native speakers of English.

The maintenance of the balance of power between the states and the federal government required some modifications of the Constitution.

The Second amendment contains the following three rights.
1. The protection of a well regulated (i.e. properly trained in the use of arms and a knowledge of warfare) Militia from infringement by government was placed first in the Second amendment.
2. The right of the people to keep arms was added since the Framers had already determined that they wanted no part of a select militia all people had to have arms.
3. The right of the people to bear arms was also included since

keeping Arms is not sufficient to self-preservation. The Framers had already determined that people needed to defend themselves, provide food, practice with these arms, and defend their country. Thus my diagramming of the Second Amendment is accurate.



No permit is needed to carry an Arm constitutionally. The US Constitution is the supreme Law of the Land and thus overrides ALL governmental legislation contrary to that laid down in the Constitution. To bear means more than to carry. To bear means to use those Arms as necessary for protection of self, others, and for the common defense.

Many judges over the ages have seen fit to rule on cases based upon innuendo and a measure of the goodness of the weapon, i.e. the weapons of ruffians, bullies, etc. are supposedly not protected. These rulings simply come about through the fear of the deciding judge(s) rather than through the true meaning of the Second amendment. The Second amendment protects all Arms which are of utility in individual defense. This means that the claim of some illiberal gun control fanatics that those who believe in the right to

keep and bear Arms would allow the private ownership of even atomic bombs is easily countered since atomic bombs are not easily used for individual self-defense.

There is no argument that the people through their elected officials can set laws concerning the use of Arms so long as those laws do not infringe upon the right to keep and bear Arms in proper defense, including the killing of another in self-defense. Even the Ten Commandments of the Old Testament do not prohibit killing. The commandment actually states "Thou shalt not commit murder." Self-preservation is the ultimate gift of the Creator, be the Creator God, Mother Nature, happenstance, etc. Similar to the restriction that one cannot yell fire in a crowded theater, except when there is a fire, restrictions such as not allowing the random, unsafe, and unnecessary discharge of Arms within proscribed areas are perfectly legitimate laws. Laws that require permits for any form of carrying (bearing) of Arms are not permissible for these laws infringe upon the rights to keep and bear Arms.

A close look at the Constitution demonstrates that Congress is granted absolutely no power to regulate the Militia and that the powers that are granted show that the militia preexist the Constitution AND the federal government. Thus following from the logic used in Cruikshank concerning preexisting rights, etc, Congress and the federal government have no powers over the militia other than those granted by the Constitution. The federal government is not empowered by the Constitution to create a militia or to determine what or who the militia consists of, merely to provide for 1) calling forth the militia and 2) to provide for arming, organizing, and disciplining the militia. All statements in the Constitution presuppose the existence of the militia prior to the formation of the United States of America. Accordingly, the federal government has more power concerning the militia than explicitly granted in the words of the Constitution, as is verified by the Tenth Amendment. The federal government cannot create anything that predates the existence of the federal government and unless specifically given the power, the federal government cannot

eliminate anything the existed BEFORE the federal government came into being without the express authorization of the Constitution.

Land Ownership within State's Boundaries

The Constitution of the United States: A Critical Discussion of its Genesis, Development, and Interpretation

John Randolph Tucker, LL.D. (1823-1897)

Edited by Henry St. George Tucker (1853-1932)

Published 1899 by Callaghan, Chicago, IL

Volume 2, Pg. 598, Paragraph 292

"It will be noted that the language is that Congress shall exercise exclusive power, not absolute. The limitations upon the power of Congress, express and implied, fully apply. Congress has the power, subject to these limitations, to exercise all legislation proper to the District of Columbia. States legislate under their reserved powers exclusively within the States; but the territories ceded under this clause to the United States are subject to the exclusive legislation of Congress. It is further to be noted, that while Congress may acquire this territory for governmental purposes and the like, it has no power to exercise exclusive legislation until such territory is acquired as a matter of title to land, and is ceded by the States in which it lies as to all jurisdiction.1"

"Congress may buy property, or condemn it under the fifth amendment of the Constitution, and when acquired for federal use it is exempt from State taxation. But Congress cannot have exclusive jurisdiction for legislation except by cession from the State where the land lies.2 In the case referred to in 135 US Reports, the government had built a fort within the Territory of Kansas, and held it as being part of that Territory, subject to its control. After the admission of Kansas into the Union, the question arose whether Congress had jurisdiction to legislate

within the limits of this fort. The Supreme Court decided that upon the admission of Kansas the jurisdiction to legislate passed to the State, and that Congress had never acquired the right to legislate except by the consent of the new State as to this fort so established by Congress prior to its admission."

1 People v. Godfrey, 17 Johns 225; Fort Levenworth R.R. Co. v. Lowe, 114 US 528, 538.

2 Cherokee Nation v Southern Kansas Ry. Co. 135 US 641.

Land ownership by the Federal Government: The Constitutional Approbations and Limitations

The following sections of the Constitution are reproduced here to provide ease of access to the portions of the Constitution which pertain to land ownership by the federal government.

Article I, Section 8

"To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;"

Article IV, Section 3

"Section. 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as the Congress. The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in the Constitution shall be so construed as to Prejudice and Claims of the United States, or any particular State."

No other clauses in the Constitution deal with territory, property, or land under the ownership and control of the federal government.

The Tenth Amendment states:

Article X.

"The powers not delegated to the United States by the Consti-

tution, nor prohibited by it to the States, are reserved to the people. "

There are those who would say that the Commerce clause covers this contingency. For proof that the Commerce clause ONLY covers the buying, selling and transport of goods and in a restricted manner at that, please read or reread the section on the commerce power limitations. Although Congress, in attempt to usurp power from both the state and the people and with the help of the Court, have stretched the commerce clause well beyond the breaking point. The truth be known that the commerce clause is a very limited power. Tucker supports these facts with court cases and other documentary evidence.

In Article IV, Section 3 the Congress is granted the power to "dispose" of territory belonging to the United States. It is readily apparent that within the powers granted to Congress a distinct power is not granted for the obtaining of territory. Under the general powers of Congress and the laws of nations, the only method by which the United States obtains territories is through captures following wars and possibly through the sale of lands from one government to another. Additionally, the term territory carries a recognized meaning of lands outside the boundaries of a state. Early in this country's history, the federal government took as territories, lands to the west of the original thirteen states, splitting this land into new states and setting up republican forms of government as required by the Constitution.

In order for any lands to remain as territories, the boundaries of the state which surround the land would have had to have been set so that the land never became part of the state. This however would have dire consequences for those living on these lands as they would not be residents of a state nor could they vote in presidential or congressional elections, similarly to those peoples of Puerto Rico. So, if Congress, at the time a state became a member of the union, had selectively maintained the territorial status of certain parts of the land encompassed by that state's

boundaries, then the land would be U.S. Territory and under the control of the federal government. But once a state was formed the land within its boundaries is the sovereign territory of the state and no federal holds can be kept except for Constitutional purposes as stated in Article I, section 8.

Congress is empowered with exclusive legislative power of the seat of government. This land was also to be ceded by a state or states to provide a permanent location for our elected government to operate. This area is limited to a maximum of ten square miles. Due to Article IV, Section 3 limitations on the formation of states, Congress does not have the power to form a state from this land. As an example of the lack of understanding of the Constitution, the reader should know that at least one member of Congress continually proposed legislation declaring Washington, DC as a state in the union. This cannot happen without the consent of the legislatures of the states which ceded the land in the first place. AND if Washington, DC were to become a state, Congress would lose their power over the area to a newly formed state government.

So just how has Congress continued to steal state lands? Most often through intimidation and with the supreme Court as an accessory. Congress simply passes legislation which takes their granted powers and stretches those powers. The supreme Court took a stance of not acting upon legislation until a case arose within the legal system. This means the supreme Court is not proactive in protecting state's and people's rights but is merely reactive. States and state officials have also allowed these thefts to go unquestioned for many reasons most having to do with federal grant money.

The National Parks and Forests, even though well-intentioned, are unconstitutional acts. Even more amazing is that these acts began as far back as 1871 with Teddy Roosevelt's theft of Yellowstone. I am not claiming that the formation and protection of lands as national parks, forests, monuments, and other protected lands are not good programs only that they are patently illegal since these

acts violate the Constitution of the United States. The only legitimate remedy is and was for Congress to offer an amendment of the Constitution to add these powers to the list in Article I, Section 8. It is very likely that Congress did not take this proper route because the states are highly unlikely to ratify any changes to the Constitution which would directly affect their sovereignty. Congress is not limited in terms of buildings and can purchase lands from the states for hospitals, post offices, and any other building that is for benefit of the country so long as that government building places no restrictions upon those who use it. There have been cases where the government has taken private lands for public use and in these cases also, Congress should have only obtained those lands constitutionally. This means that Congress should have paid the owner of those lands just compensation and additionally, Congress must have the permission of the state legislature if Congress is to have exclusive jurisdiction over the land purchased for "needful buildings."

There is one other applicable clause in the Constitution concerning governmental acquisition of lands from private individuals. This clause is the final clause of the Fifth Amendment and states:

Article V.

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

For a full exposition on the protections afforded individuals by this clause, see the section of this book specifically directed at the Fifth Amendment. I will however expound a portion here.

The last clause of the Fifth Amendment is sometimes referred to as the takings clause. The invalid interpretation of this clause assumes that following due process, the property can be taken. However, close examination of the paragraph proves this to be a wrong understanding of the Fifth Amendment.

The semicolon, ";", which separates the "due process" clause from the "just compensation" clause is, in the written English language, a soft period. Had this been a comma, then the "due process" clause and the "just compensation" clause would have been inextricably linked and fully dependent. The use of the semicolon states that the clauses are related but are independent of each other. That is to say that property may be taken following due 6 process BUT that in every case just compensation must be paid. There is absolutely no exception regardless of the issues involved and regardless of the desires of the courts, the people, or the government.

In addition, the "just compensation" clause allows no selective determination of what amounts to a "taking". Recent legislation and judicial decisions have tried to split hairs concerning just what amounts to a "taking." Cases during the 19th century generally ruled that any reduction in value was indeed a "taking" and the owner was to be justly compensated. But these takings laws are far more unconstitutional than a simple failure to pay what is rightly and justly owed. Most of these laws are based upon claims of power under the Commerce clause which has been shown elsewhere to actually be a limited power which does not include all acts which directly or indirectly affect commerce AND especially does not grant power over acts which occur wholly within a state.

Thus it should be concluded that the acts of Congress in taking lands from states and individuals, regardless of the good intentions for the use and protection of the land, violate the Constitution. Should Congress desire the power to own land within the bound-

the state in which they lie or remain forever as territorial holdings.

The Constitution allows the Congress to set the requirements for admission of a state but that does not give Congress a blanket power to violate the Constitutional restrictions on land ownership. A question arises in how the state boundaries were set and with how the land was originally dealt. If the land was transferred then transferred back, it is clearly unconstitutional in any way, shape, or form as the federal government is not allowed land for land's sake. In order for theses lands within the boundaries of a state to be owned by the federal government, they must have been retained through the formation of the state in which they lie. This retention then makes the land a territory and carries with it all the issues and problems of a territorial area.

Territory Ownership by the Federal Government

In a previous essay, the ownership of land for land's sake was discussed. The Constitution provides only for the federal government to hold bare lands as territorial properties. Thus during the 200+ years since the formation of the United States of America, the federal government has obtained open lands through various means. From these lands under the regulations of Congress, new states were formed and added to the United States. In the western region of the country, Congress played with admissions and withheld vast portions of land from inclusion in each state.

Now the question arises as to the legitimacy of the maintenance of these lands as federal holdings. The Constitution specifically states that lands within the boundary of a state may be purchased by the federal government, with the consent of the legislature of the state in which the land resides, for the purpose of "needful buildings". A list of what class of buildings constitutes "needful buildings" is included in the same section. No where in the Constitution is the federal government authorized to hold land for any other purpose than "needful buildings" except for those lands denoted as territorial holdings.

Any land, therefore, held not according to the Constitutional provisions of Article I, Section 8, can only be considered to be territorial holdings for it to be legitimate. This presents a number of problems in itself.

Persons living within the lands are not citizens of any state and therefore do not receive representation in Congress. Nor can these individuals vote in the elections of the state as they do not meet the necessary residency requirements.

These lands can never be converted into states as that is prohibited by the Constitution. So these lands can either be turned over to

aries of states for activities other than “needful buildings” then Congress must offer an amendment of the Constitution stating the appropriate needs. The States and ultimately the people of the states will then decide if the power rightly belongs in the hands of the federal government or should remain with the states or the people.

Laws based upon commerce must be understood to be invalid. Land does not enter into interstate commerce. Land cannot be transported and relocated. Thus it does not move in interstate commerce. Congress’ commerce power is limited. See the discussion on the Commerce clause elsewhere in this book.

The IRS

Following the supposed ratification of the Sixteenth Amendment, the federal government opened the floodgates of abuse for American citizens. The Internal Revenue Service was formed. For many decades now, the American taxpayer has borne the brunt of vicious attacks by the American government which declares the victim guilty until proven innocent. But the laws of the United States had acted in direct violation of many of the provisions of the Constitution since the country was formed. It was in the words of an old adage: the shoe on the other foot.

The Congress have passed laws and allowed unchecked regulations to be formed and enforced by the IRS and other government agencies. The preparation and implementation of regulations by any group other than Congress stands in highly questionable constitutional lights. The Constitution makes express provisions of the powers of Congress and Congress is not empowered to delegate authority for legislation to ANY other officer or group. Thus the preparation and implementation of regulations, a rose-colored name for legislation and laws, is very likely unconstitutional.

Congress, and the states, are prohibited further in the types of legislation which can be passed. The regulations of many federal agencies fall into the prohibited categories. The broadest and most restricted category is that of Bills of Attainder. Bills of Attainder were issued in England. These bills confiscated properties and in most cases brought the death of the supposed offender. I say supposed because the legislature decided the guilt and the penalty without the color of courts and juries. If the Bill of attainder was restricted to confiscation of property and possibly incarceration, it was known as a Bill of Pains and Penalties. Story, Book III, Pg. 209-212. A Bill of Pains and Penalties took the property of the accused without trial and without defense. Therein lies the link of the regulations of the IRS and the tax codes of Congress. When a legislative act or a bureaucratic regulation declares an individual guilty without a proper judicial course of action, it is a Bill of Pains

and Penalties and is thus prohibited to both Congress AND the legislatures of the States. Unconstitutional acts are not law and are not legally enforceable. The acts of the IRS in confiscating properties are unconstitutional since the regulations and laws that allow these confiscations violate the prohibition on Bills of Attainder as well as the just compensation clause of the Fifth Amendment AND the prohibition on excessive fines of the Eighth Amendment. One must always remember that the Constitution is the will of the people. Laws that do not conform to the letter and spirit of the Constitution, regardless of benefit, are unconstitutional. The Supreme Court has become increasingly more fearful of the Congress and has not been the bastion of safety for the rights and will of the people that it should be. Americans as a people must stand up and require the Congress to obey our law, the Constitution.

Government by Intimidation

In what has become the most commonplace legislative abuse of this century, those in the federal government use the threats, primarily that of withholding of funds, to force compliance with acts which violate the sovereignty of the states. In many, if not most of the instances, the federal government is threatening to withhold funds which were not constitutionally appropriated in the first place. Congress is not authorized to expend monies for projects which are not national in character, i.e. local expenditures which benefit a restricted portion of the population. But even, if the funds were properly and necessarily appropriated, the federal government is not acting within the frame of trust granted by the people and the states when it abuses those to whom the government owes its very existence. Congress was never granted power to be involved in education and yet they appropriate monies which are held like the proverbial carrot dangling in front of the noses of states. Then if the monies are accepted, and regardless of the fraction of the budget the monies affect, Congress' restrictions control the complete behavior of the system, unconstitutionally. The current indirect mode of access to education is through the creative interpretation of the commerce clause. What is more frightening is that Congress is not empowered to do by indirect what it is not granted power to do by direct means and neither the courts nor the states or people do anything to halt the encroachment. Yet Congress continually does what its members decide it can do without regard to the legitimacy of those actions and without review by the courts to protect the people.

In other instances, Congress' withholding of funds, for say highways, may violate, at least in part, the Constitutional provision that the federal government is responsible for establishing post roads, those roads for the carrying of mail. But more importantly, the United States has become a country wherein the federal government, a supposed partner of the states, has abused the granted powers to force behaviors upon the states and the

peoples of those states. Nothing in the Constitution can be legitimately construed to grant Congress powers which were left to the states, including the "necessary and proper" clause.

Under the powers granted to Congress, Congress' legislation must be necessary and proper to carry into effect those powers enumerated in the Constitution. Congress and the federal government were formed in order to supplement not supplant the state governments. Is it truly proper for Congress to utilize intimidation and threats, like the bully on the block, to violate state sovereignty and to force states to enact national restrictions upon the people of the state? Of course not! This is not proper legislation nor is it proper behavior for the federal government. "Salus populi suprema lex" is not an adequate cause for the violation of the constitutional 2 separations of powers between the federal and state and local governments. Yes, the separation of powers not only occurs within the federal government but an even greater separation is supposed to exist between the states and the federal government. [Reread the tenth amendment of the Constitution. All powers not granted to the federal government are left to the states or to the people.] One must also consider if this type of legislation is proper under the limited grants of power. It has been decided in many cases during the 1800s that Congress cannot use is powers to do that which was left to the control of the states. In this century, Congress and the courts have either forgotten, a bad sign showing a lack of intellect among our leaders, or have decided to ignore the prior understanding of the powers of the federal government, a more ominous foreboding of a tyrannical government yet to come.

Congress's appropriations for local and private use, such as that of disaster aid, is completely and unequivocally unconstitutional. The restriction upon appropriations is that the appropriation be made within three specific categories, those of debts, common defense, and general welfare. The expenditures of monies for ANYTHING not specifically national in character violates the Constitution, regardless of the intent of the legislature or the

desires of the people. Again, an amendment of the Constitution must be made which transfers power from the people and states to the federal government. See the essay on the fallacy of interpretation.

Failure of Congress to maintain our roads and transportation systems is a direct failure of Congress to expend monies for common defense. So in withholding highway funds and other monies from the states because the state does not comply with this or that legislation, the federal government in turn violates the very core of the Constitutional grants of power of appropriation. However, the people are all too often ignorant of the function of our governments. And, the local government receives the blame simply because of the people's greater familiarity with the local government than the distant federal government.

Full Faith and Credit

Article. IV.

"Section. 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof."

"Section. 2. The Citizens of each State shall be entitled to all privileges and Immunities of Citizens in the several States."

The Full Faith and Credit declaration is not an if proposition nor does it require ANY action by Congress. All states MUST give full faith and credit to the public Acts, Records, and judicial Proceedings of every other state. Congress "MAY" act upon the effect of the Full Faith and Credit. Whether or not Congress acts, the states are required to provide Full Faith and Credit.

Thus in the instance of right to carry permits, Congress has not acted upon the effect of such and therefore the permit of one state carries full weight in all other states regardless of the laws of the other state. Within its own realm, the Constitution supersedes ALL state law. Until such time as Congress alters the effect of each act, FULL FAITH and CREDIT SHALL BE GIVEN.

One must also pay close attention to the restriction imposed upon Congress by the Framer's choice of words. Congress "may", meaning that it is not required to, prescribe by "general", meaning NOT specific, laws. The differentiation between general and specific occurs in several places in the Constitution. The Framers carefully decided that Congress was not to micromanage the "public Acts, Records, and judicial Proceedings" of the states but only to prescribe general laws the manner of proof and the effect of this proof. Congress may not selectively legislate on certain records, acts, or judicial proceedings but may only enact general laws concerning all records, acts, and judicial proceedings. Con-

gressional legislation which produces specific controls, in example laws concerning concealed carry licenses or even specifically involving marriage of same sex couples are not Constitutional since they are specific and not general.

Specific manners of proof and/or specific effects of that proof are not part of the grant of power to Congress.

Exclusion of State Exercise of Power

The Constitution grants to the United States government specific powers and leaves ALL others to the states and/or to the people, themselves. In interpreting the Constitution, this interpretation in itself being unconstitutional, the supreme Court has shown surprising inconsistency.

Specific and limited restrictions are placed upon the states in the exercise of certain powers. The Framers added only those restrictions deemed necessary. The supreme Court has attempted to expand those restrictions by claiming that the exercise of certain powers by the federal government must exclude state governments from exercise of the same power. At the same time, the supreme Court has ruled in other instances that powers are co-extensive, meaning the states and the federal government can exercise equivalent powers. Unless the Constitution specifically prohibits the exercise of a power, that power remains an exercisable option to the states so long as the exercise by the state does not override the federal exercise of the equivalent power.

An example is found in the immigration and bankruptcy clause granting power to the federal government. In the case of immigration, the Court has ruled that Congress' power is wholly exclusive but that in the case of bankruptcies the power is coexistent. Why? You must ask them. Nothing in the grants of power nor in the prohibitions upon the states split hairs so finely as the Court has done here. In my opinion, the Court has simply adjudicated the matters in a random and capricious way that moves powers to the federal government where the Court believes they are needed. In both instances the federal government is to set standards for immigration and bankruptcy but the states are still free to legislate above and beyond so long as that legislation does not conflict with or destroy the federal legislation. The states could place greater restrictions upon the topics but not lesser. The states power is explicitly stated in a later article.

Prohibitions on the States

The Constitutional provisions concerning prohibited acts by the states are shown below.

Article I, Section. 10.

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports and Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of the Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay;

The above sections of the Constitution are understood within the context of the powers granted to the federal government. The politically-separate states had exercised the above powers and this independence of action in many affairs caused problems and jealousies among the states. Following on the failure of the Articles of Confederation, the members of the Constitutional Convention went about repairing the flaws of prior governments. Of utmost importance was the movement of specific powers belonging to the people and the states to the federal government.

The line of demarcation of powers is sometimes claimed to be more of a grey area. This is not completely true as the Framers developed the above sections in order to restrict the states in those areas most likely to be problematic.

One should understand the history of the development of the United States in order to fully understand the "why" of the above restrictions. One need not know any more than the above sections to understand these same restrictions. Once again the language is simple and easy to understand. There are absolutely no hidden ideas or phrases in need of legal "interpretation."

The actions of multiple states in developing relationships with foreign countries would cause nothing be misunderstandings. Each state would negotiate for itself the best "treaties" possible, leaving the others to fend for themselves. These treaties could put the individual states in danger. The transfer of treaty power and ALL powers related to managing foreign relationships was to benefit the states as a group. Individual states had to be restricted or the power would have been moot if a single state could form an alternative treaty with foreign nations.

Several items above are based upon the actions of various governmental agencies in England. Bills of attainder and ex post facto laws are discussed in their own essays. The coining of money and emission of bills of credit were controlled because the Framers' experiences dictated that money must be stable and not subject to the whims of changing legislatures. All too often money had been issued only to be negated in value by a subsequent governmental decree leaving the holder without recourse. Contract law was protected in recognizing that individuals were still in charge of their own personal contracts although laws could be passed affecting future contracts.

Protectionism was feared as much as any other factor of the time. The legislatures of the states had shown previously that they were capable of passing laws which gave their own manufacturers and

producers favored status. The formation of an federal government of equality among the states was to eliminate these factious activities. Under the Constitution, states are allowed for health and safety reasons to impose cost recovery imposts and duties but all net (profit) from those imposts and duties is to be turned over the federal government.

Lastly, the Framers feared that a single state might bring war upon the entire body of states. The states were therefore restricted in the keeping of troops, and other items of war except in time of war and with the consent of Congress. The Framers recognized that an absolute ban on military forces would leave the states vulnerable to invasion or insurrection. The "fix" for this weakness is found within Article I, section 8 and the second amendment of the Constitution. The people are left armed and in power to form and train as militia. See the essays on the second amendment and militias for a broader discussion of these topics.

Power of Prohibition

The issue of a constitutional power in the hands Congress which allows for the prohibition of things has long been discussed among many groups of Americans. For many the 18th amendment proves that in order to ban Commerce in a particular thing, Congress must be granted that power from the people. However, Congress has taken the power beyond the 18th since its repeal in the 21st amendment. The fact that a Constitutional amendment was deemed necessary for the prohibition of alcoholic beverages should bring doubts to the legality or Constitutionality of all other federal legislation which transcends this boundary. The Constitution has not changed only Congress' and Courts' interpretations have. And as has been shown elsewhere in this book, interpretation of the words of the Constitution is not legitimate. The end DOES NOT justify the means and no matter how twisted the interpretation of words become, the only meaning of the Constitution must be based on the naked text (Hamilton). The Tenth Amendment continues to prove that powers by implication do not exist. If a power can be separated from the granted powers, i.e. bankruptcy and commerce or coining of money and commerce, then the nexus is never existed in the Constitution. Individual grants of power are required. Only those powers which cannot stand alone are maintained as implied powers necessary and proper to the carrying into effect the granted powers. Claims beyond this scope are merely grabs for powers not granted and occur because power exists to be sought after, exercised, and expanded upon.

In Tucker (1899), a discussion is presented wherein the power to prohibit the importation of persons (Article I, Section 9) is extended to imply that Congress has the broad power to prohibit or ban the importation of things in addition to persons. This implication is not valid. The Constitution provides that all powers NOT granted are reserved (Article X, Bill or Rights). Thus the grant to prohibit the migration or importation of persons is

restricted to persons. Within Article III, Section 8, and elsewhere in the Constitution no grant to prohibit or ban the commerce in any particular thing is granted. For Congress to have the power to ban, even in the interest of the general welfare [with respect to which Congress only holds the power to tax and spend], the power must be stated or so closely connected that it cannot stand as a separable power. If implication through lack of inclusion of a prohibition or simply the lack of an exclusion grants powers, then the federal government is truly all-powerful. The Constitution of the United States with its individual grants of powers is wholly unnecessary and nugatory. All state and individual sovereignty is eliminated and there is no need for state laws and boundaries.

Some might say I am taking the implication issue too far but where is the line to be drawn. If one allowance is made then where do allowances stop. The line can be drawn only at either end, that only implied powers which are inseparable from the granted powers or that ALL implied powers exist. Anywhere in between is, by its own implication, a bending of the naked text of the Constitution. Yes, those who framed the Constitution were as guilty as our elected representatives today in their eagerness to stretch the Constitutional powers in the name of salus populi suprema lex.

Tucker's (1899) discussion on the commerce power specifically shows that the Commerce power is for the regulation of persons and things in transitu. Prior to beginning transitus and following the delivery to its destination, these things and/or persons no longer fall under the jurisdiction of Congress' Commerce power. For more information on the Constitutional proof of the limitations of the Commerce Clause, see the chapter on that topic.

The Constitution of the United States: A Critical Discussion of its Genesis, Development, and Interpretation

John Randolph Tucker, LL.D. (1823-1897)
Edited by Henry St. George Tucker (1853-1932)

Published 1899 by Callaghan, Chicago, IL
Volume 2, Pp. 525-6, Para. 254

"(d) By later cases the power gas been extended to embrace contracts as to things in commerce, as correspondence by telegraph, etc. These telegraphs were long since invented, but as they were new means of commerce of persons and things, the power embraces commerce through those means as it had done through the old and superseded means. The power is not changed by the increase of its domain by reasons of the advance of scientific investigation.1 In regulating commerce, therefore, Congress regulates traffic in things, vehicles of transport, and things !in transitu!, but not the things themselves. Before and after the !transitus! they are beyond this power of regulation. The production and use of things in the !terminus a quo! and the !terminus ad quem! are not subjects of the commercial power, but of the law of the State or country from which and to which they are transported.2

1 Mobile v. Kimball, 102 US 690; W.U.Tel.Co. v. Alabama, 132
id. 472
2 Brown v. Maryland, 12 Wheat 419; Waring v. Mayor, 8 Wall.
110; In re Nagle 135 US 1; Royall v. Virginia, 116
id. 572;
Nashville v. Alabama, 128 id. 100.

The Illegal Drug Operation

There is an illegal drug operation occurring in America and it has gone unchecked since the 1930s. The illegal operation is sponsored by Congress and is under the control of the executive branch. This action is disguised as program for the benefit of the people but it has made criminals of more Americans than any other government action to date. The illegal operation is the "War on Drugs".

In 1916, the good people of the United States made a conscious decision to outlaw a "drug". That drug was alcohol. The Constitutional method that was followed was the amendment of the Constitution with the ratification of the 18th amendment. We called this action prohibition.

The 21st amendment repealed this action and returned our nation to a state of normalcy. The legislation of moral behavior was finally recognized to be unlegislatable. But this was not the end.

The country entered the great depression in 1929 with the crash of the stock market. A new president, bold and imaginative, arose and with his election the nation was plunged into the American Dark Ages. The people no longer understood or cared to understand the limitations the Constitution placed on our government. All that mattered was that someone take charge and help the people. Thus was born BIG Government and the Welfare States of America.

Laws to fight organized crime and other perceived threats to government intervention and control were passed. As this period continued, the Constitutional protections afforded the people were trampled upon but because the government was helping the people, and people tend to want to be taken care of, blind eyes were turned upon these actions. Once some of the Constitutional protections were breached, the others soon fell.

The country and those elected servants of the teens and their understanding of the Constitution were replaced. The recognition of the limited powers granted by the Constitution disappeared. Now, Congress and the executive simply legislated controls over drugs, firearms, gold, and any other commodity they felt inclined to effect. Much if not most was legislated in the name of regulations of commerce.

But why and how, if less than 2 decades prior the 18th amendment was required, could the Constitution suddenly change WITHOUT amendment? The clear, unbiased, absolute truth is that the Constitution, Congress' powers, and the law DID NOT change What changed was the willingness of the government to usurp powers 2 that had been withheld and to manipulate the powers granted so as to justify these intrusions into the retained rights and powers of the states and the people.

Thus the 1937 drug laws, the 1933 ban on private ownership of gold, the 1934 National Firearms Act are all unconstitutional power grabs. Intentions are never good enough to allow for the violation of the Constitution. If Congress didn't have the power to ban alcohol production, consumption and transportation without an amendment, Congress did not and still does not have the Constitutional authority to legislate as they have since no Constitutional amendments have been made of the Constitution to grant Congress these powers.

So you judge. Either your great-grandparents and grandparents and their Congressional representative and senators were idiots who had no understanding of the Constitution OR the Congresses during and following the 1930s violated and still violate the trust granted to them from the people by usurping powers and passing legislation that was outside the distinct powers of the Constitution. Only one side can be right.

But even more disturbing is that the Supreme Court has stood back

and allowed this usurpation to go on relatively unchecked. The Supreme Court is supposed to be the guardian of our rights AGAINST these usurpations. Often though, the Court responds out of fear of repercussions from Congress and decides NOT to hear cases which reach the Court. In other instances, the Court has stated that even Constitutionally protected individual rights must make way for good-intentioned legislation that is designed for the benefit of whole, i.e. in the case of drug testing. This determination is absolute bull. There are no circumstances under which the rights enumerated in the Constitution can be legitimately set aside, even in times of war. See the discussion on my essay on Suspension of the Constitution.

What is the answer to correct this theft of power? The people must stand up and take back the power requiring their representatives and senators to abide by the limited powers and restrictions of the Constitution. The people are the guardians of their own freedoms. But the fate of the United States is written in the past. Look carefully at those who came before us. There is our destiny.

Story, Joseph, LL.D., 1833, Commentaries on the Constitution of the United States, Book III, Pg. 730-731, Section 1873

...

"1873. It was under a solemn consciousness of the dangers from ecclesiastical ambition, the bigotry of spiritual pride, and the intolerance of sects, thus exemplified in our domestic, as well as foreign annals, that it was deemed advisable to exclude from the national government all power to act upon the subject. The situation, too, of the different states equally proclaimed the policy, as well as the necessity of such an exclusion. In some states, episcopalians constituted the predominant sect; in others, presbyterians; in others, congregationalists; in others, quakers; and in others again, there was a close numerical rivalry among contending sects. It was impossible, that there should not arise perpetual strife and perpetual jealousy on the subject of ecclesiastical ascendency, if the national government were left free to create a religious establishment. The only security was in extirpating the power. But this alone would have been imperfect security, if it had not been followed up by a declaration of the right of the free exercise of religion, and a prohibition (as we have seen) of all religious tests. **Thus, the whole power over the subject of religion is left exclusively to the state governments, to be acted upon according to their own sense of justice, and the state constitutions;** and the Catholic and the Protestant, the Calvinist and the Arminian, the Jew and the Infidel, may sit down at the common table of the national councils, without any inquisition into their faith, or mode of worship."

...

The First Amendment

Article I.

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; of the right of the people peaceably to assemble, and to petition the Government for a redress of Grievances."

An often violated amendment of the Constitution is the First Amendment. During this century, legal zealots have manipulated this amendment to the point where it no longer resembles the truth it once carried.

Of all the Amendments of the Constitution, the First Amendment is the ONLY amendment directly specifically toward the federal government and Congress in particular. Its restrictions were never intended to be applied against the states under the auspices of the federal constitution. Berger (1996) provides numerous cites to the framing of the first amendment wherein the first Congress states emphatically that the amendment in no applies to the states. In truth, each of the early states was formed by like-minded individuals often times by a specific religious group. The point was that the people wanted the federal government restricted completely in these areas.

In the 20th century, the courts, with the misinterpretations of many lawyers, have twisted the words of the First Amendment. Today, its bans have been extended against the states, in most instances under the 14th amendment. And this is even more incredible since the 14th amendment does not deal with rights at all. The 14th amendment concerns only privileges and immunities.

The congressional discussions of the 14th amendment discuss certain civil rights BUT one must remember that the people in

voting for ratification of the 14th amendment were never privy to the intentions of the framers or the congressional discussions. The 14th amendment like all the Constitution can only be judged on its naked text. Thus since neither the word right nor its derivatives appear anywhere within its paragraphs, the 14th amendment cannot be misconstrued to deal with rights in any way, shape, or form. Good intentions cannot be used as an excuse to misinterpret the Constitution. The allowance of a single breach in the walls means the entire document will fall.

Free Speech: Is it truly free?

Today we have controls over speech in the form of "hate speech laws." In the past, we had the Sedition Acts and other government restrictions on speech. The Courts claim power over "fighting words" saying that the framers surely could not have meant to protect such "terrible" speech. It is truly interesting to consider that the First Amendment protects all these forms of speech.

But for just a moment, take yourself back to the years just prior to the American Revolution. Were not the pamphlets and speeches that were made "hate speech" and "fighting words"? Did those who wished to separate America from her British controllers not use seditious words and urge other patriots to war? Then why is it difficult to understand that the First Amendment protects these same forms of speech more than 200 years later.

Are there limitations on protected speech? Surely, but those limitations can be found in understanding natural law, natural rights and the extent of those rights. The old children's adage, "Sticks and stones may break my bones, but words can never hurt me", still rings today but people have become weak. It's easier to allow the government to protect me than for me to stand up for myself.

Was the First really the first and is it still?

Position within the Bill of Rights is sometimes thought to provide some connotation of the relative importance of the rights enumerated therein. The truth is that position has nothing to do with importance. The original offerings had the current First Amendment in the third position, thus the claim that it's first because it's first is proven bogus. The Rights expressed in the Bill of Rights are equal to each other in importance. No single right would stand alone. However, singly important is the Second Amendment, that which states the people have the right to keep and bear arms. Without the power of arms in the hands of the people to back up words and actions, those in power would have no fear of abusing all other rights, including that of free speech.

Do not believe for one moment that any government would stand idly by and see itself denigrated in the press or in speech if there existed no power behind the words beyond mere good intentions.

The First Amendment

The First Amendment of the Constitution is actually an enumeration or listing of several related rights of liberty. However, the supreme Court has seen fit to restrict those rights with respect to free speech. Limitations on free speech have been offered since the inception of our country but one need only look to the time before and during the framing of our founding documents for evidence that these limitations are not legitimate but are usurpations of ungranted power.

The Revolutionary War was fought because of the oppression to which the King of England subjected the colonists. Had the colonists not talked of sedition or spoken "fighting words", the war would not have been fought and America would not be. The supreme Court has since decided, in their infinite wisdom, that "fighting words", i.e. those words which would incite riots or other undesirable actions are not protected under the First Amendments free speech guarantees. In my opinion, had the Framers entertained this same line of thinking they would not have written

the declaration of Independence and the other documents that created our country and its way of life. These same Framers were yelling "fighting words" at their fellow colonists in order to build for the Revolution. Common sense dictates that the Framers must have had "fighting words" specifically in mind when the First Amendment was written since they themselves had been using "fighting words" to form this great country. Even threatening statements, such as those offered to an unsavory politician, must be protected under the free speech clause. "Sticks and stones may break my bones, but words can never hurt me." Only after physical action has been taken can the authorities legitimately respond. Threats, hate speech, name-calling, etc are protected forms of speech. For those statements that go beyond the boundaries of libel and slander, the recipient has the right to a day in court.

Amazingly, the supreme Court has taken the side of the press well beyond the protections offered to the general public. The object of this lesson is that power can always be used to corrupt and control.

The same people who created our Constitution turned around and passed the Sedition Acts which made speaking against the government a crime. Why ? Power corrupts.

Just what does the first clause state? Look carefully. Does the clause prohibit laws that establish a religion? Yes, but it is more. The clause "an establishment of religion" is not what it appears on face value. "An establishment of religion" is a civil and political body. The Framers were not looking at only a national religion but they were prohibiting ALL laws respecting an establishment of religion", which is that civil and political body which is known as religion to man.

Story, Joseph, LL.D., 1833, Commentaries on the Constitution of the United States, Book III, Pg. 746-747, Paragraph 1889 - 1890.

...

"1889. The next amendment is: 'A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.'

1890. The importance of this article will scarcely be doubted by any persons, who have duly reflected upon the subject. The militia is the natural defence of a free country against sudden foreign invasions, domestic insurrections, and domestic usurpations of power by rulers. It is against sound policy for a free people to keep up large military establishments and standing armies in time of peace, both from the enormous expenses, with which they are attended, and the facile means, which they afford to ambitious and unprincipled rulers, to subvert the government, or trample upon the rights of the people. **The right of citizens to keep and bear arms has justly been considered, as the palladium of the liberties of a republic;** since it offers a strong moral check against the usurpation and arbitrary power of rulers; and will generally, even if these are successful in the first instance, enable the people to resist and triumph over them. And yet, though this truth would seem so clear, and the importance of a well regulated militia would seem so undeniable, it cannot be disguised, that among the American people there is a growing indifference to any system of militia discipline and a strong disposition, from a sense of its burthens, to be rid of all regulations. How it is practicable to keep the people duly armed without some organization, it is difficult to see. There is certainly no small danger, that indifference may lead to disgust, and disgust to contempt; and thus gradually undermine all protection intended by this clause in our national bill of rights."

A Scientist's View of The Second Amendment

INTRODUCTION

I like many lived engrossed in my own life. As a child of the fifties and sixties, I grew up during the greatest period of this country's development.

I was raised a Democrat, believing from my limited experience that this was the party of the people. My views on individual rights and societal responsibilities are in between the positions of the parties. Some call me a conservative; others believe me to be a liberal. I live by the law and see laws as black and white with no grey areas. I have the right to protect what is mine. When I step into society I must behave appropriately, following the laws of God and society, respecting the equal rights of my fellows.

I succumbed to the belief that our government functioned according to the Constitution simply because my education at the hands of public teachers, while excellent, was sorely lacking of the history of our great country. The cursory examinations offered scarcely touched the subject and I was left, like many others, an unwitting pawn in the scheme of government controls and revisionist history.

I awoke sometime in 1993 upon recognizing the attempted usurpation of power by those entrusted with serving us in Congress. I had even been fooled enough to have voted for Bill Clinton for President. (That was my fault. I didn't pay attention to the information in the campaign). My awakening was abrupt and brought my personal views to the forefront of my thoughts.

I believe wholly in the Constitution of the United States of America as written by the Founding Fathers. It is my contention that government should never venture beyond what is specifically given by the Constitution. Extension of powers by

(mis)interpretation or contortions are usurpation of power by those elected to serve the people.

My quest began with the undertaking of a study into the rights of the people versus the powers of the federal government. I found "Commentaries on the Constitution of the United States" by Story (1833) to be a most valuable set of documents. My biases were and are toward the people. Raised in a family where hunting and shooting are part of life, I am pro-private gun ownership. I believe the right to be absolute. My views were based on experience rather than upon knowledge. And so began a trek into the past. This trek opened a great new world to me.

I approached my investigation as a scientist with an extensive background in examining the unknown. My experiences have taught me to avoid the mindset that often accompanies research, that of preconceived ideas as to the outcome of a research project. My mind was not filled with the opinions of others as would be the minds of most political science or legal scholars. I could approach the subject more openly because my training was to do exactly that, detach myself from my mis-preconceptions.

I have always had an insatiable thirst for knowledge, constantly reading, studying, and learning all I can comprehend. But I was not expecting the immensity of this search into the past. Through my investigations and studies, I began to see that since the First Congress met, usurpations or impropriety of the granted powers have occurred (Schwartz, 1992).

The Second Amendment of the Constitution of the United States is one of the most discussed sections of the entire document. Over the years, scholars have approached the amendment from varying points of view arguing that the wording was unclear and that their particular interpretation was correct. Research and scholarly works by Kates, Cottrol, Cramer, Halbrook, and numerous others have reexamined the collectivist thinking that permeated the past two decades. Reviews of the historical documents have lead these

scholars toward the individualist point of view with respect to the meaning of this, the palladium of our freedoms.

As late as the 1930s, our elected representatives and their employees understood the Second Amendment's limitations on government actions. The National Firearms Act of 1934 centered around the inability of the government to ban machineguns and other weapons associated with criminals. (Since Congress was granted no power over criminal actions, they couldn't approach the control from that direction.) The Attorney General warned that a ban was in violation of the Constitution. The decision was reached that Congress could use their powers of taxation and commerce to control these particular weapons of choice of the criminal.

Within the pages of this chapter, I hope to convince the reader that even Congress' taxation and commerce powers are restricted by the Second Amendment because the Second Amendment came after the grant of powers, is part of a block of changes (amendments) "of" the existing document, and uses the absolute wording, "shall not be infringed." I cover the "but what about an atomic bomb" scenario. Finally this paper provides an new alternative understanding of the Second Amendment which justifies the existence of all clauses and demonstrates the individual stature of the statements it embodies.

If the reader is interested in the great body of scholarly writings related to this paper and this subject, the list of literature at the end should whet the appetite. Good luck with your studies and I hope you are pleasingly informed when you finish my paper.

THE CONSTITUTION

The Constitution of the United States of America is at the same time both a well known and vastly misunderstood document. A complete and exact copy of it is included at the beginning of this book. The text list at the end includes many excellent books which

have been written about the Constitution. Due to revisionism which is blatant and rampant in new texts, I have opted to omit the new texts from the appendix.

Just what the Constitution is has not often been explained. Many people know that there is a Constitution but not what having a Constitution means. It is a grant of powers FROM the people to a central government which was formed BY the people and FOR the people. The word, people, in this context means those who call themselves "Americans", residents and citizens of the United States. The Constitution is not simply a compact or confederation of states. The states are only a part of the federal government in that the word state can mean "people" but the distinction is far from clear (US v Verdugo-Urquidiz, 1990). The federal and state governments are separate, distinct bodies politic established for differing reasons. Generally, the federal government is necessary for our interaction with the other nations of the world and for the interactions of each state with the other states of this nation. One can easily imagine the consequences of having the separate states vie for treaties and agreements on an individual basis. Story (1833) goes to great lengths to discuss the problems behind NOT having a single federal government. For those desiring a complete history of the Constitution, it is suggested that Story's three volumes be a beginning.

Before entering into a dissertation on selected parts of the Constitution, a bit of explanation about how to interpret the Constitution is in order. There are copious amounts of literature available which provide today's Constitutional student with direct access to the thoughts of the framers of the U.S. Constitution. The most often recognized of these are the Federalist Papers. One must not limit themselves to the Federalist Papers only as the "Antifederalist" movement was equally active in writings on the proposed Constitution during the process of ratification. Several books containing these papers are included in the list at the end of this book.

Before the Constitution, the colonies had formed a Confederation of States under the Articles of Confederation. The Articles were extremely weak in that the power to force compliance with federal requirements did not exist. The individual states functioned in whatever manner a particular state desired. Even the federal debt could not be paid since many states refused to pay their share. And so a Constitution was undertaken which would provide a strong central government capable of sustaining itself through the will of the people.

In regard to the Constitution, there are six methods of interpretation in use today. These are textual, historical, structural, doctrinal, prudential, and ethical. In using these methods, one must always begin with the historical viewpoint for defining the words used. Word definitions are an area in which current usage modifies the meaning for each generation. Without a clear understanding of the meaning of specific words at the time they were used, no valid understanding of the Constitution can be had regardless of which of the above methods one uses. Prudential and ethical examinations of the document are especially tenuous as these bring an individual's bias into the discernment process. Structural interpretation also requires a solid understanding of the historical usage of language. Structural analysis is difficult if one forgets how the information was disseminated at the time it was written.

When interpreting the Constitution, great care must be made to ascertain the intent of those who wrote the words we read today. Discussions about the Constitution and its powers were extensive and often heated. Beyond learning what the Framers meant, one must understand the meaning of words, grammar, and punctuation as they were used at the time the document was written. Today, many words have radically different meanings than they did just ten much less two hundred years ago. Other words have changed little. Then just as today, a word could have several meanings. Thus, words must be understood by what is conveyed in their sentence; and sentences must be studied in relation to their

paragraph. Nothing should be pulled out of context.

If a word is strong and unambiguous then it will be easily understood by all. Words that have both broad and narrow views should be taken in their broadest sense, IF there are no restrictions listed or implied by other statements in the Constitution, or in the narrow sense if restrictions are given. Still, the same word used in different phrases can and does convey different meanings to the that word. An example is found in Article 1, section 8 of the Constitution of the United States. The word "provide" is different when used in the context of "providing a Navy" and "to provide for the organizing, arming, and disciplining, the Militia". Similarly, one "provides" a family and after the family exists, one "provides for" that family through various ways, i.e. shelter or food. As is implied by the wording of Article 1, section 8, the militia must have existed prior to the Constitution (there is no mention of creating or forming) and therefore the Militia existed prior to the federal government. And just as one "provides for" one's family, the government was supposed to "provide for" the Militia. Those that fought in the Revolutionary War realized that the militias needed organization, arming, and training (disciplining) and that these needs should be met universally in all parts of this new country. As one studies the Constitution, a copy of Story (1833) is indispensable.

Amendments "of" [we do not make amendments to] the Constitution, are similar to modifications added to the end of a legal contract. Changes made to the body of a contract affect only the part or parts with which they are attached. Changes made as addenda modify the entire document and so it is with amendments. The Constitution is at the same time inviolable and changeable. It is the ability to be amended that gives the Constitution its life. One must realize that changes can be and have been made as seen fit by the people and that interpretation by executive, legislative, and judicial branches.

Madison originally wanted to insert the amendments into the body

of the Constitution along with other similar guarantees such as the right of habeas corpus. Discussion ensued among the members of Congress. It was settled that the amendments "of" the Constitution should be placed at the end. The primary reason for their placement was that the body of the Constitution was likened to a contract already signed and sealed. Changes to the body would be akin to having someone alter a contract after you signed it thus producing the appearance that you agreed to all passages in the document.

THE SECOND AMENDMENT

"A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

This first work is directed at the Second Amendment "OF" the Constitution of the United States or America. Additions to this work are in the process which will address my interpretations of the entire Constitution along with discussions of where violations of this supreme law of the land have been made by those entrusted with its protection. Generally, one will find that these violations are due to stretching the meanings of words and phrases through out-of-context manipulations. These stretches are most often developed under the prudential and/or ethical interpretations of the Constitution. To this I state, "Like the ten commandments, the Constitution is not open to interpretation."

The Second Amendment of the Constitution is probably the most quoted, most widely known part of the Constitution of the United States of America. Yet after more than two hundred years of existence, it is the most argued, most misunderstood amendment.

One might venture to state that the wording of the amendment is different from how it would be written today. However, this work intends to show that by properly reading the Second Amendment

the true meaning is as forthcoming in the historical words as the meaning would be if written in contemporary terms.

Justice Story had the following to say about the Second Amendment. ... The right of citizens to keep and bear arms has justly been considered, as the palladium of the liberties of a republic; since it offers a strong moral check against the usurpation and arbitrary power of rulers; and will generally, even if these are successful in the first instance, enable the people to resist and triumph over them. ...

Just what is a palladium. No it's not the chemical element. Palladium, as used in this instance, means the safeguard. And so the relative importance of the Second Amendment is set for future generations who understand the true meaning of the Second Amendment. Without the rights enumerated in the Second Amendment, all others are of no consequence as nothing stands in the way of those who would enslave mankind when Arms are unavailable. But of course, our leaders are so good and benevolent that they would never usurp powers and attempt to enslave the people of America!

AN HISTORICAL PERSPECTIVE

To better understand how and why the amendment appears as it does, one must review the history of the amendment.

The Second Amendment to the Constitution was not the first place that the right of the people to keep and bear Arms was expressed. The idea of an armed populace protecting self, family, home, and government can be traced back to the Roman Empire (Halbrook (4)). Throughout history, the people have asserted their will through Arms ownership and those without Arms have generally been the subject of the will of others, i.e. enslaved. Laws do not make men equal, Arms do. And the rights of keeping and bearing Arms belong to all humans NOT just to Americans. America is blessed by the forethought that our Founding Fathers had in

enumerating these rights for all posterity. A precursor to the right expressed in the Constitution of the United States of America was in the English Bill of Rights of 1689. Tired of the ruling class disarming the general populace, the people arose and attempted to regain their rights through documents such as this and the Magna Carta. However, the government was not of the people and this right was trampled upon by the ruling class of England as it still is today.

The basis of the right to Arms comes with an understanding and belief in "natural" rights endowed by a Creator. As the Declaration of Independence states: "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." Further delving into Natural Rights, one finds that Life and Liberty include the freedom to own property and to protect oneself and one's property from encroachment by others. Those wishing to advance their understanding of Natural Rights may want to read the essay on Natural Rights.

Our government is founded on the basis that people come together to form a society due to common needs. They grant parts of their individual rights and powers to the government. The government derives from and is responsible to the people, not the other way around. In the United State of America, the people control the government. The government DOES NOT LEGITIMATELY control the people, although at times it appears that the government is doing so. Our Founders, just coming out of a long battle for freedom with England, realized that governments are never perfect. So in establishing our country and forming its government, they left several avenues of alteration open to the people.

The most common method of changing our government is through the power of the vote. The people hold in their vote the power to shape the country. The current push for term limits is totally unnecessary since the people, in the thoughtful exercise of their

power to vote, may change the direction of the country as was accomplished in the 1994 elections. This method provides for changes that the people desire which are temporary and easily altered.

The next most commonly recognized form of change is through constitutional amendments. Those who wrote the Constitution developed two ways of offering amendments. The first is in concurrence of two-thirds of both houses of Congress followed by concurrence in three-fourths of the states. The other is through the decision of conventions of two-thirds of the States which must also be followed by concurrence in conventions in three-fourths of the states. These changes are more permanent than those accomplished through the power of the vote but are still modifiable by future generations if and when the desire arises.

The last and least often recognized change flows from the Revolution itself. In the words of the Declaration of Independence, "That whenever any Form of Government becomes destructive to these ends, it is the Right of the People to alter or abolish it;... it is their right, it is their duty, to throw off such Government,...". The writers of this declaration understood all too well what a tyrannical government could and would do to its subjects. For over two hundred years we have lived in a relatively stable and free society. We have become accustomed to and accepting of government intrusions into our daily lives. Nothing has changed. More than two hundred years ago the men who wrote the Declaration of Independence recognized the same apathy in the people with respect to government abuses and the same propensity of those in power to abuse and usurp. The Declaration of Independence is presented in its entirety in the Historical Documents Appendix.

The question arises as to how the third option can be exercised by the people. The best example occurred in the late 1770s and early 1780s. We know it as the Revolutionary War. Although numerous reasons for the War exist, the proximate cause was the

attempted disarming of the colonists. England, in the shadow of the Bill of Rights of 1689, had developed laws to control the available Arms and the hunting of the average subject of the Crown. Many of the firearms control laws were directed at specific groups, i.e. peasants in a monarchial-controlled government. The colonists, because of the need for self-sufficiency, were allowed firearms and other Arms for personal use. For more information, see Joyce Malcolm's book.

Some of the colonies, Massachusetts for example (Schwartz, 1992), required firearms to be kept in every household. Those too poor to buy a firearm could obtain one free from the colonial government. The individual colonists trained in the care and use of their firearms. Beyond using the firearms to provide food for the table and security for the individual and his family, the colonists were each expected to be part of the armed force that protected their village, town, and colony from whatever perils might arise. Each and every male colonist was a member of the Militia, with exceptions for religiously scrupulous individuals.

Literally, dozens of quotes concerning Militia membership can be found in the writings of these colonists. Just one is offered here to extend an explanation of the composition of the Militia. "I ask, sir, what is the militia? It is the whole people except for a few public officials." (George Mason, 3 Elliott, Debates at 425-426). The Quotation Appendix contains numerous other quotes concerning the topics discussed here.

Why the great need for local Militias ? In order to understand the framers, one must study the history associated with their lives. The country was being developed but even in terms of colonial ideas of civilization, the continent was uncivilized. While "police" forces have existed throughout history, they generally were composed of men whom the rulers could control to do their will and beckoning. Some argue that these police are not the same as the police of today, a point with which I, the son of a police officer, do not agree. In the colonies, establishments were separated by

what seemed great distances. Therefore, people had to rely on themselves and their neighbors for safety and security. The Militia provided this safety and security. [Those who believe the police forces of today provide this protection should read Court rulings on the topic some of which I have included at the end of this book.]

When the colonists had been subjected to more abuse than deserved, it was the Militia that first came out to fight for independence. These groups of men formed together into the Continental army. Had they not had their Militia training and experience, and their Arms, we might still be a colony of England. However, as I will attend to later, these militiamen were not the perfect opposition to highly trained military forces.

These experiences led the colonists to develop a block of ideas about what a government was and how it should function. These ideas were expressed as our Constitution and its subsequent amendments.

THE BILL OF RIGHTS

Most people are aware of the Bill of Rights and its guarantees of the rights of the people. What is generally unknown is that the Constitution and the Bill of Rights DO NOT GRANT these rights to the people. As is implied in the Declaration of Independence, these rights are endowed by our Creator. The Bill of Rights was added to the Constitution in order to set in "stone" limitations on the expansion and intrusion of government into areas not allowed by the powers the people granted to it.

The addition of the Bill of Rights was fraught with battle after battle. In general, the Federalists, those who believed in a strong central government, saw no need for a Bill of Rights. Their main point of argument was that the Constitution only granted the powers enumerated within it to the government and there was therefore no need to include anything about individual rights since control over these was not part of the grant of powers. Many saw

inclusion of a list of rights as possibly being detrimental to those rights and to other rights not listed. In truth, we see today that some Congresspersons have not grasped the fact that the inclusion or lack of inclusion of those rights enumerated in the Bill of Rights have no effect on their existence. These rights pre-existed the Constitution and exist independently of the Constitution, as recognized by the Supreme Court in US v Cruikshank (1876). Calls for the repeal of any of the amendments known as the Bill of Rights would have no legal effect. These rights do not emanate FROM the Constitution, they existed prior to the Constitution and come only from Providence, in other words, God. The individual rights enumerated by the Constitution are inalienable and indefeasible meaning that they can neither be legitimately taken away or given up. If they are taken, one is no longer free; one is enslaved.

In recent years, many groups have come forth stating that each of us should be willing to sacrifice some of our freedoms in order to help fight the crime in America. I will only state that the truth is crime rates HAVE NOT INCREASED on a per capita basis (Order the video - "Are We Scaring Ourselves to Death ?" from ABC TV) and quote Benjamin Franklin - "THEY THAT CAN GIVE UP ESSENTIAL LIBERTY TO OBTAIN A LITTLE TEMPORARY SAFETY DESERVE NEITHER LIBERTY NOR SAFETY". For additional information, one should study the Uniform Crime Report from the Federal Bureau of Investigation.

To protect your rights, you must first be aware of their existence and extent. A proper study requires large amounts of time and effort on the part of the student. The following interpretations are my own based on my personal knowledge and studies. Other opinions may differ. My response to differing opinions is "Prove ME wrong !" not through other opinions but with defensible, written proof from the framers that my views are incorrect. I do not blanketly consider all court decisions to properly follow the correct path. Our Judges often tend toward one side or the other of the political spectrum and are all 1) political appointees or 2) politicians. Neither group can be considered unbiased. While

there are many honorable, open-minded judges, most will hold opinions that reflect their political leanings.

DEVELOPMENT OF THE SECOND AMENDMENT

In order to fully grasp the Second Amendment, one must follow its development.

At the time of the ratification of the Constitution, many Americans were concerned over the lack of a Bill of Rights similar to those found in many of the state constitutions. [It turns out the those elected to Congress DID NOT hold the same concern over the lack of a Bill of Rights. (Schwartz, 1992). The following forms of the amendment were offered.

Pennsylvania Convention, Dec, 1787.

7. That the people have the right to bear arms for the defence of themselves and their own state, or the United States, or for the purpose of killing game; and no law shall be passed for disarming the people or any of them, unless for crimes committed, or real danger or public injury from individuals; and as standing armies in the time of peace are dangerous to liberty, they ought not to be keep up: and that the military shall be kept under strict subordination to and be governed by the civil power.

Resolutions of New York, Aug, 1788

That the people have a right to keep and bear arms; that a well regulated militia, including the body of the people capable of bearing arms, is the proper, natural, and safe defence of a free state. That the militia should not be subject to martial law except in time of war, rebellion, or insurrection. That standing armies in time of peace are dangerous to liberty, and ought not to be kept up, except in cases of necessity, and that at all times the military should be under strict subordination to the civil power.

Resolutions of New Hampshire, Apr, 1788

Congress shall never disarm any citizen, unless such as are or have been in actual rebellion.

Resolutions of Virginia, June, 1788

17th. That the people have a right to keep and bear arms: that a well regulated militia composed of the body of the people trained to arms, is the proper, natural and safe defence of a free state. That standing armies in time of peace are dangerous to liberty, and therefore ought to be avoided, as far as the circumstances and protection of the community will admit; and that in all cases, the military should be under strict subordination to and governed by the civil power.

Resolutions of North Carolina, Aug, 1788

17th. That the people have a right to keep and bear arms; that a well regulated militia composed of the body of the people trained to arms, is the proper, natural and safe defence of a free state. That standing armies in time of peace are dangerous to liberty, and therefore ought to be avoided, as far as the circumstances and protection of the community will admit; and that in all cases, the military should be under strict subordination to and governed by the civil power.

James Madison took it upon himself to bring the amendments to the First Congress. Much opposition to the amendments occurred as many Congressmen felt the new government should be given more time to be tested. Madison persisted in his efforts believing that the people would be betrayed if the amendments were not offered. This was not, however, the first time words enumerating the right of individuals to hold weapons appeared in American documents. Many of the colonies had formulated their own declarations of rights in which the right to keep and bear Arms was discussed. In some instances, early colonial documents went so far as to require the ownership of firearms by all free men.

Madison's first proposal of the Second Amendment, if kept, would have set most of the discussion aside. The text of the first draft was:

"The right of the people to keep and bear arms shall not be infringed; a well armed and well regulated militia being the best security of a free country: but no person religiously scrupulous of bearing arms shall be compelled to render military service in person."

The House Select Committee took to task the rewriting of the proposed amendment and developed the following:
"A well regulated militia, composed of the body of the people, being the best security of a free State, the right of the people to keep and bear arms shall not be infringed, but no person religiously scrupulous shall be compelled to bear arms."
The House of Representatives passed the following modification to the Select Committee version:
"A well regulated militia, composed of the body of the People, being the best security of a free State, the right of the People to keep and bear arms, shall not be infringed, but no one religiously scrupulous of bearing arms, shall be compelled to render military service in person."
The Senate version was:
"A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed."
And the final form, as Article number 4, passed by the First Continental Congress in September 25, 1789 is:
"A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

THE ERRANT COMMA

An interesting development occurred during this phase of the development of the Bill of Rights. As Madison's proposed amendments were edited and rewritten, portions were removed and punctuation added. A very noticeable comma was added after the word Arms. Paying close attention, it can be seen that the comma first appeared in the full house version of the document.

But of what importance is this ? In today's world of copiers and computers, we have become accustomed to obtaining information almost instantaneously. We have forgotten the time required to laboriously copy documents by hand or even on a typewriter. In this world everyone can have a personal copy immediately.

However, in the world of the first Congress, even the printing press required large amounts of time to reproduce documents. One takes notice that the original founding documents of this country were all hand written. Why ? Cost and convenience.

One must also consider HOW the information was disseminated. Even with the capabilities available today, the House reporter often must read legislation to the House. Realizing this and the situation in 1789, one comes to realize that the House reporter or Speaker of the House read the document aloud for the members.

Today, we view the Constitution and the Bill of Rights as written documents meant to be read silently similarly to a book. Turning back to 1789, we come to realize that the documents were meant to be read aloud by someone literate. Many of the American people could not read and due to the limitations on reproducing copies of the documents, copies to read were not widely available. So as an individual trained in public speaking, those speakers would prepare the documents for proper use as a spoken instrument. A good rule of thumb is to place a comma whenever you pause for a breath or where a pause is desired so that a new emphasis can be added to certain words.

So as the Bill of Rights moved from the Select Committee to the full House, a comma was added to the Second Amendment. This is not the only place. Careful study of the entire Constitution bears out my hypothesis. Commas appear in many locations that appear totally out of place. The second phrase of the Second Amendment contains an extraneous comma after the word, Arms, to provide a break for breathing and to allow the speaker to emphasize the negative verb clause, "shall not be infringed". Thus, as a document written for reading, the comma is unneeded and can be simply removed without modifying the meaning of the amendment. Story (1833) writes his Second Amendment without the comma as he was publishing a book for reading and likely realized that the extra comma was not needed in a written document.

So the errant comma isn't errant but was inserted to allow for proper reading of the document to the house. The Senate was composed of 26 members and the House contained around 64 at this time. Looking at the dates of voting one can also determine that it would have been extremely difficult to have made printed copies, even handwritten, for everyone. The comma continued as the documents were read in each of the Houses and for the final version which was signed. And as each handwritten copy was made for transfer to the state legislatures for ratification, the comma was retained so that the speakers in those houses would receive the documents with an understanding equal to that at the federal level.

GRAMMATICAL ANALYSIS OF THE SECOND AMENDMENT

Mr. Neil Schulman wrote an excellent paper in conjunction with discussions with Professor Roy Copperud. Professor Copperud was an internationally acclaimed scholar an expert on the usage of the English Language. It was Copperud who, although decidedly antigun, openly analyzed the Second Amendment remarking that it did indeed convey information concerning an individual right and that right pre-existed the Second Amendment. However, It is my contention that Professor Copperud missed a relevant point in analyzing the grammar of the Second Amendment. Here following I present my modifications and extensions of that earlier analysis.

The text of the Second Amendment is short and to the point, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

First, carefully study the phrase and the words. Notice that certain words are capitalized but are generally not proper nouns or at the beginning of sentences, places where capitalized words are usually

found. Yes, this was one of many styles of writing at the time but still the capitalization of a common noun transforms the noun into a proper one. This capitalization of a common noun, promoting it to proper noun status, alters the meaning of the word and specifically accentuates the word in the body of the writing. A general assumption can be made that capitalization particularizes or gives individualized significance to the word. Therefore, the word, Militia, as expressed in the Second Amendment, would directly indicate the Militia, in all its forms, as known to the framers. That Militia is not the National Guard or any other organized body of military (Perpich v. Department of Defense, 1990) as these forms did not exist at the time of the founding of our Country. The capitalized word should be translated to indicate ALL forms of militia rather than any limited particular group. If one follows the treatise of Story (1833), the broad interpretation would be justified.

Words today, just as at the time of the writing of the Constitution, have a number of meanings. Story (1833) has indicated that the word "State" is often used as a synonym for "the people composing these political societies in their highest sovereign capacity." So while many view the word State as only meaning a geopolitical area they are narrowing the term without cause, as no where in the Second Amendment is such narrowing promulgated. Unless a specific term is limited by text preceding or following it, it should be construed in the broadest sense of its meaning.

Another word granted enhanced significance through capitalization is Arms. In consistent analysis with Story(1833), and by implication from the capitalization, this term would be interpreted to include all weaponry including firearms, knives and other weapons of war. The broadest sense of its meaning is again appropriate. We will return to other nouns made proper through capitalization at a later point.

The lack of proper guidance on the part of the government, both state and federal, in maintaining a well regulated [which according

to the Fletcher's "A Discourse of Government with relation to Militias" meant properly disciplined where disciplined means to train in military exercises and prompt action in response to command] militia can never be held as now requiring the disarming of the people. The rights expressed in the Second Amendment include the right of the people to maintain their own independent militias even though the Supreme Court has ruled otherwise in Presser v Illinois.

THE CAPITALIZATION

An important factor in understanding the entire Constitution is the use of capitalization of common nouns throughout by the framers of the document. The modification of a noun through the use of capitalization is a subtle, albeit very important change. This simple grammatical change alters the meaning of the words from generalities to more complex specifics. There are distinct differences between the body of the Constitution and the Bill of Rights.

In standard form, a common noun at the beginning of a sentence is capitalized
The body of the Constitution, in example, contains the following common nouns which are capitalized:

We, People, Order, Union, Justice, Tranquility, Welfare, Blessings, Liberty, Posterity, Constitution, All, Powers, Congress, Senate, House of Representatives, The, House of Representatives, Members, Year, People, States, Electors, State, Qualifications, Electors, Branch, State Legislature, No, Person, Representative, Age, Years, Years, Citizen, United States, Inhabitant, State;

We, All, The, No, and all the other sentence beginning nouns are understandable. The use of capitalization on the many other nouns requires careful review.

Take, for example, the word People in the preamble. Why was this word simply not people, small "p" ? In understanding, the thinking and indeed the feelings of the founding countrymen, the Framers

of the Constitution wanted to impart a stronger sense on the intentions of the word, People, in the document. By making People a proper noun, much more significant than a common noun, the framers were extending the meaning to include each and every idea as to what a people was and is. People may be simply the plural of person, or as is often used, a group or race, as in the People of England. Throughout the body of the Constitution, the word used is People, capital "P".

This first example leads to the Bill of Rights. Within the First Article, generally called the First Amendment, the word has transformed into people, small "p", and its implication of simply the plural of person. In a similar manner as was seen in the body of the Constitution, the word, people, in every occurrence in the Bill of Rights uses a small "p". This use is consistent with the desires of the Framers that the Bill of Rights were an enumeration of individual rights recognized, not granted by the Constitution of the United States of America.

Throughout both portions of the Constitution, the framers cautiously utilized capitalization to modify words so as to enhance or maintain the commonality of meaning.

For a more complete understanding of what the Founding Fathers recognized as a "well regulated" militia, I urge the reader to study the work of Andrew Fletcher on the subject.

There is no hyphen in the Second Amendment. The addition of a hyphen alters the meanings of the words and the hyphenated phrase as can be seen in the following simple example:

ten dollar bills versus ten-dollar bills

While the word well cannot stand alone in the amendment, regulated can. Hyphenating the two words implies that they are inseparable which is not the case. To regulate means to bring into proper function. Adding the word well simply states the extent of the regulation. "A regulated Militia" would provide an understanding of the Second not much different than "A well regulated

Militia". Beyond this small but significant alteration, it is revisionism to add the hyphen.

The meaning and/or definitions of "Militia" both literally and legally have no bearing on the right of the people to keep Arms or the right of the people to bear Arms. Assemblage of individuals into a militia is a right independent of the others enumerated in the Second Amendment. As with the other rights, the wording of the Second is clear as an absolute prohibition toward any law which "infringes" on the rights included in its phraseology.

INFRINGED versus ABRIDGED

The two words which are the heading of this section are at times considered interchangeable by those not familiar with the actual meanings of them. Infringe and abridge are not, have not been, and most likely will not ever be synonyms. The framers of the Bill of Rights understood the differences. They utilized abridged in the context of speech as they recognized certain limitations must exist. In contrast, "infringed" is the verb used for the Second Amendment. It is much stronger an indicates an absoluteness to the power of the prohibition.

Abridge, in its archaic sense, means deprive. Therefore, the first Congress bid unto itself (yes, the First Amendment is applicable only to Congress just as it states as its main subject. [See Story(1833)]) that it would make no laws which would deprive any of their freedom to speak of or to write about their ideas. This is not to say that all speech is protected absolutely but that one cannot be constitutionally prohibited from holding and sharing beliefs contrary to others.

The verb, infringe, must be looked at in greater depth since its synonyms are greater in numbers. Its usage in the Second Amendment eliminates many of the synonym one finds. Following the standard rules of English usage, one can determine that there is no direct object of the verb, infringe, in the phrase: "shall not be

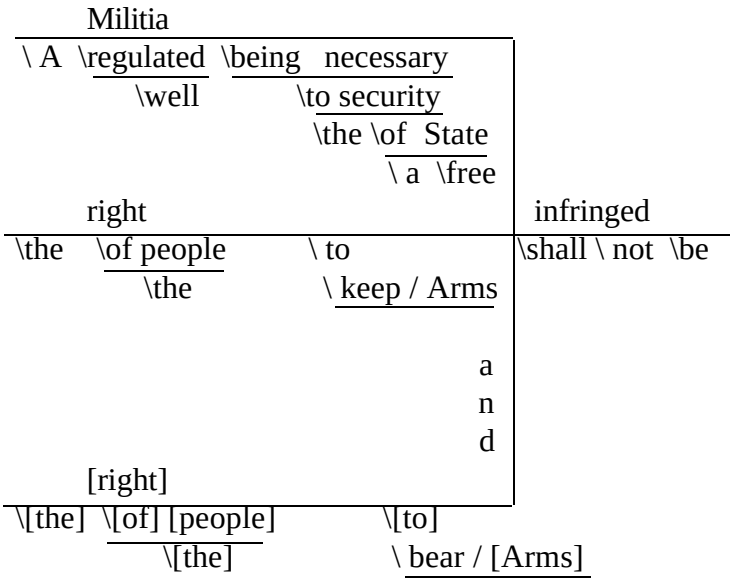
infringed."

Infringed is, therefore, used in the intransitive form. The appropriate synonym and definition for this usage follow.
Synonym: encroach
Definition:
"to enter by gradual steps or by stealth into the possessions or rights of another;"
The word, trespass, is offered as an alternative synonym to encroach. And under trespass is found the following.
"Infringe implies an encroachment clearly violating a right or prerogative." "Encroach implies a usurpation of rights or possessions."

It cannot be then said that a tax does not "infringe", in the correct meaning of the word or its synonyms. Why did all Congresses prior to those of the 1930s not venture to establish taxes on firearms ? Did previous Congresses view the RKBA as absolute where as "New Deal" Congresses have viewed the Constitution as not restricting their powers through selective interpretation of various out-of-context clauses ? The National Firearms Act hearings and court cases of the time related the control and taxation of specific classes of firearms to similar prohibitions on drugs. However, drugs are not mentioned anywhere in the Constitution and the derivation of meaning is fallacious.

THE GRAMMAR

Repeating:
"A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."
A first step to understanding the Second Amendment involves breaking down the phrases in to their component parts. One of the most basic methods is to diagram the statements.



Are the two phrases related ? Yes and no. How the two are related accounts for the majority of the disagreements on the "meaning" of the Second Amendment. Yet, the common interpretations on either side of the debate never account for the legitimacy and necessity of both phrases in the amendment. My interpretation as shown above in the sentence diagram brings together both sides of the issue and provides legal standing to the first clause beyond its being a superfluous preamble to the second clause. This is important as nowhere in the Constitution does there appear to be any other unnecessary phraseology. However, no where in the Constitution is it stated that superfluous phrases are prohibited.

The meaning of Militia, both literally and legally, has no bearing on the rights of the people to keep and to bear Arms. Assemblage of individuals into a militia is an independent right enumerated in the Second Amendment. As with the other rights, the wording of the Second Amendment is perfectly clear as an absolute prohibition on any law which infringes on the right to form a militia of the people so long as that militia is well regulated, which means properly trained in the use of their arms and in the art of war as per

Fletcher. Support of this right can be found in the First Amendment's right to peaceably assemble.

THE CONTEST FOR YOUR RIGHTS
THE COURTS

As Americans, most of us were brought to believe that the Courts of our Country are the bastions of honesty, fair play, and outright perfection in the establishment of justice. We were taught to accept the rulings of these time-honored individuals as they made "interpretations" about our laws and our lives. Their judgments were "above reproach".

In accepting this policy, we have forgotten that these individuals are simply men like the rest of us, subject to the same misguidance and misinterpretation, subject to the same strains and errors, that we all face. We have forgotten that, although their educational level is great, they too have suffered from the failure of our educational system to provide a broad-based education of basics. In the same way that most individuals in the world have been, even those that consider themselves literate, these "judges" have not often received the education necessary to review the grammatical format of the English Language. Too often the format is ignored for the sake of trying to determine the meaning of a law strictly through the words used. This ignorance has permeated our society. Individuals from the upper echelons to the lowest levels have little concept as to the proper use of language, especially as it applies to grammatical correctness and meaning.

Are our Courts absolutely free from prejudicial interpretations ? One would hope so but as one becomes more worldly one begins to recognize that no one can be truly objective, especially when one's power would be challenged if the decision were made in the opposite vein. Each judge and every jury makes decisions based upon the "evidence" provided. The final determination will be dependent upon what and how the information is presented. Still,

the most well meaning individual or individuals will have some preconceived ideas as to what is meant by various statements. Each of us is controlled by the urge of self-preservation. To interpret any law or statement in a manner contrary to our self-inflicted ideas about personal preservation would prove difficult to even the greatest of homo sapiens.

Good Ol'boy Politics are rampant. With greater knowledge, one begins to understand that all those in power want to keep that power. Those that don't have the drive (or the ego) simply slip away to whence they came. Why would our courts NOT interpret the Second Amendment as an individual right ? Because that would mean giving up a bit of power by saying the people have some aspect of control over their lives. Too many on both sides of the political spectrum wish to hold on to the power they have gained. America is seeing the establishment of our very own form of royalty.

WHAT DOES THIS TIRADE HAVE TO DO WITH ANY-THING ?

The interpretation of the Second Amendment of the United States Constitution has long been a source of controversy. The majority of those interpreting this amendment's meaning have found that the Framers of the Constitution were merely enumerating what is commonly called a "natural" right and that this right is an individual right of all human beings. On the converse side, a few interpreters of the Second Amendment have opted to decide the issue was one of a collective right and that the amendment is establishing the right of the state to have a militia. Both sides of this issue are highly biased concerning the interpretation of the Second Amendment to fit each sides directions for the country.

One must understand that the views developed by students of law in this country come from a not so large group of professors of law. Yes, there are dissenters among this group but there has developed a consensus in a specific direction. Once a legal direction is

established, it requires a brave soul to question the past reasoning and look in a new direction for the truth.

THE CONTROVERSY

What has come to pass is that most individuals, including most legal experts, do not have sufficient background in the use of grammar, punctuation, and capitalization to understand the meaning of the Second Amendment in its current form.

Two sides have developed over the years, one the "individualist" supporters and the other the "collectivist" group.

Today, a spin on the collectivist viewpoint has developed in which the holders believe that the second amendment guarantees only that an armed militia may exist for the benefit of the state. However, one can easily recognize that armed Militia existed even prior to state government. The earliest armed Militia were likely family members protecting their own and their property against other families.

APPLICABILITY OF THE CONSTITUTION TO THE STATES

It has been decided in Barron v. Baltimore in 1833 that the Constitution, particularly the Bill of Rights, did not apply to the states. Why ? The gist was that the Constitutional restrictions written were expressly directed at controlling the federal government so that the people's and the state's rights would not be overridden. However, the political agenda of those who ruled in this case cannot be overlooked. Several of the Justices felt this interpretation to be incorrect. No one can state irrevocably what Justice Marshall's true reasons were for no one could nor can they read his mind. See the essays on Marshall and his decisions.

Since all justices are political appointees, no opinion can be said to be free of political innuendos. The selection of a replacement judge is and always has been influenced by the desires of those

appointing the judge. But moving to an elected system would not help, because then the judge would have to become the politician.

Why does the Constitution apply to the states ? In order to join the Union of the United States, an individual state must ratify the Constitution and be accepted into the Union. Article VI specifically states that the Constitution is the supreme Law of the land and through the ratification process each state has accepted this assertion. At no point in the Constitution is there any indication that any or all portions are excluded from the supremacy clause. As the Second Amendment, and all the Bill of Rights, was developed subsequently to the main body of the Constitution, one must presume that the Congress while adding the Bill of Rights were aware of the supremacy clause. Had they not wanted broad applicability of the Bill of Rights, limitations would likely have been added to the preamble or to each enumerated right. Interpretations ignoring these facts must be looked at with suspicion. Examples may be found in For The Defense of Themselves and The State by Clayton Cramer.

WHAT LIMITATIONS DOES THE SECOND AMENDMENT PLACE ON GOVERNMENT ?

Limitations on government by the Second Amendment are seldom discussed as the topic is very disturbing to many. The right expressed by the Second Amendment is a natural right granted by the Creator. All who accept this position must also then accept that there can be no limitations placed upon rights which come from God.

In the case of felons, it is oft stated that the government can remove rights such as the right to vote and to hold public office and extrapolating from this the justification is drawn that felons may be deprived of other rights. However, the justification is flawed. The right to vote and to hold public office are not from God but are the creation of man so man and man's government have control over these "rights". These "rights" are not of the same class as

rights granted by God. In all actions where man violates rights granted by God, man is usurping power that does not belong to him. While many may be ready to agree that we can remove natural rights from one who has violated man's or God's laws, one must understand that to do so still violates Providence.

The Second Amendment was added to the Constitution of the United States of America. Therefore, any student today must accept that the first Congress knew the provisions of the Constitution. No exceptions to the direct statement, "shall not be infringed.", were added. Thus, following from the words used and the intent of the Framers, and Madison's statements that these first amendments were concerned with private rights, the only logical conclusion is that NO law may encroach upon the natural rights as enumerated in the Bill of Rights of the Constitution (see US v Cruikshank, 1876).

Natural law applies to all governmental bodies not just the federal government. Governments who pass laws infringing upon the rights enumerated in the Second Amendment are in violation of God's law. This includes states, municipalities, and all other bodies politic.

Why is the Supreme Court so reticent to rule upon the Second Amendment? It is the opinion of this writer that the members of the Supreme Court recognize that if they rule in the only proper direction that ALL local, state, and federal laws concerning firearms will necessarily be repealed. On the other hand, if they rule against the Second Amendment being an individual right of the people, the country might suffer civil war. The second option is totally disastrous. The first option is very likely a bitter pill to swallow. Those in power generally do not wish to release even one iota of it back to the people.

LIMITATIONS ON ARMS HOLDING BY THE GENERAL POPULACE

A comparison of Arms available today in contrast to those of the Framer's times shows great advances in the power of many weapons. Are these more powerful weapons truly more lethal ? Medicine has advanced even further than the capabilities of the Arms of the world. The question arises, "Did the framers understand that weaponry would advance ?" My opinion is yes. The Framers had already seen great advances in the Arms of their day, These were intelligent, thoughtful men. While the harnessing of the atom may never have crossed their minds, improvements in Arms continued on a regular basis during their time.

So if the right to self-preservation through the use of Arms is a right of Providence, what limitations, if any, can be placed upon this right ?

My opinion is that the government cannot control access to Arms in any way, shape, or form. It is the function of natural law that precludes the use of certain types of weapons. The natural law of self-preservation sets restrictions as to what force may be used against one's foes. Common sense easily dictates that on an individual basis only those Arms which can be applied against specific enemies may be assumed valid for use under natural law. Therefore, the paranoid gun control freaks incessant screaming about using atomic or nuclear weapons or even heavy armored weaponry, is countered. If the weapon can be used for personal self-defense against a small number of foes, it is acceptable as an Arm for individual ownership. If the weapon cannot be easily controlled to ONLY direct it's defensive force against one's foes, then it is not an individual weapon but a common defense weapon.

The primary restriction on ownership and use of Arms is that they must not be used for aggression but only for defensive purposes. Therefore, laws restricting the firing of a firearm within societal boundaries may be passed but specific limitations still apply

concerning one's use of the firearm for defense. However, laws which restrict the carrying of Arms, open or concealed, violate the right of the individual. Society cannot presume one is guilty of improper use simply for possession of an Arm without absolute proof of one's improper use of that Arm.

WHAT IS THE MEANING OF THE 2ND AMENDMENT ?

Following the above discussion, the Second Amendment can be seen as to clearly and unequivocally describe the inalienable, natural rights to life, liberty, and property and the methods by which those rights are to be protected through the use of Arms and proper training in the use of those Arms. Those rights as enumerated in the Second Amendment are 1) the right to keep Arms, the right to bear Arms, and the right to establish and train as a member of a Militia. The Amendment fully describes both individual AND collective arrangements, i.e. the right of the people to keep and bear Arms as individuals and the [right] to maintain a well regulated Militia, collectively. The Second Amendment does not establish these rights but acknowledges their preexistence through enumeration and places an absolute prohibition against "infringement" on all bodies politic. This prohibition extends to all, federal, state, local, and civil agencies, groups, and individuals. There can be no legitimate infringement of the right to keep and bear Arms for the protection of self, family, community, and country nor to the practice with those Arms in order to maintain a well prepared and trained citizenry to protect the future of this country. The proper use of those Arms, either in training or actual protection, must fall within the bounds of the natural right to defense of self, family, community, or country and does not include offensive use.

WHY WOULD THE FRAMERS MAKE SUCH STATEMENTS?

One must place oneself in the mindset and position of those who are considered the founding fathers. The Revolutionary War had just

ended and the memories and fears of oppression were vivid in the minds of those who were creating the beginnings of our country. These were extraordinary people, well read about government and articulate of their views. How did these people view the right to arms as expressed in the English Bill of Rights in 1689 ?

Should the weapons of war be stored in community locations, it becomes a simpler task to disarm the populace. The widespread keeping of Arms reduced the chances that all Arms could or would be confiscated. However, just keeping Arms does not provide adequate protections against invasions or usurpations. Thus the framers added the right to bear these Arms in defense of self, family, community, and country. And so the second and third rights enumerated in the Second Amendment were born.

But what good are Arms if one is not trained in their individual use. And in their use in conjunction with other individuals having the same purpose in self-defense. The Revolutionary War provided sufficient evidence to the leaders of our country that the best use of Arms comes only with proper training. George Washington stated that the general militia of the time was not suited to fight regular military troops. But, had it not been for the willingness and ability of these militia men to fight, America might still be a part of the United Kingdom. Therefore, in my opinion, the framers of the Bill of Rights added the qualification that recognized the right of the people to maintain their own properly trained and disciplined military groups commonly known as militia. Had not the right of the people to form militia been protected, Article I, Section 8 might have been misconstrued to allow for both the federal and state governments to provide for organizing, disciplining, and arming the Militia in a negative fashion, i.e. not providing for it through direct action or simply inaction.

The English Bill of Rights of 1689 touched ever so lightly on the right of the people to keep and bear arms. Even so, there were restrictions placed upon the keeping and bearing of arms by those

in power. The framers of our Constitution and Bill of Rights knew that without an absolute prohibition against infringement, men, just as the rulers in England had, would usurp power and trample upon the natural rights of others.

And so, the Second Amendment can be understood to enumerate existing rights of the people to keep Arms, to bear Arms, and to form together in militia units with absolute protection so long as the purposes of these actions fall within the natural rights of protection and preservation associated with Life, Liberty, and the Pursuit of Happiness.

WHAT ABOUT THE COMMERCE CLAUSE ?

Congress was granted the power to regulate Commerce with foreign Nations, among the several States, and with Indian Tribes in Article I, Section 8. Under the auspices of this grant of power, one might assume that Congress could enact legislation to control the commerce of Arms.

The blanket grant of power over commerce outside the boundaries of each state was necessary in order to provide equal opportunities to all peoples of this country. Prior to the enactment of the Bill of Rights and the inclusion of the Second and Ninth Amendments in the Constitution of the United States of America, Congress technically had the authority to regulate Arms, though the knowledge of natural rights among the founders precluded any action on moral grounds. Once the Bill of Rights was enacted, and a likely cause of the enactment of the Bill of Rights, Congress's power over Arms was eliminated. The use of the word, "infringed", was and is the key factor in this restriction. Many have called for the banning of ownership and commerce in Arms by Congress but this is not a power held by Congress. In truth, Congress may not ban anything as the commerce in any particular goods would then be annihilated and not regulated. To ban is necessarily exclusive of

regulation as goods which cannot be bought and sold cannot be, by proper definition, regulated. Story (1833) discusses the commerce in Book II beginning on page 504 of his Commentaries on the Constitution of the United States. He states that Commerce completely internal to a state is the sole jurisdiction of that state. The 1930's NFA hearings were in full agreement with the lack of power by the federal government to ban anything, for to ban precludes to regulate.

BUT ISN'T CONGRESS SUPPOSED TO PROVIDE FOR THE GENERAL WELFARE ?

Article I, Section 8 enumerates the powers granted to Congress by the people. The beginning paragraph follows:
"Section. 8. The Congress shall have the Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;"

This is often read as "The Congress shall have the Power To ... provide for the common Defence and general Welfare..." ignoring the fact the these powers are limited to taxing and spending for these purposes (Schwartz (1992), NOT to writing laws that specifically address these two points void of a taxation nexus. Congress itself is most often culpable in using this misinterpretation for its own advantage. A proper reading of this clause eliminates all possibility of its use in the banning or controlling Arms.

One might say "Aha !". Congress can provide for the general Welfare through taxation of Arms which is partly how the NFA '34 was given its legal nexus. BUT the Second Amendment IS an amendment "of" the Constitution including Article I, Section 8. The word, "infringe", places restrictions upon ALL conflicting phrases which existed prior to its implementation. And so, the

framers of the Bill of Rights again have proven the great depth of their thinking by using the best wording of the Second Amendment which would provide absolute protection against government usurpation of our natural rights. Had not the framers used the words, "shall not be infringed", which are an absolute prohibition upon control, Congress might have Constitutional recourse even though Congress could never have Providential recourse in the control of Arms.

IS THE 2ND AMENDMENT ABSOLUTE ?

An often cited argument is that none of the rights enumerated in the Bill of Rights is absolute, that is without qualification. The analogy stated is the perceived equivalent limitation on free speech from the First Amendment that one cannot "yell fire in a crowded theater" when no fire exists. The advocates of such logic forget that one does have the right to "yell fire in a crowded theater" if the theater is indeed on fire.

These non-absolutist advocates liken their gun control schemes to the above mentioned limitation on speech. However, equating the limitation on the place and manner of using a word to the ban of ownership of particular firearms is invalid. In order for the two arguments to be equal Congress would have to ban the use of the word "fire" or some other similarly asinine action.

A much more equal comparison to restricting the manner and place in which words may be used would be the restriction of where and when one could use a firearm. Extensions beyond simply restricting the place and manner of use are not valid for either the First Amendment, the Second Amendment, or any other Amendment.

While the Courts continue to support the right to free speech, in many instances, these same courts have attacked the Second

Amendment by supporting restrictions on ownership. AS one can see from the above analysis, these bans on ownership ARE NOT equivalent to the prohibition on the place and manner of use of words.

One can use the word fire in many different places and in many different manners. Similarly, one may legitimately use an Arm in many places and in many different manners. So while the government may restrict the use of dangerous words or Arms to provide a measure of safety for the public, the government may not make a ban on the "ownership" of any word or words or Arm or Arms.

The Second Amendment is absolute in its restriction against banning the ownership and carrying of Arms. The only action that the government can take is to restrict the use for safety's sake, taking into account that there are exceptions to every rule.

TO WHOM DOES THE RIGHT TO SELF-PROTECTION BELONG?

We often look at the right enumerated in the Second Amendment as being exclusively an American right. The truth is that the right to self-preservation/protection is a natural right which comes from God. This right knows no artificial state or country boundaries. While Americans can count their blessings that the Founding Fathers had the courage to place this right in our Constitution, all other peoples of the universe should not give up their God-given right without a battle, be it in the election booth or elsewhere.

The reader may notice that the author slipped into intent in this particular essay. This is due to the fact that this was one of the first essays written. However, an understanding of the words of the Second Amendment are shown in this essay to substantiate individual ownership of Arms through both intent and the naked text.

For Whom? and what type of Arms?: Two questions the Framers would never have asked

The claim that the Framers of the Second Amendment had limited weapons in mind when the amendment was made of the Constitution have totally ignored the de facto standard understanding of the Constitution as a developed document whose framers were intent upon correcting the errors and flaws of the documents of England. The right to keep and bear arms in England was often restricted not only to whom the right belonged but also to what arms could be kept. Since the Framers disagreed with how the right was governed in England, their efforts were to assure the right not be violated in America. Thus the phrase "shall not be infringed" was used to state emphatically that the right to keep and bear arms was absolute. In correcting the limits of the English law, the Framers also used the word "Arms" placing no restriction upon the type of arms, notice the word used is NOT firearms but the more encompassing "Arms", and no statement as to suitability of the arms to any particular use. The Framers were fully aware of the breadth of armaments available in their time and having been through the early arms development knew all too well that arms of the future would become more powerful and more devastating. A study of arms development shows that many arms thought to be modern were conceptualized centuries ago.

The same point of view is maintained throughout the Bill of Rights. The actions of the Framers were directed at correcting weaknesses known to exist in the English Bill of Rights and common law. Their work resulted in the American Bill of Rights. A revolutionary, inciteful, radical list of unalienable rights that NO government can legitimately violate.

The Courts, including the Supreme Court, who have tried to read into the Bill of Rights limitations do so in the same manner that the King and Nobility of England did to their documents more than

200 years ago.

When the Supreme Court gave police the automobile exclusion, decided in 1925 under prohibition and gangsters, they side-stepped the fourth amendment by taking the probable cause clause out of context. The stop and search rulings of today are no different than the general warrants of merry old England which history proves were the reason the Fourth Amendment was written. Only today, the general warrants carry the signatures of the supreme Court, the body that supposedly protects the people, now an aristocracy deciding like demigods the meaning of the Constitution, a document written in simple plain English with no hidden meanings or agenda.

The Fourth Amendment of the Constitution of the United States of America

The Fourth Amendment of the Constitution is one of the protections of the citizens of this country against the theft of freedom.

Article IV.

"The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The supreme Court has at its own discretion eviscerated the Fourth Amendment. The claim through invalid interpretation is that there can be reasonable, warrantless searches. The Fourth Amendment is not written in legalese requiring interpretation. The language is direct and to the point and covers two separate but linked ideas. Absolute clarity can be found in Rawle (1829) which is available at: HTTP://www.zianet.com/drbill/govnmt/readings.html

The first clause of the Fourth Amendment sets forth an individual right of each person to be secure in his/her person, house, papers, and effects, against unreasonable searches and seizures. There is no mention of what constitutes an unreasonable search so one must look to the following clause and to historical evidence as to the types of search the Framers deemed unreasonable. The evidence points to those searches which were made under general warrants and writs of assistance as being unreasonable. This same line of reasoning, coupled with the second clause, would cause one to conclude that ALL searches without a proper warrant are unreasonable. The formation of the second clause provides direct

evidence that this is the only proper understanding of the first clause.

The second clause is the restrictive clause which applies to the government. The Second clause explicitly states that "no Warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." It does not say that a search may be conducted with probable cause. The exclusions developed by the Courts are theft of power under "good 2 intentions" or under the predilections of the judges to decide how everyone else should behave. As I have said time and again, there is no good intentions clause in the Constitution.

The history behind the Fourth Amendment is that the government in England was issuing general warrants which contained no information. These warrants were served at the will of those carrying the warrant upon whomever it was so desired. No discussion of warrantless searches has come to my attention. The Framers of the Bill of Rights, desiring to protection the citizens of the United States from similar violations of rights, added the Fourth Amendment.

The federal government in its ever increasing desire to fight crime, a power not granted to the federal government generally but only in specific instances, has usurped police powers from the States. The Courts have been accessory to the theft of power by the federal government. By taking the "probable cause" clause out of context, the federal government AND the Courts have violated the historical basis, intent, and written word of the Fourth Amendment. Once again the attack has been through "good intentions". But unrestrained power brings about attacks on the citizenry, making many who are not criminals, criminals. These supreme Court decisions which allow for warrantless searches and seizures are based wholly on a lie. The Fourth Amendment states emphatically that "no Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describ-

ing the place to be searched, and the persons or things to be seized." The Fourth Amendment in no way states that a reasonable search may be conducted without a warrant being first issued. The "probable cause" clause is intimately tied to and requires a warrant. There can be no "probable cause" search and seizure WITHOUT a warrant. The only reasonable search and seizure involves the issue of a warrant prior to and not based upon a search. These protections apply to all property not just a home. The stop and search programs implemented by state and local police violate the Fourth Amendment regardless of any supreme Court decisions. Even the supreme Court cannot make legitimate that which is repugnant to the very core of the Constitution of the United States.

The Framers had the equivalent of the today's automobile in their carriages and horses. A person, his papers and effects do not stop being protected outside a house. Even when moving about the country traveling between states, the fourth amendment is still active. Changes in methods and things does not alter or leave behind the protections of the fourth amendment. The Courts often use a claim that the framers could not have foreseen changes when it suits THEIR (the Courts) needs. When these comparisons provide support for the courts desires, the courts often state that the Framers couldn't have known about such and such as thus could not have meant for this particular clause to be that inclusive.

The supreme Court has developed tests which allow law enforcement officers to use probable cause to stop and frisk "suspects" based upon profiles and experience. The court cases in which the supreme Court has expressed approbation of these practices are equivalent to the general warrants and writs against which the Framers of the Constitution were protecting the people. There is no difference between a piece of paper marking a court decision which allows the violation of the right of the people to be secure in their person, houses, papers, and effects and a general warrant or writ of assistance issued by the British. Both are legal documents which allow officers to search and arrest individuals on

mere suspicion. In America, the supreme Court has taken general warrants and writs of assistance to a new high and violated the direct meaning, historical sense, and intent of the Fourth Amendment.

The Fourth Amendment and its history stand up against the current trend in American Justice. If you are willing to accept these intrusions in the name of justice when the intrusions are visited upon another, then you can have no recourse when similar intrusions are visited upon you. One cannot pick and choose for whom and how the protections of the Constitution and in particular the Bill of Rights apply.

Some of the allowances made for state and local law enforcement officials are based upon the invalid determination by Chief Justice Marshall in Barron v Baltimore (1833) wherein the Bill of Rights was decided not to be applicable to the states, a decision 180 degrees out of phase with Rawle and the legal teachings of the time. A weaker version of the Bill of Rights is claimed to exist in the form of the Fourteenth Amendment. However, careful study of the Fourteenth Amendment shows that only privileges and immunities are covered and extended and that states may not treat one individual differently from another. There are no protections equal to those in the Bill of Rights in the Fourteenth Amendment. Berger (1996) takes all fourteenth amendment adjudication and proves it invalid.

Marshall's decision was directly repugnant to the supremacy clause and the Constitutional guarantees of republican form of government for each state. A republican form of government could not and cannot be maintained if the rights in the Bill of Rights are not restrictions upon all governments (See Rawle, 1829 for evidence to the contrary of the current judicial claims). The Framers understood by including the Bill of Rights in the Constitution, the supreme Law of the Land, that all subsequent states would be required to guarantee their citizens the same basic, natural rights the Framers believed to be inalienable and wholly

necessary to a proper government. Without the Bill of Rights, each state would have been open to making its own decision concerning natural rights.

Current events have led to a Supreme Court case wherein the state of Wisconsin wishes to exercise no-knock entry in all cases. If no-knock is not a violation of the prohibition against unreasonable searches and seizures, then there can be no search and seizure which is considered unreasonable. Is it not 4 unreasonable to have your door kicked in and your family held at gun point? There have been numerous instances where the police acting in good faith have come to the wrong house. It's too damn bad that the police are afraid that evidence will be destroyed. That's life.

These laws are requested and passed in the guise of good intentions. The primary goal is to fight the war on drugs, a war built on laws which violate the Constitution. In 1918, America and her government replaced a world war with a war on a drug, alcohol. At that time, the Congress understood and recognized that the Constitution does not grant the power to ban things. An amendment was necessary. What has changed today? Nothing but the perception of those in Congress who believe Congress is omnipotent. Congress and the Courts today believe they understand the Constitution better than those who framed it. Interpretive methods are used under the claim that the Constitution is a living document that changes with the needs of the people. WRONG!. The only change allowable under the Constitution is amendment NOT interpretation. Two wrongs do not make a right!

The Fourth Amendment
Article IV.
"The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to

be seized."

Federalists and those who have been corrupted by the desire for power see the words unreasonable searches and seizures and decide that there can be "reasonable" searches and seizures with out warrants. I see the amendment and understand it to mean that no search or seizure can be made without a warrant and that no search or seizure can be unreasonable even with a warrant. The right to be secure against unreasonable searches and seizures is an absolute protection against government intrusions. A review of Story will point out the flaw in their reasoning even in the Courts of England of the 17th century. At that time, names warrants without proper descriptions of the place to be searched and things to be seized were ruled illegal. Can we be any less civilized today ?

There is absolutely NO allowance of warrantless searches and seizures. In order for the warrant requirement of this amendment to be independent of the rest of the amendment it would need to be separated by periods or colons. The supreme Court decisions stating otherwise are simply abrogations of the restrictions herein described. This amendment does not allow for "reasonable" searches or seizures without warrants. The warrant statement is not qualified to only unreasonable searches by the wording. The statement concerning unreasonable searches and seizures is absolute and is not limited to the designs of the Court and its 5 opinions. Since the Constitution is silent upon "reasonable" searches, the power is not granted to the federal government.

Check out Boyd v United States 116 U.S. 616 Suit brought for a penalty under the customs acts. The law provided that the prisoner must produce an invoice in court for the inspection of the government attorney or else be taken to confess the offense. This was held to be a violation of this amendment. It is equivalent to compulsory production of papers, and it violates a subsequent amendment in compelling the accused to produce evidence against

himself. Spies v United States 123 US 131 under similar circumstances held the amendment applicable only to Congress.
Constitution of the US, John Randolph Tucker, LL.D., Vol II., Sec. 329., Pp. 672-673.

The ugly monster created by Chief Justice John Marshall rears its head once again. His error in claiming the Bill or Rights as applicable only to Congress still is a violation of the supremacy clause of the Constitution.

Tax Reporting:
The federal requirements to report income, etc are in violation of the fourth amendment of the Constitution. Although the government supplies the papers, the information to be placed upon them is private and of none of the government's business. Regardless of the laws passed by Congress, Congress has no power to require all persons to surrender their rights to their papers an effects. Throughout history, papers and effects have included ALL information about an individual. These are protected and the ONLY constitutional way the government can have access to these papers is either through direct permission of the individual or under the auspices of a warrant issued with sworn testimony.

As can be more fully understood after reading Berger (1996), the Courts of the United States have continually violated the spirit and letter of the Constitution. Predilections of the judges and not the law have reigned. While Berger attributes these predilections to more recent events, the truth is that judicial predilections began early on with Marshall's ruling in Barron v Baltimore being one of the earliest.

The Fourth Amendment
The General Principles of Constitutional Law, 1899, 3rd Edition.
Civil Rights, Section. II, Pg. 229-232
Judge Thomas M. Cooley.

"Unreasonable searches and seizures. — The fourth article of the amendments has in its view invasions of right which are more frequent, and of which others may be guilty besides those who command the military force of the State. Most commonly, perhaps, they consist in a disregard of that maxim of constitutional law which finds expression in the common saying that every man's house is his castle. The meaning of this is that every man under the protection of the laws may close the door of his habitation, and defend his privacy in it, not against private individuals merely, but against the officers of the law and the state itself. The amendment declares that "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." The latter clause of the amendment sufficiently indicates the circumstances under which a reasonable search and seizure may be made. First, a warrant must issue; and this implies, (a) a law which shall point out the circumstances and conditions under which the warrant may be granted; (b) a court or magistrate empowered by the law to grant it; (c) an officer to whom it may be issued for service. Second, a showing of probable cause; by which is meant the production of satisfactory evidence to the court or magistrate, (a) showing that a case exists in which the issue of a warrant would be justified by the law; (b) pointing out the place to be searched, and the persons or things to be seized if they shall be found there. Third, a particular description, in the warrant, of place, person, or things sufficient to guide the officer in executing it. Nothing less than this can be sufficient.1 The law providing for search warrant should be limited to cases of actual crime, in which

the thing which was the subject or the instrument of the crime, or the supposed criminal, is concealed, or supposed to be concealed, on individual premises. The following are the most frequent cases: for property stolen, and the supposed thief; for property brought into the country in violation of the revenue laws, and the supposed smuggler,; for implements of gaming unlawfully kept; and for liquors unlawfully stored for sale. No doubt the right of search may be extended by statue to other offences; but any search to obtain evidence of an intent to commit a crime can never be legalized.2 The warrant must be executed by a search in the very place described, and not elsewhere; the service should be made in the day-time, and without the presence of a crowd of people;3 and the subject of the search must be brought before the court or magistrate, to be disposed of according to law.4 If the officer obeys the command of his warrant, and is guilty of no excess or departure, he is protected, even though the search proves to be fruitless and the showing of cause unfounded. Without a search warrant the doors of a man's dwelling may be forced for the purpose of arresting a person known to be therein, for treason, felony, or breach of the peace, or in order to dispossess the occupant when another, by judgment of a competent court, has been awarded the possession. In extreme cases this may also be done for the enforcement of sanitary and other police regulations;

1 Bishop Crim. Procedure SS 240-246 See West v Cabell 153 US 78 2 Wilke's Case,
2 Wils 151 and 19 State Trials 1405; Broom, Cont. Law, 613; De Lolme, Const. of England, ch 18.
3. 2 Hale, P.C. 150; Arch Cr. Law 7th ed, 145.
4. Fisher v MsGirr, 1 Gray (Mass.) 1; Green v Briggs, 1 Curt 311; Hey Sing Jeck v Anderson, 57 Cal. 251.

but, in general, the owner may close the outer door against any unlicensed entry, and defend it even to the taking of life if that should become necessary.1 The protection of the Constitution is not, however, confined to the dwelling-house, but it extends to one's person and papers, whereever they may be. It is justly

assumed that every man may have secrets pertaining to his business, of his family or social relations, to which his books, papers, letters, or journals may bear testimony, but with which the public, or any individuals of the public who may have controversies with him, can have no legitimate concern; and if they happen to be disgraceful to him, they are nevertheless his secrets, and are not without justifiable occasion to be exposed.2 Moreover, it is as easy to abuse a search for the purpose of destroying evidence that might aid an accused party, as it is for obtaining evidence that would injure him, and the citizen needs protection on the one ground as much as on the other. Even a search-warrant to seize private papers, letters, and memoranda, must by wholly unwarranted, except possibly in cases of frauds upon the revenue, where the papers to be searched for have been the agencies or instruments by means of which the frauds have been accomplished or aided.3

1. Bohannon v Commonwealth, 8 Bush (Ky.) 481; Pond v People, 8 Mich. 150

2. Cooley on Torts, 2nd Ed. 346.

3. The seizure of the papers of Algernon Sidney, which were made use of as the means of convicting him of treason, and of those of Wilkes about the time that the controversy between Great Britain and the American Colonies was assuming threatening proportions, was probably the immediate occasion for this constitutional provision. See Leach v Money, Burr 1742; s.c. 1 W. Bl. 555,19 State Trials, 1001 and Broom Const. Law 525; Entick v Carrington, 2 Wils. 275; s.c. 19 State Trials, 1030, and Broom Const. Law, 558; May, Const .Hist, ch. 10; Trial of Algernon Sidney, 9 State Trials, 817.

This whole matter is learnedly and elaborately discussed in United States v Boyd, 116 US 616, where the question arose upon a revenue statute providing that in case of an action against an importer a certain paper should on notice be produced by him, or its contents as stated by the district attorney should be taken as true. The court considered the statute bad as violating the spirit of the prohibition of the Fifth Amendment against compelling a

person to be a witness against himself, as well as that of the Fourth against unreasonable searches and seizures. It held that a compulsory production of papers to establish a criminal charge or a forfeiture of property was illegal whenever a search and seizure would be; that such compulsory production or search and seizure to get evidence of a crime is unreasonable, and differs utterly from a search for stolen property. Compare State v Griswold, 67 Conn. 290."

The Automobile Exclusion: Just One of Many Unconstitutional Acts of our Illustrious Supreme Court

Just what makes an automobile so different that the Court care decide that there exists an exclusion to the fourth amendment's absolute prohibition on searches and seizures without warrants. The truth behind the apparent paradox of the Fourth Amendment's prohibition on warrantless searches and seizures and the Court's granting of the automobile exclusions is that the Court has still not held the actual Fourth Amendment to bind the states. But how, you may ask, can this situation have arisen?

The starting point was with the 1833 decision of the Court in Barron v. Baltimore that the Bill of Rights did not bind or apply to the States but were only binding on the federal government. The Court also holds the view that the powers granted by the Constitution are unlimited within their realm. In reviewing the power to regulate commerce and combining this with the statement restricting Congress from prohibiting migration and importation until after a specified date, the Courts have held the opinion that Congress can control people through this grant of power. The position of the Court is that the federal government is supreme within their sphere of powers. The Court has, however, ignored the relative position of the Fourth Amendment and its modification of the Constitution, including each and every conflicting grant of power. This is to say that the protection of the Fourth Amendment supersedes and restricts Congress' power to regulate commerce and the implied power to control migration and importation of persons. All Congressional legislation must include conformity with the Fourth Amendment and not the Fourth Amendment as the supreme Court views it but the Fourth Amendment's own naked text.

Why did the Court manipulate the law so? Part of the answer is

that they didn't have manipulate it because the Barron v. Baltimore case where the Court decided that the entire Bill of Rights did not bind the States cleared the way to Court derived controls. The other part of the answer lies in "Salus populi suprema lex" wherein those in power expand their powers by claiming that they are doing so only for the public good and safety. Thus the Court in "fighting crime" has allowed exclusions from the absoluteness of the Fourth Amendment to protect us from ourselves.

The Exclusionary Rule - A Case of Stolen Power

The Exclusionary Rule is a rule promulgated by the supreme Court setting the conditions of acceptable evidence gathering. This rule arises because, at times, evidence is gathered "improperly" by law enforcement. This rule sets down what is proper and what is improper, and the admissibility of that evidence in our courts.

The weakness from the people's point of view or strength from the Court's point of view of this rule is that the Court itself has caused this rule to be required. That is in making other determinations concerning "unreasonable searches and seizures", the Court has forced the issue so that they must exercise a power to control those who would gather and introduce evidence in our courts and in so doing the Court exercises control over the people. The judicial practice of selective incorporation is the core reason for the existence of the Exclusionary Rule.

In actuality, the Fourth Amendment provides law, rather than a rule, by which law enforcement is to behave. This law requires all government agents to follow a set pattern in order to obtain evidence. The initial restriction of the Bill of Rights, and in particular the Fourth Amendment, by Marshall in 1833, brought the issue of improper evidence gathering to a beginning.

Prior to Barron (1833), the protections of the Bill of Rights covered both federal and state and local governments. Following Barron, state and local governments were no longer bound by the restrictions of the Bill of Rights unless such rights were enumerated in the individual state constitutions. During the 1920s and 1930s, the Court, using the Fourteenth Amendment, began to reapply the rights associated with the Bill of Rights to the states. The Court DID NOT incorporate the Bill of Rights only the concepts based on the Court's view. The rights from the court are

not as extensive nor as absolute as those of the Bill of Rights. Thus was borne the need to control the enthusiasm of law enforcement in gathering evidence.

Now, the issue would have been moot had the Court simply held that the rights in the Bill of Rights bound all governments. The Fourth Amendment, as well as the others, provide absolute restrictions on government infringement. In the case of the Fourth Amendment, there is only one reasonable form of search and seizure, that is WITH and under a properly obtained warrant. And what is a properly obtained warrant. That too is spelled out unambiguously under the Fourth Amendment.

A warrant, to be proper, must be issued upon a showing of "probable cause" which is accompanied by an oath or affirmation. Within a proper warrant, the specifics MUST be stated. This is to say that a warrant issued without naming the place to be searched and the person and/or things to be seized is invalid. A blanket warrant to look for evidence is not legal under the Constitution of the United States. Cooley states it best when saying that it is just as easy for searching officers to destroy evidence of innocence as it is to "find" evidence of guilt.

The Courts have screwed this one up because they, rather than follow the Fourth Amendment, created a compromise protection under which they, the Court, were able to keep the power they had stolen early on. The Courts pulled the probable cause phrase out of context and now use it to allow warrantless searches. Again this is because in the US, the Fourth Amendment and the Bill of Rights still do not bind the states. Only the crumpled and restricted rights authorized by the Court bind law enforcement and the Courts can alter the restrictions are their whim.

Why has the Court done this? In my best guess, the restricted version of the Fourth Amendment was developed because the Court recognized the absoluteness of the original Fourth Amendment. Its absoluteness retains the power for the people and places

government agents on proper behavior or the evidence they gather is of no use. The Court decided that fighting crime, i.e. "Salus populi suprema lex," was more important than protecting individual rights against the government. And the Court is part of the government, its members appointed and under the final control of the other branches. The use of the Court's created, imaginary "selective" incorporation scheme retains the power which they gained through such decisions as Barron (1833) while providing some semblance of protecting the rights of the people against intrusions by the government. However, the Court have left sufficient "holes" that the government can abuse the citizens and still proclaim "proper" conduct.

Under the Courts scheme, "probable cause" takes on a life of its own. Police need only "probable cause" to stop and question individuals. This "probable cause" may also be used in specific situations to obtain evidence of wrongdoing. The Courts decided form, however, conflicts with the direct and unambiguous wording of the Fourth Amendment, as well as the historical evidence against general warrants. The Fourth Amendment restricts "probable cause"

Around 1925, the Courts made the incredulous decision that there existed an automobile exclusion to the protections against unreasonable searches and seizures. This is ridiculous and fallacious. The Framers had the equivalent of the automobile in their carriages and within the Fourth Amendment and ALL the rest of the Constitution, they provided no exemption from the protections against "unreasonable searches and seizures". The Court then looks at "unreasonable searches and seizures" and attempts to develop their own definition of reasonable. The Fourth Amendment has beat them to the punch. A reasonable search and seizure requires a warrant and no search and seizures conducted without a warrant is reasonable. Within the Court's definition, a reasonable search and seizure can occur if the agent of the government has "probable cause". One can readily see though that probable cause is required to obtain a warrant and thus we come full circle

around to the fact that a reasonable search and seizure requires a warrant and a warrant requires probable cause with supporting evidence and specifics.

The blanket search of a place or thing for evidence of a crime violates the Fourth Amendment's requirement for specificity. The Court has used their power to shoot holes all through the absolute restrictions of the Fourth Amendment because this allows the Court to exercise great power over the people. Adherence to the Fourth Amendment would hamstring the Court and the police since they could no longer simply "inspect" for evidence of a crime.

One case is searching an automobile for illegal substances. Now this is not only a violation of the Fourth Amendment, it is also a violation of the Fifth Amendment's self-incrimination protection. No search is legal which does not occur under a warrant which contains the specifics of the place to be searched and the items/ persons to be seized.

Still today, the Fourth Amendment binds only the federal government. The incorporation doctrine has not altered this. The lack of applicability of the Bill of Rights to the states has been used to control the people. Why? Simply because of power. The Court stole power and once in their hands the subsequent courts have refused to return the power to the people. This is as it has been said throughout history. Once power is gained only extraordinary efforts will return the power to its rightful owners. Judges, just as other officials, need, want, and revere power. And power exists to be sought after, to be demonstrated, and to be expanded upon!

Forced Transaction Reporting

The required reporting of all transactions, i.e. reports of the transfer of monies exceeding a specified amount and including all W-2 and 1099 forms, is a violation of the fourth and fifth amendments. Penalties which are assessed without judicial determinations of guilt violate the bill of attainder clauses of the Constitution. These reporting regulations can be categorized as general writs and writs of assistance, both recognized to have been prohibited by the Constitution. You may read more about writs in the essay on the fourth amendment and in the Oxford Companion (1992).

The sixteenth amendment gave the Congress the power to tax incomes without regard to apportionment, source, or census. But, and this is a big but, Congress was not given the power under this or any other clause in the Constitution to pass laws which were in violation of the prohibitions of the Constitution. The fourth and fifth amendments' protections are broad and general. The words as well as intent of the Framers were to correct the abusiveness of the English system. This could only be accomplished by absolute restrictions on the newly formed government.

The fourth amendment protects against all unreasonable searches and seizures. According to Rawle (1829), and I point out that there have been no modifications of the Constitution with respect to the topic herein discussed, the meaning of an unreasonable search and seizure is one without a warrant. Warrants can only be issued upon probable cause, i.e. evidence that wrongdoing has occurred. There are NO reasonable searches which do not have a warrant. The belief that probable cause allows for warrantless searches and seizures is a fabrication of the legal community during this century. Thus, for the government to have access to the information contained in W-2s, 1099s, transaction reports over a certain amount, and all other required federal reports, the government would need a warrant issued by a court specifying the

reasons. General writs as that which is issued currently requiring these reports are unconstitutional.

The government has no legitimate business in conducting unreasonable searches of our papers. In protecting the people from the government, the Constitution does not specify private papers only papers, the implication of which is that ALL papers are protected against government intrusion without a warrant first being issued following a show of probable cause, i.e. the government must have evidence of guilt before having access to the papers. Under our current system, the government has access to papers BEFORE probable cause has been shown and BEFORE a warrant can even be issued. This is patently unconstitutional.

And, under the fifth amendment, one is given immunity from providing information which would incriminate one. US v Boyd (1869) determined that the requirement to produce papers 2 which might provide evidence of guilt violated the fifth amendments protections. Again, unless the government can build a case and properly obtain a warrant showing probable cause, the papers are not subject to being turned over to the government.

The propositions that formed our government were based upon the honesty of the people. The government has, however, determined that it cannot trust the people and has thus created improper reporting requirements. None of the amendments of the Constitution have altered the breadth or the restrictions on the government's legitimate powers. Our government following upon their interactions with a few have decided the guilt of the many. The Congress have passed laws which if properly challenged would not stand in any legitimate, honest court.

US v Boyd decided that the required production of papers which results in criminal prosecutions violates the fourth amendment's protections against unreasonable searches, meaning ALL searches without a warrant, and the fifth amendments protections against self-incrimination. Thus unless the government can prove wrong-

doing or at least sufficient evidence for a warrant to issue, the government is restrained in its ability to pry into the affairs of the people. Whether the courts agree or not, the above statements are correct. In legislating required reporting to the government departments, the government has surpassed its legitimate duties and violated the people's trusts which were granted through the Constitution. In addition, the legislation which has been passed to require the reporting of such information carries with it the underlying implication of wrongdoing. If no wrongdoing was assumed the government could not justify the need for such information. Those in power assume that because some in society will violate its laws that all persons are guilty. Legislation which decides or implies guilt without judicial review falls under the prohibition on Bills of Attainder or more specifically in the case of only the confiscation of property, under Bills of Pains and Penalties. One should look into the Webster Hubbell case of 1998 for a current opinion on this issue.

Congress passes much of their legislation under the guise of commerce but a review of the essays on the commerce clause will prove this to be invalid. Claims that specific actions affect interstate commerce are indirect attempts to steal power. The Congress is not empowered to do by indirect means that which it is not granted the power to do by direct means. This last statement is the core of the necessary and proper clause of the Constitution. We live in a century where the government has usurped powers like a sponge soaking up water. These thefts have either gone unchallenged or when challenged the courts have been reticent to decide the case or have, using their own moralities, decided that alter the direction of society through "Government by Judiciary" (Berger, 1997). Please read the essays on interpretation and other topics to extend your understanding of these violations of the Constitution.

One additional point is that like all other amendments of the Constitution the Fourth amendment supersedes any and all prior

conflicting clauses. Thus the tax powers, commerce powers, and other powers ,having come first, are modified by the restrictions of the Fourth amendment. Another point is that the various branches of the federal government are content to read THEIR grants as broadly as possible while reading the restrictions, i.e. the people's rights, in as restricted a view as possible. This method is both 1) discriminatory and 2) contrary to the attitudes and ideas of the framers who looked at government as a necessary evil which was limited to specific powers and under the control of the people and who held the individual as the source of all power in society. Thus the framers would view the granted powers as restricted and the rights as unrestricted.

The Unlawful Seizure of Assets

The due administration of justice in our society depends on the protections afforded to us as individuals through the hard fought battles of our founding fathers and all the revolutionaries gone before them. These natural rights are partially presented as an enumeration through the section of the Constitution commonly called the Bill of Rights. These rights are not granted by the Constitution, as those ignorant of the history of the document believe or suppose. The relative importance of each is not determined by position within the Bill of Rights but each is equally important as all others.

Ben Franklin is often quoted as having said that "they that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety." Americans have become complacent in their acceptance of governmental restrictions and intrusions into private lives through the usurpation of power by our elected servants. How relevant are Ben's words today !

One area of great concern is that of confiscation of private property. The Constitution of the United States places great restrictions on the right of governmental bodies to take private property for public use through the "Fifth" amendment.

Article V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Why is it that Americans accept the unconstitutional process of taking private property without just compensation? The reason the people accept this abuse of power is likely due to 1) ignorance of the Constitution and 2) for those who seemingly understand the Constitution, an incorrect interpretation of the last clause of the "Fifth" amendment of the Constitution.

Reading Blackstone one finds the idea of asset forfeiture arising from the common law of England. Blackstone states that property ownership is a privilege of society conveyed upon a member of that society. If said member violates society's laws then the assets may be seized and forfeited back to society. I find this position indefensible in anyone who believes in natural law. If God created the universe, the Earth, and man, then property comes from God and not from society. Before society, individuals settled upon property, obtained tools and other necessities of life. The concept raised in Blackstone appears to develop out of the Sovereignty of the King, as owner of all, rather than from natural law.

But why would rights to life, etc. be considered God-given rights and rights to property be considered not rights but privileges of society? Did Blackstone and more importantly, the King, not claim power through grants from God? Did not God create the Earth and Heavens and man, placing man on Earth and thus grant the Earth to man for man's property? Could the common law practice of forfeiture based on the property ownership arising from society be simply an excuse to justify England's empire building policies wherein the English colonized much of the world, stealing the land and property of the indigenous peoples under English common law? It is highly likely that this IS the basis for the English common law attitude. How else could a supposed God-fearing nation come to new lands, often lands where "society" did not exist, and steal the lands and property of those indigenous inhabitants? The common law basis of property ownership being a privilege of society was simply justification for theft.

In America, there is no King. The concept of property as being a privilege of society through the Sovereign has been continued but has no basis to one who follows natural law. IF and ONLY IF one concedes that all things come only through the exchange of monies then one might show that indeed property emanates from society. But one must ask what about the individual who creates usable items from that which is naturally upon Earth? Does society own the Earth or does nature? Did God not create the Earth, and Heavens, and Man? For those who are strict evolutionists, did not the "Big Bang" create the heavens and Earth and did not man develop out of a primordial ooze long before any society formed?

The Founders utilized asset forfeiture but only for certain cases and within the body of the Constitution the Framers prohibited some of the harsh actions taken in England, i.e. corruption of blood. There are six methods of interpreting the Constitution, three are strictly subjective. The use of subjective "interpretations" of the Constitution violate the very existence of the document. The Constitution is not open to interpretation, especially when that interpretation is used to prove the validity of a law, which on its face value violates the direct meaning of the words of the Constitution. The only use of such "interpretations" is to transfer power to the beneficiary of the interpretation.

I have shown in another section the reason why even the supreme Court cannot interpret the Constitution. I direct the reader's attention to that section for a better understanding of the limitations of the power of the supreme Court.

The Constitution provides the power to regulate commerce and to punish violations such as when goods are smuggled into this country in its taxation and fines sections. However, the extent of the punishments that may be handed down are limited. Should someone be caught smuggling goods, criminal and civil sanctions are allowed. However, the Fifth and Eighth Amendments limit the extent of monetary punishments. The original taxes due upon the

goods as well as fines, which are not excessive, may be taken BUT all the goods cannot be seized without just compensation. The seizure of all the assets violates first the Eighth Amendment as an excessive fine and secondly the Fifth Amendment's requirement that just compensation be rendered for private property taken for public use. Reading Story, the Fifth Amendment's protections of property are absolute.

The primary usurpation of this power is under the guise of Drug Control, but there are many other instances where state, local, and federal government entities illegally confiscate property. When communities approach the condemnation of private property for public use such as in the conversion of residences into roadways, just compensation is generally part of the resolution. However, these same communities sidestep the issue when it comes to converting private property taken during the course of police actions. Again, I quote myself: "There ain't no good intentions clause in the Constitution'"

One must recognize the punctuation and independence of the various clauses of the Fifth Amendment. The According to Webster, the semi colon, ";", is a soft period. Therefore, in the "Fifth" amendment, the last clause is separated from the body and from the "due process" phrase as a stand-alone statement. The "due process" phrase applies in that the proper legal process must first be applied but the final clause itself limits the ability of government to take ANY private property without "just compensation" regardless of "due process".

Justice Joseph Story, LL.D. in his 1833 Commentaries on the Constitution of the United States, wrote a separate paragraph dedicated to this single phrase. His words follow.

"1784. The concluding clause is, that private property shall not be taken for public use without just compensation. This is an affirmance of a great doctrine established by the common law for the protection of private property. It is founded in natural equity, and is laid down by jurists as a principle of universal law. Indeed,

in a free government, almost all other rights would become utterly worthless, if the government possessed uncontrollable power over the private fortune of every citizen. One of the fundamental objects of every good government must be the due administration of justice; and how vain it would be to speak of such an administration, when all property is subject to the will or caprice of the legislature, and the rulers."

Justice Story's final statement in this paragraph places the final phrase of the "Fifth" amendment in perspective.

Whether the history of our legal decisions on this final clause of the "Fifth" amendment agree with the above interpretation or not, the truth as evidenced in Justice Story's writings should not go untold. The American people have unjustly allowed the usurpation of the power to confiscate property without just compensation for too long. Even though there is a desire to punish those who profit from illegal activities, the power of confiscation unchecked threatens even those who have not yet violated society's law and who allow these unconstitutional practices to continue. Where does one draw the line? Who will draw the line? When will YOU become involved?

There is no mention of the extent of the power of eminent domain in the "Fifth" amendment. Therefore, as the Constitution is a document of granted powers, one must determine that "eminent domain" may be limited by this amendment and by the final phrase. Supreme Court cases (Berman v Parker, 1954; Hawaii Housing Authority v. Midkiff, 1984) have found that the subphrase "taking private property for public use" applies to all instances where such actions will aid the governmental objective. Clearly, the taking of private property as in the confiscation of homes, boats, and cars from "Drug Dealers", "Tax Cheats" or any other "criminals" falls into this category and as such are protected under the last clause of the "Fifth" amendment.

Surely, the application of reasonable fines, under the "Eighth"

amendment, and taxes, to these seizures is warranted. Through a combination of the "Fifth" and "Eighth" amendments, it should be found that the government must compensate ALL persons justly following the confiscation of their property. This means that any monies in excess of the fines must, under the "Fifth" amendment, be returned to the property owner. To control the power of the government to deprive its citizens of their fortunes, the property cannot, constitutionally, be disposed of other than for a just amount. The people must take the stand and decide that, even for those who are charged with breaking the law, none can accept any infraction against the Constitutional guarantees. Property rights cannot be traded away through legal manipulations. Governmental bodies should not be allowed to confiscate property without following the Constitutional guarantee of just compensation for all. The battle against drugs has caused many to give up essential liberty for a little safety. As the prescription to end the problem continues to grow, we will all soon deserve neither.

More recently, the Endangered Species Act has resurfaced because of its effects on private property values. Subjectively, the supreme Court justices have made the determination of what and how much a "taking" entails. This is not their place nor within their power. What fraction of value cannot be called a taking? A tenth, a hundredth, a thousandth? Can a poor individual afford the same taking as a rich one without being subjected to a greater destruction of a lifetime's labors?

Based on the foregoing interpretation of the final clause of the Fifth Amendment of the Constitution of the United States, it is this author's opinion that all owners of properties devalued by the Endangered Species Act are due "just compensation" from the federal government. The protection of endangered wildlife is of concern to all people. Those willing to sacrifice the properties of others must be willing to compensate those others for their losses. There is no subjective amount that can be equally applied in all cases. Only by setting the limit at zero diminishment can equality of treatment under the law be accomplished.

The Protection of the Fifth Amendment against self-incrimination must also apply to incrimination through fingerprints, voice prints, and all other "personal" methods of witnessing against oneself. Fighting crime DOES NOT allow the government and the 6 courts to sidestep the protections of the Constitution. Regardless of what the Court declares the protection against self-incrimination is absolute and must therefore extend to all incriminating witness. The amendment does not specify the what being a witness entails. In the case of a deaf & dumb individual the only "witness" would be fingerprints or other personal information. Thus the SC has improperly interpreted, but then again any interpretation of the Constitution is improper since the Court cannot interpret its founding documents.

The Constitution provides additional protections against the abuse of power. The framers, having suffered through abuses where property was appropriated for governmental use, placed a prohibition directly in Article II, Section 9 and Section 10. These protections are the absolute prohibition of bills of attainder. A more complete discussion of bills of attainder may be found in the essay on that topic.

In my own studies, I have found that the Founding Fathers passed legislation requiring the forfeiture of goods under various circumstances. How the tables turn when one moves from being the smuggler (arms and goods for a revolution) to being the "ruler"! While the illegal activity of smuggling is a violation of numerous laws, the words and statements of the Constitution protect even those who would engage in illicit activities. A bend in the provisions of the Constitution, no matter the intent of the bend, weakens the Constitution in all other areas, just as bending a water pipe will at some point in time cause a break which will allow all the water to leak out. Again, the ain't no good intentions clause in the Constitution.

"Eternal Vigilance is the price of liberty." - Thomas Jefferson

The Constitution of the United States A Critical Discussion of its Genesis, Development, and Interpretation

John Randolph Tucker, LL.D. (1823-1897)

Edited by Henry St. George Tucker (1853-1932)

Published 1899 by Callaghan, Chicago, IL Reprinted 1981 by Rothman, Littleton, CO

Volume 2, Pg. 598, Paragraph 292

"It will be noted that the language is that Congress shall exercise exclusive power, not absolute. The limitations upon the power of Congress, express and implied, fully apply. Congress has the power, subject to these limitations, to exercise all legislation proper to the District of Columbia. States legislate under their reserved powers exclusively within the States; but the territories ceded under this clause to the United States are subject to the exclusive legislation of Congress. It is further to be noted, that while Congress may acquire this territory for governmental purposes and the like, it has no power to exercise exclusive legislation until such territory is acquired as a matter of title to land, and is ceded by the States in which it lies as to all jurisdiction.1"

"Congress may buy property, or condemn it under the fifth amendment of the Constitution, and when acquired for federal use it is exempt from State taxation. But Congress cannot have exclusive jurisdiction for legislation except by cession from the State where the land lies.2 In the case referred to in 135 US Reports, the government had built a fort within the Territory of Kansas, and held it as being part of that Territory, subject to its control. After the admission of Kansas into the Union, the question arose whether Congress had jurisdiction to legislate within the limits of this fort. The Supreme Court decided that upon the admission of Kansas the jurisdiction to legislate passed to the State, and that Congress had never acquired the right to legislate except by the consent of the new State as to this fort so established

by Congress prior to its admission."

1 People v. Godfrey, 17 Johns 225; Fort Levenworth R.R. Co. v. Lowe, 114 US 528, 538.

2 Cherokee Nation v Southern Kansas Ry. Co. 135 US 641.

The Sixth Amendment

The Sixth Amendment of the Constitution was added so that a citizen of the United States could not be confined indefinitely and could not be tried by anyone other than those citizens of the area where the crime was committed. A major factor in providing a fair trial is that the accused is guaranteed the right to be confronted with the witnesses against him. The importance of this clause hangs on the word, confronted. In today's fight against crime, the authorities often use an anonymous tip program to bring forth witnesses. These witnesses however are kept anonymous from the accused and thus the accused cannot be confronted with the witnesses against him. The authorities may or may not be witnesses against the defendant, regardless of the position of the courts. The actual witnesses against him are those that make the anonymous tip. The authorities may after a surveillance become witnesses against the individual but the initial witness must be brought forth as state action would not have ensued without the claim of the tipster.

An individual's desire to remain anonymous should blemish the claims by the individual. The unwillingness to face an accused by those who would use an anonymous system to make claims against another must reflect upon the validity of their claims. This system does little to combat crime but widens the gaps between people. Individuals become more withdrawn from society for fear that someone they know or don't know may take an action against them. Trust is removed from the picture when one cannot rely on judgments being valid and having recourse against those who would violate that trust.

As in all crime fighting programs developed by government agencies, the actions are taken with "good intentions". But "good intentions" cannot be sufficient to violate Constitutional guarantees. For once Constitutional provisions are broached, then no Constitutional provision will withstand the onslaught.

Article VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; to be confronted with the witnesses against him; to have compulsory process of obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Subpoena power to bring in witnesses whose testimony will benefit the accused must be granted for in many instances. Witnesses may be antagonistic to the accused. Witnesses may also fear retribution by another party should they testify in court and thus the only way to protect the accused is to provide that witnesses in his favor be required to come forth.

Lastly, the Framers knew the need for Counsel for defense. Thus, the statement that all accused shall have the assistance of Counsel for defense. Most individuals do not have sufficient resources or knowledge to deal with the vagaries of the legal system. The Sixth Amendment attempt to preclude the government from trying an individual without a knowledgeable defense.

The Seventh Amendment

Article VII.

"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise examined in any Court of the United States, than according to the rules of common law."

The Seventh Amendment of the Constitution is an added protection of the right of trial by jury is all cases whether civil or criminal as conducted under common law. This amendment is a natural partner for the Sixth Amendment and other Constitutional provisions.

One must consider the buying power of twenty dollars from that time to grasp the distinctions being made by the Framers. While the amount still stands today (as an example of where our elected representatives have failed to do their duty), the buying power of twenty dollars has been dropped significantly. The issue of the right of the people to a trial by jury is preserved.

An important part of the Seventh Amendment is the statement that "no fact tried by a jury, shall be otherwise examined in any Court of the United States, than according to the rules of common law." Many would "interpret this statement as being applicable only to the Seventh amendment. This is patently invalid. The statement is merely collected into the Seventh Amendment and holds its applicability to the entire judicial process.

Common law - is basically unwritten meaning not developed from legislative processes. Common law develops in the hands of the courts and judges from rulings. Stare decisis builds from common law. Under common law, judges "decide" the law and similar cases are required to follow the same dispensation. In the US, all courts are common law courts including the supreme Court.

One of my discoveries in studying Constitutional law is that there is no guarantee of "innocent until proven guilty" within the Constitution. Due Process under law does not require that 2 one be assumed innocent. Due process simply means that the lawful proceeding were followed under rules set by law.

The idea of "innocent until proven guilty" is common law BUT in a common law situation, i.e. civil proceedings, in American courts, one must prove one's innocence. What I found troubling is that a common law practice could protect us under non-common law or criminal law proceedings but that under common law civil trials, Americans have no similar protection against the suit. In my opinion, the common law perspective of "innocent until proven guilty" should be recognized as it is in criminal proceedings.

The reader should be prepared that if the reader ever appears as the defendant in a civil trial the burden of proof of innocence lies on the defendant. Although this form of jurisprudence has developed in America, I for one believe that the people need to stand up and demand that the common law of "innocent until proven guilty" be standardized in civil actions as it is in criminal actions.

I also believe that one of the reasons that "innocent until proven guilty" is not part of civil proceedings in that the government uses civil proceeding to seize and forfeiture properties. Thus the owner must prove innocence. A question comes to mine: "Do you still beat your wife ?" A no answer implies having done so before and a yes answer is out of the question. So the "defendant" in this question has no way out when ordered to answer only yes or no.

The Eighth Amendment

Article VIII.

"Excessive bail shall not be required, no excessive fines imposed, nor cruel and unusual punishments inflicted."

The eighth amendment of the Constitution contains the oft recognized phrase prohibiting cruel and unusual punishments. This amendment is one that has not been "incorporated" under the fourteenth amendment as being applicable to the states. Please see the section on Chief Justice John Marshall and his error that has nearly destroyed America.

In England, the courts often imposed fines and/or required bails so great that the average man could not pay. In payment, the state might take the individual's property and force the individual into involuntary servitude to pay the debt. Those who could not pay the bail were left in jail or prison until their case came before the court. The Framers, many having seen the terrible effects themselves, added the Eighth Amendment to protect the common man against the vagaries of the powerful.

Just what amounts to excessive bail or is an excessive fine is relative. However, the determination cannot be a simple amount as an excessive amount to a poor man may be but a pittance to a rich man. In a democratic sense, the American system of fines and bails must be adjusted to account for the "value" of the person.

Fines must also be developed that fit the crime. The current fines for various drug related offenses are a case in point. The fines for a personal crime, possession of marijuana can approach $1,000,000.00, while the fines for a crime against society, i.e. bank fraud, may total only thousands.

The Ninth and Tenth Amendments of the Constitution

Article IX.

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Article X.

'The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

More than any other amendments of the Constitution, these two are paramount in necessity for understanding the true limitations on the federal government. These amendments of the Constitution do not require extensive "interpretation" or discussion. Their intent and meaning are quite apparent to anyone with a basic understanding of English.

Any right that the PEOPLE decide IS their right becomes a right of the people. The government is not granted the power to decide rights (See US v Cruikshank, 1876) since all rights come FROM God and all power flows FROM the people. The Framers in enumerating the rights in what has become known as the Bill of Rights selected only a few rights that were known to have been trampled upon during their lifetimes by those in power. Regardless of what men and women in power say, the protections of these rights are absolute prohibitions against government intervention, for or against. The only limits on the extent of these rights with respect to man come from God in the form of natural law. Man may create laws to deal how one man affects another man but this is because under natural law one human may not infringe upon the rights of another.

Some, ignorant of the Constitution, believe the order of the

amendments is indicative of the importance of the right. Nothing could be farther from the truth. If this was true then the original first two amendments, one adjusting the number of representatives by population and the other stating that no increase in salary for legislators could become effective until a federal election has passed (our Amendment 27), must have been more important than any of the rights enumerated in the part that passed, our Bill of Rights. The rights are coequal in importance and the position of the right in the Bill of Rights is simply coincidental. While some of the Framers and some current readers might disagree, that is their option and their opinion while what I express is mine. Let them back their opinion with logic as I have above.

A study of the backgrounds of those who came to America to settle provides the insight necessary to understand the selection of the specific rights which came to be included in our Constitution. Each section of this book on the specific amendments contains explanations of each right. Suffice it to say that governmental abuses in the old country and by those placed in power in this country were the root cause for the inclusion of these protections. Too often those in power come to believe themselves anointed by a power higher than man and come to believe in their elitist value.

The last of the first ten amendments of the Constitution is of utmost importance in understanding just how limited the power of the federal government is. If a particular power is not granted to the federal government by the Constitution, then the government DOES NOT HAVE THAT POWER regardless of the need or the desires of those elected to Congress. Members of Congress who exercise powers not granted to them are guilty of treason against the people. This includes the infamous interpretation of the inclusion of powers through implication. In my discussion of the commerce clause, I have demonstrated how the Constitution itself proves that Congress has misinterpreted the extent of their powers and stolen powers not intended for their use. Powers cannot be legitimately transferred from the people to the government by default or even through the desires of the many. One path and only

one path exists for the transfer of power, the amendment which must be approved by local representatives of the people.

So for the federal government to legitimately exercise a power, the power must be explicitly granted or must be so intimately tied as to defy separation. The enumeration of powers within the Constitution proves that intimately linked powers which are capable of being enumerated separately must be enumerated separately in order for the federal government to exercise those powers. For a state to exercise a power, it must only not be prohibited by the federal or state Constitutions. All power comes FROM the people to their respective states and to the federal government and that which is not given is retained by the states or by the people.

The Tenth Amendment was added to remind the people AND those in power of the limitations of the federal government. The amendment has failed only because the people have failed to be ever vigilant: “Eternal vigilance is the price of liberty.” - Thomas Jefferson

Right of Recall

The right of recall is not outlined in the Constitution. No remark and specifically no prohibition of recall is discussed. This is because the Constitution is a transfer of powers from the people to the newly formed government. All powers not transferred or prohibited are retained. Since the right of recall was not transferred nor is it listed as a prohibition, the people retain the right of recall of elected officials. Congress is powerless under the Constitution to limit, restrict or otherwise affect this right. The people may exercise this right should they so choose. The Constitution grants no rights but simply enumerates rights which preexist the Constitution. Man preexists society and society preexists government. Thus all rights and power belong to man and only those transferred or prohibited are restricted in exercise, i.e. see the Ninth Amendment of the Constitution.

Some, and especially those in Congress, might disagree stating that Congress is granted some power over elections but a careful perusal of the Constitution with respect to elections shows the following:

Section. 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations except as to the Places of chusing Senators.

The limits are clear. Congress may alter regulations concerning the "Times, Places and Manner of holding Elections... except as to the Places of chusing Senators". Congress has no power over elections beyond these minor controls. No other portion of the Constitution grants or restricts the rights of the people to recall an elected official.

The Tenth Amendment

Article X.

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Above all the amendments of the Constitution added by the first Congress, the tenth amendment sets the stage for understanding that the federal government has ONLY those powers granted by the people through their Constitution. Powers which are not explicitly granted or which are so intimately linked as to defy separation are granted. All others including those which may be intimately but separable are not granted regardless of the necessity of those powers to the federal government. As times change the Constitution can be modified as needed BUT only through amendment. Too often, those in the federal government have realized that many of the powers currently exercised cannot be willingly transferred and so "interpretations" are made that create powers where none exist. In too many instances, the tenth amendment is ignored by Congress, the elected officers of our government, and even the judiciary.

The Tenth amendment is bonafide, absolute proof that any power not granted is reserved. Thus extending powers through unconstitutional interpretation of the text of the Constitution is in violation of the Tenth Amendment as well as the Constitution itself. Only those powers which are irrevocably connected can be assumed as implicit under the granted powers. Stretches of words and creative interpretations are not legitimate. And powers which can be granted separately must so be in order for the federal government to legitimately exercise the powers.

Sometimes this amendment is referred to as State rights amendment but this is a mistaken understanding. Under the governmental systems in America, all power flows upward from the people to

each level of government under which the people chose to live. The people transfer powers from themselves. Powers that of necessity belong in a central government are transferred through the Constitution and amendments of the Constitution. At lower levels, state constitutions, county, city, and town charters are used by like-minded individuals to create the environment in which they desire to live. Within the boundaries of the United States, people are free to choose alternate cities, states, and locales in which to live. But in all instances, the powers transferred by the people are transferred willingly.

The minds that formed our Constitution were unequalled in their ability to understand government. This was in part because many of these same minds had participated in the framing of the Articles of Confederation. The weaknesses of this first try at forming a government were readily apparent. The framers spent numerous hours correcting the flaws they believed existed in English laws and governmental contracts and those of the Confederation. A limited body of powers were decided upon as wholly necessary for the fair function of our country. Of primary interest were powers that would guarantee that all states and all peoples would be given equal rights. Powers which had been exercised independently by states but which impacted the citizens of other states were transferred in order to reach the best possible arrangement of powers for all concerned. Those powers appear primarily in Article I, Section 8. The main Constitution includes certain restrictions on the states and the federal government. The Tenth amendment concludes the restrictions by stating that all powers not granted are reserved either to the several states or to the people of the United States.

Article X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

This is the states' powers (States have no rights) amendment. It should be noted that it is also the people's powers amendment since all powers not granted by the people of a state to the state government are retained by the people. Alternatively, the Tenth amendment can be referred to as the federal power limitation amendment. The Tenth amendment is THE amendment that places all of the Constitution into its proper perspective as a grant of powers. It is this amendment that supports the antifederalist point of view that all that is not granted is withheld. This amendment is also the most often violated by Congress and the Courts.

Quite commonly, Congress will overstep its granted powers through the use of "nexus" or links to other areas which with a stretch or even without a stretch are intimately connected to a granted power. However, as was discussed under the powers granted to Congress portion of this book, the original intent and the ratification discussions offered by those in favor of the Constitution in the 18th century show beyond a shadow of a doubt that intimate connections are insufficient to transfer any power to the federal government. Specific grants of even closely linked powers must be made as was and is the case of regulation of commerce and uniform bankruptcy laws. One cannot argue that setting the value of our coinage is also not intimately linked to regulation of commerce but once again the Framers show that intimately connected powers must be individually granted rather than simply taken for granted as having been transferred to the federal government.

Notation:
Are any of the rights as enumerated in the Constitution under the purview of the Congress or as is discussed in US V Cruikshank (1876) are these rights outside the powers of Congress ?

The Constitution specifically provides and enumerates ALL powers granted to the President by the people. Within these grants, there does NOT exist the power to safeguard information under

the guise of national security or "executive privilege". There does not exist the power to issue executive orders which effect areas normally under the jurisdiction of the Congress or the Courts.

The Fourteenth Amendment - Whoops, we stretched this one too far!

Article XIV.

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

"Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for the President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State."

"Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote

of two-thirds of each House, remove such disability."

"Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or lay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void."

"Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

Those who attempt to read between the lines of the record of the intentions of the men who wrote and offered the Fourteenth amendment before Congress cite the intent to extend the rights enumerated in the Bill of Rights to the states. But, a thorough reading of the 14th amendment of the Constitution of the United States will provide no nexus to rights as expressed in the Bill of Rights. The Constitution itself proves that privileges and immunities ARE NOT rights (see Article IV, Section 2). If privileges and immunities are rights then why did the framers CHANGE the terminology when they wrote the entire Bill of Rights. Would it have not been in keeping with the terminology of the day to have stated privileges and immunities in each of the amendments known as the Bill of Rights? No doubt that it would have but the Framers knew something that many today do not recognize or do not want to recognize. That is that rights when left under the catchall of privileges and immunities become controllable by the government. The Framers knew this explicitly from their own experiences with Parliament and the King. Thus the separation of rights from privileges and immunities was accomplished for a specific reason, to protect the rights of the citizens of the United States from the vagaries of those elected to power. If one accepts equality between the terms, privileges and immunities, of Article IV and the term, rights, in the Bill of Rights, then the rights as expressed in the Bill of Rights are binding on the States since the privileges and

immunities provided in Article IV, Section 2 would include ALL these same rights. Thus the incorporation doctrine of the supreme Court is wholly unnecessary and the Court has mislead the citizens of the United States and stolen control of our rights for themselves.

The Doctrine of Incorporation utilizes the 14th amendment to bring the protections of the Bill of Rights into applicability against the States. Chief Justice Marshall in his Barron v Baltimore (1833) opinion declared that the Bill of Rights was applicable only to the federal government. If, as the Court today asserts, privileges and immunities are equal to rights then one, John Marshall, who was there are during the creation of the Constitution would have known this and would have decided this issue differently.

During the ensuing years, many battles were fought over these rights. Following the War between the States, the 14th amendment was created and ratified. Those pushing this amendment were concerned that states throughout the United States were not reciprocating in the treatment of citizens. Thus was born the 14th amendment wherein it is stated that the no state shall abridge the privileges and immunities of citizens of the United States and that no state shall pass any law which would "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

One can only notice that the 14th amendment makes absolutely no statement pro or con concerning "rights". It was a recognized fact, as can be found finely stated in US v Cruikshank (1876), that the rights enumerated in the Bill of Rights preexist the Constitution and the federal government, come from God, and therefore cannot be legislated for or against by Congress. Chief Justice Marshall failed in his decision by ignoring the supremacy clause of the main Constitution and the guarantee of a republican form of government for each and every state.

The Constitution and all amendments of the Constitution are the

supreme law of the land. The first amendment is the ONLY amendment which is directly strictly at the Congress. While the implied intent "interpreted" from the discussion surrounding the Bill of Rights may be that the Congress was adding the Bill of Rights to keep the federal government and especially future Congresses from stealing god-given rights from the people, we must also give the Congress due credit in that they knew the supremacy clause would extend those same rights to all governments, including the state and local levels.

To believe otherwise is to impugn the intelligence and integrity of those great men who founded the United States of America. If Congress in adding the Bill of Rights had the intention of ONLY directing those prohibitions against the federal government why were not all the amendments prefaced with the statement "Congress shall make no law...".

Pure scientific logic brings one to the understanding that ONLY the first amendment (See Story on the First Amendment) was strictly federal in nature. And how better to guarantee to ALL new states, and the Framers knew that new states would be added in the future since they had sufficient foresight to add Article IV, Section 3, and the peoples of those states, the same freedoms and rights enjoyed in the original thirteen states than to make those rights part of the supreme law of the land.

Article IV, Section 4 substantiates this understanding of the Constitution in its entirety. The Framers were smart enough to recognize that a power might arise within any state and thus placed the guarantee of a republican form of government to all states within the scope of the federal government. And how better to guarantee this republican form of government than through enumeration and protection of the basic rights of mankind by the supreme law of the land, the Constitution.

The Doctrine of Incorporation is not valid. This move by the Supreme Court is simply another grab at power by a small group

of individuals following their own agenda for our country. The Bill of Rights except for the First Amendment have always and will always apply to the States under the supremacy clause of the Constitution. These same rights preexist the formation of ALL governments and are granted to man by the Creator. These rights are independent and above all governments instituted by man.

The Bill of Rights is an ALL situation. No where in the Constitution does any statement to the contrary exist. Falling back to the supremacy clause, only one conclusion can be logically reached. The rights are equal in value, applicability, and none can be encroached upon legitimately by any government.

Berger in Government by Judiciary (1996) demonstrates even further that the fourteenth amendment provided absolutely no remedy to the ills of segregation and suffrage for all peoples. Berger provides direct quotes and documented evidence that the fourteenth has no applicability to the Bill of Rights. Many will rail against this understanding of the fourteenth amendment but as is often the case, the truth hurts. This still does not supply reason to abrogate the Constitutional restrictions placed upon the court and other branches of our government. "There ain't no 'good intentions' clause in the Constitution."

Even If ——

Let us suppose for a moment that Berger's (1976, 1996) proof that the Fourteenth Amendment does not carry the Bill of Rights into action against the states is incorrect. With this supposition, one takes the current Court actions as valid and the Bill of Rights is found to bind the states following incorporation under the "privileges and immunities" clause and the "equal protection" clause of the Fourteenth Amendment. The only flaw in the Court's scheme of things is that the Court has granted itself power to determine WHICH of the rights are protected AND to what extent and with what loopholes, the Court likes to call these exceptions. True incorporation is a take all proposition. But the Court refuses to incorporate fully and textually, reserving to itself the power of "interpreting" what the Bill of Rights really means and granting rights to the people as the Judges see fit.

But we are, for the moment, assuming (got to be careful here) that what Berger states is untrue!

Thus the rights enumerated in the Bill of Rights bind the states equally as the federal government. But this is not what the Court says. The Supreme Court makes exceptions, exemptions, and decisions based upon their own predilections concerning WHICH rights should bind the States. For one, the Court has failed yet to incorporate the Second Amendment against the states thus allowing 20,000 unconstitutional laws to stand. Why? Because those on the Court know the truth of the Second Amendment, and fears power in the hands of the people. When a group is desirous of maintaining control over others, the first thing to accomplish is to remove any means the subject group has of defending themselves. The historical record is ripe with examples so read it and think. "It couldn't happen here!" Well, the Japanese Americans might just disagree with you!

A problem still exists under the selective incorporation doctrine of

the Supreme Court. Now the First Amendment begins "Congress shall make no law ..." So even under incorporation, the First Amendment is clearly and singly directed against the federal government. Incorporation cannot eliminate this barrier to applicability against the states, especially when one reads the intent of the Framers. Oh, I know I speak out against intent but when the other side uses it, one must fight fire with fire.

A second point is that the Fourteenth Amendment is NOT concerned with rights, as the Framers and true intellectuals understand them. The Fourteenth Amendment has concerns merely with "privileges and immunities" which ARE NOT RIGHTS as the Framers understood rights to be. "Privileges and immunities" are given by government. Rights are given by God. (See the essay on privileges and immunities versus rights.) So there can be no incorporation of rights based upon an amendment which does not recognize rights.

The "equal protection" clause merely provides that all laws, even restrictive or oppressive laws, must operate equally upon all. It does not provide protections against oppressive laws which are enforced equally against all persons. Thus "equal protection" does not operate upon rights either.

So regardless of the illegitimacy of the incorporation doctrine, the First Amendment protections will always be restricted in applicability to ONLY the federal government. The Court cannot incorporate rights that were never directed at the states in the first place. The other rights enumerated within the Bill of Rights carry no similar restriction and, contrary to the incorrect decision of Barron v Baltimore, always were and always will be applicable against all governments, federal, state, and local. In order for the restrictions enumerated in the First Amendment to be applicable against state governments, it needs to be amended or at least included in the Constitutions of each state.

Based upon the arguments presented here, one can see that the

Fourteenth Amendment carries no burden of rights to incorporate against the states. Berger provides that the fourteenth includes only a limited set of rights, which Berger incorrectly understands to be equal with the terms, privileges and immunities. But the intent of the Framers of the Fourteenth Amendment was that the Bill of Rights and the Fourteenth Amendment would ONLY act upon laws which were not equally enforced within the states. Thus, regardless of which side one takes in this discussion, the final conclusion is that the selective incorporation doctrine of the Supreme Court is invalid and the Court's actions under incorporation are unconstitutional.

Preferential Regulations in Commerce and Revenue

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

Congress is restricted in passing ANY commerce or revenue regulation that is not absolutely uniform across all states. Thus, technically, regulations that affect products NOT produced in every state, regardless of the intent or wording of the regulation, would violate this prohibitional clause. This clause is intimately linked to the prohibition on duties or taxes on the exports of any state.

The courts have ruled that the term, export, means to foreign countries but the existence of both clauses and the nexus between them proves that the court decisions are flawed. The term, export, means shipped out of a state to any location not within the state of origin. The true reasons why the courts have ruled in this manner are lost in the annuls of history. But, one might conclude from their actions that a primary consideration was transfer of state sovereign power to the federal government. Throughout the history of the United States, those in the federal government have continued to chip away at state and personal rights and powers.

The prohibition against the preference of any regulation of commerce or revenue applies to any product and one which would fall under this category would be tobacco. Tobacco cannot be grown in every state in the union and thus any regulation of tobacco production would technically violate this clause since the regulation ends up producing preferences. In another example, for many decades firearms have been subject to an excise tax. The

simple fact that firearms are not produced in every state makes this taxation unconstitutional both under this and the preceding clause concerning exports. Claims by Congress and rulings of the courts do not necessarily prove correct. As the saying goes, might does not make right!

Bibliography

Berger, Raoul

Impeachment

Executive Privilege: A Constitutional Myth

Government by Judiciary

Congress versus the Supreme Court

Black, Charles L. Jr.

A New Birth of Freedom

Blackstone, Sir William

Commentaries on the Laws of England 4 volumes

Carey, George

In Defense of the Constitution

Conley, Patrick T. and Kaminski, John P.

The Bill of Rights and the States

Cooley, Thomas

The General Principles of Constitution Law in the United States

Constitutional History

Flynn, John T.

The Roosevelt Myth

Fletcher, Andrew

A Discourse of Government with Relation to Militia

Locke, John

Two Treatises on Government

Meigs, Thomas

The Growth of the Constitution

Meyer, Frank

In Defense of Freedom and other related Essays

Rawle, William

A View of the Constitution of the United States of America

Schwartz, Bernard

The Great Rights of Mankind

Sidney, Algernon

Discourses concerning Government

Story, Joseph

Commentaries on the Constitution of the United States of America - 3 volumes

Tocqueville, Alexis de

Democracy in America

Trenchard, John and Thomas Gordon

Cato's Letters

Tucker, John Randolph

The Constitution of the United States: Its Origins and Genesis - 2 volumes

The Oxford Companion to the Supreme Court of the United States of America

The Federalist Papers

The Antifederalist Papers

One cannot read merely the Federalist Papers in the hopes of understanding ALL those who ratified the Constitution. The Federalist Papers only cover one side. Those who wrote all these papers hid behind pseudonyms for reasons unknown to us today. However, the fact that they hid is reason enough to cast doubt upon the veracity of their works and their honesty to the people concerning the proposed Constitution. It is my opinion that the intentions of those who wrote what are known as the Federalist and Antifederalist Papers are not relevant to a valid understanding of the Constitution. The naked text of the Constitution tells it all. The Constitution is NOT written in an outdated or outmoded style and the words used do not have meanings different today than then. One should study all sides of every argument in order to develop valid understandings and so I include a reference to these writings but with the above warning.

Just What Rights Do You Have in the U.S.

Every American (actually the term is US Citizen) speaks of their Constitutional rights. The belief exists that the Constitution grants some inalienable rights to the citizens of the United States. This is far from the truth.

First, the Constitution grants no rights and cannot grant true rights. One must understand that rights, as understood by the Founding Fathers, were given ONLY by God. The Constitution does grant privileges and immunities which are often confused with rights, especially by certain facets of our society. Privileges and immunities are "rights" and exemptions granted through law. These "rights" are not the same as God-given rights and "rights" granted or given under privileges and immunities can be ungranted or taken away just as easily as they were given.

Even the rights recognized and enumerated in the Bill of Rights are restricted to us. The original Bill of Rights placed absolute control on the federal and state and local governments. This truth can be ascertained by simply reading the Bill of Rights and is supported by the writings of Rawle and other contemporaries of the founding.

Then in 1833, the supreme Court, under the leadership of Chief Justice John Marshall, took one of the early steps to expand the powers of court. A few earlier decisions had worked to expand the power of the court over the states and this one led the way to an expansion of power over the people. The 1833 decision known as Barron versus Baltimore held that the Bill of Rights was not binding upon the states. This now left the determination of what rights the people had to the Supreme Court.

Now, Chief Justice Marshall was a federalist, that is a member of the framers with an interest in a strong centralized government. It

is my opinion that each move Chief Justice Marshall carried out was to expand and consolidate the power of the Court which much to his chagrin was saddled with being the weakest branch of the new government. Chief Justice Marshall likely knew that IF the court was elevated to the position of deciding what the Constitution meant then the Court would hold the power to control the government and the people. His actions were not as expansive as those of this century but much of what the Court has decided today is based upon his early decisions.

Generally, once the Court makes a decision, the Congress, if dissatisfied with the decision will offer legislation or amendment to override the decision. I believe that Marshall recognized this and made decisions which aided the federal government in taking and expanding their powers. A good federalist would work in any direction which would strengthen the federal government.

And so the rights many people believe are granted by the Constitution were decided as not binding the states. During the next 100 years, the states were free to abrogate these rights. Thus, restrictions on religion, the press speech, firearms ownership, and laxity in the control of searches and seizures among others were allowed.

In the mid 1870s, Republicans in Congress, fearful that the 1866 Civil Rights Act would be overturned by simple legislation, offered the fourteenth amendment to place these "civil rights" above elimination by simply legislative action. The fourteenth amendment was offered to the people for ratification on the foundation that it ONLY bound the states with respect to the fundamental rights as expressed in the Civil Rights Act and that it would not bring the Bill of Rights to bear upon the states.

Currently, many argue that the intent of the fourteenth amendment is irrelevant. However, IF the intentions as expressed by the framers and offered to the people are not be accepted as true and

binding then the entire fourteenth amendment and its ratification were perpetrated in fraud. While arguments concerning the efficacy of intent at the time of the framing of the Constitution are valid due to the limited capability of newspaper publication, news distribution was much more widespread by the 1870s allowing the people to read and hear what the fourteenth amendment was to bring to their government. Still by the 1870s, most of the voting population was not educated to the point of being able to read for themselves and very likely listened to what was claimed concerning the fourteenth amendment. If we are to accept that the people knew that the fourteenth was much broader than claimed by the framers of the amendment, then we must accept that the framers were liars and cheats defrauding the country.

From the ratification of the fourteenth amendment in the 1870s and into the 1920s, the Court did not give opinions which bound the states by the Bill of Rights or any of them. The effects of prohibition (The 18th amendment) were being felt in the 1920s as the people of the US responded by NOT abiding by the law of prohibition. The criminal element arose to new heights and the Courts began to modify rights. An early example is in the automobile exclusion of the protections of the fourth amendment.

The Fourth Amendment of the Constitution was added in response to what were known as general warrants under English law. The Fourth amendment is at times claimed to be ambiguous but in my opinion the ambiguity is only in the minds of those who wish to manipulate the absoluteness of the prohibitions so readily apparent in the words of the Fourth Amendment. The Fourth Amendment states:

The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

We are often faced with those who ask what are "unreasonable searches and seizures" but the second clause answers the question. ALL searches and seizures which are not carried out under a lawfully obtained warrant are "unreasonable." This is borne out by Rawle, 1829 and Cooley, 1899. And all warrants require "probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." In today's Courts, the phrase, "upon probable cause" has been taken out of context to grant more expansive powers. BUT, since the Court ruled in 1833 that the Fourth and other amendments of the Bill of Rights do not apply to the states, there is no governmental violation in their minds when they use misinterpretation of the Fourth amendment to advance their causes.

Under the Fourth Amendment, even with a lawfully obtained search warrant, the officers of the government are not given blanket power to look through everything. The search and seizure is confined to the specific person and specific things named in the warrant. If the specifics are not in the warrant, then according to the Fourth amendment the warrant is invalid. Those searching for evidence of guilt can just as easily destroy evidence of innocence as they can find evidence of guilt. However, we have a problem since, as stated above, the Courts have ruled that the Bill of Rights is not binding on the state and state officials.

Now how has the supreme Court accomplished this alteration and infringement of rights supposedly granted by God and protected by enumeration in the Bill of Rights. It has been done under the guise of incorporation of the Bill of Rights against the states, an idea developed by the Court. This activity is known as the incorporation doctrine but is in reality the selective incorporation doctrine and is implemented under the privileges and immunities clause of the fourteenth amendment.

The truth is that the Court is not binding the states by the Bill of

Rights but is using the "selective" incorporation doctrine to give the people "rights" which are similar to but which do not mirror those of the Bill of Rights and only as extensive of "rights" as the Court deems fit. What this means is that although the people read the Bill of Rights and have their understanding from the Bill of Rights, the rights enumerated in the Bill of Rights are binding ONLY on the federal government. Those rights "granted" in the Civil Rights Act of 1965 are not "rights" but are privileges granted by the government. These "privilege rights" are just as easily removed when the government deems it necessary.

For the federal government, there are major questions arising out of this practice. Those in Congress will often parrot the claim that the rights in the Bill of Rights are not absolute but no where in the Bill of Rights are ANY limitations entertained. In fact, the Bill of Rights, being a later modification of the Constitution, supersedes all conflicting clauses and restricts the federal powers with respect to these areas. The rights enumerated within the Bill of Rights are absolute and supreme to all laws passed by Congress.

The weakness of our system of laws is that those who practice the law claim an omnipotent understanding which is not available to common people. The common people stand back and accept these actions because they lack the self-confidence needed to tell our law-givers that they are wrong. A cycle began and continues today which relegates the people to a secondary position and places the law-givers in a position of ultimate power over the people.

The people were and are fools who sheepishly accept the current power claims of the federal government. Once civil rights were accepted in place of natural rights, those in control tightened their grip. Someday the hold will strangle the people.

Incorporated Rights and 4th Amendment Violations

The Bill of Rights contains a listing (enumeration) of rights [these are NOT privileges and immunities as many in the legal community would have you believe]. In 1833, the supreme Court of the United States ruled that the Bill of Rights WAS NOT binding on the states. For a 40 years following, the citizens of each state were left to the vagaries of their state constitutions. In the mid-1870s, Congress offered, and the people ratified, the Fourteenth Amendment. The ENTIRE AND SOLE PURPOSE of the 14th amendment was to constitutionalize and to make repeal of the rights recognized in the 1866 Civil Rights Act difficult. For another 60 years, the 14th amendment was held in perspective. Then in the late 1920s a new breed of supreme Court judges "found" previously unknown federal powers in certain of the clauses in the 14th amendment. During the ensuing years, certain amendments from the Bill of Rights were incorporated through the "privileges and immunities", "due process" and "equal protection" clauses and held to bind the states. Now, not all the Bill of Rights was or is incorporated. In a great power grab, the Court has NOT held that the exact protections of the Bill of Rights are incorporated rather the member of the Court have made THEIR versions of the various rights, with THEIR versions of exceptions, the law of the land.

An example of the Court's manipulative prowess concerns the 4th amendment. The 4th amendment is:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The simple grammar of this amendment proves beyond a shadow

of a doubt that warrant is required for ANY search and seizure to be reasonable. The naked text also proves the "probable cause" is required to obtain a warrant, not to stop and search a car or other private place. It is sufficient to note the there are no periods or semicolons within the 4th amendment. This places the separate clauses in a dependent relationship with each other. Thus the second clause is a complete exposition upon what the Framers and the Constitution require for a reasonable search and seizure.

One need not take my word for this. In the late 1800s, a giant of legal scholarship arose in Michigan. He was Michigan supreme Court Judge Thomas M. Cooley. Cooley produced a text on the Constitution which went through four editions, the last being produced in 1935, nearly forty years after his death. Here is Cooley's discussion of the fourth amendment.

Cooley, The General Principles of Constitutional Law, 1899, Civil Rights, Section. II, Pg. 229-232

"Unreasonable searches and seizures. — The fourth article of the amendments has in its view invasions of right which are more frequent, and of which others my be guilty besides those who command the military force of the State. Most commonly, perhaps, they consist in a disregard of that maxim of constitutional law which finds expression in the common saying that every man's house is his castle. The meaning of this is that every man under the protection of the laws may close the door of his habitation, and defend his privacy in it, not against private individuals merely, but against the officers of the law and the state itself. The amendment declares that "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The latter clause of the amendment sufficiently indicates the

circumstances under which a reasonable search and seizure may be made. First, a warrant must issue; and this implies, (a) a law which shall point out the circumstances and conditions under which the warrant may be granted; (b) a court or magistrate empowered by the law to grant it; (c) an officer to whom it may be issued for service. Second, a showing of probable cause; by which is meant the production of satisfactory evidence to the court or magistrate, (a) showing that a case exists in which the issue of a warrant would be justified by the law; (b) pointing out the place to be searched, and the persons or things to be seized if they shall be found there. Third, a particular description, in the warrant, of place, person, or things sufficient to guide the officer in executing it. Nothing less than this can be sufficient.1

The law providing for search warrant should be limited to cases of actual crime, in which the thing which was the subject or the instrument of the crime, or the supposed criminal, is concealed, or supposed to be concealed, on individual premises. The following are the most frequent cases: for property stolen, and the supposed thief; for property brought into the country in violation of the revenue laws, and the supposed smuggler,; for implements of gaming unlawfully kept; and for liquors unlawfully stored for sale. No doubt the right of search may be extended by statue to other offences; but any search to obtain evidence of an intent to commit a crime can never be legalized.2

The warrant must be executed by a search in the very place described, and not elsewhere; the service should be made in the day-time, and without the presence of a crowd of people;3 and the subject of the search must be brought before the court or magistrate, to be disposed of according to law.4 If the officer obeys the command of his warrant, and is guilty of no excess or departure, he is protected, even though the search proves to be fruitless and the showing of cause unfounded.

Without a search warrant the doors of a man’s dwelling may be forced for the purpose of arresting a person known to be therein,

for treason, felony, or breach of the peace, or in order to dispossess the occupant when another, by judgment of a competent court, has been awarded the possession. In extreme cases this may also be done for the enforcement of sanitary and other police regulations; 1 Bishop Crim. Procedure SS 240-246 See West v Cabell 153 US 78
2 Wilke's Case, 2 Wils 151 and 19 State Trials 1405; Broom, Cont. Law, 613; De Lolme, Const. of England, ch 18.
3. 2 Hale, P.C. 150; Arch Cr. Law 7th ed, 145.
4. Fisher v McGirr, 1 Gray (Mass.) 1; Green v Briggs, 1 Curt 311; Hey Sing Jeck v Anderson, 57 Cal. 251.

but, in general, the owner may close the outer door against any unlicensed entry, and defend it even to the taking of life if that should become necessary.1

The protection of the Constitution is not, however, confined to the dwelling-house, but it extends to one's person and papers, wherever they may be. It is justly assumed that every man may have secrets pertaining to his business, of his family or social relations, to which his books, papers, letters, or journals may bear testimony, but with which the public, or any individuals of the public who may have controversies with him, can have no legitimate concern; and if they happen to be disgraceful to him, they are nevertheless his secrets, and are not without justifiable occasion to be exposed.2 Moreover, it is as easy to abuse a search for the purpose of destroying evidence that might aid an accused party, as it is for obtaining evidence that would injure him, and the citizen needs protection on the one ground as much as on the other. Even a search-warrant to seize private papers, letters, and memoranda, must by wholly unwarranted, except possibly in cases of frauds upon the revenue, where the papers to be searched for have been the agencies or instruments by means of which the frauds have been accomplished or aided.3
1. Bohannon v Commonwealth, 8 Bush (Ky.) 481; Pond v People, 8 Mich. 150
2. Cooley on Torts, 2nd Ed. 346.

3. The seizure of the papers of Algernon Sidney, which were made use of as the means of convicting him of treason, and of those of Wilkes about the time that the controversy between Great Britain and the American Colonies was assuming threatening proportions, was probably the immediate occasion for this constitutional provision. See Leach v Money, Burr 1742; s.c. 1 W. Bl. 555,19 State Trials, 1001 and Broom Const. Law 525; Entick v Carrington, 2 Wils. 275; s.c. 19 State Trials, 1030, and Broom Const. Law, 558; May, Const .Hist, ch. 10; Trial of Algernon Sidney, 9 State Trials, 817.

This whole matter is learnedly and elaborately discussed in United States v Boyd, 116 US 616, where the question arose upon a revenue statute providing that in case of an action against an importer a certain paper should on notice be produced by him, or its contents as stated by the district attorney should be taken as true. The court considered the statute bad as violating the spirit of the prohibition of the Fifth Amendment against compelling a person to be a witness against himself, as well as that of the Fourth against unreasonable searches and seizures. It held that a compulsory production of papers to establish a criminal charge or a forfeiture of property was illegal whenever a search and seizure would be; that such compulsory production or search and seizure to get evidence of a crime is unreasonable, and differs utterly from a search for stolen property. Compare State v Griswold, 67 Conn. 290." [Note: The SC has overturned US v Boyd stating well, the early court didn't say why it was unconstitutional.]

A special note should be made about the abuse of power being as easy as the proper exercise and that a search conducted to gather evidence of wrong-doing is unconstitutional under the 4th. The warrant must particularly describe the place to be searched and the persons or things to be seized. It really is as easy for the officers to destroy evidence of innocence as it is to "find" evidence of guilt!

And Cooley is not alone in this understanding of the 4th amend-

ment.

However, since the 1833 decision eliminated the 4th amendment restrictions on state officials, state level violations continued into this century. Then the supreme Court using the due process and equal protection clauses of the 14th amendment determined in Mapp v Ohio that the 4th amendment was incorporated to bind the states. However, and this is a major however, the Court left open "certain" exclusions, thus leaving in place the current "probable cause" and other patently unconstitutional searches and seizures. So those who claim the 14th incorporates the Bill of Rights against the states are full of crap, having either swallowed it whole or lacking the intellect to question and understand for themselves.

Today, the Court is often viewed in awe, their every decision being claimed as correct, they ARE the Court of course. Blackstone, the father of our written codes, has this to say about the relative legitimacy of the power of magistrates:

"For whenever a question arises between the society at large, and any magistrate vested with powers originally delegated by that society, it must be decided by the voice of that society itself. There is not upon earth any other tribunal to resort to."

Thus we must recognize the judges are not superior to the people and judges can be wrong. I do not claim every decision is incorrect and I am willing to restudy case law in order to hopefully prove my error. BUT, if the simple naked text of the Constitution, easy to understand by ALL people, is contrary to their decision, then I take the position that the Constitution reigns supreme even over the judge's decision.

Other examples abound! First, the supreme Court has continuously refused to hear cases involving the Second Amendment, leaving in place the 1833 decision that the states were free to violate the rights expressed in the 2nd amendment. State and local

gun control has blossomed into 20,000 laws. Those who make much ado about the state laws have no grasp of reality.

The 1833 decision is easily proven incorrect and thus constitutionally invalid. The second amendment absolutely restricts all government infringement on Arms, at federal, state, and local levels. This is not say that laws concerning the proper use of Arms cannot be made but that no restrictions about ownership, i.e. taxes, license, etc., are valid. The Court has not accepted 2nd amendment cases for only one reason, they are reticent to force the rescinding of those 20,000 state laws and force the return of a great deal of power to its lawful owners, the people. The Court fears an armed citizenry, especially a citizenry which educates itself about the truth of the Constitution rather than passively accepting the judges as the only purveyors of the truth.

The non-inclusive Commerce Clause

For a moment lets look at the use of terms in the Constitution. It is readily apparent that the Framers used terms consistently throughout the document.

The Framers referred to the United States in all occasions when discussing the body-politic which was being created by the Constitution.

The Framers referred to the States as individual entities coming together in certain respects as member nations in the Union known as the United States.

The Framers referred to the People in each instance where Constitutional provisions were directed toward individuals of the several States.

Throughout the Constitution, these categorizations or groupings are consistent. If one looks through the Constitution and locates the term, States, one will find that the reference is to a specific body-politic which is made up of elected servants who form legislative, executive, and judicial branches within one of the member nations of the United States. One will not find the term State referring to the United States nor to the People. Nor will one find these other terms in reference to any other.

Thus when one reads the Commerce Clause one should note the conspicuous absence of the term People from the clause. Reading the clause as written, one then understands that the federal government was granted powers to manage commerce interactions with the other nations of the world, and to manage the commerce interactions of the States with each other, and to manage the commerce interactions with the Indian Tribes. The absence of the term People is important for its absence demonstrates that the federal government is not and was never empow-

ered to interfere in the commerce which occurs between individuals.

Understanding this limitation is important. Since the federal government holds no grant of power to regulate commerce among individuals, legislation such as the American with Disabilities Act and the Civil Rights Act are not based upon Constitutional principles. Rather these acts lie outside all Constitutional powers of the federal government. Thus these acts are void. However, because the federal government has the biggest guns, the people are coerced into following these illegal acts.

And for a little backup some excerpts from:

Jefferson's Opinion on the Constitutionality of a National Bank
1791

I consider the foundation of the Constitution as laid on this ground: That " all powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States or to the people." [XIIth amendment. The XIIth amendment became the Xth amendment following the failureof ratification of the Ist and IInd amendments.] To take a single step beyond the boundaries thus specially drawn around the powers of Congress, is to take possession of a boundless field of power, no longer susceptible of any definition.

For the power given to Congress by the Constitution does not extend to the internal regulation of the commerce of a State, (that is to say of the commerce between citizen and citizen,) which remain exclusively with its own legislature; but to its external commerce only, that is to say, its commerce with another State, or with foreign nations, or with the Indian tribes.

It is an established rule of construction where a phrase will bear either of two meanings, to give it that which will allow some meaning to the other parts of the instrument, and not that which would render all the others useless. Certainly no such universal power was meant to be given them. It was intended to lace them up straitly within the enumerated powers, and those without which, as means, these powers could not be carried into effect.