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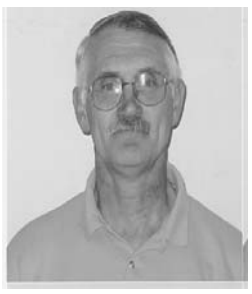
First Principles: The Pillars of American Freedom

CHAIRMAN'S CORNER
The Search For a Constitutional Presidency



Dr. Lee Button

Every four years it is the privilege of American citizens to vote for a presidential candidate. And every four years the importance of this event is given an increasingly higher priority- as if we were now in the routine of electing a King or Queen. But what exactly is the constitutional role of the President? Jefferson said that in questions of power elected officials must be chained to the Constitution. How many links are in this chain and how should we expect a constitutional president to be bound?

The answer to the first part of the question is simple. How many constitutional powers does a President have? Many are surprised to learn that the executive officer of this nation has but six areas of authority.

The President is the Chief of state, the Commander **in** Chief of the armed forces. (Not commander ***and*** chief. President John Quincy Adams said that "[t]he declaration of war is in its nature a legislative act, but the conduct of war is and must be executive.) The President is CEO of the executive branch, the chief foreign diplomat, the architect of necessary legislation and the caretaker of justice through the appointing of judges and issuing of pardons.

These are the **only** things the President is allowed to do. The limitation to his power is defined by the title of the office. It is an executive position. Executive power is tied to the word execute. The president has authority to **enforce** the law. This understanding leads to three working principles. First, the executive is not entitled to make laws or judge laws. Executive power is not legislative or judicial power. Second, executive power is active, not passive. As one has stated, "the executive does not wait for someone to come and request enforcement of a law**.** This is [in contrast] to judicial power which is passive or responsive in nature. The judiciary has no power to seek out a case or controversy, but must wait for one to come to it. The executive, on the other hand, need not wait but may seize the initiative." Third, executive power involves a discretionary element**.** The executive does

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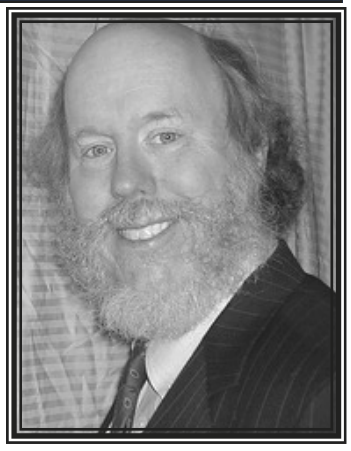
Banks As Spies

_ By James Bovard

Editor's Note: Though nearly a decade since its original publication in the Washington Times in April 1999, Mr. Bovard's article seems ever more relevant especially in view of how bank and credit card processing companies operate today under government regulation. Money laundering appears to be the target of government concern; but, even small organizations like NHCCS is made to bear the pain. Then too, in contrast to the recent Madoff scandal, one is led to question if government regulation, to the extent it may be justified as necessary, sets its line of sight on the most appropriate targets. We speak from experience, having just spent months proving NHCCS' credentials to an online processing service with whom we have been doing business for five or more years. To force compliance, the online payment service limited access to our account; we could continue to deposit money, but we were prohibited from withdrawing OUR money until we forwarded all of the information the service requested from us. From that nasty experience, it would appear that personal liberty, not to overlook common sense, is all but dead in the United States of America. This blatant trampling of rights by government, is the subject of Mr. Bovard's article. Truly a concern that would outright amaze our nation's founding fathers while giving them yet another reason to roll over in their graves.

Mr. Bovard is a bestselling libertarian author of such titles as: *Lost Rights: The Destruction of American Liberty, Freedom in Chains: The Rise of the State and the Demise of the Citizen*, and *Attention Deficit Democracy* to name but a few. He is also a familiar lecturer and political commentator on government abuses of power, waste, corruption and other government misdeeds. The Wall Street Journal considers Mr. Bovard as "The roving inspector general of the modern state." Please visit Mr. Bovard's website at: www.JamesBovard.com.



James Bovard

BANKS AS SPIES—JAMES BOVARD

Shaking out your banking secrets?

Internet activists, conservatives, libertarians, civil liberties groups, and others trounced federal banking agencies last month. The proposed expansion of the "Know Your Customer" banking regulations were defeated by hundreds of thousands of Americans who took to their keyboards. Unfortunately, federal banking regulations continue to be profoundly intrusive - and a threat to the security and reputation of millions of innocent Americans.

The Bank Secrecy Act of 1970 effectively made it a federal crime for banks to keep secret from the government. This law required banks and other financial institutions to submit a Currency Transaction Report (CTR) to the feds for every transaction involving more than $10,000 cash. Many homebuyers have been reported to the IRS as potential money launderers when they go to a closing to buy a home with a cashier's check more than $10,000.

Between 1987 and 1995, banks and other institutions delivered 62 tons of Currency Transaction Reports to the feds - more than 77 million separate reports. But only 580 people were convicted of money laundering during that period, according to former Fed Governor Lawrence Lindsey. Twelve million Currency Transaction Reports (CTRs) were filed in 1997 alone.

This requirement floods federal agencies with paperwork, and actually undermines law enforcement: The vast majority of the CTRs are never even examined by bureaucrats. This helps explain why the feds failed to notice the suspicious actions of notorious CIA-turncoat Aldrich Ames, who was receiving wire transmissions of more than $50,000 from Switzerland. His local bank notified the government of "suspicious transactions," but the

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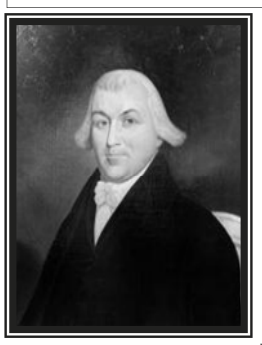
What Would They Say...

"I believe that banking institutions are more dangerous to our liberties than standing armies. If the American people ever allow private banks to control the issue of their currency, first by inflation, then by deflation, the banks and corporations that will grow up around the banks will deprive the people of all property until their children wake-up homeless on the continent their fathers conquered." _Thomas Jefferson—(1803)

Biographical Sketch: James Iredell ~ An English Born American Patriot



James Iredell
1750–1799

"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 the citizens or subjects of any foreign state."

You will recognize that statement as the Eleventh Amendment to the Constitution. It was ratified February 7, 1795. But the motivation for its passage began two years earlier with a Court ruling that involved a most unforeseen North Carolinian.

James Iredell, unlike most of the Founders described in this column, was not from the United States. He was born in Lewes, England in 1750. Before tension between the two countries grew most severe, in 1767 his father's business in Bristol began to fail, and 17 year-old James was sent to the colonies. With the help of his mother's family he secured a job as King George's comptroller of customs in Edenton, North Carolina.

His new job afforded him several advantages. Primarily it brought him a living wage. But it also allowed him to study law under Samuel Johnston, a future governor and first Senator of the state. And not least of his job benefits, he met Mr. Johnston's sister, Hannah, who became his wife.

His saturation with colonial life and growing understanding of the rule of law convinced him that the colonies should no longer be under British Parliamentary authority. This did not gain him much acclaim in England, especially since he was employed by the Crown. But he was committed to the cause and in 1774 wrote an essay *To The Inhabitants of Great Britain*. His study of the law had shown that British courts could not effectively administer colonial justice. Independence was the answer. His eloquence and wisdom won him the approval of the state and he found himself in the middle of the Revolution.

He continued his rebellion in writing with a second more notable treatise called *Principles of an American Whig*. This work written before 1776 bears unmistakable similarities to the Declaration of Independence. For example, *"Prudence, indeed will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, 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."* He condemned British abuses like the Stamp Act, severe taxation and the placement of troops in Massachusetts.

After the War for Independence he served his state honorably. He helped write new state statutes and organized the court system. His plan established three Superior Court Judges and once the Court was organized, he of course became one of the first three. One of his special jobs was to read old lawsuits and determine if they were worthy of trial. His past studies and legal knowledge prepared him well for this new occupation.

After a brief time away from public service he was appointed to the position of State Attorney General. Thus he became the statewide prosecuting attorney. By 1791 he had revised most if the state's laws and they were received in that year as *Iredell's Revision.*

As the nation grew and time advanced, the states had all developed two distinct factions; Judge Iredell was firmly established on the Federalist side. When the Convention of 1787 assembled he led the North Carolina charge for the Constitution's ratification. Encouraging public participation in the debate he succinctly responded to each of Virginian George Mason's eleven reasons to reject it. A Norfolk, Virginia printer was so impressed by his word crafting in that response that he halted the printing of several other political tracts to publish Iredell's *'Principles.'* That work preceded more than half of the Federalist Papers and at the time was as well read.

His arguments were honored and in 1788 when the state delegates met in Hillsborough, NC to discuss the new Constitution, he led the movement for its ratification. It was not any easy step. The Anti-Federalists were well organized and the debate was intense. The most serious questions were related to the judiciary and the lack of a religious test for public office. Judge Iredell drew on his experience as an English citizen and defended the exclusion of religion. He knew well the ease with which its 'establishment' may occur. *"Had Congress undertaken to guarantee religious freedom, or any particular species of it, they would have had a pretense to interfere in a subject they have nothing to do with."* Skillfully, he took the lack of a Constitutionally mandated religious litmus test and turned it into a protection of religious freedom. Though the first convention in 1788 failed to ratify the new Constitution, the Judge drew much applause particularly with statements like this one: *"I believe the passion for liberty is stronger in America than any other country in the world."*

North Carolina did ratify the Constitution in 1789 with Iredell as the floor general. For his part in the process, President Washington rewarded him, in 1790, with a seat on the Nation's Highest Tribunal. James Iredell served as the youngest original judge at 38 years old and was an Associate Justice for 10 years. And since, the system was working well in those days, the Court did not hear its first case until 1792. Justice Iredell wrote opinions in only a few hearings, but two have great historical merit.

Among these is the 1798 case of Calder v. Bull, a controversy regarding the validity of an act passed by the Connecticut Legislature as ex post facto law therefore contrary to Article 1, Section 9, Clause 3 of the Constitution. Iredell's opinion was an obvious precursor to the idea of judicial review. He believed that actions of a state that violated an obvious provision of the Constitution could be voided. *"The principles of natural justice are regulated by no fixed standard; the ablest and the purest men have differed upon the subject; and all the court could properly say, in such an event, would be, that the legislature (possessed of an equal right of opinion) had passed an act which, in the opinion of the judges, was inconsistent with the abstract principles of natural justice."* Five years later in Marbury v. Madison this position became fixed; it has been a consistent practice of the court ever since.

The second case of note, Georgia v. Chisholm, was settled earlier in 1793. The controversy here was whether citizens of one state, S. Carolina, could sue the government of another state, Georgia, with Iredell as the lone dissenter. The majority opinion concluded that a state may be sued in federal court without its consent. But, Judge Iredell was confused by this calling it *"a construction, I confess, that I never heard of before, nor can I now consider it grounded on any solid foundation…"* He went further to say: *"That the moment a Supreme Court is formed, it is to exercise all the judicial power vested in it by the Constitution, by its own authority, whether the Legislature has prescribed methods of doing so, or not." My conception of the Constitution is entirely different. I conceive, that all the Courts of the United States must receive, not merely their organization as to the number of Judges of which they are to consist; but all their authority, as to the manner of their proceeding, from the Legislature only. . . . Having a right thus to establish the Court, and it being capable of being established in no other manner, I conceive it necessarily follows, that they are also to direct the manner of its proceedings. Upon this authority, there is, that I know, but one limit; that is, "that they shall not exceed their authority. If they do, I have no hesitation to say, that any act to that effect would be utterly void, because it would be inconsistent with* ***the Constitution, which is a fundamental law paramount to all others, which we are not only bound to consult, but sworn to observe;*** *and, therefore, where there is an interference, being superior in obligation to the other, we must unquestionably obey that in preference."*

Most Americans agreed with James Iredell and passed the 11th Amendment in protest; it guaranteed that the Supreme Court would never go beyond its Constitutional authority again.

James Iredell died suddenly on October 20, 1799 at age 48. But the Englishman from N. Carolina left an eloquent legacy and a respected name, as one of America's true statesmen.

_Dr. Lee Button, NHCCS Vice-Chairman

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have some discretion concerning the use of executive power.

It is remarkable that through the centuries and especially since the early 1900's the office of president has been parlayed into a far superior authority than was originally intended. How has it happened that one who is positioned simply to carry out the will of Congress has become the major player in American politics?

The President has presumed the role of lawmaker in two ways: executive orders and regulatory agencies. If the President is the maker of law and not the legislature how much simpler the process becomes. The voter is led to believe that one elected person is essentially more important than 535. Unfortunately through executive orders and Federal agencies the President has usurped control over the Congress.

According to the National Archives, "executive orders are official documents, numbered consecutively, through which the President of the United States manages the operations of the Federal Government." That seems to fit into the constitutional framework, except for this major shortfall. Executive orders are only to be implemented in the executive department. The Constitution does not give the President authority to dictate how Congress or the Courts should rule. Nor does it allow the Executive officer to determine law for the citizen. That is solely the role of the Legislature. It should also be added that the idea of 'signing orders' is nowhere to be found in the Constitution. This is the imposing of the President's will when he signs a bill and outlines how he will execute it.

Most Federal Regulatory Agencies are ordered by the executive department. If you take any series of letters and arrange them in some way you will probably arrive at the initials of one of these offices, notably, the FCC, USDA, DEA, EPA, INS, IRS, etc. The Whitehouse web site lists more than 130. The issue here is not whether such agencies are in the practical realm of the President's power. Rather, the overstepping of *executive* constitutional authority occurs when these groups make rules that are applied to the general public *without Congressional approval*. This goes far beyond interpreting the law, the Court's responsibility, and finding the law, the Legislature's task. This is clearly the enacting of law by the executive office and has no Constitutional approval.

Article 2, Section 2 of the Constitution states clearly what the President's powers are. What is the President's role in regard to law? He may request legislation and encourage its progress through Congress. He may sign it into law or veto it. He must enforce it when made. But he may not write law in any form, not through executive order nor regulatory agency.

The President is the Chief spokesman to the people. He is the chief foreign diplomat. He has power to make treaties as long as two thirds of the Senate approve. He has the power to appoint judges but here again only with the advice **and consent** of the Senate. He may grant pardons for offenses against the United States. He may execute a war but cannot declare war. There is no ambiguity present. So with careful observation and comparison it is possible to determine when Presidents have diligently kept their oath of Office to preserve, protect, and defend the Constitution of the United States.

We may begin at the beginning. With little hesitation our first 7 presidents receive high marks. That is to be expected since each of them served during the founding years of the nation. Although, John Adams created problems with his Alien and Sedition Acts which clearly violated the right of free speech among other issues.

Andrew Jackson is to be commended for his refusal to re-charter a national bank. But he effectively declared war on the Cherokee Indians, violating the treaty between the Cherokee Nation and the United States when he refused to order federal troops out of sovereign Cherokee territory in Georgia, ostensibly to "assist" the Cherokee in their compulsory removal from resource-rich land. Jackson's refusal to enforce a Supreme Court's decision favoring the Cherokee Nation led to the now famous *Trail of Tears*. Here, the Cherokees were forced to march westward "supervised" by federal soldiers. Four thousand Cherokees died on the march westward. In his own defense, Jackson said: "*Each public officer who takes an oath to support the Constitution swears that he will support it as* ***he*** *understands it, and* ***not as it is understood by others****. It is as much the duty . . . of the President to decide upon the constitutionality of any bill ... as it is of the supreme judges when it may be brought before them for judicial decision.*"

The constitutional incompetence of other presidents may be illustrated by summarizing a few well known violations. Consider, first of all, the creation of the Department of Education. Does the Federal government have any jurisdiction over education? Hopefully you are shaking your heads from side to side.

Since the government has no constitutional authority here why *is there* a Federal Department of Education? Because, President Carter signed rather than vetoed the Department of Education Act of 1979. That Act reached far into the heart of the unalienable rights of parents. A congressional committee justified the legislation giving the following reasons: "*The Congress declares that the establishment of a Department of Education is in the public interest, will* ***promote the general welfare*** *of the United States, will help ensure that education issues receive proper treatment at the Federal level, and will enable the Federal Government to coordinate its education activities more effectively.*"

Notice the phrase "promote the general welfare." Where did they come up with that phraseology? It first appears in the Preamble to the Constitution. But...*where* does the power of Congress actually begin? Not until Article 1 of the U.S. Constitution. This promotion of the general welfare notion is, most specifically, a part of the people's plan for government, **not** the government's plan for people. A constitutional President will not execute laws that are so clearly be-

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First Inaugural Address
_Thomas Jefferson

Editor's Note: How fitting for us now to sample the humility exemplified by Thomas Jefferson's First Inaugural Address. Noticeably absent is the egoistic chest pounding and the presidential activist chatter which permeated the 2008 national campaign. How very fortunate were our ancestors to have known and been governed by such virtuous men as Thomas Jefferson. Will America ever see this kind of statesmanship again? (Address has been edited to fit in the available space)

"Called upon to undertake the duties of the first executive office of our country, I avail myself of the presence of that portion of my fellow-citizens which is here assembled to express my grateful thanks for the favor with which they have been pleased to look toward me, to declare a sincere consciousness that the task is above my talents, … I shrink from the contemplation, and humble myself before the magnitude of the undertaking… To you, then, gentlemen, who are charged with the sovereign functions of legislation, and to those associated with you, I look with encouragement for that guidance and support which may enable us to steer with safety the vessel in which we are all embarked amidst the conflicting elements of a troubled world.

During the contest of opinion through which we have passed the animation of discussions and of exertions has sometimes worn an aspect which might impose on strangers unused to think freely and to speak and to write what they think; but this being now decided by the voice of the nation, announced according to the rules of the **Constitution,** all will, of course, arrange themselves under the will of the law, and unite in common efforts for the common good. All, too, will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will to be rightful must be reasonable; **that the minority possess their equal rights**, which equal law must protect, and to violate would be oppression. Let us, then, fellow-citizens, unite with one heart and one mind… But every difference of opinion is not a difference of principle. We have called by different names brethren of the same principle. We are all Republicans, we are all Federalists. If there be any among us who would wish to dissolve this Union or to change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it… *[emphasis added]*

Let us, then, with courage and confidence pursue our own Federal and Republican principles, our attachment to union and representative government. Kindly separated by nature and a wide ocean from the exterminating havoc of one quarter of the globe; too high-minded to endure

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bureaucrats were so swamped by other reports they never checked it out.

During the 1980s, federal banking agencies pressured banks to enact some type of Know Your Customer program to curb money laundering and, by extension, help curb the flow of drugs. By 1990, most banks had some system of this type in place, at least on paper. But the regulations proposed last December went far beyond what any bank was already doing - and thus a routine tightening of the screws turned explosive.

The proposed regulations were a logical extension of the growing pressure on banks to become government informants. Since 1996, banks have been required to file Suspicious Activity Reports (SARs) to the Treasury Department's Financial Crimes Enforcement Network (FinCEN) on any transaction involving $5,000 or more which "has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the institution knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction."

The feds now receive almost 100,000 SARs a year. And a federal appeals court ruled in February that banks do not need a "good faith belief" of criminal activity before filing an SAR on someone: The "safe harbor provisions" provided by federal regulators allow defamatory statements by anonymous informants against innocent citizens, thus making the reports an easy way to smear people. What's more, as Greg Nojeim of the American Civil Liberties Union observed, "Congress barred financial institutions from telling their customers that their bank had spied on them by reporting their transactions to the federal government."

The feds have chutzpah demanding more personal financial information on citizens considering their abysmal record of safeguarding the information they already collect. The comptroller of the currency issued a rule last November authorizing the release of SARs to "any supervised entity and to other persons, without a request for records or testimony." The agency's discretion in passing out titillating tidbits is effectively unlimited. The GAO reported last summer that 13 state agencies have violated federal rules for the use of SAR information they receive, and Money Laundering Alert, a leading newsletter, cited reports that "in two major U.S. cities local police departments have made SAR filings available to private investigators."

The KYC debacle signified the first time congressional Republicans have torpedoed a drug war-related expansion of government power. GOP indignation is a bit ironic, since 12 Republican senators are co-sponsoring the "Drug-Free Century Act," which urges that KYC regulations be "expedited." A money laundering bill that passed the House by voice vote last fall would have required banking agencies to speedily issue the same regulations.

The KYC episode is also a warning to all future regulators of the danger of clear English. If the banking agencies had simply proposed convoluted amendments to existing statutes - and avoided the "Know Your Customer" title - the regulations would have generated far less controversy. Since the New Deal, federal bureaucrats have become masters of subjugation through obfuscation. Leviathan has expanded through ink-storm after ink-storm of impenetrable Federal Register notices. The more complex the regulations become, the easier it is for bureaucrats to browbeat and bully their victims.

Rep. Ron Paul, Texas Republican, is sponsoring legislation to immediately abolish existing KYC regulations and block any attempt to revive or expand such intrusions in the future. Mr. Paul has 56 co-sponsors, including House Whip Tom DeLay, Texas Republican; the fate of his bill will determine whether Congress is serious about respecting Americans' privacy. The trouncing of the proposed regulations will be a hollow victory unless Congress abolishes the bad laws that already mean a federal thumb in every pie.

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the degradations of the others; possessing a chosen country, with room enough for our descendants to the thousandth and thousandth generation; entertaining a due sense of our equal right to the use of our own faculties, to the acquisitions of our own industry, to honor and confidence from our fellow-citizens, resulting not from birth, but from our actions and their sense of them; enlightened by a benign religion, professed, indeed, and practiced in various forms, yet all of them inculcating honesty, truth, temperance, gratitude, and the love of man; acknowledging and adoring an overruling Providence, which by all its dispensations proves that it delights in the happiness of man here and his greater happiness hereafter -- with all these blessings, what more is necessary to make us a happy and a prosperous people?

Still one thing more, fellow-citizens -- **a wise and frugal Government,** which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement, **and shall not take from the mouth of labor the bread it has earned.** This is the sum of good government, and this is necessary to close the circle of our felicities.*[emphasis added]*

About to enter, fellow-citizens, on the exercise of duties which comprehend everything dear and valuable to you, it is proper you should understand what I deem the essential principles of our Government, and consequently those which ought to shape its Administration.

I will compress them within the narrowest compass they will bear, stating the general principle, but not all its limitations.

Equal and exact justice to all men, of whatever state or persuasion, religious or political**; peace, commerce, and honest friendship with all nations, entangling alliances with none**; the support of the State governments in all their rights, as the most competent administrations for our domestic concerns and the surest bulwarks against antirepublican tendencies; the preservation of the General Government in its whole constitutional vigor, as the sheet anchor of our peace at home and safety abroad; a jealous care of the right of election by the people -- a mild and safe corrective of abuses which are lopped by the sword of revolution where peaceable remedies are unprovided; absolute acquiescence in the decisions of the majority, the vital principle of republics, from which is no appeal but to force, the vital principle and immediate parent of despotism; **a well-disciplined militia**, our best reliance in peace and for the first moments of war till regulars may relieve them; the supremacy of the civil over the military authority**; economy in the public expense, that labor may be lightly burthened**; the honest payment of our debts and sacred preservation of the public faith; encouragement of agriculture, and of commerce as its handmaid; the diffusion of information and arraignment of all abuses at the bar of the public reason; freedom of religion; freedom of the press, and freedom of person under the protection of the habeas corpus, and trial by juries impartially selected.

These principles form the bright constellation which has gone before us and guided our steps through an age of revolution and reformation.

The wisdom of our sages and blood of our heroes have been devoted to their attainment. They should be the creed of our political faith, the text of civic instruction, the touchstone by which to try the services of those we trust; and should we wander from them in moments of error or of alarm, let us hasten to retrace our steps and to regain the road which alone leads to peace, liberty, and safety. *[emphasis added]*

I repair, then, fellow-citizens, to the post you have assigned me...Without pretensions to that high confidence you reposed in our first and greatest revolutionary character, whose preeminent services had entitled him to the first place in his country's love and destined for him the fairest page in the volume of faithful history...I shall often go wrong through defect of judgment...I ask your indulgence for my own errors, which will never be intentional...

Relying, then, on the patronage of your good will, I advance with obedience to the work, ready to retire from it whenever you become sensible how much better choice it is in your power to make.

And may that Infinite Power which rules the destinies of the universe lead our councils to what is best, and give them a favorable issue for your peace and prosperity.

_President Thomas Jefferson

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yond the jurisdiction of the federal government.

The founders clearly understood this. That is why federal jurisdiction over education was rejected at the Convention in 1787. James Madison supposed that the legislative power of the United States did include power to encourage by "proper premiums and provisions, the advancement of useful knowledge and discoveries." This, however, was rejected along with the power to establish a university and seminaries for the promotion of literature, the arts and sciences. On each of these points, Congress and the President have subsequently acted contrary to this original intent. National endowments now exist for arts and literature, as well as a Federal Department of Education.

President Jefferson acknowledged that if the federal government wanted to get into the education business, then the Constitution would have to be amended! Referring to education and the arts in his Sixth Annual Message, he declared: *"I suppose an amendment to the Constitution, by consent of the States, necessary, because the objects now recommended are not among those enumerated in the Constitution, and to which it permits the public monies to be applied."* Furthermore, when President Madison recommended a university, Congress concluded: *"The erection of a university, upon the enlarged and magnificent plan which would become the nation, is not within the powers confided by the Constitution to Congress."* President Monroe said the same: *"I think proper to suggest also . . . that it be recommended to the States to include in the amendment a right in Congress to institute likewise seminaries of learning."*

President Buchanan vetoed the first legislation which would have brought the federal government into education, *"I presume the general proposition is undeniable that Congress does not possess the power to appropriate money in the Treasury, raised by taxes on the people of the United States, for the purpose of educating the people of the respective States. It will not be pretended that any such power is to be found among the specific powers granted to Congress nor that it is necessary and proper for carrying into execution any one of these powers."* President Buchanan's warning is clear, *"Should the time ever arrive when State governments shall look to the Federal Treasury for the means of supporting themselves and maintaining their systems of education and internal policy, the character of both Governments will be greatly deteriorated."* Put James Buchanan down as a Constitutional hero.

The original 1867 Department of Education, therefore, made a mockery of the Constitution, it was justified as a function of the census and placed in the Department of Interior by Andrew Johnson. So you see, unfortunately, the phrase 'general welfare' has been used by politicians to finagle money for all sorts of things such as welfare, social security and health care.

However, the Federal government has no jurisdiction in these areas. Nevertheless, for his support in this area, we may call President Franklin Pierce another constitutional hero. For, he clearly saw that the people had not extended to any branch of the national government authority or power to make or execute any law related to welfare, social security or health care.

To that end, President Pierce vetoed an act granting land to the states for the benefit of indigent, insane persons. He said: *"[It is] my deliberate conviction that a strict adherence to the terms and purposes of the federal compact offers the best, if not the only, security for the preservation of our blessed inheritance of representative liberty."* He also said: *"This bill ... presents at the threshold the question whether any such act on the part of the Federal Government is warranted and sanctioned by the Constitution, the provisions and principles of which are to be protected and sustained as a first and paramount duty."*

Then referring to the text of the bill*: "The question presented, therefore, clearly is upon the constitutionality and propriety of the Federal Government assuming to enter into a novel and vast field of legislation, namely, that of providing for the care and support of all those among the people of the United States who by any form of calamity become fit objects of public philanthropy. I readily and, I trust, feelingly acknowledge the duty incumbent on us all as men and citizens, and as among the highest and holiest of our duties, to provide for those who, in the mysterious order of Providence, are subject to want and to disease of body or mind; but I cannot find any authority in the Constitution for making the Federal Government the great almoner of public charity throughout the United States. To do so would, in my judgment, be contrary to the letter and spirit of the Constitution and subversive of the whole theory upon which the Union of these States is founded"*

President Pierce maintained the standard of the Constitution as supreme. He was not convinced by the rhetoric concerning the general welfare clause. He even spoke of promoting general welfare. *"I shall not discuss at length the question of power sometimes claimed for the General Government under the clause of the eighth section of the Constitution, which gives Congress the power 'to lay and collect taxes, duties, imposts, and excises, to pay debts and provide for the common defense and general welfare of the United States,' because if it has not already been settled upon sound reason and authority it never will be. . . It is not a substantive general power to provide for the welfare of the United States, but is a limitation on the grant of power to raise money by taxes, duties, and imposts. If it were otherwise, all the rest of the Constitution, consisting of carefully enumerated and cautiously guarded grants of specific powers, would have been useless, if not delusive . . . ."*

President Grover Cleveland also spoke out on the general welfare position. *"I can find no warrant for such an appropriation [federal aid to drought-stricken Texas farmers] in the Constitution, and I do not believe that the power and duty of the General Government ought to be extended to the relief of individual suffering which is in no manner properly related to the public service or benefit...The friendliness and charity of our countrymen*

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How's Your Constitutional IQ?

1. When did the United States stop coining(minting) true silver dollars: 1895, 1935 or 1976?
2. When did the Sixteenth Amendment, allowing an income tax, go into force: 1893, 1913, or 1922?
3. What year did Congress take America off the gold standard by gathering up all the monetary gold from the people and turning it over to the Federal Reserve System: 1913, 1933, or 1965?
4. One of the signers of the Constitution devised the word "cent" to indicate one of the lesser coins. Who was it? Alexander Hamilton, Gouverneur Morris, or Robert Morris?
5. Who voluntarily added to the President's oath of office the words: "So help me God": George Washington, Andrew Jackson or Abraham Lincoln? When did Congress make the words an official part of the oath?

Answers:

1) 1935. 2) 1913. 3) 1933 under Franklin D. Roosevelt, Democrat President. 4) Governor Morris—he had a keen financial mind as well as a skilled pen. He was also the founding father who arranged the layout of the draft of the Constitution. 5) George Washington; Congress made them official in

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The People's Liberty:
A Commentary on the Constitution of the State of New Hampshire

_The Honorable Dan Itse

The following is the next installment of the Peoples Liberty, a Commentary on the Constitution of the State of New Hampshire. Articles 7 through 10 of the New Hampshire Constitution deal with the sovereignty of the people and of the State. They codify the right of the people to reclaim the power they have delegated to the State, or that the State has delegated to the general government should the state abuse that power.

<u>Art. 7. [State Sovereignty.]</u> The people of this State have the sole and exclusive right of governing themselves as a free, sovereign, and independent State; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, pertaining thereto, which is not, or may not hereafter be, by them expressly delegated to the United States of America in congress assembled.
June 2, l784

Article 7 is an extremely important enumerated right. It specifically recognizes the preeminence of the laws of the United States of America. However, taken with Article 10, it clarifies the intent of the people of New Hampshire that the Constitution for the United States of America is severable if the United States of America abuses its powers. The right, and obligation, of the people, or their political entity, New Hampshire, is to throw off tyrannical government. Part 1, Article 10, was not removed when the Constitution of the State of New Hampshire was amended to accommodate ratification of the Constitution for the United States of America. It is also important to note the powers transferred to the United States of America are delegated so as to connote an inferior status. This is an exact parallel to Articles 3 and 12 which Article 7 links to a surrender of rights in order to ensure a higher protection [of others]. It embodies the Evangelical principle of personal sovereignty, responsibility and authority.

<u>Art. 8. [Accountability of Magistrates and Officers; Public's Right to Know.]</u> All power residing originally in, and being derived from the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them. Government, therefore, should be open, accessible, accountable and responsive. To that end, the public's right of access to governmental proceedings and records shall not be unreasonably restricted.
June 2, l784. Amended l976 by providing right of access to governmental proceedings and records.

Consistent with Article 1, Article 8 shows that from inception the people of New Hampshire always recognized the submission of **government to the governed**. Sovereignty or independency is the origin of power. Sovereignty is defined as the supreme and independent power or authority in government as claimed by a State or community. A sovereign is a group or body of people or a State having sovereign authority, having supreme rank, power or authority. If all power resides in, originates in, and is derived from the people, and if all the people are equally free and independent, then the people are the sovereigns of the State, and therefore, of these United States. That the members of government are the substitutes and agents of the people, embodies the Evangelical principle of servant leadership. The 1976 amendment resulted in N.H. Right to Know laws.

<u>Art. 9. [No Hereditary Office or Place.]</u> No office or place, whatsoever, in government, shall be hereditary - the abilities and integrity requisite in all, not being transmissible to posterity or relations. June 2, l784.

Article 9 ties directly to Article 2 (that all men are born equally free and independent) and Article 10 (that government is not for the emolument of any man, family, or class of men). It is interesting to note that the Constitutions of the States included this prohibition. This together with the discussions in the Federalist Papers showed many aspects of the Constitution for the United States of America were derived from the Constitutions of the States. It embodies the Evangelical principle of no divine right of kings.

<u>[Art.] l0. [Right of Revolution</u>. Government being instituted for the common benefit, protection, and security, of the whole community, and not for the private interest or emolument of any one man, family, or class of men; therefore, whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought to reform the old, or establish a new government. The doctrine of nonresistance against arbitrary power, and oppression, is absurd, slavish, and destructive of the good and happiness of mankind.
June 2, l784.

Article 10 ties back to: Article 1 in both the sovereignty of the people and the purpose of government, Article 2 in the common benefit, and Article 9 in prohibiting emoluments. It is this Article that prohibits special grants to earn money such as the casino gambling and licensing professions. Article 10 is also the embodiment of the Declaration of Independence; it establishes the obligation to resist tyranny; and, it is the only such declaration outside the Declaration of Independence. Here to, it is noteworthy that the New Hampshire Constitution itself was subject to a Constitutional convention in 1791; it was amended to comply with the Constitution for the United States of America wherein Article 10 was retained, unaltered. Therefore, we can assume that the ratifiers of both Constitutions assumed they retained the right to throw off the Government of the United States of America should it be injurious to their liberty. Moreover, it embodies the evangelical principles of personal sovereignty, responsibility and authority. In addition, one of the most important aspects of Article 10 is that the word ***ought*** is a moral imperative; the people have an obligation to throw off tyrannical government, the summation of the preceding Articles. It demonstrates that *due subjection* in Article 6 is *not subjection* of the people to government, but of government to the people (Article 8) and of both to God.

_Dan Itse

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It's Time to Seize the Reins

_Romelle Winters

Romelle Winters

I looked up at him, an incredibly beautiful horse. His name was Hollywood and he was as stunning as his name indicated. His eyes were big, moist, and bright blue. One ear flicked with annoyance as if to ask why I was hesitating. His saddle was on and he stamped a foot telling me to climb on so he could run a bit. Apparently, patience was not one of his virtues.

It had been a long time since I rode a horse and I shivered with anticipation. What if he threw me off? I suspected I would break more easily now that many years had stamped their mark on my bones.

How the heck was I going to get on the back of this beast who seemed to be growing in size every second I waited? I guessed that is why God invented mounting blocks. I needed to get into the saddle and mused that it had been many years since I lifted my leg that high -- I had been 30 and far more flexible.

I walked up the stairs of the wooden platform and was relieved to see the saddle within reach. With some difficulty, I threw one leg over the saddle, slid across and rested my backside squarely on the center of the soft leather. It didn't feel too bad, but the pulling of muscles in my legs warned me that they would be reminding me of this foolishness for

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days to come.

When I finished my ride, the horse stood patiently at the side of the mounting block where he expected me to gracefully climb off. He was an optimistic fellow. I got one foot onto the block and tried to pull my right leg off the saddle. Much to my surprise, it would not move. The hump on the back of the saddle prohibited my leg from joining its partner on more firm ground. Funny, I thought, Roy Rogers never seemed to have problems like this.

Continuing to hop on one foot, it was obvious that the mounting block was not as wide as I would have wished. I was moving farther away from the horse, with my right leg still firmly attached to his back. I looked like some peculiar bouncing bird, hopping on one foot while the other pointed upright toward the sky. I glanced at my daughter and grandson who didn't seem amused by my plight: *"Hurry up and get off or he is going to bolt."* My daughter's voice indicating she was clueless about my predicament.

With one foot on a three foot high platform and the other wrapped around a beast who had the potential to rip me in two, I pondered my situation. On the one hand, I was in a precarious position. On the other, I was doing hyper extended splits which I had not been able to do since my pre-puberty days. That certainly raised my self-esteem. However, by now the horse was casting an impatient glance at me which inspired me to avoid a potentially painful experience.

Moving to the opposite side of Hollywood, my grandson began to push my leg over. It refused to budge. He lifted it even higher to force it over the hump at the back of the saddle. My hyper extended splits extended even more *hyperly*. Proudly, I realized I hadn't been able to touch my leg to my shoulder since the age of 10 when my bones began to fuse into the solid mass they had become.

Grunting, shoving, and pushing, my grandson finally succeeded in removing my obstinate anatomy off the back of the horse. Hollywood and I were both relieved although I suspect the experience was less painful for him, And I was not impressed when he rolled his eyes.

Later, in thinking about the encounter, I realized the strong correlation between the horse, as a beast of burden, and governments. Just as people find it easier to use an animal for transportation, they too rely upon government to move their lives along smoothly. However, just as it is not effortless to train a beast of burden, it is equally difficult to establish and then control a government.

Like Hollywood, governments can be tame and gentle or they can be totally wild, despotic. And, just as a rider must be aware of the horse's strength and power, a nation's people must be vigilant to remain in command of government's latent, but ever present, coercive powers. To help with this, our forefathers gave us a written Constitution so that *We the People* could hold the reins of government, a safe way to control the beast. Citizens of a free nation, to remain free, must be capable and **desirous** to take charge and rein in the brute or the brute will take charge and rein in the people, as a horse would an apathetic rider. Governments, like a horse, can make for an easy ride when kept under control, but if left to themselves, they can and do become dangerous. They too, will bolt out of control causing untold damage and destruction.

That night I had a dream about the day's experience. Only this time, the government was the beast seated upon my back. At first, it was not too difficult, for the beast spoke to me seductively and lulled me into thinking it was friendly. Then, it began to incrementally change its demeanor; it began to use its coercive power to whip me liberally while digging its spurs into my sides. I realized I had no control over its actions now and every attempt to rear upward and throw off its substantial body was unsuccessful. It had grown far too large.

Even the saddle had developed tendrils which were now wrapped about me, draining my blood to directly feed the beast astride my back. Taking energy from me, the beast began to increase its size dramatically and I realized my life would become more miserable as the beast continued to gain control of me. My condition was deteriorating rapidly; there was little I could do. Looking around, I saw others in the same dilemma, but they were so busy trying to stay alive that they could not give me any assistance.

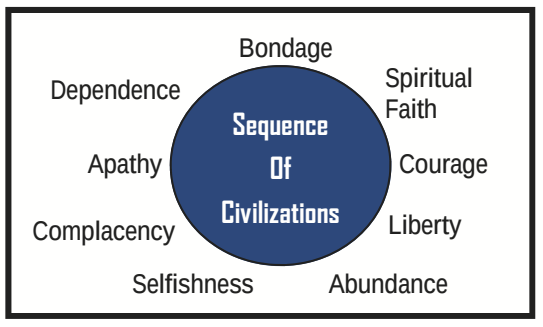
A government gains dominance over a nation in much the same way, through unchecked growth. When it overpowers the people, its control becomes overwhelming and impossible to combat. We become one with the beast as it sucks our blood to enlarge itself. Our capability to cast it off is gone, our strength sapped, transferred to the beast. It gains complete control over our lives and there is little we can do except allow it to drain all of our blood. It is as George Washington warned:

"Government is not reason, it is not eloquence, it is force. Like fire, it is a dangerous servant and a fearful master."

The time to take control of a government is when it is still small, when there is some ability to manage it. But, here in the United States, we have almost reached the point of no return. Our income is being consumed by taxes, and we cannot restrict the amount of blood government depletes from us.

Our only hope is to find a way to throw off the out-of-control beast. In doing this, we must have the audacity to hope that others have not become so enamored with government that they prefer to be completely conquered by it. This has happened to many powerful nations precipitating their collapse. As Lord Tytler warned:

"The average age of the world's greatest civilizations has been 200 years. These nations have progressed through this sequence: From bondage to spiritual faith; from spiritual faith to great courage; from courage to liberty; from liberty



to abundance; from abundance to selfishness; from selfishness to complacency; from complacency to apathy; from apathy to dependence; from dependency back again to bondage."[1]

The sequence is not inevitable unless good men (and women) choose to do nothing to prevent it. America is 232 years old...where would **you** place her on this chart?

I believe we are between "dependence" and "bondage." _Romelle Winters

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1. Lord Alexander Tytler 1747-1813, Scotland

A Framer's View of the Special Interest:

"Some states have lost their liberty by particular incidents: But this calamity is generally owing to the decay of virtue. A people is travelling fast to destruction, when individuals consider their interests as distinct from those of the public. Such notions are fatal to their country, and to themselves...Miserable men! Of whom it is hard to say, whether they ought to be most the objects of pity or contempt: But whose opinions are certainly as detestable as their practices are destructive." _John Dickinson

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can always be relied upon to relieve their fellow-citizens in misfortune...Federal aid in such cases encourages the expectation of paternal care on the part of the government and weakens the sturdiness of our national character, while it prevents the indulgence among our people of that kindly sentiment and conduct which strengthen the bond of a common brotherhood."

A proper definition of general welfare was never out of reach. Yet in 1856, while Buchanan was president Congress asserted that the Constitution's general welfare clause empowered it to establish a Federal Department of Agriculture for the purpose of collecting agricultural statistics, promoting agriculture, and procuring and distributing seeds, cuttings and bulbs. The proponents of the Bill claimed that "the general welfare could in no way be better advanced or promoted, than by such means as shall secure the largest amount of wealth from its original source, the cultivation of the soil."

After several years of debate in Congress, President Lincoln signed, in 1862, the act to establish a Department of Agriculture. The language of the new act was consistent with the general assertions of 1856. The President acknowledged that while the department was established for the "immediate benefit of a large class of our most valuable citizens," it should eventually become "the fruitful source of advantage to all our people."

Finally, consider foreign policy and the Constitution. Foreign policy always involves commerce, treaties and military involvement. The Constitution establishes that: First, Congress has power to regulate commerce with foreign nations. Second, the President and the Senate have power to make treaties. Third, the President is Commander in Chief, but Congress controls the actual declaration of war and has the power of the purse.

The President has never had and still does not have the authority to engage in foreign war without a formal declaration from Congress. Yet in 1973 Congress wrote and Richard Nixon signed into law the War Powers Resolution. The purpose statement of this act noticeably reveals a deliberate attempt to undermine Constitutional authority:

(a) *It is the purpose of this joint resolution to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.* If this was the intent of the framers, how did they somehow not know it and write it?

(b)*Under article I, section 8, of the Constitution, it is specifically provided that the Congress shall have the power to make all laws necessary and proper for carrying into execution, not only its own powers but also all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof.* The twisting of Constitutional language here is deliberate.

(c) *The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.* Take note of how the Constitution was amended without the people even being asked.

One treads on dangerous ground when devaluing the presidency of Abraham Lincoln. Yet, in terms of Constitutional interpretation, his political philosophy was quite liberal: *"The legitimate object of government is to do for a community of people whatever they need to have done, but cannot do at all, or cannot do so well, for themselves, in their separate and individual capacities."*

Perhaps Mr. Lincoln fully intended to reinstate Constitutional policy after the War Between the States; but unfortunately we will never know for the many unconstitutional acts he instigated during those Civil War years set an unfortunate precedent. For example, he launched a military invasion without the consent of Congress and blockaded Southern ports; he suspended the writ of habeas corpus for the duration of his administration and had his military arrest tens of thousands of Northern political opponents using a secret police force.

On May 18, 1864 Lincoln sent this order to General John Dix: "*You will take possession by military force, of the printing establishments of the New York World and Journal of Commerce...and prohibit any further publication thereof...you are therefore commanded forthwith to arrest and imprison...the editors, proprietors and publishers of the aforesaid newspapers."* Then, the border states were systematically disarmed, and two "confiscation acts" were written into law wherein any U.S. citizen could have his private property confiscated for such "crimes" as *falsely exalting the motives of the traitors overstating the success of our adversaries,* and *inflaming party spirit among ourselves.* Informers who turned in their neighbors could keep 50 percent of their neighbors' property; the other half went to the U.S. treasury. Indeed the times were tragic, the nation divided and the Constitution demoted as higher law.

Theodore Roosevelt (T.R.) was another President who scored poorly in regard to the Constitution. According to him, if the people were to be served, then it was incumbent upon the President to orchestrate the initiatives that would be to their and the nation's benefit. If the Constitution did not specifically deny the President the exercise of a power, Roosevelt felt at liberty to do it: *"Is there any law that will prevent me from declaring Pelican Island a Federal Bird Reservation? . . .Very well, then I so declare it!"* By **executive order** in March 1903, he established the first of fifty-one national bird sanctuaries. These and the national parks and monuments he created are a part of his legacy.

Roosevelt believed that the United States Constitution was to be broadly, expansively, and energetically interpreted. He rejected the idea that the Constitution should be read as a restraining rather than as an enabling document. He believed that the national government had a right—and a duty—"*to do anything that the needs of the Nation demanded unless such action was [expressly] forbidden by the Constitution or by the laws."* He argued: *"I am not pleading for an extension of constitutional power. I am pleading that constitutional power which already exists shall be applied to new conditions which did not exist when the Constitution went into being."* According to TR: *"The Constitution belongs to the people and not the people to the Constitution."* In his view, state and local authorities, as well as the Congress, was to defer to the Oval Office. The president, Roosevelt wrote, should *"do all he could for the people, and not . . . content himself with the negative merit of keeping his talents undamaged in a napkin. . . . I did not care a rap for the mere form and show of power; I cared immensely for the use that could be made of the substance."*

Interestingly, it seems the less we know about any given President the more likely it is that he acted constitutionally. We *all* know of FDR, and the hypothesis here is upheld. For example, as President he threatened to take over the Supreme Court and pushed through the *New Deal,* a program which contradicted the Constitution every step of the way.

Then came Woodrow Wilson who, after establishing the unconstitutional Federal Reserve, among other Progressive notions, turned around and apologized for the destruction he caused. And, let us not overlook President Herbert Hoover who, in 4 years, signed 3 times as many Executive Orders, 1,011 to be exact, as compared to the 380 issued by Ronald Reagan in 8 years.

And so, we have seen examples of Constitutional Presidents as well their counterparts. Given that, how might a President leave a legacy of Constitutional policy?

For that answer, we turn to President Cleveland: *"[Constitutional government requires] a patriotic disregard of such local and selfish claims as are unreasonable and reckless of the welfare of the entire country."*

That requires a commitment like this: *"I shall to the best of my ability and within my sphere of duty preserve the Constitution by loyally protecting every grant of Federal power it contains, by defending all its restraints when attacked by impatience and restlessness, and by enforcing its limitations and reservations in favor of the States and of the people."*

What may we expect in the next four years? Time will tell; but, judging by the 2008 campaign rhetoric the Constitution is in trouble again.

_Dr. Lee Button

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