



# Original Intent

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## Declining American Culture: Rugged Individualism—A Lost Attribute

### CHAIRMAN'S CORNER

### The Progressive Era... 20 Short Years that Socialized America.



Dianne Gilbert

What happens when the sound political doctrines espoused by our nation's Founding Fathers do not remain dominant among the body politic? Simply put, you get the leviathan government we live under today. But there was a time in American history when their ideas and philosophies were dominant and that fact manifested itself in the overall happiness of the people. The people were free to be. They could work for whom they would and for what they would. They were free to try, free to fail and free to try again without penalty. American government operated within the expressed boundaries of the American Constitution and government adhered to a philosophy of *laissez-faire*. It was a *just* government that, at bottom, upheld the *Spirit of 1776*: the right of the people to self-govern.

#### Citizen-Government Relationship turned Upside Down

That is not the way government operates now. The original government-citizenship relationship affirmed by the Declaration of Independence gave the people power over government. However, over time that arrangement has been turned upside-down. Instead of government taking its marching orders from the "Consent of the Governed..."<sup>1</sup> the people are now the ones asking "May I?" of some government bureaucrat, and usually unelected at that.

To what do the people of the 21<sup>st</sup> century owe this repugnant circumstance? We owe it to progressivism, the Americanized version of European socialism that swept America like a tidal wave at the turn of the 20<sup>th</sup> century. It resonated with our educated, middle-class urbanite forebears who, as the Progressive Movement's mainstay, "called for the reform of American culture in demanding governmental protection of [their] societal interests from the abusive power of consolidated wealth."<sup>2</sup>

Dr. Gregory M. Browne offers this explanation

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### Why the DREAM ACT is a Nightmare

by Professor Kris W. Kobach

Kris W. Kobach is Professor of Law at the University of Missouri-Kansas City School of Law and is representing the U.S. citizen plaintiffs who have filed suit in two states (Kansas and California) to enjoin a state statute from providing in-state tuition rates to illegal aliens asserting violations of federal law and the Equal Protection Clause of the U.S. Constitution by discriminating against them as out-of-state-tuition students in favor of illegal aliens. He served as counsel and chief adviser on immigration law and border security to U.S. Attorney General John Ashcroft



Prof. Kris W. Kobach

#### The Senate Comprehensive Immigration Reform Act Rewards Lawbreaking!

It is no secret that the Comprehensive Immigration Reform Act of 2006 (S. 2611), passed by the U.S. Senate on May 25, 2006, contains numerous provisions that reward illegal aliens for violating federal immigration law. What is less well known is that the Senate bill also condones the violation of federal law by 10 U.S. states. Indeed, S. 2611 expressly shields these states from liability for their past violations of federal law.

These absurdities are found in the Development, Relief, and Education for Alien Minors (DREAM) Act provisions of S. 2611.[1] Just before the Senate Judiciary Committee approved the first version of the bill in the evening of March 27, 2006, Senator Richard Durbin (D-IL) offered the DREAM Act as an amendment. It passed on a voice vote and was in the compromise version of the bill that the Senate passed in May.

The DREAM Act is a nightmare. It repeals a 1996 federal law that prohibits any state from offering in-state tuition rates to illegal aliens unless the state also offers in-state tuition rates to all U.S. citizens. On top of that, the DREAM Act offers a separate amnesty to illegal alien students.

#### The DREAM Act

On its own, the DREAM Act never stood a chance of passing. For years, polls have shown consistently that overwhelming majorities of voters oppose giving in-state tuition

benefits to illegal aliens. Not surprisingly, the DREAM Act languished in committee for four years until the opportunity arose to hitch it to the Senate's immigration bill.

Events of the past 10 years illustrate how the DREAM Act would undermine the rule of law. In September 1996, Congress passed the landmark Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). Led by Lamar Smith (R-TX) in the House of Representatives and Alan Simpson (R-WY) in the Senate, Congress significantly toughened the nation's immigration laws. To his credit, President Bill Clinton signed the bill into law.

Open-borders advocates in some states—most notably California—had already raised the possibility of offering in-state tuition rates to illegal aliens who attend public universities. To prevent such a development, the IIRIRA's sponsors inserted a clearly worded provision that prohibited any state from doing so unless it provided the same discounted tuition to all U.S. citizens:

*Notwithstanding any other provision of law, an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident.[2]*

Members of Congress reasoned that no state would be interested in giving up the extra revenue from out-of-state students, so this provision would ensure that illegal aliens would not be rewarded with a taxpayer-subsidized college education. The IIRIRA's proponents never imagined that some states might simply disobey

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### What The Founders Would Say...

"Every member of the state, ought diligently to read and study the constitution of his country, and teach the rising generation to be free. By knowing their rights, they will sooner perceive when they are violated, and be the better prepared to defend and assert them."

— John Jay 1777

## Biographical Sketch: Caesar Rodney ~ Ailing But Available Patriot



"Listen my children and you shall hear of the midnight ride of . . . Caesar Rodney." Caesar Rodney? That's probably not the way you first heard that line but just as appropriate as the original.

The Rodney family roots deep into the Middle Ages. Sir Richard De Rodney rode with King Richard in the Crusades, dying in the battle of Acre. The wealth and power of the family continued to grow as its members divided. Shortly after William Penn began building a colony in America William Rodney joined the new settlers there. After a brief stay in Philadelphia Mr. Rodney resettled in Kent County Delaware.

Moving to a community near Dover William took up the life of a farmer and grew not only a large estate but also a large family. The eldest child of the eight Rodneys was named Caesar. The importance of this man in the history of the First State typifies his role in the founding of America.

Like many of the patriots Caesar was educated at home. Soon after he reached his seventeenth birthday his father died. His mother made the difficult but necessary decision to move Caesar under the guardianship of Nicholas Ridgely. Mr. Ridgely was a clerk of the peace and doubtless introduced young Caesar to politics.

He must have taken to that lifestyle capably. In 1755 he was appointed High Sheriff of Kent County. Subsequently, he became a registrar of wills, recorder of deeds, clerk of the orphan's court, justice of the peace and a lower court judge. Dispelling the myth that one must study the law to judge the law Caesar Rodney never became a lawyer. To further round out his busy life he became a leader of the state militia, eventually gaining the rank of Brigadier General. Surprisingly, as his story unfolds, it is his military responsibility that plays, perhaps, the central role in his most legendary action.

As his notoriety grew so did his popularity and in 1758, under the royal government, he was elected to the colonial legislature in Newcastle. He served each year (with the exception of 1771) until this body was dissolved in 1776. These years were not spent in endless debate over the fine points of jurisdiction and interpretation. The colonies were in turmoil and needed his wisdom in other ways.

He became a delegate to the Stamp Act Congress in 1765 and upon hearing that King George repealed this oppressive regulation help to write this Sovereign an eloquent letter of gratitude from the people of Delaware. Some historians record that the King was so overwhelmed by this missive that he read it more than once. Of course King George was not persuaded by the actions of the colonists that any further repentance on his part was necessary and conditions in America worsened. The leaders of Delaware once again penned a letter to the King. "If our fellow-

subjects of Great Britain, who derive no authority from us, who cannot in our humble opinion represent us, and to whom we will not yield in loyalty and affection to your majesty, can at their will and pleasure, of right, give and grant away our property; if they enforce an implicit obedience to every order or act of theirs for that purpose, and deprive all, or any of the assemblies on this continent, of the power of legislation, for differing with them in opinion in matters which intimately affect their rights and interests, and every thing that is dear and valuable to Englishmen, we cannot imagine a case more miserable; we cannot think that we shall have even the shadow of liberty left. We conceive it to be an inherent right in your majesty's subjects, derived to them from God and nature, handed down from their ancestors, and confirmed by your royal predecessors and the constitution, in person, or by their representatives, to give and grant to

their sovereigns those things which their own labors and their own cares have acquired and saved, and in such proportions and at such times, as the national honor and interest may require. Your majesty's

faithful subjects of this government have enjoyed this inestimable privilege uninterrupted from its first existence, till of late. They have at all times cheerfully contributed to the utmost of their abilities for your majesty's service, as often as your royal requisitions were made known; and they cannot now, but with the greatest uneasiness and distress of mind, part with the power of demonstrating their loyalty and affection to their beloved king." This loyalty of Rodney and other Delaware leaders to the King cannot be overlooked. That he would then make such a bold stand for independence from England is all the more remarkable.

As events continued to lead toward open protest and eventual war Caesar Rodney became more involved in the national process. Part of his legislative responsibility was as chairman of the committee of correspondence. This allowed him to write and receive letters from patriot leaders throughout the colonies and forged his own position on what must happen on these shores. When the call came to participate in the newly organized Continental Congress he answered readily.

When the Congress began meeting in 1774, in spite of a severe case of asthma and a cancerous lesion that grew across his face Mr. Rodney was in attendance. He had previously planned a trip to England for medical treatment and perhaps a cure for this cancer in the advanced medical facilities of that nation. But

the passion for freedom grew stronger in his heart than the wound upon his face. Joined by Thomas McKean and George Read he made his way to Philadelphia. Doctors there did provide some relief and a partial halting of the disease but he would never be completely well. More important was the liberty of his people and the colonies.

The discussions in Philadelphia finally settled on a motion to break free from King George and his tyrannical regulations. That was June 30, 1776. The vote was 9 colonies for independence, 2 against and New York abstaining. Delaware was divided, McKean in favor of the motion, Read against. Unfortunately, that day militia 'General' Rodney was on horseback in Delaware squelching a Loyalist riot. As quickly as he could Representative McKean sent word to Rodney that his vote was needed to unlock the Delaware delegation. So began the midnight ride of Caesar Rodney. All night long as July first turned into July second the brave statesman rode through a thunderstorm covering the 80-mile journey in just enough time to cast his historic vote in favor of independence. There would be a war, the colonies would be free and Delaware became the first state.

Thomas McKean remembered years later the image of Rodney at the door "in his boots and spurs." John Adams described him as "the oddest looking man in the world; he is tall, thin, and slender as a reed, pale; his face is not bigger than a large apple, yet there is sense and fire, spirit, wit and humor in this countenance."

Once the vote was assured and the debate continued Rodney is said to have humbled the self-important Virginians by assuring them. "Let Virginia be of good cheer, she has a friend in need; Delaware will take her under its protection and insure her safety."

General Rodney's militia experience made him an invaluable aid to the war effort. Delaware regularly met or exceeded its quotas for troops and provisions throughout the entire War of Independence. After the revolution Rodney returned to state leadership and was elected Delaware's President in 1778. Continued declining health prevented him from ever again serving his state on a national level but he held more state offices than any other Delawarean.

The ravages of illness eventually had their way and Caesar Rodney died in 1784. He will never be forgotten. His visage is captured on monuments in Wilmington. His profile on horseback is stamped into the new Delaware quarter. His name has been given to Delaware parks, schools and even a road race. His midnight ride has also been immortalized.

A poem called Caesar Rodney's Ride closes with this stanza.

"At tyranny's feet was the gauntlet flung;  
'We are free!' all the bells through the colonies rung,  
And the sons of the free may recall with pride,  
The day of delegate Rodney's ride."

—Dr. Lee Button. Lee is Vice Chairman of the NH Center for Constitutional Studies, Inc.

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**Third Parties Can Save This Country \_ Romelle Winters**



**Romelle Winters**

When the Constitution was written the Founding Fathers did not mention political parties. Obviously, they were aware of the various factions which had philosophically divided thought even within their own ranks. Whigs, Federalists and a myriad of other groups worked within the convention to bring their ideas to the table. However, nothing in the final document mentioned parties. Even those of us without the wisdom of the Founders know that would have been just plain stupid.

Yet, through the years, this country has devolved into a nation with two parties dominating our governance. In the past several decades, the Republicans and Democrats worked in unison to effectively eliminate all third parties from becoming an influential voice in the political process. The result has been the almost-dictatorial hold on the country by two parties which have become closer and closer in ideology.

The media, intended to be a watchdog for our freedoms, has joined the duopoly to silence any voices which could pose a threat to the Republicrats -- or Dumbikins. Consequentially, any possible opposition is eliminated, creating a profound threat to our freedom.

The collusion between the media, the political parties, industry, and foreign influences has created a government working for the advancement of its own agenda and ignoring the Constitution unless it suits their purposes. Our country is governed by an unknown, unseen entity which is open to corruption and the destruction of the United States as we know it.

The framers of our government intended our country to be run by citizen legislators -- govern for a while, then go home where you will live with your political decisions. This would insure the flow of new ideas. It would protect us from the dishonest tendencies of those exposed to the temptations brought about by long exposure to power and money. And make no mistake about it, term limits is not the answer. It only brings another Republican or Democrat into office leaving us exactly where we began.

Allowance of vibrant third parties would bring new thoughts and innovations to the table. The Republicrats would find themselves in the uncomfortable position of having to defend their actions --- many of which are unconstitutional. With a two party system, neither party will confront the other because they

are both guilty of the same infractions.

How have the Republicrats maintained control? The Federal Debate Commission is one way. Since the Nixon-Kennedy debates candidates for office have debated before the public. It is now well-known that a candidate cannot win the presidency without debating before the country. This controlling commission is not a part of the Federal government - - despite its name. It is a private organization funded by donations from INTERNATIONAL corporations. Thus international business controls the commission which determines who will be part of the debates -- thus winning the presidency. Sounds like fascism to me. A few years ago, Ross Perot was allowed in and, unexpectedly, gained much support. He just might have become president had he not pulled out, then returned -- doing a bizarre tap dance with his viability as a candidate. The Commission learned its lesson -- no more third party candidates allowed. They set the bar and if a candidate meets it, the bar is raised.

Money flows only to the major parties in sufficient quantities making the candidates beholden to the pressures of financing the next campaign. Dishonesty becomes inevitable as witnessed by the votes our Congress has cast in recent years. Vox populi is no longer important -- monei comingintous is.

The media -- controlled by businessmen whose bias is influenced by advertising income and Pulitzer Prize accolades -- supports candidates from one of the two mirror-image parties. They effectively shut out third parties which would actually make their product more interesting. One major talk-show host read, verbatim, a press release issued by a third party without a mention that the thoughts were his own. At least he got their message out albeit under his name. The "fair and balanced" station presents the views of only the two major parties. Major third parties who are looking for a voice are told they will never be seen on the station. This is fair and balanced?

As time goes on, the two major parties -- major by their own design and collusion -- will grow more and more alike. The influence of the Constitution on the government has been superceded by the wishes of those who finance and run the duopoly. It should be quite obvious to thinking people and those who love this country, that a duopoly can be as dictatorial as any other tyrant.

The best solution is to begin to support the third parties -- there are a few major ones in existence. Pick one and work for it. Work within your state to make ballot access more friendly to third parties. In the meantime, at the national level, throw out whoever is in office. Keep them in flux and prevent the legislators from making the public trough their permanent feeding ground filled with increasingly luxurious swill. The longer they are in office, the better they know how to circumvent ethics and fill their coffers and pockets.

Follow in the steps of our Founding

Fathers and do not place this country in jeopardy by supporting a duopoly. The people are rapidly losing their voice to the money and influence of the Republicans and Democrats. A vibrant third party movement can change that and bring us back to the freedoms guaranteed by the Constitution. It's up to you.

Romelle Winters is a former History teacher and is Public Relations Chairman for NHCCS

**A Constitutional Gem:**

*By Donald Conkey*

**“Strong local self-government is the key-stone to preserving human freedom.”**

In introducing this principle the late Dr. Cleon Skousen wrote:

“Political power automatically gravitates toward the center, and the purpose of the Constitution is to prevent that from happening. The centralization of political power always destroys liberty by removing the decision-making function from the people on the local level and transferring it to the officers of the central government. This process gradually benumbs the spirit of ‘voluntarism’ among the people, and they lose the will to solve their own problems. They also cease to be involved in community affairs. They seek the anonymity of oblivion to the seething crowds of the city and often degenerate into faceless automatons who have neither a voice nor a vote.”

**Question:** Has America reached this non-involvement stage in its on-going history?

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tion regarding the period's activities:

"...The Progressive Movement was part of an international movement of statism, principally egalitarian statism...it was the outcome of a rise of statist political philosophies across the Western World: that is, those that fostered, nourished, and contributed to the growth of state. The ideas embodied in these philosophies created intellectual and mass movements favoring the growth of state and expansion of its power...[They] gathered momentum in the period 1870-1900, became strongest in the period from 1900 to World War I, and challenged the traditional notions of civil society and personal life, particularly the Founders' doctrine of limited government...[To be sure] the revolution that the Founders of the United States carried out was negated on almost every count by the revolutionaries of the Progressive Era."<sup>3</sup>

The consequence of their misguided labors was a socialized America, which was marketed and sold to an unsuspecting body politic under the banner of moving forward as in making "progress." Recognizing that the masses would not accept socialism if called by that name, the Progressives cleverly renamed their creed; hence, the term *progressivism*.

As it were, progressivism would essentially run its course by 1920 with the conclusion of Woodrow Wilson's second term; but, not without leaving its devastating mark upon the body politic. By the time enough Americans had caught on to its destructive tendencies, it had managed to destroy America's culture of rugged individualism, her once virtuous national character and her limited, laissez-faire (hands-off) government. Despite its shortened life span, progressivism brought about a significant transformation of American government and left little in place of what the Founding Fathers built. Likewise, because the people failed in their duty to preserve American freedom for their posterity, this specious attack upon the once virtuous American culture is yet to be reversed.

#### Progressivism...Code Word for Socialism

*Progressivism* is an euphemism for European socialism. It embraces all of the markings associated with big nanny, paternalistic, collectivistic government. It is statism, which in today's parlance is what we call "big government." It had swept the European continent at a time when nothing linked to such an ideology would have found approval here. But time and circumstance has a way of changing all that as it did here in America; progressivism's supporters had only to lie in wait of an opportunity to launch it on this side of the Atlantic. They were handed that opportunity in the social unrest that issued from America's growing pains in the closing decades of the

19<sup>th</sup> century.

Given this tailcoat to ride on, the Progressives went to work capitalizing upon the disorder that America's cities were experiencing at the time. Widespread municipal corruption had become the order of the day for some of the nation's cities, and this situation was further exacerbated by rapid population growth, much of that due to uncontrolled immigration from Eastern Europe. Taken together, America's urban dwellers were ripe for the Socialists' picking; and, joining them feeling equally disfranchised was the small businessman. More and more Americans would fall captive to the Progressives' muckraking mantra, which began to fill a number of nationally distributed journals and magazines. The Progressives hammered upon the States' inability to control urban civil unrest, municipal corruption and the financial threat to middle-class America allegedly posed by the large corporations on the one hand and organized labor on the other. Convinced that the Framers' limited government could not reliably restore order, they agitated the general public into accepting the notion of a stronger, more highly centralized national government to take control of the problems confronting the nation.

#### The Wolf's Head In The Door...

The Progressives' long awaited opportunity to push big government onto the American people had at last become a reality. They lobbied for new legislation that would Washington, DC higher control over the nation's economy. They took the power and authority that once fell under the jurisdiction of State police powers and put it under the direct control of the national government. They put all their eggs in statism's basket, too shortsighted to see that by treading upon the State's policing powers they were effectively relinquishing their capacity to control government and so their God-given right to self-government. Jefferson would have advised them to think twice about the hastiness of their actions: "*It behooves our citizens to be on their guard, to be firm in their principles, and full of confidence in themselves. We are able to preserve or self-government if we will but think so.*"<sup>4</sup>

It's been virtually all downhill for American freedom since then; moreover, as scholars of the American Founding can attest, what the Progressives have cost Americans in terms of lost liberties is nothing short of cataclysmic. Unfortunately too few Americans have the capacity to fathom this loss; for, who alive today has grown up knowing anything other than big government? Consequently, Jefferson's prophetic words have now become our reality: "*[We] should look forward to a time, and that not a distant one, when corruption in this [country], as in the country from which we derive our origin, will have seized the heads of government and be spread by them through the body of the people and make them pay the price. Human nature is the same on every side of the Atlantic, and will be alike influenced by the same causes.*"<sup>5</sup>

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federal law.

#### States Subsidizing the College Education of Illegal Aliens

However, that is precisely what happened. In 1999, radical liberals in the California legislature pushed ahead with their plan to have taxpayers subsidize the college education of illegal aliens. Assemblyman Marco Firebaugh (D) sponsored a bill that would have made illegal aliens who had resided in California for three years during high school eligible for in-state tuition at California community colleges and universities.

Democrat Governor Gray Davis vetoed the bill in January 2000, stating clearly in his veto message that it would violate federal law:

*[U]ndocumented aliens are ineligible to receive postsecondary education benefits based on state residence.... IIRIRA would require that all out-of-state legal residents be eligible for this same benefit. Based on Fall 1998 enrollment figures... this legislation could result in a revenue loss of over \$63.7 million to the state.[3]*

Undeterred, Firebaugh introduced his bill again, and the California legislature passed it again. In 2002, facing flagging poll numbers and desperate to rally Hispanic voters to his cause, Governor Davis signed the bill.

Meanwhile, similar interests in Texas succeeded in enacting their own version of the bill. Over the next four years, interest groups lobbying for illegal aliens introduced similar legislation in most of the other states.

The majority of state legislatures had the good sense to reject the idea, but eight states followed the examples of California and Texas, including some states in the heart of "red" America. Today, the 10 states that offer in-state tuition to illegal aliens are California, Illinois, Kansas, Nebraska, New Mexico, New York, Oklahoma, Texas, Utah, and Washington.

In most of these states, the law was passed under cover of darkness because public opinion was strongly against subsidizing the college education of illegal aliens at taxpayer expense. The governors even declined to hold press conferences or signing ceremonies heralding the new laws.

However, in Nebraska, the last of the 10 states to pass the law, something unusual happened. During the 2006 session, Nebraska's unicameral legislature passed an in-state tuition bill for illegal aliens. Governor Dave Heineman vetoed the bill because it violated federal law and was bad policy. In mid-April, the legislature, which included 20 lame-duck Senators, overrode his veto by a vote of 30 to 19.

The veto would become an issue in the 2006 Republican gubernatorial primary.

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Heineman's opponent was the legendary University of Nebraska football coach and sitting U.S. Representative Tom Osborne, a political demigod in the Cornhusker State. Osborne had never received less than 82 percent of the vote in any election. Heineman, on the other hand, had not yet won a gubernatorial election. He became governor in 2005 when Governor Mike Johanns resigned to become U.S. Secretary of Agriculture.

Few believed that Heineman had a chance of winning the primary, but Coach Osborne fumbled. He criticized Heineman for vetoing the in-state tuition bill and indicated that he favored the idea of giving subsidized tuition to illegal aliens. The voters reacted negatively, and Heineman surged ahead in the final weeks to beat Osborn by 50 percent to 44 percent in the primary election on May 9, 2006. After the vote, both candidates said the tuition issue had been decisive.

**State-Subsidized Lawbreaking**

In all 10 states, the in-state tuition laws make for shockingly bad policy.

First, providing in-state tuition rates to illegal aliens amounts to giving them a taxpayer-financed education. In contrast, out-of-state students pay the full cost of their education. This gift to illegal aliens costs taxpayers a great deal of money at a time when tuition rates are rising across the country. The costs of these subsidies are staggering. For example, California taxpayers pay more than \$50 million annually to subsidize the college education of thousands of illegal aliens.

Second, these states are encouraging aliens to violate federal immigration law. Indeed, breaking federal law is a prerequisite for illegal aliens because state laws expressly deny in-state tuition to legal aliens who have valid student visas. An alien is eligible for in-state tuition only if he remains in the state in violation of federal law and evades federal law enforcement. Legal aliens must pay out-of-state tuition. The states are directly rewarding this illegal behavior.

This situation is comparable to a state passing a law that rewards residents with state tax credits for cheating on their federal income taxes. These 10 states are providing direct financial subsidies to those who violate federal law.

Third, not only are such laws unfair to aliens who follow the law, but they are slaps in the faces of law-abiding American citizens. For example, a student from Missouri who attends Kansas University and has always played by the rules and obeyed the law is charged three times the tuition charged to an alien whose very presence in the country is a violation of federal criminal law.

Even if a good argument could be made for

giving in-state tuition benefits to illegal aliens, the bottom line is that the policy violates federal law. These 10 states have brazenly cast aside the constraints imposed by Congress and the U.S. Constitution.

**Pending Lawsuits**

In July 2004, a group of U.S. citizen students from out of state filed suit in federal district court in Kansas to enjoin the state from providing in-state tuition rates to illegal aliens. [4] They pointed out that Kansas is clearly violating federal law and the Equal Protection Clause of the U.S. Constitution by discriminating against them in favor of illegal aliens.

The district judge did not render any decision on the central questions of the case. Instead, he avoided the issues entirely by issuing a particularly weak ruling that the plaintiffs lacked a private right of action to bring their statutory challenge and lacked standing to bring their Equal Protection challenge. The case is currently before the U.S. Court of Appeals for the Tenth Circuit. Regrettably, the wheels of justice grind slowly, and a decision is unlikely before the spring of 2007.

Meanwhile, in December 2005, another group of U.S. citizen students filed a class-action suit in a California state court. [5] They too maintain that the state is violating federal law and the U.S. Constitution. Pursuant to a California civil rights statute, they are also seeking damages to compensate them for the extra tuition that they have paid above that charged to illegal aliens. Additional suits will likely be filed by U.S. citizens in the eight other states.

**Another Senate Bill Amnesty**

Just when it looked as if U.S. citizens might vindicate their rights under federal law and the wayward states would be held accountable, the Senate passed the immigration bill, offering the offending states a pardon.

The DREAM Act provisions, which are buried more than 600 pages into S. 2611, grant an unusual reprieve to the offending states. They retroactively repeal the 1996 federal law that the 10 states violated, making it as though the provisions in the 1996 law never existed. [6]

On top of this insult to the rule of law, the DREAM Act would create a massive independent amnesty in addition to the even larger amnesty that the rest of S. 2611 would confer. This amnesty opens a wide path to citizenship for any alien who entered the country before the age of 16 and has been in the country for at least five years. As with the rest of the Senate bill, the guiding notion seems to be "The longer you have violated federal law, the better."

Beyond that, all the alien needs is a high school diploma or a GED earned in the United States. Alternatively, he need only persuade an institution of higher education in the United States—any community college, technical

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**How's Your Constitutional IQ ?**

1. Did the Founders consider the right to bear arms a right vested by law or an unalienable right associated with the unalienable rights to life, liberty, and property?
2. When did the U.S. Post Office become an independent agency—in 1959, 1967, 1970 or 1982?
3. Which two Founders opposed the creation of a federally chartered private bank because they felt it was unconstitutional?
4. How much time passed between the writing of the Constitution and the regulation of railroads?
5. Who was the first President to issue a great number of executive orders?
6. What percentage of the first \$20,000 of a person's income did the income tax initially take?
7. Who gave the government its powers?
8. Did Jefferson fear that future leaders of the nation might load the people with heavy, perpetual debt?

**Answers** (1) The Founders considered it an unalienable right. This is stated per the Second Amendment. (2) 1970—it was severed from the Executive Branch and made an independent agency called the USPS. (3) Thomas Jefferson and James Madison (4) 100 years. This power gradually expanded until the railroads were virtually bankrupted. (5) Theodore Roosevelt issued 1006. Others before him issued well under 100. (6) One percent. In 1787, 7% The people.

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Continued from Page 4—Chasirman's Columns

### Paving the Way ...

Progressivism, socialism, was pushed onto an unsuspecting body politic by American intellectuals whose modern equivalent is today's *liberal*. But, as previously noted, socialism did not simply plant itself like weed to spring up and take over the garden. Hardly, the political soil in which progressivism was able to triumph had actually been fertilized by the agricultural community in the closing decades of the 19<sup>th</sup> century, an era historians often refer to as the prelude period leading up to the Progressive Era. It was actually the handiwork of a farmers' movement, started in the mid-west, that opened the door for socialism to walk through. It was those "*tillers of the field*," in whose hands James Madison said we could safely place American freedom; for, they were "*the best basis of public liberty, and the strongest bulwark of public safety.*"<sup>6</sup> As a matter of fact, both Madison and Jefferson thought America's farmers incorruptible for they could provide for themselves and did not need to depend on any other source or person for a subsistence. Jefferson went so far as to say they were "*the chosen people of God...*"

While that may have been true for some *tillers of field* others were hardly worthy of such accolades. Caught up in the dilemma of a rapidly changing market economy without the business savvy to compete, they demanded changes to the Framers' free market system. Their primary objective was to protect their long enjoyed position of political and economic power, which they now saw drifting toward the manufacturing sector and away from rural America toward the city. Madison's *salt-of-the-earth* people and Jefferson's *chosen flock* had taken a decidedly *left* turn. Historian Arthur Link explains:

"To begin with, the philosophy of *laissez-faire individualism*, upon which the exploitive and competitive system depended for ideological justification, had suffered steady erosion by the writings of neo-democrats like Henry George, Lester F. Ward, and Henry Demarest Lloyd. By 1900 the ideal of an individualist society had given way, at least in the minds of many intellectuals and political leaders, to the concept of a society organized for collective action in the public interest. Moreover...a large segment of the farmers had abandoned their traditional individualism and had organized politically to implement a comprehensive program for the control of the railroad, the large corporations, and the money supply."<sup>7</sup>

### Actions have Consequences

Regrettably, America's *yeomen class* had set the stage for expanding government's once limited role. Of particular significance here is the *Southern Farmers Alliance and Industrial Union* movement, organized in or about 1877. Their activities are not to be dismissed for it was this organization that spawned the Populist Movement of the 1890s and anticipated the arrival of the Progressive Era.<sup>8</sup> Indeed, many of the Populists' demands were later incorporated by the Progressive Movement and contributed in an important sense to the rent-seeking society we have become.

That is not to suggest that the farmers' movement was the only grass roots effort to

throw open the door to socialism. Other factions having similar socialistic goals were indeed present and agitating. One such group was a religious movement called the Social Gospellers whose orientation was mainly non-denominational Protestant. Somehow, they were able to square the plain wording of the Commandments: "Thou Shalt Not Steal," and "Thou Shalt Not Covet..." with their demand for the government to do it for them.

Still another faction whose actions helped socialize America was the Granger Movement. It too was an agrarian centered effort unto which historians accord the distinction of delivering to the American people their very first unconstitutional regulatory agency: the Interstate Commerce Commission (ICC) of 1887. Moreover, some Constitutional scholars mark their handiwork as the beginning of the end of America's free market economy, true federalism and consequently the Framers' republican government:

"Beginning in the latter part of the 19<sup>th</sup> century, America's legislative bodies got into the business of creating new offices of government which combined powers which the people intended are to be kept separate pursuant to the Doctrine of Separation of Powers. Congress first did this by creating the Interstate Commerce Commission (ICC) in 1887. The States got into the act thereafter. From there it has all been down hill for the people's Republic as expediency and constitutionally lawless power in the hands of corporate interests gained the upper hand over the people's Rule of Law..."<sup>9</sup>

### Democracy... Hue & Cry of the Progressive Movement

Recall that progressivism's main following came from educated, middle-class city dwellers, elitists. Their major tenet was that "*society [had been] corrupted by the political machine and the large corporation; and that they, as true citizens and champions of democracy [emphasis mine], must actively induce its reform.*"<sup>10</sup>

Do not miss the emphasis upon the *need* to reform *democracy* for it signals a most important Progressive contravention of the Framers plan of government. Whereas our founding fathers made the protection of individual rights central to American freedom, the Progressives pushed majority rule, higher *democracy*, and the whims of man mentality all of which call for the subordination of individual rights to the *public interest or the collective whole*. Supreme Court Justice Oliver Wendell Holmes', a progressive to the core, demonstrates this mentality respecting the constancy of law: "*The law is not so much the result of logic as of the felt necessities of the times.*" And so, if an individual's private property rights had to be trampled upon to achieve the mob's felt objective, then that is what must be done.

Suffice it to say that this progressive reliance upon majority rule is utterly inconsistent with its intended use under the U.S. Constitution; but, it is wholly consistent with European statism. And...that goes a long way to explain why the word *democracy* is not found within any of the original freedom documents comprising American organic law. For, as Jefferson would readily remind us: "*No man has a*

(Continued on Page 7 - Chariman's Corner)

(Continued from Page 5 - Dream Act)

school, or college—to admit him.

The DREAM Act abandons any pretense of "temporary status" for the illegal aliens who apply. Instead, all amnesty recipients are awarded lawful permanent resident (green card) status. The only caveat is that the alien's status is considered "conditional" for the first six years. To move on to the normal green card, the alien need only obtain a degree from any institution of higher education, complete two years toward a bachelor's degree, or show that doing so would present a hardship to himself or his family members. Of course, an alien with a normal green card can bring in family members and seek citizenship.

Furthermore, the DREAM Act makes it absurdly easy for just about any illegal alien—even one who does not qualify for the amnesty—to evade the law. According to Section 624(f), once an alien files an application—*any application*, no matter how ridiculous—the federal government is prohibited from deporting him. Moreover, with few exceptions, federal officers are prohibited from either using information from the application to deport the alien or sharing that information with another federal agency, under threat of up to \$10,000 fine.

Thus, an alien's admission that he has violated federal immigration law cannot be used against him—even if he never had any chance of qualifying for the DREAM Act amnesty in the first place. The DREAM Act also makes illegal aliens eligible for various federal student loans and work-study programs.

### Conclusion

In addition to being a dream for those who have broken the law, the DREAM Act raises an even larger issue regarding the relationship between states and the federal government. The 10 states have created a 21st century version of the nullification movement—defying federal law simply because they do not like it. In so doing, they have challenged the basic structure of the republic. The DREAM Act would pardon this offense and, in so doing, encourage states to defy other federal law in the future.

One thing that has been learned in the struggle to enforce federal immigration laws is that states cannot be allowed to undermine the federal efforts to enforce them. Rule of law can be fully restored only if all levels of government are working to uphold it.

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[1]S. 2611, § 621-632.

[2]8 U.S. Code, § 1623.

[3]Gray Davis, veto message to California Assembly on AB 1197, September 29, 2000, at [info.sen.ca.gov/pub/99-00/bill/asm/ab\\_1151-1200/ab\\_1197\\_vt\\_20000929.html](http://info.sen.ca.gov/pub/99-00/bill/asm/ab_1151-1200/ab_1197_vt_20000929.html) (August 10, 2006).

[4]See *Day v. Sebelius*, 376 F. Supp. 2d 1022 (2005).

[5]See Stuart Silverstein, "Out-of-State Students Sue over Tuition: Plaintiffs Are Challenging California Practices That Require Them to Pay Higher College Costs Than Some Illegal Immigrants," *Los Angeles Times*, December 15, 2005, p. B3

[6]S. 2611, § 623.

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(Continued from Page 6 - Chairman's Corner)

natural right to commit aggression on the equal rights of another; and this is all from which the laws ought to restrain him.”<sup>11</sup>

What Jefferson is saying is that what a man has no **natural right** to do as an individual, neither can he assert as much by banding with others of like mind to form a majority. This is the *very principle* lost to the progressive mindset and thereby to Socialists as well.

Nevertheless, progressive politicians were quick to push the popular notion of mob rule to make *democracy* the new standard of right and wrong. Madison explains the inherent dangers in such a policy especially when the reliance upon democracy is not “qualified with every moral ingredient...” leaving its implementation to be grossly misunderstood: “[I]n the more popular sense...” Madison warned “...nothing can be more false...” For, in this popular sense, “... it would be in the interest of the majority in every community to despoil and enslave the minority of individuals...In fact it is only reestablishing under another name and a more specious form, force as the measure of right.”<sup>12</sup> [emphasis mine].

Students of American history know that as Classical Liberals our founding fathers built upon a system of negative freedoms. That properly understood means *the absence of force*; that is, they believed that a man is *free* only to the extent that he is *not* forced to do something, either physically or under the threat of violence. And... this applies equally to force through government coercion.

**Metamorphosis of a Nation**

But Madison's words fell upon the deaf ears of 20<sup>th</sup> century progressive politicians who, by championing democracy, had discovered an easy road to election and re-election. What the farmers started at the end of the 19<sup>th</sup> century, these politicians seized upon. They began to cater to the selfish whims of a rent-seeking body politic; they switched their allegiance from the people's *written will* to the *moving will* of the special interest.

By the turn of the 20<sup>th</sup> century both Democrat and Republican national party platforms carried planks pushing progressivism; however, the first real thrust of the progressive agenda into national politics was led by Republican President Theodore Roosevelt in

1901. It was subsequently picked up by the Taft Administration in 1909, though in a more moderate sense, and then pushed vigorously again by Woodrow Wilson from 1911 to 1920. All three of these *American* presidents considered themselves to be *progressive* and their actions and policies proved that to be the case, in one way or another.

Moreover, we are yet plagued by the progressive legacy they left behind; the list is long and it includes such monuments as the: federal regulation of business, income tax, direct election of senators, the Federal Reserve, an inflationary soft-money system, ever diminishing protection for private property rights, government conservation, regulatory commissions like the Federal Trade Commission, antitrust laws, farm subsidies, food and drug regulation, compulsory education, collective bargaining legislation, zoning, federal regulation of alcohol, involvement in overseas conflicts such as WWI, as well as the establishment of the draft to send American men overseas and the modern notion of the *living* Constitution. It is to these Republican and Democratic Presidents that we owe the highly centralized and bureaucratically controlled administrative state we now labor under.

How will you vote in the next election?

—Dianne Gilbert, Chairman NHCCS

1. From: the Declaration of Independence, 1776
2. The Rise of the Progressive Mentality;" <http://tarbell.allegheeny.edu/mcl.html>; retrieved March 3, 2006
3. Dr. Gregory M. Browne: Professor, Yorktown University where he teaches graduate level course study on the Progressive Era.
4. Jefferson, Ford 7:423 (1800)
5. Jefferson, Notes on Virginia, Bergh 2:164, 1782
6. James Madison; National Gazette essay, 3 Mar. 1792
7. Arthur S. Link (1963), Woodrow Wilson and the Progressive Era 1910-1917, (Harper TorchBooks, Harper & Row, Publishers, Inc., New York) P.1
8. Populism is the ideology promoted by the Populist Movement; it essentially sought an expanded role for the national government encouraging Washington, DC to take over the nation's railroads and control of the wealth of the large corporations.
9. James B. Woods III, (2004) Dark Secrets of America's Fourth Branch of Government, Retrieved 2004 from <http://www.beatalltraffictickets.com>
10. Pelletier Library of Allegheny College (2005). *The Rise of the Progressive Mentality*. Retrieved March 6, 2006, from <http://tarbell.allegheeny.edu/mcl.html>
11. Jefferson, Ford 10:21 (1816)
12. Madison to James Monroe; 5 Oct. 1786; PJM 9:141

**The Founding Fathers on Taxation**

However extensive the constitutional power of a government to impose taxes may be, I think it should not be so exercised as to impede or discourage the lawful and useful industry and exertions of individuals. Hence, the prudence of taxing the products of beneficial labor, either mental or manual, appears to be at least questionable...Whether taxation should extend only to property, or only to income, are points on which opinions have not been uniform. I am inclined to think that both should not be taxed.

—John Jay, 1812  
America's First Chief Justice

At home, fellow citizens, you best know whether we have done well or ill. The suppression of unnecessary offices, of useless establishments and expenses, enabled us to discontinue our internal taxes. These covering our land with officers, and opening our doors to their intrusions, had already begun that process of domiciliary vexation which, once entered, is scarcely to be restrained from reaching successively every article of produce and property.


—Thomas Jefferson  
Second Inaugural Address, 1805

It is a general maxim, that all governments find a use for as much money as they can raise. Indeed they have commonly demands for more: hence it is, that all, as far as we are acquainted, are in debt. I take this to be a settled truth, that they will spend as much as their revenue; that is, will live at least up to their income. Congress will ever exercise their powers, to levy as much money as the people can pay. They will not be restrained from direct taxes, by the consideration that necessity does not require them. If they forbear, it will be because the people cannot answer their demands.

—Melancton Smith  
New York Ratifying Convention, 1788

“The power to tax is the power to destroy...a government which lays taxes on the people not required by urgent public necessity and sound public policy is not a protector of liberty, but an instrument of tyranny.”  
— Calvin Coolidge 30th President

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## An Exposé on the Proper Interpretation of the New Hampshire Constitution—Rep. Dan Itse

*Editor's Note: This issue begins a multi-part series on the proper interpretation of the NH Constitution Part-One—The Bill of Rights by the Honorable Dan Itse. Dan is Legislative Liaison to the NHCCS.*

This expository on the Constitution was written to discuss the nature of our constitution and the government it guarantees to the people living in the State of New Hampshire. There is a misconception that only lawyers are competent to understand the Constitutions. This misconception has led to an abuse of the people under the guise of constitutionality by the judiciary. This abuse is not unlike the abuse of the people by the church in the middle ages when the laity were hindered, even forbidden from reading the bible themselves for fear they would develop an understanding different from the church.

When considering this phenomenon we should consider that the primary expository works on the Constitution for the United States of America, the Federalist Papers and the Anti-Federalist Papers were written as news paper articles for everyone to read. These writings themselves have been edited (simplified) even for the students of law. Realize how much this controls the understanding, the interpretation, of the Constitution. However, if one reads these expository works, and then reads the Constitution, one realizes how simple and straight forward the Constitution is. They simply wrote what they meant, and except for the changes in our language, no "interpretation" is necessary, and their definitions of the words are obvious from the context.

When reading the Constitution of the State of New Hampshire, it is even more straight forward than the Constitution for the United States of America. That our Constitution was meant for the average person to read and comprehend is obvious from the Constitution itself. Article 38 states clearly that the people are to go back and study the constitution frequently so as to be able to force those in elected office to adhere to the constitution. It is also important that Article 37 requires that all Articles of the Constitution be interpreted in a manner consistent with every other Article. Article 37 refers to the Constitution is referred to as a fabric (interwoven) of unity and amity (self-consistent). However, this does not prevent an expository of the First Part, the Bill of Rights separate from the Second Part, the Form of Government. The founders understood the rights of man to be preexisting, and therefore, they would be independent of the form of government, but the form of government would be entirely dependent on the inherent rights. This is evident in The Declaration of

Independence, part of which are included in Articles 2 and 10, which states that the very purpose of government is to secure the God given, unalienable rights. This is why the Bill of Rights appears first as a complete document. However, it is necessary to ensure complete understanding of the inherent rights that they be considered as one fabric, uniform and self-consistent.

The expository on the Bill of Rights has been written and released first by necessity. It will be followed by a complete expository including additions for the Form of Government.

### PART FIRST- BILL OF RIGHTS

**Article I. [Equality of Men; Origin and Object of Government.]. All men are born equally free and independent; therefore, all government of right originates from the people, is founded in consent, and instituted for the general good. June 2, 1784**

This first article states that all of the power originates from the people. The term general good refers to the general good of the people and infers that the legitimate actions of government must benefit all equally at the time they are taken. The equality of men and general good also ties it directly to Articles 9 and 10. Article 9 forbids hereditary titles and Article 10 requires that government be for the common benefit and forbids government to be used for personal enrichment.

\*The date on which each article was proclaimed as having been adopted is given after each article. This is followed by the year in which amendments were adopted and the subject matter of all the amendments.

**[Art.] 2. [Natural Rights.] All men have certain natural, essential, and inherent rights - among which are, the enjoying and defending life and liberty; acquiring, possessing, and protecting, property; and, in a word, of seeking and obtaining happiness. Equality of rights under the law shall not be denied or abridged by this state on account of race, creed, color, sex or national origin. June 2, 1784 Amended 1974 adding sentence to prohibit discrimination.**

This Article borrows language directly from the Declaration of Independence in the definition of liberty which ties it directly to Articles 12 and 28 regarding property. It is also important that these rights are natural, essential and inherent; that is they preexist government. The latter phrase regarding discrimination

says that judgment and punishment of a person can not be augmented based upon who they are. This is generally understood in regard to the accused, but in fact also makes punishment based upon whom the victim is, unconstitutional.

**[Art.] 2-a. [The Bearing of Arms.]. All persons have the right to keep and bear arms in defense of themselves, their families, their property and the state. December 1, 1982**

The article is the embodiment of the second amendment to the Constitution for the United States of America. It was added in response to laws restricting gun ownership. In the Federalist Papers, Madison outlines how gun ownership was what enabled the success of the war for independence, and is necessary to resist a tyrannical government, as outlined in Article 10. It is also important that unlike the Constitution for the United States of America, our Constitution specifies the reasons for which to keep and bear arms and defines it as a personal right.

**[Art.] 3. [Society, its Organization and Purposes.] When men enter into a state of society, they surrender up some of their natural rights to that society, in order to ensure the protection of others; and, without such an equivalent, the surrender is void.**

**June 2, 1784**

Article 3 is interesting in that it states that living in society constitutes a surrender of a portion of a person's absolute sovereignty under God. The converse is that living isolated in the wilderness, a person would have unlimited rights. This Article justifies the surrender of rights in return for protection. For example, the surrender of some privacy under the guidance of Article 19, in order to be protected from crime by the apprehension of and punishment of criminals. However, taken in context of self-defense, and decisions by the Supreme Court of the United States of America, which define that the police are under no obligation to protect an individual from crime, because it is physically impossible to execute, but only to investigate crime and apprehend criminals; therefore, the right to protect oneself and one's family and property, even with deadly force, is never surrendered. This concept is repeated in Article 12 with protection and taxation are also reciprocal, and paralleled in Article 18 requiring punishment (a taking of liberty) to be proportional to the crime.

\_Hon. Dan Itse.

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