



Original Intent

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Guard With Jealousy the Public Liberty: The American Constitution

CHAIRMAN'S CORNER

The Public Liberty Shipwrecked by Executive Order



Dianne Gilbert

Throughout most recorded history, people have been governed by rulers' law—the law that rulers chose to impose. The people had no real choice. [But], America's Founders believed that liberty was too precious to entrust to leaders. For the first time ever – in America, in 1787 – the people themselves prepared their own written Constitution – one of laws and people, not of rulers. It not only protected them from the harmful acts of other citizens; more importantly, it protected them from their own government."¹

As "ordained and established" the 1787 Constitution set up and authorized a General Government for the United States of America. As understood by the people of the era in which it was accepted, this new government was duty bound to uphold and unswervingly operate in harmony with the principles of liberty and union set forth by the Declaration of Independence. That called for a national government of *limited* powers, based upon the rule of law and *consent of the governed*. Thus, the primary role given the new central government was to secure and protect the people's *God given rights*, such that they may attend to prospering *themselves*. Nevertheless, being fully aware of man's intrinsic passion to rule over other men, and that "government is not reason...nor eloquence" but rather a coercive "force," which, like fire, could become a "fearful master," the Framers proceeded to bind the hands of those put in charge of running the government with the chains of a *written* Constitution.

Consequently, when it came to parceling out *grants of power* under the Constitution our nation's founding fathers left nothing to chance. Power was not to accumulate or be left to concentrate in one or even a few sets of hands; it was to be divided and distributed, checked and balanced, among the three branches: "Power being found by universal experience liable to abuses, a distribution of it into separate departments, has become a first principle of *free* governments. By this contrivance, the *portion entrusted to the same*

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If the Gov't Won't Do It

By Dr. Mackubin Thomas Owens

Mackubin T. Owens is Professor of Strategy and Force Planning at the Naval War College in Newport, Rhode Island. He retired from the Marine Corps Reserve as a Colonel in 1994. He was wounded twice during the Vietnam War and awarded the Silver Star medal. Dr. Owens earned his Ph.D. from the University of Dallas, his M.A. in economics from Oklahoma University and his B.A. from the University of California at Santa Barbara.

[A]n Arizona newspaper has proposed an interesting way to curb illegal immigration during a time of war: the use of a citizen militia. Last month, according to the November 15 *Arizona Daily Star*, Cochise County's *Tombstone Tumbleweed* published an editorial entitled "Enough is Enough!" calling for armed, able-bodied citizens, operating on private property, to "create a presence and a deterrent to illegal border crossers."

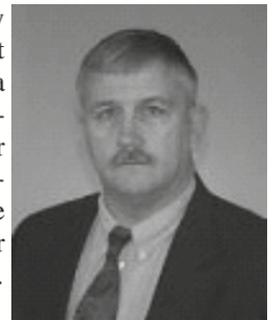
Predictably, the proposal was attacked by "human-rights" activists as a manifestation of "militant vigilantism." According to Isabel Garcia of Tucson, "to have the official newspaper of [Cochise County] call on people to take up arms is very dangerous, very frightening. Law enforcement and public officials should be concerned." Imagine! Armed citizens, protecting their homes! Absolutely shocking!

But really, if the federal government can't or won't do the job, why not rely on the posse comitatus and the militia? The *Tumbleweed* has the Constitution on its side. Indeed, the Founders framed the Second Amendment with such an armed citizenry in mind.

That amendment reads, "A well-regulated Militia being necessary to the security of a free state, the right of the People to keep and bear arms shall not be abridged." Obviously, gun-control advocates see the Second Amendment as a stumbling block to their schemes to disarm the American citizenry, so they purposely have misconstrued it. They have done so by claiming that because

"It is indeed unfortunate that, because of the actions of certain extremists, 'militia' has become a term of opprobrium. It should be rehabilitated."

of the preparatory clause, the amendment guarantees only a "collective," not an individual, right to bear arms, thereby restricting it to members of the organized "militia" (or the police and military).



Prof. Mackubin T. Owens

But over the past decade, constitutional-law scholarship has refuted this view. A recent case in point is Leonard Levy, a constitutional scholar with impeccable liberal credentials, who in his book, *Origins of the Bill of Rights*, demonstrates beyond the shadow of a doubt that the framers of the first ten amendments intended to guarantee the individual right to bear arms.

How could this strained interpretation of the Second Amendment ever have been taken seriously in the first place? All one has to do is consult the words of the Founders themselves. "No free man shall ever be debarred the use of guns," wrote Thomas Jefferson in his proposed Virginia Constitution of 1776. Both the Pennsylvania and Vermont constitutions assert that "the people have a right to bear arms for the defense of themselves and the state..."

So what is the meaning of the reference to the militia? For the Founders, the militia arose from the posse comitatus, the "power of the county" constituted by the people as a whole, embodying the Anglo-American idea that the citizenry is the best enforcer of the law. From its origins in Britain, the posse comitatus was understood to be the people at large, constituting the constabulary of the "shire." When order was threatened, the "shire-reeve" or sheriff would raise the "hue and cry" and all citizens who heard it were bound to render assistance in apprehending a criminal or maintaining order. In this tradition, the sheriff in the Ameri-

(Continued on Page 4 - If the Gov't Won't)

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: Roger Sherman ~ Father of Coinage



Roger Sherman

“Money ought to be something of certain value. . .” With these words Roger Sherman lays a key brick in the foundation for an effective economy. The key word is ‘certain. Money must have a certain and consistent standard of worth. Otherwise it and the articles it represents are without any value at all. Mr. Sherman gained a practical understanding of that fact through a lifetime of business building and legal studies.

Roger Sherman was two years old when his family moved to Stoughton, Massachusetts, a frontier town. It was 1723. Though limited in formal education his father had a substantial library and young Roger read as much as he could. Stoughton raised its first grammar school when Roger was thirteen but he attended only briefly. By this time he had gained quite a mastery of the most important topics. Sherman also had the advantage of an excellent tutor in the village, Harvard trained, Rev. Samuel Dunbar. This Pastor helped Roger obtain a grasp of science, mathematics, literature, and philosophy.

After his father’s death the family moved to New Milford, Connecticut. After settling in he and his brother opened the first store there. He poured himself into civic affairs and was encouraged to become a lawyer while serving as surveyor of New Haven County. A neighbor had asked Mr. Sherman to address a petition pending before the county court. The lawyer involved in the case was so impressed with the notes that Sherman had prepared he recommended that Roger study and present himself to the Bar. This he did and in 1754 he began his law profession. That while still engaged as store proprietor, town clerk, local representative before the provincial assembly and almanac publisher!

By the age of 40 he had become a very successful businessman and gained a favorable reputation throughout New England. His economic wisdom proved him to be well-suited as the Treasurer of Yale College. He also taught religion there. Add to his list of accomplishments, justice of the peace and eventually Justice of the Superior Court of Connecticut. The only reason he resigned as judge was his election to the Congress of the United States in 1789. It is also interesting that while serving on the Superior Court he was recognized as such an honorable man he was elected as Mayor of New Haven. He held that office until his death in 1793.

One task in particular prepared him for his later experience as a member of the Conti-

mental Congress. With a man aptly named Richard Law he was appointed to rewrite the archaic and confusing Connecticut Statutes. The work was highly regarded.

As tension mounted with Great Britain Sherman became active in the efforts for freedom. In 1775, as the War for Independence began he was appointed to the Governor’s Council of Safety and became Commissary for the Connecticut troops. Soon after, his fellow patriots awarded him for his faithfulness and wisdom by making him a member of the Committee of Five, responsible for the drafting of the Declaration of Independence.

He had a notable role in the writing of the Constitution. As a delegate to the convention from Connecticut he made the 1787 trip to Philadelphia fully prepared to “patch up the old scheme of government.” He believed that the Articles of Confederation which he had signed years earlier just needed a little revision. He had, in fact, previously presented to Congress a few amendments which would have given the Articles more strength to impose levies, the power to establish a Supreme Court, and to make laws binding on all the people. He soon realized that a new document was needed and jumped into the fray with great enthusiasm.

He disapproved the tendency toward democracy that existed in some of the delegates. He favored an executive branch dominated by the legislature and state representatives elected to two houses of Congress by the state legislatures. One house to address issues related to the people and a second house, the Senate, to address issues related to the states. He also saw no need for the new Constitution to be popularly ratified.

His reasoning skills are witnessed most clearly in two particularly awkward discussions in the Convention of 1787. The New Jersey Plan which gave equal representation to all states was aided by his writing. And the major move of the entire Convention, the decision that moved the Convention forward and produced the Constitution was based on Sherman’s Connecticut Compromise. The delegates were at a standstill. How would slaves be accounted for if the representation to the new Congress was based on population? Roger Sherman drafted a plan which eventually led to the Great Compromise. Free people would count as 1 person; slaves would count as 3/5 of one person. As distasteful as that compromise may appear it was the decision that moved the Convention forward and made Roger Sherman a most notable character in the plan. His plan included a lower House of Congress, the numbers of which were based on population and a Senate which provided two members from each state.

Truly unique and thoroughly dignified Roger Sherman is the only Founding Father to have signed all 4 of these key documents: the Articles of Association, The Declaration of Independence, the Articles of Confederation, and the Constitution of the united states. Thomas Jefferson once remarked that

Roger Sherman was “a man who never said a foolish thing in his life.” Patrick Henry claimed him as one of the three greatest men at the Convention. He spoke 138 times there in Philadelphia.

Much of what inspired Sherman’s political concern was his business acumen. He was convinced that paper money held the potential for great injustice. In 1752 because of the weakness of Rhode Island’s currency he penned A Caveat Against Injustice. It is an ‘inquiry into the evils of a fluctuating medium of exchange.’ He was angered by the cheapening of useful goods in Connecticut because of the useless money of Rhode Island.

He begins his treatise: “Forasmuch, as there have been many disputes arisen of late concerning the medium of exchange in this colony, which have been occasioned chiefly by reason of our having such large quantities of paper Bills of Credit on some of the neighboring governments passing in payments among us, and some of those governments having issued much larger sums of Bills than were necessary to supply themselves with a competent medium of exchange, and not having supplied their treasuries with any fund for maintaining the credit of such Bills; they have therefore been continually depreciating and growing less in their value, and have been the principal means of the depreciation of the Bills of Credit emitted by this colony, by their passing promiscuously with them; and so have been the occasion of much embarrassment and injustice in the trade and commerce of the colony, and many people — and especially widows and orphans — have been great sufferers thereby.

But our Legislature having at length taken effectual care to prevent further depreciation of the Bills of this colony, and the other governments not having taken the prudent care, their Bills of Credit are still sinking in their value, and have in fact sunk much below the value of the Bills of this colony.”

This insightful disposition led him to conclude that only silver and gold were adequate mediums of exchange. “But if what is used as a medium of exchange is fluctuating in its value, it is no better than unjust weights and measures, both which are condemned by the laws of God and man, and therefore the longest and most universal custom could never make the use of such a medium either lawful or reasonable.”

His firm conviction on that point provided the impetus for Article 1 Section 10 of the United States Constitution: “No State shall ... make any Thing but gold and silver Coin a Tender in Payment of Debts.” He knew that paper and ink would always fail as currency. We would do well as a nation to pay heed.

Roger Sherman was elected as a Senator from Connecticut at the age of 70. He died in that office in 1793 two years later. He was devoted to his state, his new country, and his God.

By Lee Button

DEPARTMENT OF EDUCATION: USELESS, EXPENSIVE, UNCONSTITUTIONAL



Romelle Winters

When we think about the government's infringement on liberty, dramatic pictures come to mind: citizens behind bars; starving people held captive in barbed wire enclosed concentration camps; armed soldiers marching through streets; firing squads. These

thoughts cause a cold hand of fear to grip the heart. Yet, a smart government can take freedoms from its subjects in far more subtle, malevolent, and permanent ways.

Overt overstepping of authority by a government alerts its citizens. They see freedoms disappear as life and property are assaulted. Past history has shown the consequences of an out-of-control government. People are inspired to confront and overthrow these leaders.

However, evil leaders have also taken note of the past. They know how far they can deceive the citizens before people turn against them. They see the consequences of Britain's heavy-handed control of the Colonies. Royalty in France learned a deadly lesson as eliminating oppression became a goal of many. Russia, in losing its monarchy, spread an evil throughout the world.

In Jonathan Swift's book, *Gulliver's Travels*, the hero was tied down with slender ropes by the tiny Lilliputians as he slept. He needed only to close his eyes and let his guard down allowing a group of diminutive people take his liberty and freedom. How much easier this was than struggling with a fighting giant.

Our government has followed the example of the Lilliputians and is quickly tying us down with a myriad of seemingly minor restrictions. It sings us to sleep with lullabies of safety while it fashions thin wires which hold us to the desires of the leaders. We lost our freedoms as we watched the Super Bowl and World Series. Comfortable in our homes, the government quietly ties us to its will with a multitude of restrictions.

One thin strand is education. Every parent wishes his children to be well-educated. Most people are aware that a solid education is the foundation for a successful life. Enter the Federal Government. During his run for the presidency, Jimmie Carter received strong support from members of the National Education Association. As a reward,

he created an unconstitutional agency, the Federal Department of Education. Since its establishment, the quality of education has dropped dramatically as children graduate from high school unable to read, write, or calculate. These uneducated students enter colleges where they take remedial classes in basics, or simply flunk out.

Expensive programs are used to inflict a poor education on the children of this nation. Rather than teach the students the basic 3's, time is wasted on relentless sex education, psychiatric evaluation, administration of mind-numbing medication, and a politically correct curriculum. The Department of Education is the largest terrorist organization in the country. And they have done their job well as fewer and fewer of our children are prepared for their future success.

Another thin strand tying down the population is excessive taxation. Hard-earned money is confiscated from paychecks before workers see them. Employers, also highly taxed, become unpaid tax collectors for the Federal Government. Lincoln once said that a nation cannot exist half slave and half free. Yet, the people of this country work for the government almost half of the year, thus making them half slave. Mothers, who once stayed home to care for children, now find themselves in the workplace to pay for taxes while their children are put into day care under the supervision of strangers.

Congress, which has discovered it can buy anything it pleases by raising taxes, is on a spending spree with little concern for the budget constraints. If there isn't enough money, they print more, raise existing taxes, invent new taxes, or entice people to approve of immoral activities such as gambling.

States have their own filaments which hold down the citizens. Property taxes, excise taxes, license fees, dog licenses, tolls, sales taxes, and a host of other expensive regulatory levies pour into the treasury of states who are as experienced at spending as their Big Brothers at the federal level.

Little by little, the citizens are becoming more and more restricted by regulatory demands of government. Helmet laws. No smoking laws. Mandatory seat belt laws. Childhood inoculations. Each places another thin string on our sleeping bodies until soon we will be hopelessly tied by the government which is growing at an alarming rate.

Like sleeping Gulliver, we are imprisoned and unable to move. Like Gulliver, we are

able to speak, but have reached a point where no one listens. Certainly not our elected officials, who ignore the Constitutional restraints placed upon them. They fill their pockets and freezers with cash and vacation on junkets paid by lobbyists.

We have become a nation of complainers. We have no other choice because we are tethered by the countless ropes that appeared while we slept. Grumbling has become a way of life for a nation which could have saved itself when there was still time. Now we are tied by the corruption that has infiltrated our political system. Only a mighty push from all can break the ties that enslave us. Is it possible for all to work together to free ourselves from dependence or have too many of us become part of the workers tying the ropes?

Romelle Winters holds a Bachelors degree in American History and is a retired educator. She is Publicity Chairman for NHCCS. She is also an interpreter for the person of Martha Washington and is available to lead seminars and/or teach classes on American history, constitutional government, western civilization and the roots of the American Republic. If you are interested in having Mrs. Winters lead a seminar for your home school group, or for your public or private American History or Civics education class, please make your request known to NHCCS by calling 603-679-2444 or send an email to: chat@nhccs.org and note the request in the subject line.

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**HISTORY:
 STUDY IT OR BE
 DOOMED TO
 REPEAT IT!**

Evangelical Principles—Part I

Hon. Dan Itse

Today our nation, though still the freest in the world is in danger of sliding into tyranny. The reason is best explained in the prelude to the movie "Fellowship of the Ring". The elf queen Galadriel is giving a discourse on the history of the ring, and man's lust for power over other men. Near the conclusion she states "...and some things that should not have been forgotten were lost. History became legend, legend became myth ..."

My first and greatest hope for today is to show you the justification for your liberty, that you might fully understand it; to inspire a love for your liberty, and for the constitutions that articulate it; for you to know that you are the masters of your governments. You will notice that I use the plural because each of you lives with two separate governments, governed by separate constitutions, that of your state, and that prepared for the United States of America by representatives of the states. Your first and best protections are found in the constitution of your state.

The first constitution I will deal with is the Constitution of the State of New Hampshire. New Hampshire has the distinction of being the first State to declare itself independent from Great Britain. It also had the first constitution as an independent State on January 5, 1776 and the last post war constitution adopted in 1784. As such it embodied everything contained in the constitutions of the other states, and then some. In Federalist Paper 47, James Madison recognized the genius that being written after the other constitutions afforded the Constitution of the State of New Hampshire. Though Madison was referring specifically to the necessity of commingling the powers of government to preserve liberty, one of the specific improvements they made was to identify what the foundational principles of American Government were.

The Constitution of the State of New Hampshire is the only state constitution which identified the justification for the American liberty. I use the past tense because its identity was removed in 1968. Part 1, Article 6 stated

"As morality and piety, rightly grounded on evangelical principles, will give the best and greatest security to government, and lay in the hearts of men the strongest obligations to due subjection."

Evangelical principles are identified as the foundation of our rights. Evangelical Principles arise from the work of John Calvin and the Geneva bible. The Geneva Bible was what guided the Pilgrims, Puritans,

Congregationalists, Baptists and Scotch-Irish Presbyterians.

Some of these Evangelical principles are:

1 Samuel 8 The desire for a king is a rejection of God.

Acts 10:34 "God is no respecter of persons." All men are created equally free and independent, there ought to be no partiality before the law, that there is no divine right of kings.

Luke 22:26 "... he who is greatest among you, let him be as the younger, and he who governs as he who serves." Leaders are accountable to and subject to the people.

Romans 13:1-7 "For he (the governing authority) is God's minister to you for good." Public service is a ministry under God.

Deut. 1:13 "Choose wise, understanding and knowledgeable men from among your tribes (yourselves) and I will make them heads over you." Self government.

1 Cor. 6:1-7 "Dare any of you go to law before the unrighteous, and not before the saints." Have wise and Godly men for leaders.

The first document which articulated these principles was the Fundamental Agreement of the Colony of New Haven. They were also articulated in the constitutions of many of the states in 1776 and 1777. The best of these are Massachusetts, North Carolina, Pennsylvania and Virginia. Though none of them had all of the elements, they all required a frequent recurrence to fundamental principles of the constitution. However, none of them specified what those principles were, what they were called. Only New Hampshire, in retrospect, specified that the source of good government is Evangelical principles.

The first ten Articles of New Hampshire's Bill of Rights embody Evangelical principles as follows:

1. Legitimate government originates with people and is founded in consent. Self government.
2. The right to enjoy and **defend** life and liberty, and to acquire, possess, and **protect** property,
3. That without the reciprocal protection the surrender of natural rights is void,.
4. Certain natural rights are unalienable because nothing of equivalent value can be given or received for them,
5. All men have the right to practice religion as they see fit,

(Continued on Page 5 -Evangelical Principles)

(Continued from Page 1 - If Gov't Won't)

can West would "raise a posse" to capture a lawbreaker. "A militia when properly formed," wrote Richard Henry Lee in his Letters From the Federal Farmer, "are in fact the people themselves . . . and include all men capable of bearing arms." This view was echoed on countless occasions during the colonial, revolutionary, and founding periods.

The Founders did not fear an armed citizenry. Indeed, they saw the Second Amendment and the militia as a means not only to enable citizens to protect themselves against their fellows, but also to protect themselves from oppression by the federal government. "The militia is our ultimate safety," said Patrick Henry during the Virginia ratifying convention. "We can have no security without it. The great object is that every man be armed...Every one who is able may have a gun."

The *Tumbleweed* editorial reflects the spirit of the Founders. According to Chris Simcox, publisher and editor of the paper, citizens have a patriotic obligation during a time of war to "stop the flood of [illegal] immigrants funneling through Cochise County," especially in light of the federal government's failure to do so. "We want local people, we don't want the Rambos, the mercenaries and soldiers of fortune." There is nothing wrong with the Cochise County sheriff deputizing the posse comitatus to curb lawbreaking — the violation of U.S. immigration laws.

It is indeed unfortunate that, because of the actions of certain extremists, "militia" has become a term of opprobrium. It should be rehabilitated. The Tombstone Tumbleweed's modest proposal is a good start.

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Madison ~ Jefferson War & the Executive

The constitution supposes, what the History of all governments demonstrates, the Executive is the branch of power most interested in war, and most prone to it.

_Madison To Thomas Jefferson, 2 Apr. 1798
PJM 17:104

In times of peace the people look most to their representatives; but in war, to the executive solely.

_Jefferson (1810)

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(Continued from Page 4 - Evangelical Principles)

6. That Evangelical principles will give the best and greatest security to government and lay in the hearts of men due subjection. Schools ought to be established to teach Evangelical principles. All religions are equal under the law.
7. The people have the right to govern themselves, and therefore, create a sovereign state.
8. All legislators and magistrates are accountable to the people,
9. There are no hereditary or divine right rulers,
10. The people have a right to throw off tyrannical government.

If they had only wanted to impart social mo-
rals, they could have said Christian. If they
had only been concerned with man’s individ-
ual accountability before God (Hebrews 9:27),
they could have said Protestant. But, they said
Evangelical which extends to man’s individual
responsibility and authority. (Psalm 82:3,
Isaiah 1:17, Galatians 6:5 and 2 Thessalonians
3:10)

It is not only a theology, but also a philoso-
phy for church and civil government. Looking
at Part 1, Article 2, it states that all men have
natural, essential and inherent rights among
which are, the enjoying and defending life and
liberty; acquiring, possessing, and protecting,
property. Protestant principles would have led
them to enjoying life and liberty, and acquir-
ing and possessing property; but, one must go
to Evangelical principles to reach defending
life, liberty and protecting property.

We must ask what did they mean when they
said that these principles would lay in the
hearts of men due subjection. By including
Article 10 which says, “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 doc-
trine of nonresistance against arbitrary power,
and oppression, is absurd, slavish, and de-
structive of the good and happiness of man-
kind.” They obviously were more concerned
that the people would be too subservient rather
than not subservient enough. They were
pointing out man’s subjection to God, and the
subjection of legislators and magistrates to the
people.

Why does this give the best and greatest se-
curity to government? Because legislators and
magistrates who are aware of their subjection
to God and the governed, the people, will not
make laws or act in a way that would inspire
the people to rebel.

(To Be continued Next Issue)

Madison: the Constitution for the United States of America Properly Interpreted

But, after all, whatever veneration might be
entertained for the body of men who formed
our constitution, the sense of that body could
never be regarded as the oracular guide in
the expounding the constitution. As the in-
strument came from them, it was nothing
more than the draught of a plan, nothing but
a dead letter, until life and validity were
breathed into it, by the voice of the people,
speaking through the several state conven-
tions. If we were to look therefore, for the
meaning of the instrument, beyond the face
of the instrument, we must look for it not in
the general convention, which proposed, but
in the state conventions, which accepted and
ratified the constitution.

_Speech in Congress, 6 Apr. 1796

As a guide in expounding and applying the
provisions of the Constitution, the debates
and incidental decisions of the Convention
can have no authoritative character...The
legitimate meaning of the Instrument must
be derived from the text itself; or if a key is
to be sought elsewhere, it must be not in the
opinions or intentions of the Body which
planned and proposed the Constitution, but
in the sense attached to it by the people in
their respective State Conventions where it
received all the authority which it possesses.

_To Thomas Burke, 15 Sept 1821
DLC: Madison Papers

But whatever might have been the opinions
entertained in forming the Constitution, it
was the duty of all to support it in its true
meaning as understood by the Nation at the
time of its ratification.

_To John G. Jackson, 28 Dec. 1821
DLC: Madison Papers

If the instrument be interpreted by criticisms
which lose sight of the intention of the par-
ties to it, in the fascinating pursuit of objects
of public advantage or convenience, the pur-
est motives can be no security against inno-
vations materially changing the features of
the Government.

_To Andrew Stevenson, 25 Mar. 1826
DLC: Madison Papers

(Continued from page 1- The Public Liberty)

hands being less, there is less room to abuse
what is granted...” With this as their objective
the Framers incorporated into the new plan of
government Montesquieu’s *Separation of
Power* doctrine: “Hence the merited praise of
governments modeled on a partition of their
powers into legislative, executive, and judi-
ciary, and a repartition of the legislative into
different houses.”²

Those Were the Days...

And so it was likewise done when it came to
parceling out the important function of mak-
ing the laws; here the Framers first vested
lawmaking authority in the Congress only to
repartition it across a House of Representa-
tives, where the voice of the people is heard,
and a Senate, where the voice of the State was
once heard: “*All* legislative Powers herein
granted shall be vested in a Congress of the
United States, which shall consist of a Senate
and House of Representatives.”³ Then, should
the people be foolish enough to elect a rogue
Congress, one that blatantly disregards the
Constitution, they granted the President the
authority to check the Congress by giving him
veto power over legislation deemed unconsti-
tutional. Beyond the veto authority, however,
the Constitution limits the President’s law-
making role. He may “*recommend* to their
[Congress] consideration such Measures as he
shall judge necessary and expedient...”⁴ but
he is to *dutifully* enforce constitutional policy
passed by Congress whether it suits his per-
sonal agenda or not: “...he shall take Care that
the Laws be faithfully executed...”⁵

Unfortunately, and to every living Ameri-
can’s detriment, that is not the way the system
works now; and has not worked for most of
the 20th century. And, while the tendency to-
day is to focus public attention upon judges
who legislate from the bench, judicial activ-
ism, we ought to be paying much closer atten-
tion to the free wheeling use of presidential
decree, otherwise referred to as *executive or-
ders*, which, in fact, pose as grave a threat to
the public liberty for they are created with a
stroke of the president’s pen and by stealth
corruption of the constitutional process made
law of the land. They are fiat laws, which vio-
late the Constitution and fraudulently reach
the people under the color law without benefit
of Congressional oversight or statutory au-
thority. Further, except for the fact that execu-
tive orders are now recorded in the Federal
Register, a requirement instituted by Congress
in 1935, no one would ever know what mon-
strous situation the President had created in
the privacy of the Oval Office.

The Executive Function.. What Can the President Legally Do?

With the tragedies of the American Revolu-
tion still in near memory, the Framers of the
1787 Constitution were determined that the
political tyranny from which they had just
freed themselves would never, ever, see the
light of day in America again. With that ob-
jective before them, they enumerated the pow-
ers and duties of the president in plain lan-
guage; these are to be found in Article II sec-
tions 2 and 3. It is a short read, thereby a
short list; thus, a President carrying out his
constitutional role wouldn’t get to do very

(Continued on page 6-The Public Liberty)

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HISTORY:
STUDY IT OR BE
DOOMED TO
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much at all. Constitutionally speaking, he has but six main areas of jurisdiction; namely, he is: Chief of State, Commander in Chief of the military forces, Chief Executive Officer of the Executive Branch, and America's face to the rest of the world as our Chief Diplomat. As noted earlier, he wears the hat of Chief Architect for legislation for the *Congress to consider*; and, he is the *conscience* of the nation with respect to the Executive pardoning power. In association with these areas of jurisdiction, the President is charged with roughly eleven main duties:

1. He may require the written opinions of the heads of the major departments that fall within the Executive Branch;
2. He may grant reprieves and pardons, conditionally or otherwise;
3. He may make treaties, but only with the advice and consent of the Senate;
4. He may nominate and appoint Ambassadors, judges to the Supreme Court and other public ministers, again with the advice and consent of the Senate;
5. He may grant commissions to fill up vacancies during Senate recesses;
6. He may recommend legislation he judges necessary and expedient;
7. He shall from time to time give Congress information on the state of the Union;
8. He may convene, on extraordinary occasions, one or both Houses and adjourn them to a time he considers proper;
9. He may receive Ambassadors and other public ministers;
10. *He is to oversee that the laws are faithfully executed*;
11. He shall commission all the officers of the United States.

An Elective King!!!

Yet, over the last century or so the Presidency has taken on a life of its own, one akin to that of a King. As a matter of fact, the American presidency has become exactly what the "Anti-Federalists" feared, the office of "**an elective king**." ⁶ According to the late Dr. W. Cleon Skousen: "The Founders would be amazed to learn that under the influence of a European centralist philosophy known as democratic socialism, the President has been burdened with a host of other responsibilities never dreamed of by the Founders." ⁷ Likewise, one can only imagine their alarm to see the vast number of federal agencies that now exist under the executive branch as well as to learn that these agencies are authorized under the *color of law* to reach across state, county and local government boundaries to meddle in the private lives of American citizens.

Jefferson warned that executive tyranny could one day become a reality: "The executive in our governments is not the sole, it is scarcely the principal, object of my jealousy. The tyranny of the legislatures is the most formidable dread at present and will be for many years. *That of the executive will come in its turn, but it will be at a remote period.*" ⁸

A Shattering of the Constitutional Chains

President Washington was the first to cross the line; surprisingly so, given his expressed love for the Constitution. Likewise, he was the first president to issue a presidential decree,

sans any constitutional or statutory authority, only to turnaround after the fact and ask Congress to ratify its terms, which Congress did. The incident in question was Washington's April 22, 1793 *Proclamation of Neutrality*.

Therein he urged all Americans to remain neutral with respect to the hostilities that had broken out between the Republic of France and Great Britain: "...whosoever of the citizens of the United States shall render himself liable to punishment or forfeiture under the *law of nations*, by committing, aiding or abetting hostilities against any of the said powers...will not receive the protection of the United States against such punishment and forfeiture; and...I have given instructions...to cause prosecutions to be instituted against all persons, who shall,...violate the *law of nations*, with respect to the powers at war, or any of them." ⁹ And with that, the proverbial skids had been greased.

All the same, the Constitution and the public liberty continued on safe ground up through the first half of the 19th century. Although presidential decrees were issued throughout that time, they were tempered by the character of the men fulfilling the presidential role; and, we must remember that decrees and executive orders are constitutional when their reach extends no farther than the president's cabinet and their respective departments or when there is constitutional or statutory authority permitting their use.

Nonetheless, the calm prevailed until the arrival of Lincoln who, in less than two months of taking office, single-handedly ordered a naval blockade of certain seaports belonging to the Confederate states. A definite act of war, Lincoln never bothered to reconvene the Congress to seek approval for this undertaking, which the Constitution requires him to do.

Picking up where Lincoln left off came Theodore Roosevelt (a.k.a. 'TR') to kick off the 20th century "*progressive style*." During his two terms as president, 1901 to 1909, TR issued 1006 executive orders in glaring contrast to the total number of 143 presidential edicts issued by all previous twenty-four administrations. By and large, it was TR's abuse of the presidential decree that accounts for the fact that most Americans have come to believe, dangerously so, that the President, rather than they as rightful owners, *runs* the country. You can see this for yourself in the way presidential candidates now campaign: "**Here's what I will do for you if elected.**"

But, TR vehemently denied having upset the nation's constitutional balance of powers: "I decline to adopt the view that what was imperatively necessary for the nation could not be done by the President unless he could find some specific authorization to do it. My belief was that it was not only his right but his duty to do anything that the needs of the nation demanded unless such an action was forbidden by the Constitution or by Law. Under this interpretation of Executive power I did and caused to be done more things not previously done by the President and the heads of the Departments. I did not usurp powers but I did greatly broaden the use of Executive power." ¹⁰

Kingly Government

Theodore Roosevelt set a bad example for others to follow: "From this point on, each President looked upon executive orders as a tool to demonstrate the power of the President to take **'independent action.'**" ¹¹ President William Howard Taft, Roosevelt's vice president, successor and later Chief Justice of the Supreme Court learned well from TR; he alone issued 698 executive orders in just one four year term.

Following Taft, came Woodrow Wilson wielding another 1,791 executive orders. Wilson also holds the distinction of being the first president to implement the "national emergency" as well a tool for wielding presidential power; he was also the first to establish federal agencies by executive order. His actions went so far in the direction of absolute tyranny that one Senate Investigative committee characterized his administration as one "marked by the acquisition and exercise of dictatorial powers." ¹²

Next came, Herbert Hoover and Franklin Delano Roosevelt (FDR) marching in lock step. Together they issued 4, 723 presidential executive orders with FDR, as one might expect, authoring 3,723 of them. Throughout this so called "strong president" era property rights were trampled upon left and right; one of the most sweeping incursions of which was Truman's 1952 seizure of the steel mills. This action was later ruled unconstitutional by the United States Supreme Court: "The Founders of this Nation entrusted the law-making power to the Congress alone in both good and bad times. It would do no good to recall the historical events, the fears of power and the hopes for freedom that lay behind their choice. Such a review would but confirm our holding that this seizure order cannot stand." ¹³

But perhaps there was no executive order so endangering to the public liberty as Bill Clinton's EO13083. Therein, he shamelessly attempts to redefine the meaning of "federalism," a term that describes the relationship between the States and the Federal government, as it was understood at the founding. Had EO13083 survived, the myriad of federal agencies now comprising the executive branch, atop of which the president sits like a king over his kingdom, would have been empowered "to solve 'national' and 'multistate' problems from a list of nine broad 'circumstances' purporting to justify such actions." ¹⁴ In essence, it would have meant "lights out" for what currently remains of the Tenth Amendment.

The bold, unconstitutional actions taken by the likes of Lincoln, the Roosevelts, TR and FDR, Truman, and Clinton, as American presidents, are examples of ambitious men imposing "**ruler's law**" upon the people. Suffice it to say their actions form the antithesis to the Framers' model of *safe government*. Hence, it is expedient to recall here that the driving force behind the American colonies call for independence was self-government, to live under a system of **people's law**, where the people are governed by *only those laws* of which they themselves approve: "The first grand right is that of the people having a share in their own government by their representatives chosen by themselves, and... of being

(Continued from Page 6 - The Public Liberty)

ruled by laws which they themselves approve... This is a bulwark surrounding and defining their property, which by their... labours they have acquired, so that no portions of it can be legally taken away from them but with their full and free consent.”¹⁵

It is to this standard that all 4,400 carefully chosen words of the Constitution were written and later ratified by the people of the States; it is to this principle that James Madison, chief architect of the new government, declared: “Every word of [the Constitution] decides a question between power and liberty!”

What Now?

Can executive tyranny be stopped? Jefferson believed the only “true corrective of abuses of constitutional power”¹⁶ was a well informed body politic. If the people were properly immersed in the knowledge of the American Founding and the freedom principles upon which the Constitution rested, they would immediately know when their rights were being violated. A body politic made vigilant through knowledge would rise up as necessary to keep the wolf from the door; they would provide the best defense of the public liberty: “I sincerely wish... we could see our government so secured as to depend less on the character of the person in whose hands it is trusted. Bad men will sometimes get in and with such an immense patronage may make great progress in corrupting the public mind and principles. *This is a subject with which wisdom and patriotism should be occupied.*”¹⁷

Jefferson’s prayer was that American education, preferably entrusted to private hands, could be relied upon to properly prepare each rising generation as the men of the next “...to be the sole guardians of [the] principles” the founding fathers “delivered over to them.”¹⁸ But since the Executive Branch controls what American youth are taught, as well as how they are taught, we should not be surprised to find the public liberty in such a shipwrecked state.

—Dianne Gilbert, Chairman

Do you need to be reconnected to the roots of the American Republic? The New Hampshire Center for Constitutional Studies offers public and private seminars on the American Founding, and Constitutional Government. We provide an article by article, section by section, and clause by clause walkthrough of the American Constitution. Call us or visit our website: www.nhccs.org to inquire about the next scheduled class or to schedule one for your group or organization.

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2. James Madison, National Gazette essay, 4 Feb. 1792; PJM 14:217; *James Madison’s Advice to My Country*, pg 98
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7. *Making of America Study Guide*; W. Cleon Skousen, pg 90
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9. *George Washington, A Collection*, Edited by William B. Allen, pg 565
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17. Ibid, Bergh 10:237 (1801); emphasis added
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The Public Liberty

Guard with jealous attention the public liberty. Suspect everyone who approaches that jewel. Unfortunately, nothing will preserve it but downright force. Whenever you give up that force you are ruined.

—Patrick Henry
Virginia Ratifying Convention

They that can give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety.

—Benjamin Franklin 1759

None but an armed nation can dispense with a standing army.

—Thomas Jefferson 1803

The Founding Fathers On The Need for a Militia

“Always remembering, that an Armed and trained militia is the firmest bulwark of Republics; that without standing Armies their liberty can never be in danger; nor with large ones, safe.”

—President James Madison
First Inaugural Address, 4 Mar. 1809

“I think the truth must now be obvious that our people are too happy at home to enter into regular service, and that we cannot be defended but by making every citizen a soldier, as the Greeks and Romans who had no standing armies; and that in doing this all must be marshaled [and] classed by their ages, and every service ascribed to its competent class.”

—Thomas Jefferson (1814)

“The militia...ought always to be counted upon as a valuable and powerful auxiliary.”

—Alexander Hamilton
Federalist Paper No. 26

“In times of insurrection, or invasion, it would be natural and proper that the militia of the neighboring States should be marched into another, to resist a common enemy, or to guard the republic against the violence of faction or sedition...This mutual succor is, indeed, a principal end of our political association.”

—Alexander Hamilton
Federalist Paper No. 26

“The supreme power in America cannot enforce unjust laws by the sword; because, the whole body of the people are armed and constitute a force superior to any band of regular troops that can be, on any pretense, raised in the United States.

—Noah Webster

“The President will have only the occasional command of such part of the militia of the nation as by the legislative provision may be called into the actual service of the Union...It would amount to nothing more than the supreme command direction of the military and naval forces, as first general and admiral of the Confederacy.”

—Alexander Hamilton, Federalist Paper #69

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“[I] hope the maxim would never be adopted here that the chief magistrate could do no wrong.”

—Elbridge Gerry,
Delegate from
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“I ask, who are the militia? They consist now of the whole people, except a few public officers.”

—George Mason—Author VA Declaration of Rights

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An Expose on the Proper Interpretation of the New Hampshire Constitution

By the Hon. Dan Itse

Editor's Note: This is the second installment in a multi-part series on the proper interpretation of the NH Constitution Part-One—The Bill of Rights

The first article on the Constitution of the State of New Hampshire presented Articles 1, 7 and 38 to demonstrate that the Constitution of the State of New Hampshire declared that the people of New Hampshire are the sovereigns of sovereign state. As such they have the duty to understand and enforce their constitution. Also included as part of the first installment were Articles 2 and 3.

In this second article we present Articles 4 and 5. In combination with Articles 2 and 3, these articles present the idea of natural rights, that some natural rights can be surrendered for the protection of others, that there are rights of conscience which can not be surrendered, and the right of religion. The idea of surrender of natural rights is clear in that when one commits a crime such as murder, your right to defend life might be surrendered and your ability to enjoy life and acquire property will likely be surrendered. Similarly, if you commit a property crime your ability to protect your property will be surrendered.

In the right of religious freedom, we see a right of conscience which is not absolute. Your right to practice religion exists only so long as it is peaceable. Your practice of religion can not infringe on another's right to practice their religion. An example of this is the recent law prohibiting the disruption of funerals.

Article 4. [Rights of Conscience Unalienable.]

Among the natural rights, some are, in their very nature unalienable, because no equivalent can be given or received for them. Of this kind are the Rights of Conscience. June 2, 1784

This article puts rights of conscience above all other rights because there is no protection which can be traded. This ties directly back to Article 3. Many rights of conscience are enumerated in separate Articles; therefore, this would refer to unenumerated rights. An example of such a right would be the right of a pharmacist to not dispense abortifacients. What is more important is what is said about natural right. Natural rights are those which would exist without this or any government,

they come to men naturally. These are also known as negative rights. Those upon which the government can not infringe. Positive rights or civil rights are those created by government, they are also known as privileges of society. Another common distinction is financial. Generally, it costs nothing for government to not infringe upon your natural right, but privileges of society always cost something and can bankrupt a society. It embodies the evangelical principle of God before government.

Article 5. [Religious Freedom Recognized.]

Every individual has a natural and unalienable right to worship God according to the dictates of his own conscience, and reason; and no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession, sentiments, or persuasion; provided he doth not disturb the public peace or disturb others in their religious worship. June 2, 1784

This Article is the first enumerated right of conscience and codifies the right to practice any religion as long as it does not interfere with the rights of others. Therefore, you can not worship in any way that jeopardizes the safety of another.

It is extremely important that the founders codified Article 5, the original form of Article 6 requiring teachers in the public schools to be protestant, Article 11 the qualifications to vote, and the religious qualification of protestant faith in Part 2 for Governor, Senator, Executive Councilor and Representative at the same time, and therefore, according to Article 37 there is no conflict between these Articles. They saw no conflict between freedom of worship and religious qualification for certain governmental activities and offices. It proves that they believed that the states have the right to establish a religion if they choose, and that, that right continued beyond the creation of the United States of America. It is also important to realize that in the original Constitution of New Hampshire religious protection in Article 6 was only extended to Christian denominations. It embodies the evangelical principle of personal relationship with God.

_Hon. Dan Itse

How's Your Constitutional IQ ?

1. Can congress appropriate money to be expended over a period of ten years on an advanced laser weapon for the military?
2. When a President takes his oath of office he commits himself to do two things. What are they?
3. The income tax was initially viewed as a tax on the wealthy. What single factor, more than any other, shifted it to a tax on the general citizenry?
4. Can the government discriminate in determining who will be allowed to migrate to the United states and who will not?
5. The Founders made the passing of laws slow and complicated. There were several major reasons for taking this position. Can you name just one?

Answers: 1) No—the Constitution restricts military funding to 2 years. 2) Faithfully execute the duties assigned to the office of President and to preserve, protect and defend the Constitution of the United States. 3) Withholding income taxes from wages and salaries. 4) Yes. The Supreme court has held that the United States, as a sovereign nation, can determine the conditions under which persons shall be allowed to enter the country. This broad authority allows the government to use its discriminatory powers to impose quotas and set required qualifications, restrictions, and even outright prohibitions against certain types of immigrants. 5) a. They didn't want any more laws that were absolutely necessary. b. the goal was no efficiency in passing laws but effectiveness in preserving freedom. c. They wanted to keep government as simple as possible. d. They believed that almost all

George Washington : America's Need for a Militia

There can be little doubt but [that] Congress will recommend a proper peace establishment for the United States. In which a due attention will be paid to the importance of placing the militia of the Union upon a regular and respectable footing. If this should be the case, I would beg leave to urge the great advantage of it in the strongest terms. The militia of this country must be considered as the palladium of our security and the first effectual resort in case of hostility. It is essential, therefore, that the same system should pervade the whole; that the formation and discipline of the militia of the continent should be absolutely uniform, and the same species of arms, accoutrements, and military apparatus should be introduced in every part of the United States—

_Circular to the States, Fitzpatrick 26:494 (1783)

The militia...is certainly an object of primary importance, whether viewed in reference to the national security, to the satisfaction of the community, or to the preservation of order.

_To the Senate and the House of Representatives
Fitzpatrick 31:402 (1791)

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