



STUDY OUR HISTORY

"The great aim of education is not knowledge, but action."
- Herbert Spencer

- HERBERT SPENCER

"The great aim of education is not knowledge, but action."

United States Constitution

The 9th & 10th Amendments
Keystone to Restoring Our
Constitution

By Gary Wood ©2010

<http://studyourhistory.com>

Constitution Preamble

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

(Six goals are laid out in the Constitution's preamble.)

Our Societal Self



Our Societal Self

- The societal self refers to our mature self, old enough to begin fulfilling personal responsibility.
- Gears of the societal self are based on three inherent areas; the natural, commercial, and governing gears driving us in our interaction with each other.
- When we form a society of family, community, or state we become a member of that society requiring us to interact with others who also are in their societal self. (See Locke, Montesquieu, Blackstone, and others.)
- We must understand self to interpret our history.

Governing Gear

- Natural and commercial gears create interactions driving us toward a desire to form community relations with others.
- Within the Governing Gear rests agreements among people regarding how their government is to be structured.
- Government is a tool to help secure 3 fundamental areas; life, liberty and property.
- Governing works best when operated at the lowest possible level to solve challenges.
- States are the foundation of our Constitutional Republic.
- Federal level governing was to be enumerated and limited as agreed upon between each of the independent states.

The Founder's Solution ~ People's Law



Three headed eagle from Skousen's *"The 5000 Year Leap"*

Fundamental Principles of People's Law

- The Principle of [Federalism](#)
 - Federalism is the concept designed to deal with several independent states uniting to form a governing agreement for common issues impacting each state.
- The Principle of [Enumeration](#)
 - Enumeration is designed to limit the federal government created under the first principle.
- The Principle of [Separation of Powers](#)
 - Initial separation of powers occurred vertically between the states and the general government they created. Keeping the federal government further separated would reduce the chance of falling into factional control and balance the federal government in the center.

Bill of Rights Preamble

**The First 10 Amendments to the
Constitution as Ratified by the States**

December 15, 1791

Preamble

Congress OF THE United States
*begun and held at the City of New York, on Wednesday
the Fourth of March, one thousand seven hundred and eighty nine.*

THE Conventions of a number of the States having at the time of their adopting the Constitution, expressed a desire, **in order to prevent misconstruction or abuse of its powers**, that **further declaratory and restrictive clauses** should be added: And as extending the ground of public confidence in the Government, will best insure the beneficent ends of its institution

RESOLVED by the Senate and House of Representatives of the United States of America, in Congress assembled, two thirds of both Houses concurring, that the **following Articles be proposed to the Legislatures of the several States**, as Amendments to the Constitution of the United States, all or any of which Articles, when ratified by three fourths of the said Legislatures, to be valid to all intents and purposes, as part of the said Constitution; viz.:

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

Ratification dependent on states' powers being protected

- It was imperative written assurance was provided which allowed people to self-govern at the lowest level possible being closer to local legislatures than they would ever be to their federal or general government.
- By including the 10th Amendment those concerned with federal tyranny were calmed in their concern since anything the federal government attempted to legislate beyond the Constitutional limits of Congress' authority would be classified usurpation of state sovereignty and Constitutionally illegal.

The 9th Amendment

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

- ***The enumeration in the Constitution***; references the 18 specific powers the states were willing to allow, from the civil liberties of the people, the new federal or general government to oversee. These enumerated powers are found in Article 1, Section 8.
- ***Construed***; Arranged in natural order; interpreted; understood; translated.
- ***Deny***; To refuse to grant.
- ***Disparage***; to injure or dishonor by a comparison with something of less value or excellence.
- ***Retained***; Held; kept in possession; kept as an associate; kept in pay; kept from escape.

People retain natural rights

- There are natural rights from the Creator and civil rights abridged between the states and the people in which the federal government is not to interfere with.
- Any rights authorized for federal oversight were enumerated and the only way to change these enumerated rights is through the specified amendment processes in Article V.
- The Bill of Rights' first eight amendments did not contain an exhaustive list of people's rights.

James Madison - June 8, 1789

“It has been objected also against a bill of rights, that, by enumerating particular exceptions to the grant of power, it would disparage those rights which were not placed in that enumeration; and it might follow by implication, that those rights which were not singled out, were intended to be assigned into the hands of the General Government, and were consequently insecure. This is one of the most plausible arguments I have ever heard urged against the admission of a bill of rights into this system; but, I conceive, that it may be guarded against. I have attempted it, as gentlemen may see by turning to the last clause of the fourth resolution [the Ninth Amendment].”

Annals of Congress. The Debates and Proceedings in the Congress of the United States. "History of Congress." 42 vols. Washington, D.C.: Gales & Seaton, 1834--56.

Founders' beliefs on peoples' ability

- The federal government was not to interfere with peoples' rights.
- It was expected the people would be self-governing, not requiring or depending on government for defining or controlling any of our un-enumerated rights.
- There was a shared belief men should be governed by their conscience.
- The Constitution was designed to control government, not people. (This began to change with the 16th and 18th Amendments)
- “The Constitution was not designed to make people virtuous; it was created to govern a moral people.” (Joseph Andrews)

The 10th Amendment

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

- **Power** - 11. Command; the right of governing, or actual government; dominion; rule, sway; authority.
- **Delegated** - Deputed; sent with a trust or commission to act for another; appointed a judge; committed, as authority.
- **Prohibited** - Forbid; interdicted; hindered.
- **Reserved** - Kept for another or future use; retained.

States and people retain power

- Where the 9th Amendment protects the people against attempts of the federal government to invoke powers not specifically enumerated that may deny people's rights the 10th Amendment restrains federal power over states as well as citizens.
- It reemphasizes the fact our federal government only had certain civil liberties granted while protecting the political liberty, or sovereignty, of the states.
- The founders were aware it was possible for the three branches of the federal government to one day coordinate efforts to subjugate states.
- The language used in the 10th Amendment was an effort to clearly quantify the fact our federal government was not to interfere with states or people beyond its enumerated powers authorized by the states.

Thoughts from Thomas Jefferson

- "The way to have good and safe government is not to trust it all to one, but to divide it among the many, distributing to everyone exactly the function he is competent to. Let the National Government be entrusted with the defense of the nation and its foreign and federal relations; the State governments with the civil rights, laws, police, and administration of what concerns the State generally; the counties with the local concerns of the counties, and each ward direct the interests within itself. It is by dividing and subdividing these republics from the great national one down through all its subordinations, until it ends in the administration of every man's farm by himself; by placing under everyone what his own eye may superintend, that all will be done for the best."

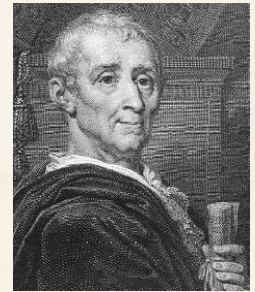
Thomas Jefferson to Joseph C. Cabell, 1816.

Thoughts from W. Cleon Skousen

- “The idea was to keep the power base close to the people. The emphasis was on strong local self-government. The states would be responsible for the internal affairs and the federal government would confine itself to those areas which could not be fairly or effectively handled by the individual states.”

The 5000 Year Leap, pg. 23

Charles Louis de Secondat, Baron de Montesquieu



- (1689 – 1755) Cited more than any other philosopher by the Founders¹, he was a French attorney and author. *Spirit of Laws* was published in 1748 and in it many of the ideas presented by Locke were supported and expanded upon. Where Locke wrote of a legislative and executive branch Montesquieu added a third, the judiciary. We know his major ideas today by the terms of ‘separation of power’ and ‘checks and balances’ which was key in protecting against tyranny. Another key ingredient is education. He believed the education of the people dictated the form of government they would eventually live under.
- **“It is in a republican government that the whole power of education is required. The fear of despotic governments naturally arises of itself amidst threats and punishments; the honour of monarchies is favoured by the passions, and favours them in its turn; but virtue is a self-renunciation, which is ever arduous and painful...It is not the young people that degenerate; they are not spoiled till those of maturer age are already sunk into corruption.”²**

The 10th Amendment in action

- In 1798 President John Adams was convinced it was necessary to pass the Alien and Sedition Acts in order to quell unrest caused by the divide between those supporting the French Revolution and those opposed to getting too involved in the affairs of France.
- Thomas Jefferson and James Madison worked to craft opposing resolutions in Kentucky and Virginia. The 1798 act was considered by those opposed to it as a direct violation of the enumerated powers and unconstitutional under the 10th Amendment.

Language reveals Founders meaning

- The language in the Kentucky Resolution of 1799 reveals for us the understanding our Founders had surrounding the 10th Amendment.

“That if those who administer the general government be permitted to transgress the **limits fixed by that compact**, by a total disregard to the special delegations of power therein contained, annihilation of the state governments, and the erection upon their ruins, of a general consolidated government, will be the inevitable consequence: That the principle and construction contended for by sundry of the state legislatures, **that the general government is the exclusive judge of the extent of the powers delegated to it, stop nothing short of despotism**; since the discretion of those who administer the government, and not the constitution, would be the measure of their powers: **That the several states who formed that instrument, being sovereign and independent, have the unquestionable right to judge of its infraction**; and that a nullification, by those sovereignties, of all unauthorized acts done under colour of that instrument, is the rightful remedy: That this commonwealth does upon the most deliberate reconsideration declare, that the said alien and sedition laws, are in their opinion, palpable violations of the said constitution; and however cheerfully it may be disposed to surrender its opinion to a majority of its sister states in matters of ordinary or doubtful policy; yet, in momentous regulations like the present, which so vitally wound the best rights of the citizen, it would consider a silent acquiescence as highly criminal: “
(*Emphasis added*)

Examining their words & meanings

- **‘Limits fixed by that compact’** directly refers to the enumerated powers of Article 1, Section 8 of the Constitution.
- **‘Despotism’** is commonly used in the Founders era. A government ruled by a despot is a totalitarian rule also referred to as absolute monarchy.
- The states were clearly considered to have the **‘unquestionable right to judge’** actions at the federal level and nullify any actions states found to be unconstitutional.

Principles of '98 examples: The Embargo of 1807–1809

- In retaliation against British and French depredations against American neutral rights on the seas, the federal government under Thomas Jefferson in late 1807 declared an embargo, according to which no American ship could depart for any foreign port anywhere in the world. (The rationale was that trade with the U.S. was a key ingredient in British and French prosperity, and thus that economic pressure might persuade them to change their policies.)
- New England was especially hard hit by the embargo because so many of its people were employed either directly in foreign commerce or in proximate fields, and it was there that opposition to the policy was concentrated. In 1808 a federal district court, in the case of *United States v. The William*, ruled the embargo constitutional. The Massachusetts legislature begged to differ. Both houses declared the embargo acts to be “in many particulars, unjust, oppressive, and unconstitutional.” “While this State maintains its sovereignty and independence, all the citizens can find protection against outrage and injustice in the strong arm of the State government,” they said. The embargo, furthermore, was “not legally binding on the citizens of this State.”

The War of 1812

- During the War of 1812, Massachusetts and Connecticut were ordered to call out their respective militias for the purpose of defending the coast. The call derived from the federal government's authority to call the state militias into service "to execute the Laws of the Union, suppress Insurrections and repel invasions."
- Massachusetts Governor Caleb Strong, however, maintained that the states reserved the power to determine whether any of these three conditions held. At Strong's request, the Massachusetts Supreme Court offered its opinion. That court agreed with the governor: "As this power is not delegated to the United States by the Federal Constitution, nor prohibited by it to the states, it is reserved to the states, respectively; and from the nature of the power, it must be exercised by those with whom the states have respectively entrusted the chief command of the militia."
- Connecticut followed suit:
- It must not be forgotten, that the state of Connecticut is a FREE SOVEREIGN and INDEPENDENT state; that the United States are a *confederacy* of states; that we are a confederated and not a consolidated republic. The governor of this state is under a high and solemn obligation, "*to maintain the lawful rights and privileges thereof, as a sovereign, free and independent state,*" as he is "*to support the constitution of the United States,*" and the obligation to support the latter, imposes an additional obligation to support the former.

Bridging the gap to today

- When we bridge the gap today we find a federal government that no longer believes the right to judge rests within the states or the people.
- Joe Sobran writes, “Notice how total the reversal of the Court’s role has been. It began with the duty, according to Hamilton, of striking down seizures of power by Congress. Now it finds constitutional virtually everything Congress chooses to do. The federal government has assumed myriads of new powers nowhere mentioned or implied in the Constitution, yet the Court has never seriously impeded this expansion, or rather explosion, of novel claims of power. What it finds unconstitutional are the traditional powers of the states.” (*How Tyranny Came to America*, pg. 16, *emphasis added*)
- Our modern history has lost the meaning of these two critical amendments. Supreme Court rulings, the 14th, 16th and 17th Amendments, combined with modern beliefs and traditions have altered our understanding.
- Some believe the Civil War settled the matter and states no longer have 10th amendment rights or duties while believing the only recourse for states rests in the amendment process of Article V.

Hamilton's Observation

“In the first place it is to be remembered that the general government is not to be charged with the whole power of making and administering laws. Its jurisdiction is limited to certain enumerated objects, which concern all the members of the republic, but which are not to be attained by the separate provisions of any. The subordinate governments, which can extend their care to all those other subjects which can be separately provided for, will retain their due authority and activity.”

Federalist No. 14

9th and 10th are not the same

- Many feel there is a redundancy in the 9th and 10th or that they represent the same thing.
- The 9th specifically protects un-enumerated people's rights from federal level control.
- The 10th focuses on the fact powers are left separate between the states and the federal levels based on the compact between them known as our Constitution. It provided authority at the level most competent to deal with challenges.

“The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected. The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.”

Federalist Papers No. 45

Explaining the 9th & 10th Amendments

Many of our founders felt the federal government could grow to rein power over individual (or sovereign) states and citizens. Like being caught in a rainstorm without an umbrella this usurpation would soak the very fabric of liberty. By including the 9th and 10th Amendments within our Bill of Rights it was believed they would shield states and people from this rein keeping the fabric of liberty dry and unsoiled. Consider the 9th as the handle and the 10th as the fabric of the umbrella. Reviving these two amendments are keystones in restoring our Constitutional path.



America Rising: An Open Letter to Democrats

[YouTube Video Message; America Rising](#)

Federalism

- federal
- **FED'ERAL**, a. [from L. faedus, a league, allied perhaps to Eng. wed. L. vas, vadis, vador, vadimonium. See Heb. to pledge.]
- 1. Pertaining to a league or contract; derived from an agreement or covenant between parties, particularly between nations.
- The Romans, contrary to federal right, compelled them to part with Sardinia.
- 2. Consisting in a compact between parties, particularly and chiefly between states or nations; founded on alliance by contract or mutual agreement; as a federal government, such as that of the United States.
- 3. Friendly to the constitution of the United States. [See the Noun.]

Federalist 45 – Enumerated Powers

- “The powers delegated by the proposed Constitution to the federal government, are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected. The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.”

Separation of Powers

- The first separation is between the federal government and the states.
- The second separation is between the three branches of the federal government
 - Legislative Branch – further divided between the Senate (representing the states) and the House (representing the people). Proposes and passes law.
 - Executive Branch – enforces law.
 - Judicial Branch – interprets Constitutionality of law.