

# MY LIBERTIES

*How to Know & Protect Your Rights*

High School Civics  
U.S. Government

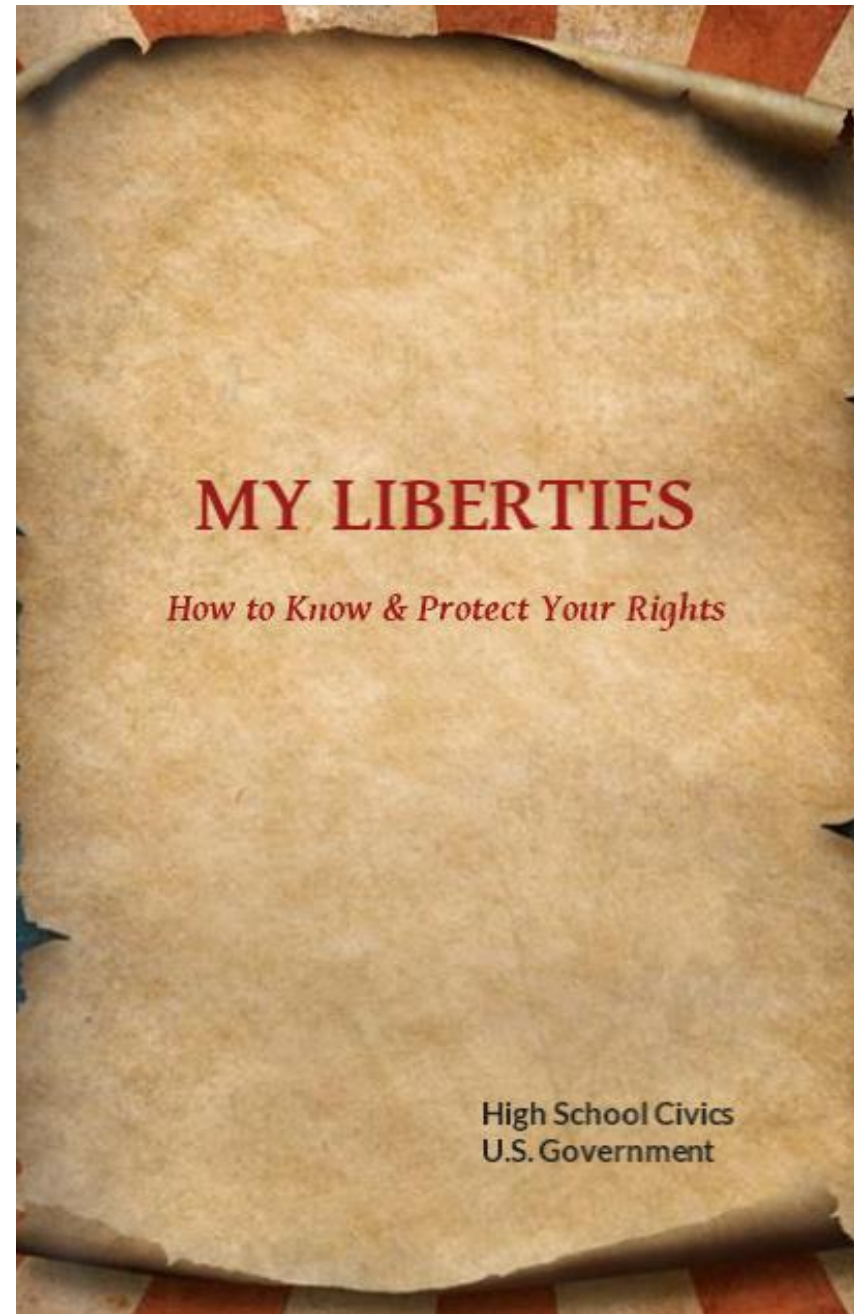
- Free Instructional Materials for Teachers, Homeschool Parents, or anyone wishing to learn how to protect their liberties...

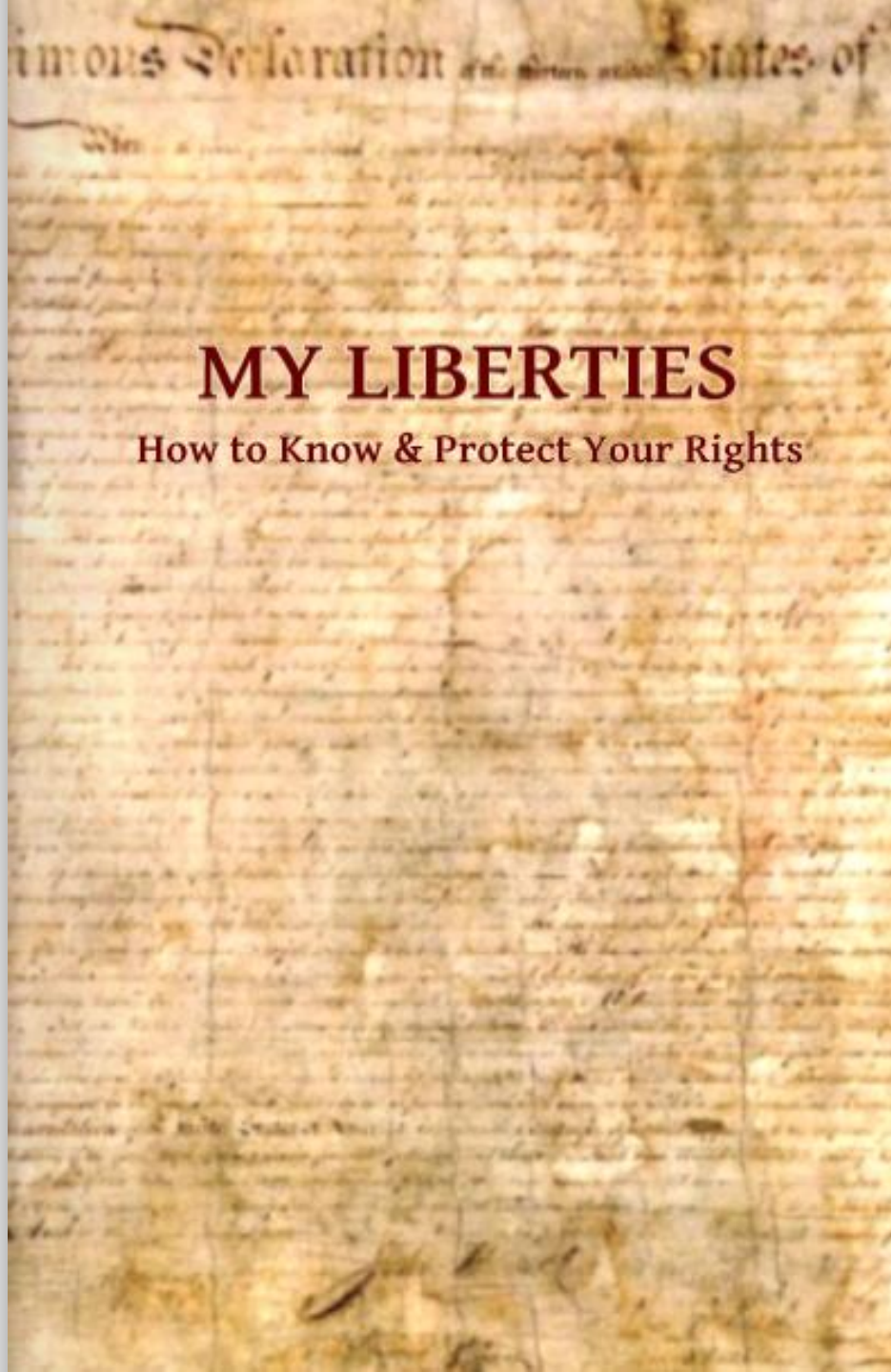
Have you ever wondered what the difference is between a republic and a democracy?

Have you ever asked what is the purpose of the electoral college?

Have you ever questioned if the government is exerting too much control over your life?

This booklet answers all these questions and more. It explains government and how it is to function.





# MY LIBERTIES

How to Know & Protect Your Rights

Copyright © 2018, All Rights Reserved.  
No part of this booklet may be copied or  
reprinted for commercial gain or profit.



NOTE: Endnotes can be found on pages 37-38.

## INTRODUCTION

Do we need government? If so, why? What is the purpose of government? Should government be large or small? Which is better and why?

There are so many questions that we all should ask, but few of us ever do. Most of us go through life just accepting that we will be governed. Some of us see government as a great evil, an oppressor of our freedom. Others see it as a great good, a means of protection.

So, which is it? It can be both. Falling on the good side of the continuum requires knowledge and vigilance. We need this understanding to ensure the greatest balance for protecting our liberties.

Since the liberties protected belong to you personally, shouldn't you understand how this governmental tension works? This booklet will help you to understand. It will equip you to effectively express, "these are my liberties!"



## Basic Principles of Civil Government

Government is not something that simply exists. Rather, the only authority a government rightfully possesses arises from the collectively surrendered authority of its individual citizens. This is known as “the consent of the governed.”

Those areas over which the citizens collectively choose to self-govern, the civil government does not control. In this balance-of-power, it is obvious that the more authority that is shifted to the government, the less authority is retained by the individual. Conversely, the smaller the government control, the greater the areas of self-governance and individual liberty are held by its citizens. The goal is to grant enough power for the government to protect us and our rights, but not too much power such that the government constrains us.

It is helpful to keep this balance-of-power at the forefront of all decisions we make in determining how much control for the “greater good” we choose to relinquish to the civil government. We must remember that the larger and more powerful we make our government, the fewer liberties we the governed retain. This dynamic can simply be stated as: less government means greater liberty.



## Basic Principles of Our Constitutional Republic

In 1776 the Declaration of Independence Created us as one Nation during the fires of Revolution. [1] Subsequently, the Constitution was adopted to sustain, improve and ultimately perfect our already existing union. Its adoption replaced the ineffective Articles of Confederation.

The Preamble of the Constitution explains, "We the People, in order to form a MORE PERFECT UNION..." In short, the goal of drafting and adopting the Constitution was perfecting the existing union, not creating it. The union had already been created through the Declaration of Independence in 1776. Our nation was in its 12th year of existence when the Constitution was

written. If you count inclusively from 1776 to 1787, that is 12 years. It was in September of 1787 that the Constitutional Convention adjourned and agreed to send the Constitution to the states for ratification. This occurred in the 12th year of our young nation's existence. This explains why the Constitution itself references being done in "...the Independence of the United States of America the Twelfth."

The Declaration of Independence created us as one nation. It was in our twelfth year of existence that the Constitution was drafted as the new Rule of Law to govern our already existing Republic. The reason this is important to understand is that every American citizen needs to know that our Declaration of Independence is still relevant to our rights and liberties. This means that we can only be properly governed when our laws align with the principles clearly stated in the Declaration.

The Constitution only replaced the Articles of Confederation; it did not replace our Declaration of Independence. Therefore, the unalienable rights listed in the Declaration are rights that can neither be taken nor given away. These are rights that were anticipated by the framers to be protected by any governing authority in order for such government to be viewed as legitimate. The Declaration makes this clear by defining the proper role and function of government, "...to secure these [unalienable] rights governments are instituted among men, deriving their just powers from the consent of the governed."

Therefore, the proper function and role of government is very simple. It is to protect our inalienable or unalienable rights. This means it is to protect those individual rights that all men inherently possess that should never be taken nor even given away. And proper government authority should only extend as far as we "the governed" consent.



### **The First 10 Amendments to the Constitution**

It is very important to understand that for a right to be "unalienable" it must be a right that we automatically possess as a human being. This is why they are sometimes referred to as human rights. Consequently, the rights which are protected by the Bill of Rights are not rights that are given to us by the government. Rather these are rights that should be understood to be inherently possessed by the people over which the government has no right to control. In short, these would be rights that all people as created beings automatically have, rights that are so basic to living in a free society that civil government should not be able to take or limit them. These are also referred to as inalienable or unalienable rights.

The preservation of inherent rights has been defined as freedom. "Freedom is not a gift bestowed upon us by other men, but a right that belongs to us by the laws of God and nature." [2]

There was a major debate as to whether a Bill of Rights needed to be added to the Constitution. A Bill of Rights was not seen as necessary since the Constitution itself was a "document of enumerated powers."

This is a big phrase that simply means that the Constitution only gives the Federal Government very limited powers over the areas it specifically "enumerates" or lists. This also means that those areas not listed in the Constitution are fully intended to be outside of the authority of the "Federal Government, or what Thomas Jefferson referred to as the "General Government." Therefore, any area that is not specifically listed in the Constitution is understood to be outside of the power of the Federal Government.

So, if the Federal Government is not to control those areas, then who is? They are areas that are reserved to the control of either the states or the people directly. This limitation was so clearly understood and important to the founders that they reiterated it in the 10th Amendment, so that there would not be any confusion.

The argument against the Bill of Rights was a simple one. "Why would it need to be restated that Congress was unable to make laws that restricted the rights listed in the first 10 amendments, when the federal or general government had no authority to exercise any control over such areas? Congress already was prohibited from passing laws that would govern these areas since they were not areas that had been enumerated or listed within the Constitution?"

Despite the limitations placed upon the Federal government by the Constitution being a document of enumerated powers, there was still an argument for the Bill of Rights. The argument for the Bill of Rights was that the rights listed in the first 10 Amendments were so important that even though the general government had been given only limited or enumerated powers, extra security and protection was preferred. They wanted to be able to reassure the people that there was no way that their individual liberties could ever be restricted or limited through improper government control.



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



The most important rights were listed, as would be expected, within the First Amendment. What is interesting to note is that every single liberty listed in the 1st Amendment over which the government was not to limit is what is legally understood as both an individual and a positive right. They are individual rights because each individual has them. Even if nobody else in the entire universe believes the way you do, the dictates of your conscience are still protected. They are positive rights because they are rights to actively do or believe something, not rights to keep others from doing or believing something.

In short, we have a right to free speech; the government can't keep us from speaking out our beliefs. We have a right to freely assemble in a peaceful manner. And we have a right to freely exercise our religious beliefs. The founders called our right to the free exercise of religion the "right of conscience" because they understood that all people have an automatic right to worship God according to the "dictates of their conscience." Therefore, this right of Free Exercise the Founders often referred to simply as our right of conscience.

James Madison, known as the "Father of our Constitution," specifically defined religion in the VA Constitution Article I, Sec. 16 as "our duties owed to God." So, the freedom to fulfill duties which we are personally convicted we owe should be viewed as an individual liberty of conscience. This means it is not a protection for a corporate church or religious theological doctrine, but of our own ability to individually "worship according to the dictates of our conscience."

In order that our first amendment rights may be fully protected, it is crucial that we properly view our unalienable rights both as individual rights as well as positive rights. Only when we understand that such liberties are both individual and positive can the government be restrained from infringing upon them inappropriately.

For example, note that one of the clauses in the 1st Amendment is not like the others. The only clause in the first amendment that references a general prohibition on Congress from acknowledging a national religious establishment is what has become known as the No Establishment Clause. Since this is a blanket negative on Congress, rather than referencing an individual positive right, we must determine its proper purpose and function. It clearly serves one important function; it serves as an additional layer of insulation for the protection of the individual and positive right of free exercise.

It makes sense that the Founders felt very strongly about clearly protecting and preserving this first amendment right. They were well-acquainted with religious persecution. James Madison was himself a direct descendent of William Tyndale. Tyndale had been burned at the stake. His crime was translating the Bible from Hebrew and Greek into English so that many could read and understand it. Oddly enough, it was not non-Christians that opposed Tyndale. Rather, it was the Church that did not want him to translate the Bible for the average man. They preferred it remain written in Latin. That way only the priests could read it so that they would be the ones who could tell others what it said.

Understanding this history explains the founders' distrust of the control that can come from a church vested with governmental power. So, they not only made sure that we have an individual positive right to the free exercise of religion to worship according to the dictates of our own conscience, but to guarantee this protection, they forbid the government from establishing a national church. They did not want a governmental church established that could then use its power to trample upon our ability to worship according to our individual convictions.

Consequently, the No Establishment Clause should not be viewed as a positive, individual right. It is a general prohibition against the government, thereby further protecting our individual rights of conscience. As such, this clause was never intended by the founders to be an individual, positive right. For example, they did not institute a 1st Amendment right to not be offended when others practice their individual rights of conscience. As a matter of fact, ensuring that individuals could worship according to the dictates of their conscience, even if others did not agree, was the whole purpose of the 1st Amendment. Since the no Establishment Clause was to serve as an additional protection from any form of government intrusion upon our individual right to free exercise, it was only intended to prevent the formal creation of recognition of a specific church by the government.

Therefore, a government employee should not automatically be viewed as the government. If they are operating as an individual, they should be afforded the right to practice their individual rights of conscience the same way any other individual would be allowed. Just because such worship may offend

someone else does not necessarily mean that a first amendment violation has occurred. If that person is merely offended, but is neither being forced to believe nor act the same way, then their first amendment rights have not been violated unconstitutionally.



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

The second amendment comes second for one very simple reason. While proper government should bring protection and order, improper government can become oppressive. At the heart of a republic is the belief that it is the citizens of that republic who are vested with the responsibility of keeping it. When asked what type of government we had been given, Benjamin Franklin famously replied, "A Republic, if you can keep it."

Each citizen must diligently watch that their government does not become destructive of their rights and liberties. The Declaration of Independence very clearly tells us, that the function of government is simply to secure our unalienable rights. It also warns us that if our government becomes destructive of those rights, then we are to throw

it off.

Since our 1st Amendment Rights, rights to our freedom of worship, to our freedom of speech, to our freedom of assembly, are so valuable, the means of ensuring that government does not become destructive of those rights must also be afforded to its citizenry. That is why the 2nd Amendment comes second. It is to serve as a reminder to our governing authorities that they are there to protect our rights, not threaten them.

This is not to depict a military revolt, but rather the safety and security that is afforded to a people who always possess the right to keep and bear arms. After all, the reference to a well-ordered militia was in fact nothing more than a reference to the whole of the people, as it was the people who in fact constituted the militia. [3] The mere fact that the people were not to be denied their right to keep and bear arms was deemed a sufficient deterrent of tyranny, thereby preventing the ultimate need to forcibly overthrow their government. Ensuring that the whole of the people could bear arms was viewed as a necessary and effective deterrent to the implementation of unjust laws, and thereby an assurance that our liberties would be protected. [4]

## DOCUMENT OF ENUMERATED POWERS

As stated earlier, the Constitution of the United States is a Document of Enumerated Powers because it specifically lists out those limited areas over which it has authority to govern. Utilizing this legal doctrine means that by the drafters clearly identifying specific areas of control, those areas which they did not list were intended to be excluded from the Federal Government's control. In short, all areas that are not specifically listed are intended to be reserved to the control of the states and the people.

Those areas of enumerated powers are listed in Article I, Section 8 of the Constitution. Every American citizen should understand that the Federal Government is only authorized to have control over the following enumerated areas:

- Congress may lay and collect taxes
- Congress may borrow money
- Congress may regulate national and international commerce
- Congress may establish uniform rules of naturalization and uniform laws of bankruptcy
- Congress may coin money and set the standard for weights and measures
- Congress may punish counterfeiters
- Congress may establish post offices and post roads

- Congress may issue patents to inventors and copyrights to authors
- Congress may establish federal courts
- Congress may punish piracy and crimes at sea
- Congress may declare war
- Congress may raise and support armies
- Congress may provide and maintain a navy
- Congress may establish rules to govern both land and naval forces
- Congress may call the militia to enforce the law, suppress riots, and resist invasion
- Congress may organize, arm, and discipline the military
- Congress may exercise control over the District of Columbia and over federal forts and arsenals

The Federal Government is limited to these few areas. There are two clauses in this section that were intended to further limit the power of Congress. First, Congress may pass legislation to exercise control over the above-listed areas, but only to the extent it is both "necessary and proper." This is referred to as the necessary and proper clause. Additionally, laws that Congress may enact must serve the common defense and general welfare of the United States as a whole. They must not benefit specific individuals or special interest groups. This is referred to as the general welfare clause. These two clauses mean that we have a right to expect that the laws Congress passes will not

be expansive and burdensome. Rather, they will be limited to only do what is necessary and proper. Likewise, we have a right to expect that our laws will benefit our nation as a whole, not specific individuals.

These 2 clauses are frequently misinterpreted to grant Congress unlimited power to act. However, obviously, if all the other clauses are enumerated powers granted to Congress, it makes no sense to add clauses that give it a blank check to do whatever it deems to be either necessary and proper or whatever it may argue is for the general welfare. Such expansive power would make the doctrine of enumerated powers irrelevant. Why would the drafters of the Constitution go to the time and effort to list out specific powers, if they ultimately intended to authorize unlimited powers that would grant Congress the authority to govern any area? They would not. So, clearly, that was not the intent or effect of either the general welfare clause, nor the necessary and proper clause. They are instead to be read in the spirit in which they were added, as further limits on the types of laws Congress may properly enact regarding the specific areas over which they are allowed to legislate.

Joseph Story, a Supreme Court Justice in the early 1800's, was the Justice who wrote the most extensively about how to properly interpret the Constitution. He explained in his Commentaries on the Constitution that the proper interpretation of both the general welfare clause and the necessary and proper clause were that they were to be limits on the types of laws Congress could enact over the enumerated areas of control it was granted.

For example, Story explained that congress could only lay and collect taxes in order to pay public debts incurred for providing for the common defense and general welfare of the entire United States. In this sense, Congress was not to be viewed as having been given an unlimited power of taxation; but one limited to very specifically stated goals. Consequently, any tax assessed by Congress not for these specifically authorized goals, would be unconstitutional as having exceeded proper legislative authority. [5]

These areas of enumerated powers are a detailed list of the limited areas over which the Federal Government may exercise power. Congress has the right to make the laws governing these areas, and once these laws are made, then the Executive Branch has the power to enforce these laws. Likewise, once these laws have been made, then the Judicial branch has the power to hear and decide cases and controversies arising from these laws as well as from the Constitution itself.

When the federal government makes laws to govern areas outside of those specifically listed in the Constitution, then it is exercising power it does not legitimately possess. Additionally, when the federal government assesses taxes to pay for debts beyond those the Constitution allows, again, it is exercising power it does not legitimately possess. Both forms of expansive government control are a threat to the liberty of the people.

Those areas not listed are intended to be governed by either the States or the people. Therefore, a good practice for every American citizen would be to memorize the enumerated powers. Only when we know the limits upon our government are we able to hold our elected officials accountable to staying within the authority granted to them. Only then will we be able to preserve our Constitutional Republic and ultimately protect our individual liberties from excessive governmental control.

Additionally, the preamble of the Constitution itself places a clear limitation on the power of the Federal Government.

*'We the People of the United States, in order to form a more perfect Union, establish Justice, insure domestic tranquility, provide for the common defense, 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.'* [6]

This one introductory paragraph to the Supreme Law of our Land, otherwise known as the Constitution, makes several things clear. First, as we already discussed, our Union already existed as one nation. The Constitutional Convention was being called not to create us as a nation, but rather to perfect our Union.

The goals and powers that were being granted to this new federal government were for very specific purposes: justice, domestic order and peace, to provide for our national defense, to promote or encourage the welfare of the Union generally, and, thereby, protect and preserve our Liberties for not only ourselves, but also for future generations.

Note, the clear distinction that they made between providing for the common defense and promoting the general welfare. The Constitution, therefore, envisions providing for our national security through a strong defense. This is to be done in such a way that promotes or encourages, but does not provide for, the welfare of the Union as a whole.

The founders anticipated and addressed the prospect of Constitutional misinterpretation. The language in the preamble left no room to allow for the assessing of taxes to provide for specific individuals. Such actions were only to be taken for the common good of the nation as a whole. They did not embrace socialistic policies. A broad utilization of the power to tax was never intended. The promotion of the general welfare of the nation did not grant to the government the power to lay taxes to benefit specific individuals. Such a power to tax could open a door to infringe upon the rights of the individual. It was understood and expressed by the drafters of the Constitution that only by limiting expansive governmental control could the blessings of liberty be protected and preserved.

The preamble provides reassurances to the States and the People that the Federal Government is extremely limited in its purpose and has no means of trampling



upon the individual rights of "We the People." Such assurances were necessary for the Constitution to obtain the support it needed to be ratified. The people feared strong, centralized control. They felt much safer with most of the power being held by those governments which were much closer and much more accountable to them. That is why state and local governments were intended to govern the majority of issues, while the distant Federal government was to be kept strictly limited to the few areas it was allowed to govern.

## FEDERALISM: The Vertical Separation of Powers

The Principle of Federalism is very simple. It keeps all powers from being centralized within one single government. In application, it is federalism that believes there should be concurrent powers. [7] This means that proper government authority can be simultaneously exercised at the federal level as well as the state and local level. These co-existing powers function by delegating to each government control over different areas.

This belief in the principle of Federalism, or the vertical separation of powers, was reaffirmed by the 10th Amendment. Federalism assures us that all power is never held by any single government, so that no government is ever capable of dictatorial control over all the people. Federalism is, therefore, an important check upon governmental oppression, or what the founding fathers referred to as tyranny.

James Madison, our 4th President, was known as the "Father of our Constitution." His warning was that we should take alarm at the first experiment with our liberties, for if we allow error to become established through precedent, or repeated use, it leads to tyranny. He further warned that those who continue to submit to such error become its slaves. [8] When we allow the Federal government to repeatedly ignore the parameters placed on it by federalism, we risk exposing ourselves to tyranny.

We see the principle of federalism throughout our structure of government. It is plainly expressed in the

10th Amendment through the doctrine known as nullification. [9] It is seen firsthand in the fact that each state, regardless of that state's population, is given two (2) U.S. Senators to serve in Congress. Compare this to the members of the House of Representatives which are reflective of the population of individual citizens in that state. The U.S. Congress having two (2) distinct houses blends the desire to give a voice to the people individually (House of Representatives) as well as upholding the voice of each of the 50 states (Senate). The House of Representatives is composed of 435 members because it is based upon representation of the individual citizens through population. Alternatively, the U.S. Senate is composed of only 100 members, reaffirming the equal value and authority of each state regardless of its population.

This balance of rights of the individual as well as states' rights is similarly seen in the Electoral College. The Electoral College is often misunderstood and, therefore, devalued. The founders wisely crafted the Electoral College for the same reason they created two (2) distinct chambers within Congress. The Electoral College allows the people of the state to cast individual votes for President, but it is the States which in turn casts their votes through their electors. The Electoral College blends national recognition of the individual while simultaneously recognizing states' rights.

The Electoral College is a perfect example of the founders' desire to afford rights to the individuals balanced with upholding the unique positions of each state. Citizens are afforded the right to cast their vote individually as a part of the nation, but the votes of each state are then cast through that state's electors. By



establishing a perfect blend of both national and federal principles, our government prevents any single faction within society from garnering too much power. Whenever any single faction, group, or demographic is allowed to acquire a higher level of power, there is always the threat that such power can be used against other citizens to deprive them of individual liberty. The founders never intended for the people of New York City to choose for the people of Oklahoma, Arizona, or Michigan who would represent them simply because of NYC's population.

The goal through this vertical separation of powers is the same as that of the horizontal separation of powers of checks and balances placed upon each of the three (3) branches of government. The goal is clear. We must keep the government decentralized and limited as much as possible. Only by doing this can we hope to prevent any one branch or government from becoming too powerful. If we can keep the power from becoming aggregated, only then can we truly be protected from the threat of dictatorial control. This limitation on government is what ensures that the rights, liberties

and freedoms are effectively reserved to the individual citizens. The belief of the founders was that the smaller the government, the safer the government. That is why our republican form of government, which protects individual liberties, is itself expected to be protected at all levels, not only at the federal level. This is guaranteed to the states in the U.S. Constitution and is not surprisingly referred to as the "Guarantee Clause."

Article IV, Section 4 of the Constitution states that "The United States shall guarantee to every State in this Union a Republican Form of Government" [11] This is to serve as an assurance that not only is our Federal government to be established and run as a Republic, so too is each individual state in the Union. Accordingly, all of our governments (federal, state, and local) are bound by the rule of law and exist to secure our unalienable rights.

As a Republic, we are to be a government of laws, not of men. As such, our elected officials are only able to exercise the authority that has been granted to them by law. This means that each office has a specific job description and that no power exercised beyond that job description is valid. This serves to keep every part of our government from becoming too powerful. The reason our Constitution clearly separated the unique powers that were granted to the three branches of government was to make certain that governmental power always would be limited and held in check.



## CHECKS AND BALANCES: The Horizontal Separation of Powers

Just as our Founders did not want too much power aggregated or collected into one government vertically (federal, state, or local), neither did they want too much power in any of the three (3) separate branches of government horizontally (legislative, executive, judicial). If any one of the three (3) were to have an ultimate power over the other two (2), then that branch could easily become supreme and tyrannical. That was why checks upon each branch were put in place in addition to a general balancing of power delegated to each branch.

As we review the unique powers granted to each of the three (3) branches it is important to keep in mind the ultimate goal of each branch. Every member of all three (3) of the branches is responsible for upholding the Constitution. In fact, their very first act is to take and oath of office swearing to uphold the Constitution. [12] The Supreme Court, therefore, is not the only branch responsible for upholding the integrity of the Constitution. All three (3) of them are sworn to do so.

The Constitution was written in such a way that the average citizen can understand what it contains. Only by teaching the average citizen how our Constitutional Republic is to properly function can we expect for our Republic to be preserved. Its principles are basic and easily understood, such as the obvious need to keep each branch from becoming too powerful. If it is allowed to become too powerful, then it has the ability to ultimately cancel out our liberties without providing us with any "redress of grievances." That means that

if a branch is allowed to become excessively dictatorial, then we are not left with a remedy that we may use to protect ourselves from government oppression that infringes upon our liberties.

To simplify, Article I of the Constitution gives to the Legislative branch, specifically Congress, all legislative power. This means they have been given the authority to make law. Article II of the Constitution gives to the Executive branch, specifically the President and their Cabinet, the ability to enforce those laws. Article III of the Constitution gives to the Judicial branch, specifically the Supreme and Federal Courts, the ability to apply those laws to specific cases and controversies.

Therefore, Congress can neither enforce nor adjudicate the law. The President can neither adjudicate nor make the law. And the Supreme Court can neither enforce nor make the law. The doctrine that upholds such strict separation of powers is known as *Nonaquiescence*. [13] Only when we fully understand these reciprocal limits of power on each of the three branches can we preserve our Constitutional Republic and along with it our individual liberties.

If we give the Legislative branch too much power, then the elected elite of Congress will have ultimate control. By allowing this, we have effectively replaced our Republic with an Aristocracy of sorts. If we give the Executive branch too much power where the President has ultimate control, then our Republic has effectively been replaced with a Monarchy of sorts. If we give the Judicial branch too much power where the Supreme Court has ultimate control, then our Republic has effectively been replaced with an Oligarchy of sorts. It is crucial to the preservation

of our liberties that we never forget our Constitutional Republic is a "Government of Laws not of Men." [14] It is only by preserving the Constitution itself as the "Supreme Law of the Land," [15] not any of the 3 branches, that our liberties can truly remain protected and safe.

When we fully understand this principle of strict separation of powers, we can readily recognize and push back against any exercise of power by any authority that is unconstitutional and could ultimately place us under tyranny. The reason Madison warned about not allowing an erroneous exercise of power to become accepted over years of use is clear. If a branch exercises power over us it was never intended, there is no established means of pushing back against such, as it was never intended nor anticipated to be allowed.

Let's look at a couple examples. When Americans are told that Supreme Court decisions are the Supreme Law of the Land, rather than the Constitution which declares itself to be the Supreme Law of the Land, that leads to tyranny. The justices only have the power to void laws that do not align with the will of the ultimate supreme, the people, as evidenced within the fundamental law of the Constitution. They cannot make law. In short, they are limited to the parameters of judgement, and they are strictly forbidden to substitute their will for that of the legislature. [16]

Consequently, if we as a nation allow these court decisions to create and establish "new" law, we grant to the court supreme power, which it Constitutionally does not possess. Such a belief in the supremacy of the power of the Court automatically subordinates the other two branches as inferior to the judicial branch. Additionally, it requires

acceptance that the Supreme Court is possessed with ultimate law-making authority, and as such, its decisions now become the Supreme Law of the Land in place of the Constitution itself.



This is the logical effect of granting to the Supreme Court not merely the proper judicial authority to void unconstitutional statutes, but in effect to create the new "law of the land." If such authority did exist, it would clearly make the court superior to the other two branches. Consequently, its ultimate power would allow its rulings to stand even if they did not align with the intent of the Constitution. Clearly, that was not the intent of the founders. They foresaw that should Supreme Court Rulings be deemed the Supreme Law of the Land in place of the Constitution itself, there could be no assurance that our liberties would be protected.

It is not difficult to see how oppressive court rulings would become if they were viewed as the ultimate authority and without any means of bringing them into

check. Such decisions automatically would become the supreme law of the land, without any direct accountability to the people. This type of preemptive power was never intended to be given to the Courts, which the founders actually viewed as "beyond comparison the weakest of the three." [17] The founders were comforted that the court would stay in this position of weakness because of the check they placed on it. The intended check on the judiciary for "judicial legislating" [court-made law] is for Congress to impeach any justice who attempts to do so, since "judicial legislating" does not constitute "good behavior." [18]



Likewise, how oppressive would it be if a Governor were to unilaterally enact laws declaring certain behavior criminal. Clearly, the corporate will of the people would not be ascertained through their numerous representatives in such a case. To envision one individual possessing the power to instantaneously trample upon the liberty of all citizens is unquestionably the very definition of tyranny.

Let's say, for example, that a Governor were to mandate that everyone in the entire state, regardless of documented exposure to an infectious disease, was forbidden from earning a livelihood by being ordered to stay at home. Further, the Governor prohibited the people from assembling to oppose this order, and that those who did would be criminally fined. Such laws would be tyrannical since the same official making the laws would also be empowered to execute them, allowing them to single-handedly, overnight oppress the whole of the people. The all-encompassing power that results from combining legislative authority, executive authority, and/or judicial authority was never intended. It is easy to see how a member of the executive branch choosing to also exercise judicial or legislative power results in oppression. It would allow them to unilaterally substitute their will for that of the people they represent.

Obviously, checks and balances of power between the three branches are more than just a means of keeping orderly job descriptions. They are in fact the very means of preserving our liberties from excessive governmental control. It is for this reason that we should zealously protect these parameters by resisting and disregarding any exercise of power that goes beyond the proper authority granted to each branch.

## AN EMPIRE OF LAWS NOT OF MEN Republic v Democracy

The fact that our Constitution identifies itself as the Supreme Law of the Land is clear proof that we are a republic, not a democracy. A republic is a government governed by the "Rule of Law." Conversely, a democracy is a government governed by the whim and caprice of the majority of people. While "We the People" have a clear voice in our government, ultimately, even we cannot change our system of governance, unless we do so in a manner that we have already set out within our Constitution. Undeniably, we have the power to modify or amend our Constitution. However, unless and until we adopt a Constitutional Amendment, we do not have the power to act in opposition to the constitutional parameters that currently exist.

By contrast, a democracy is not known as an Empire of Laws, but rather an Empire of Men. It is governed by the faction of majority opinion on any given issue. Our founders were very clear in their distrust and disrespect for a democracy. James Madison wrote extensively about the threat of factions controlling in society. Not only did he disapprove of minority factions or special interest groups imposing their will on the majority, but he was equally alarmed by the threat of a majority faction oppressing even a very small remnant of the people. [19] A majority faction or majority opinion is simply another name for a democracy.

There are numerous historic examples of the dangers to society that can arise from the control of a majority. One such example is the legislative adoption of horrific human rights violations in Nazi Germany. What of the travesties that litter our own history? Without the prevailing Rule

of Law that ultimately provided a means to override such injustices, there would have been no "redress of grievances." That simply means there would have been no way to correct such unacceptable and appalling governmental oppression.

The legal terms to define a republic versus a democracy are a Lex Rex (The Law is King) rather than a Rex Lex (The King is Law). Note that a King does not have to be an actual monarch. A Rex Lex exists whenever the will of any man or group of men can decide what is the law at any given moment. Compare this to a Lex Rex where the Rule of Law is more firmly established and can only be modified through a predetermined method that requires time and unified effort. This is the rationale behind why Constitutional Amendments cannot be easily made, nor should they be.

To underscore the view the founders had of a democracy, John Adams stated, "Remember, democracy never lasts long. It soon wastes, exhausts, and murders itself. There never was a democracy yet, that did not commit suicide. It is vain to say that democracy is less vain, less proud, less selfish, less ambitious, or less avaricious than aristocracy, or monarchy. It is not true in fact, and nowhere appears in history. Those passions are the same in all men, under all forms of simple government, and when unchecked produce the same effects of fraud, violence, and cruelty." [20] This depiction of a democracy by Adams is clearly unflattering. There is no question that he held no respect for a democracy, and even less a desire to live under one.

Adams' abhorrence of a democratic system was abundantly clear. Likewise, Benjamin Franklin equally disdained democracy. Franklin's metaphor was even more colorful. He explained that a democracy "is two wolves and a lamb voting on what to have for lunch." Clearly, Franklin had no desire to be governed by a democracy. We are not a democracy, and

Franklin emphasized this fact when he emphatically replied that we had been given a Republic, if we could keep it.

We should be very happy that our founders did not give us a democracy, but rather a republic. The question remains though, can we keep it? Obviously, we cannot keep something that we do not know what it is or how it is intended to operate. That is why it is essential that we study and understand our Constitutional Republic and how it is supposed to function.

Benjamin Franklin cautioned that, "A nation of well-informed men who have been taught to know and prize the rights which God has given them cannot be enslaved. It is in the religion of ignorance that tyranny begins." In short, if we are to ward off tyranny, then we must not be ignorant of how to preserve our rights.

Fully aware of these warnings, we must take the time to understand how our government is to properly function. We must study. For only by studying these principles will we be able to keep our Constitutional Republic. Even more importantly, it is only by studying and understanding that we may loudly declare, "these are MY LIBERTIES!"

## END NOTES

1 Federalist 2, John Jay, 1st Chief Justice of the SCOTUS

2 Essay by John Webbe in Benjamin Franklin's Pennsylvania Gazette, April 1, 173

3 George Mason, Address to the Virginia Ratifying Convention, June 4, 1788

4 Noah Webster, An Examination of the Leading Principles of the Federal Constitution, October 10, 1787

5 Commentaries on the Constitution, § 905, Joseph Story, 1833

6 Preamble of the Constitution of the United States

7 Concurrent Powers = powers that operate at the same time but over different areas, such as federal, state, and local governments

8 James Madison, Memorial and Remonstrance against Religious Assessments, 1789

9 Nullification is the doctrine that when one government oversteps into the authority reserved to another government, the government which possesses proper authority is able to nullify, ignore, or void the efforts of the government attempting to exert authority that it does not rightfully possess.

10 Bicameral means there are 2 chambers within our legislative branch. Therefore, Congress consists of both the House and the Senate.

11 Article IV, Section IV, of the Constitution of the U.S.

12 Constitution of the U.S., Art. I, II, and III

13 Nonacquiescence is the doctrine that when one branch oversteps into the authority reserved to another branch, the branch which possesses proper authority is able to refuse to acquiesce, ignore, or make void the efforts of the branch that

is attempting to exert authority that it does not Constitutionally possess.

14 John Adams quoting James Harrington, *The Commonwealth of Oceana*, 1656

15 Supremacy Clause of the U.S. Constitution, Art. VI

16 Alexander Hamilton, *Federalist Papers*, #78

17 Alexander Hamilton, *Federalist Papers*, #78, quoting Montesquieu, "Of the three powers above mentioned, the judiciary is next to nothing." "Spirit of Laws." vol. I, page 186

18 Alexander Hamilton, *Federalist Papers*, #81 "There never can be danger that the judges, by a series of deliberate usurpations on the authority of the legislature, would hazard the united resentment of the body entrusted with it, while this body was possessed of the means of punishing their presumption, by degrading them from their stations. While this ought to remove all apprehensions on the subject, it affords, at the same time, a cogent argument for constituting the Senate a court for the trial of impeachments."

19 James Madison, *Federalist Papers*, #10

20 John Adams to John Taylor, Dec. 17, 1814.



National Resource Center for Education

Now that you know the truth about our Constitutional Republic, share it with a friend, elected official, student, or concerned citizen. Then go to [www.nrced.com](http://www.nrced.com) and help us teach the world.



A NATIONAL RESOURCE CENTER FOR EDUCATION

Working Today to Protect Our Children's Tomorrow