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Part I – Sovereignty Lost

To claim, as many have, that the states' rights perspective was the position that was most favored in the burgeoning democracy known as America is to make an assertion that is both somewhat misleading and possibly even incorrect. The misleading aspect of such a claim is rooted in the fact that the idea of 'states' rights' is ambiguous because the phrase is unclear as to whether it means that one champions the rights of those officials who govern a state or that one is championing the rights of the people who live in that state.

The two are not necessarily coextensive as all too many people have discovered over the years. This point alludes to the nature of the possibly incorrect dimension of those claims that suggest that the states' rights position was the perspective that enjoyed the most support among the people of young America.

More specifically, the people who gathered on a 'continental' level to discuss, draft, and formalize documents that would come to constitute the rule of law for the new country [and this was usually between 50 and 100 people] were but a small percentage of the people who lived in the thirteen states. To be sure, each of the thirteen colonies/states supplied more participants for the constitutional forging process, but only a few of the overall total of individuals served as

representatives to the national assemblies. Moreover, the discussions that occurred in the states not only took place among a relatively limited number of people, but, as well, many, if not most, of these individuals consisted of lawyers, landowners, rich merchants, and other categories of an elite who presumed that they had the right to form governments that would control the lives of people who were not rich, or who were not landowners, or who were not part of the 'power elite' that had begun to form from the earliest days of America.

There were many people among both the power elite and the disenfranchised settlers who were distrustful of government – any kind of government. Indeed, many people came to America for an opportunity to escape the oppressive systems of monarchal governments in Europe, and they were not interested in replacing the old form of monarchy with a new form of monarchy in which some people got to tell others what the latter could and could not do.

Consequently, when one is talking about the championing of states' rights, different things are understood by this phrase depending on who one is considering. For example, even though Patrick Henry had been invited to attend the Philadelphia sessions where the Articles of Confederation were only supposed to be amended -- but, were instead, thrown out and a new document, called the Constitution, was drawn up through the politicking of such people as Madison and Hamilton -- Patrick

Henry declined the invitation because he smelled the rat of a 'new monarchy' being established through such proceedings and did not want to be a part of the process, and, Patrick Henry was not alone in his critical rejection of what was transpiring in the different Continental and Constitutional conventions.

Some people view the 1798 confrontation between President Adams and Thomas Jefferson as being about differences over the exact nature of the sort of federalism that would exist in the United States. Would there be a form of federalism in which the central, federal government would have supremacy relative to the powers of the states, or would there be a kind of federalism in which the central, federal government would be constrained by, and subject to, the interests of the respective states?

When President Adams was able to successfully persuade enough people in Congress that it was necessary to pass a law on sedition that would empower the President to have people thrown into prison for criticizing his government's abuses of power, Jefferson clashed with President Adams over this issue. Many commentators have labeled this conflict as one of states' rights versus federal rights and believed that states' rights won the day when, eventually, President Adams' Federalist Party lost the 1800 election to the so-called Jeffersonian revolution.

However, it was not states that were thrown into prison by President Adams for

criticizing his government and officials. Individuals were the ones who were being oppressed by the new law of the land, and, consequently, the imprisoning of those who were allied with Jefferson was not just an attempt to deny the rights of states, it also was an attempt to suppress the rights of individuals ... rights that already had been guaranteed – theoretically – through the Bill of Rights.

During the period of opposition to President Adams, Jefferson ghost-wrote the Kentucky Resolutions of 1798 and stated that:

"The several States composing the United States of America are not united on the principle of unlimited submission to their General Government."

One could conjecture that the reason Jefferson ghost-wrote the documents might have been because he feared being imprisoned if he were to author the resolutions under his own name or because, in a bit of political maneuvering, he wished to give the impression that there were untold others who agreed with his position on states' rights and who might be responsible for issuing the Kentucky resolutions, or perhaps, it was a combination of both such motivations.

In any event, once again, there is an ambiguity implicit in what Jefferson is actually saying when he wrote that:

"The several States composing the United States of America are not united on the principle of unlimited submission to their General Government."

Is Jefferson saying that the 'ruling elites' of the several states do not agree with the idea that there should be unlimited submission to the federal government by the various ruling elites in the different states, or is he saying that the people who live in the "several states", and quite independently of the ruling elite of those states, do not agree to the idea of "unlimited submission to their General Government", or is he saying a bit of both?

It is clear that not all three possibilities are necessarily synonymous with one another. Indeed, for many, a state government is just another version of the federal government in which centralized government seeks to gain control over the lives of the people, and, therefore, when someone champions states' rights one cannot be sure whether the latter person is seeking to secure rights for all the individuals living in those states or whether a so-called 'champion of states' rights' is seeking to secure rights for just members of the ruling elite within those states and uses the cry of 'states' rights' to induce the general population to believe that the rights of the little people are being fought for when, in truth, it is only the rights of the ruling elite that are being defended. This kind of duplicity has been in the politician's bag of tricks for centuries.

One would hope that Jefferson intended to include all the people of the several states into his notion of states' rights and that he was not simply fighting for the power elite of those states. But, if the foregoing is not what Jefferson meant, this is what he should have meant if he had thought about the matter correctly.

Whatever Jefferson's real position might have been, there were all too many individuals who treated states' rights as a license for the power elites to do whatever they liked in their respective states. If this meant supporting the slave trade, or stealing the lands of Native peoples, or denying women equal rights, or exploiting the general population in order to further their agendas, or running roughshod over labor movements, or despoiling the environment, then, this is what was entailed by states' rights.

People who thought in this manner never really understood the nature of the Bill of Rights except to the extent that those ten amendments were supposed to protect their interests quite irrespective of whether they secured the rights of anyone outside of the circles of power in which these noble champions of states' rights existed.

Apparently, "We the people" only meant some of the people. "We the people" only referred to those who were the chosen ones of God to discuss, draft, formalize, and ratify such rights and liberties.

In theory, these rights and liberties could be extended to everyone. However, in practice,

such rights and liberties were often considered to belong properly only to members of the power elite.

Like President Adams in 1798, the champions of states' rights who thought in this fashion considered anyone who was not willing to go along with the idea of "unlimited submission to the general government" (in this case the state central government) were considered to be guilty of sedition and treason to the vested interests of the power elite. As such, the idea of states' rights meant the capacity of states to use the force of law – and, if necessary, physical force -- to compel and intimidate people into complying with certain arrangements of life that were drawn up by the power elite to be imposed upon the citizens of a given state whether those citizens liked such arrangements or not.

When the 1787 draft of the Constitution was circulated among the various states, the different state conventions that were called to consider ratifying that document had numerous concerns about what kind of power the central government would be able to exert over the people of a given state. In fact, following the lead of Massachusetts, every state convention proposed a list of possible amendments to give expression to their concerns about the abuses of power, and every one of these lists contained some form of what is now known as the Tenth Amendment.

Federalists – such as James Madison, Alexander Hamilton, and James Wilson – argued

that there wasn't any need for an amendment that addressed the issue of reserving powers to the states or to the people. For example, in entry 45 of *The Federalist*, Madison argued that under the Constitution a federal government would actually possess only a few powers and that these were focused primarily on issues such as war, negotiation of treaties, and foreign commerce, whereas a vast array of powers were reserved to the states that encompassed practical issues of significance to the everyday concerns of people involving life, liberty and property, as well as matters focusing on the internal order and enhancement of a state's welfare. Moreover, during entry 46 of *The Federalist,* Madison, once again, gave emphasis to the separation of powers doctrine when he argued that state and federal governments were actually merely different modalities of trustees or agents for the people who were invested with different powers that were intended to serve the people in complementary ways.

While it might be true from the perspective of federalist political philosophy that state and federal governments were intended to serve as various kinds of trustees for the people, provided with different powers that were designed for an array of complementary purposes, this is not the same thing as saying that the people could have an independent standing within the Constitution that cannot be reduced down to what the two levels of government do, or do not do, as trustees

and agents of the people. In fact, the people should have rights and powers – beyond that of voting -- which protect them against the failure of governments to competently or morally exercise their fiduciary responsibility and position of trust in relation to the people, and this is precisely what the Ninth and Tenth Amendment are intended to accomplish.

The Ninth Amendment states:

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

The Tenth Amendment indicates that:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

Although some people are mystified about why the Ninth and Tenth Amendments should even be considered to be necessary, there is a logic underlying their presence in the amended Constitution. More specifically, when the idea of a Bill of Rights first arose as a subject of discussion, one of the primary objections to enshrining specific protections in the Constitution was that by itemizing a specific list of rights against which governments could not transgress, some individuals felt that this would leave open the

possibility that any number of other rights that had not been so itemized would not be protected. The Ninth Amendment was introduced in order to close the door on such a possibility.

When the idea of the Ninth Amendment was introduced, a method had not, yet, been developed that actually was capable of enforcing either the Ninth Amendment or any of the other amendments making up the Bill of Rights. Indeed, before the Supreme Court had come up with the idea of a right to strike down legislation as being unconstitutional, the Bill of Rights -- including the Ninth and Tenth Amendments – seemed to be little more than a promissory note on the part of centralized government indicating that it would not trespass in the areas specified by the Bill of Rights.

In reality, however, even before and notwithstanding the aforementioned epiphany at the Supreme Court, the power of enforcement with respect to the Bill of Rights has always belonged to the people. The people were not, and are not, dependent on the Supreme Court to enforce their rights, although the authority of the Supreme Court in supporting the people's rights obviously is an asset ... just as the Supreme Court's opposition to the aspirations of the people to be able to exercise their Ninth and Tenth Amendment rights is an impediment to the enjoyment of such alleged powers.

The Declaration of Independence has clearly drawn the line in the sand when it comes to the

struggle between people and governments. If governments seek to oppress their people, then the people have the right to make their grievances known, and if these grievances are not acted upon and redressed, then, the people have the right – nay, the duty -- to abolish those governments that are intent upon oppression of the people.

Although the Federalists believed adding amendments to the Constitution that protected the rights of people was largely unnecessary, they finally came to a position that was willing to accede to the presence of such amendments in the Constitution as something that appeared to be relatively benign, even if unnecessary, in order to be able to attain ratification of the Constitution from the various states. Consequently, Madison included the idea of a reserved powers clause among the amendments he proposed in 1789.

Alexander Hamilton, another Federalist, was of the opinion that the idea of having to specify some kind of reserved powers clause within an amendment to the Constitution was something of a tautology because such a reserved clause concerned a principle that he believed was already inherent in the very idea of republican government. In other words, he maintained that the very essence of republican government entailed the right of states to be free of Congressional interference in matters such as education, securing the general welfare of the people, morality, and health. Consequently, he was not so

much opposed to the principles inherent in what would become the Tenth Amendment as he was resistant to the perception of those who believed it was necessary to specify such a principle either within the Constitution or in an amendment to the Constitution.

One wonders, however, why either Madison or Hamilton – or any of the other Federalists -- would have assumed that everyone else would have understood or pursued the idea of republican government in the same way they did. More importantly, one wonders why even after all of the state conventions expressed concerns about the matter, the Federalists continued to argue for the idea that there was no need to specify such protections either within the Constitution or in amendments to the Constitution. Why were they so resistant to the idea that part of what constituted republican government should be spelled out?

The Federalists were in favor of abolishing the Articles of Confederation and replacing them with a new Constitution. The Federalists disliked the Articles of Confederation because the document was written in a way that permitted power to be largely distributed among the thirteen states of the Confederation.

By contrast, the new constitution that they sought would considerably enhance the power of the national government over the states. For instance, under the Articles of Confederation, the federal government could not levy and

collect taxes in order to be able to fund its programs.

In any event, despite the fact that members of the various state ratifying conventions were informing the Federalists that the former individuals did not see the issue of a "reserved clause" as a tautology, and despite the fact that the members of the various state ratifying conventions were warning the Federalists about a potential for abuse of power in the Constitution as drafted, and despite the fact that members of the various state ratifying conventions were insisting there was a necessity for the introduction of specific additional protections against the powers of a central government, the Federalists continued to resist and argue against what they were being told by the members of the different state ratifying conventions. One suspects that something more was involved than just the Federalist perception that such protections were tautological or unnecessary.

A number of draft amendments were proposed by different individuals and put forward for consideration. Significantly, one of the drafts of what became known as the Tenth Amendment and that was discussed in the House of Representatives on August 18, 1789 stated:

"The powers not delegated by the constitution, nor prohibited by it to the States, are reserved to the States respectively."

The phrase “or to the people” did not appear in this draft of the Tenth Amendment (which, at the time, was referred to as the Twelfth Amendment). Moreover, a great deal of the discussion over the proposed amendment revolved about a suggestion from George Tucker to add the word "expressly" to the text of the amendment so that it would read:

"powers not expressly delegated by the Constitution."

Madison was adamantly opposed to the idea of introducing the word “expressly” into the amendment. During the discussion, one of the first amendments proposed by Madison had been to suggest the statement:

“… all power is originally vested in, and consequently derived from, the people”

be added as a prefix to the Constitution.

George Tucker countered by suggesting a variation on Madison’s idea – namely, that “all powers being derived from the people” should be added. Furthermore, Tucker suggested that this be introduced at the beginning of what was to become the Tenth Amendment.

The Committee of the Whole House rejected both of these proposals. Eventually, Roger Sherman of Connecticut suggested that the phrase “or to the people” be added to the text of what would

become the Tenth Amendment, and his proposal was adopted without objection or debate although one can't help but wonder what sorts of understanding might have been dancing around inside the heads of the participants to the Philadelphia Convention that would have permitted such a suggestion to be adopted without discussion or debate.

Roger Sherman also was the individual who brokered what came to be known as 'The Great Compromise" in which the House of Representatives would serve the general population while the Senate would represent the States, and the President would be elected through a body of elite electors. Why Senators should serve the States rather than the people, and why the people, rather than a body of elite electors, should select the President, and why the people couldn't represent themselves through some form of nonelected republican self-governance, were all unanswered questions that were left to sink in the wake of 'The Great Compromise.'

Whatever the ultimate motivations, beliefs, and ideas of the Federalists might have been, one fact is very clear. The Federalists were completely wrong in their belief that there was no need for the specification of a reserve clause or other protections in conjunction with the Constitution. Indeed, as American history has shown again and again, even with the presence of the provisions of the Bill of Rights, there has

been considerable inclination on the part of successive federal governments to encroach upon the rights and powers of the people by means of imperially expansive ideological agendas that are pursued through the power of centralized government.

Thomas Jefferson had once described the Tenth Amendment as the very foundation of the Constitution. Jefferson further maintained that

"… to take a single step beyond the boundaries thus specially drawn [by the Tenth Amendment] is to take possession of a boundless field of power, no longer susceptible of any definition."

The problem with the foregoing is that Jefferson only seemed to have in mind a concern about the potential for abuses of power by the federal government. However, precisely the same kind of concern ought to be directed toward any kind of centralized form of government, including state and local government.

If one single step is permitted to governments beyond the boundaries and limits that are drawn up to protect the rights and powers of people, apart from government, then governments – on whatever level -- will seek to take possession of a boundless field of power that is no longer susceptible to any definition that protects the rights of individuals. The Tenth Amendment is not the foundation of the Constitution because it champions states' rights. It is the foundation of

the Constitution because it extends to people rights that cannot be circumscribed by any government – local, state, or federal – and because the Tenth Amendment establishes Constitutional standing for the people independent of government activities and, indeed, sometimes in contradistinction to those activities.

There is another dimension to the foregoing set of issues. The state conventions that met to consider ratifying the Constitution of 1787 consisted almost exclusively of landowners, people of wealth, lawyers, and those who already possessed considerable power in their respective communities.

Women, Blacks, Native Peoples, and the poor were already disenfranchised from the whole process. When people like Madison, Hamilton, and Wilson claimed that there was no need for protections to be specified within the Constitution and that all of this was tautologically present in the idea of republican government, they apparently did not believe that the disenfranchised had any place in such a republican government or that such people needed any protections even as those people were being abused by the power elites who were so nobly participating in their various state conventions, making sure that their own interests were to be protected ... although there were, in fact, some truly noble men among such participants because such individuals were

concerned with protecting the rights of more than just the power elites.

All too frequently the elected representatives of the people became corrupted, co-opted, or outflanked by the power elites of centralized government – whether at the federal, state or local level. Like ancient Greece, only some of the people in America were entitled to the rights, powers, privileges, and immunities of citizenship, and America soon became – if it wasn't so from the very beginning – the best democracy money could buy.

What had transpired – that is, the differences in understanding that arose with respect to the idea of "We the people" -- is what the Federalists (e.g., Madison, Hamilton, and Jay) claimed would never happen ... namely, centralized governments on both the federal and state levels oppressed people and usurped their rights ... the very rights that, for instance, the Ninth and Tenth Amendments were intended to secure and that were hardly truisms and tautologies (as some jurists and government officials have referred to these two amendments, and therefore, were considered by such individuals to be coextensive with the meaning of republicanism, and, therefore, quite unnecessary). The Bill of Rights – including the Ninth and Tenth Amendments – constituted substantive realities that had been betrayed by those seeking to gain control over the people through elected office to state and federal government positions.

To some extent, the Fourteenth Amendment (especially the section reading: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.") – the foregoing came into being following the Civil War -- helped to place constraints on the idea of unlimited states' rights. Moreover, even though the states still possessed various degrees of authority, in theory at least, such authority could not be used to extinguish or diminish the rights of individuals residing within the borders of their respective states.

Through the Fourteenth Amendment, the federal government took on something of a fiduciary responsibility with respect to protecting the rights of the citizens of the different states when those state governments sought to oppress their citizens and prevent the latter from enjoying the rights promised to the people in the provisions and principles inherent in the Constitution. Nevertheless, while it is true that the Fourteenth Amendment did help to close a loophole in some of the more tyrannical thinking concerning the extent of states' rights – the fact of the matter is that this constraint on states' rights (as well as the rights of the federal government) already existed in both the

Ninth and Tenth Amendments … but those constraints were not being observed or enforced.

Securing the rights of the people is not the exclusive right of the federal government. After all, the people have their own rights, powers, privileges, and immunities under the Ninth and Tenth amendments.

While both the federal and state governments can act in a fiduciary capacity with respect to protecting the rights of people against the unjust incursion of government into the lives of citizens, the people, quite independently of the fiduciary activity of government, have the right, under the provisions of the Constitution, to act in their own self-interest in such matters at which time the people have the right to abolish, amplify, or modulate whatever fiduciary acts might have been taken on their behalf by one government or another. Citizens are not wards of the state or the federal government.

By permitting a government to work on the behalf of the people in areas that are governed by, or entailed by, the Ninth and Tenth Amendments, citizens do not abdicate and forego those rights. They can reassert those rights at any time, and both the federal government and state government must step aside in such matters except to the extent of assisting the people, or serving as something of a catalytic agent, or helping the people to exercise their various powers and rights that have been established through the principles set forth in the Ninth and

Tenth Amendments, or helping to make sure that the exercise of such Ninth and Tenth amendment rights by an individual does not compromise the like rights and powers of other individual citizens.

There are some individuals (among them libertarians) who believe that the federal government does not possess the authority to police such activities as -- to name but a few -- drug-related activity, marriage, abortion, gambling, prostitution, and who also believe that the federal government does not possess the authority to prosecute crimes such as tax evasion (the latter is based on the idea that in Article I, Section 8, and in Article III, Section 3 of the Constitution, the federal government only gives express permission to prosecute crimes of piracy, counterfeiting and treason not tax-evasion). According to such individuals, all powers not specifically relegated to the central government by the Constitution or specifically prohibited to the states, is retained by the states.

Such a position does not accurately reflect what the Constitution actually states. More specifically, the Tenth Amendment says:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved for the States respectively, or to the people."

While one might agree that the federal government might not have the Constitutional authority to establish policing powers over a variety of individual activities – and more on this in a moment -- nevertheless, it does not necessarily follow that whatever powers that are left over belong to the states. The phrase "or to the people" is not necessarily synonymous with the idea of states.

Here again, we meet with an ambiguity. Is the foregoing phrase just another way of referring to the states – that is, are the words "or to the people" an alternative manner of speaking about states' rights or is something else meant … something extra- governmental and not necessarily reducible to the institution of the state as a legal entity?

There are many who would prefer to interpret the Tenth Amendment as referring exclusively to the rights of states as established bodies of government. Yet, a prima facie case can be advanced that is not supportive of such an interpretation, and this argument rests on the fact that the Bill of Rights is about protecting the interests of individuals with respect to the oppressive potential of governments of any kind.

As such, what is meant by the idea of the states in the Tenth Amendment is – contrary to the opinion of many people -- actually another way of talking about the rights of the people who live in those states as opposed to the institutions that comprise the governments in

those states. The purpose of the Tenth Amendment is not to secure the rights of centers of power or ruling elites but, rather, to secure the rights of individual citizens.

In a democracy, ultimate rights and powers belong to the people and not to the government, and the latter are formed and operate only through the permission of, and in accordance with, the complete consent of the people. One would not have a democracy if the powers not delegated to the federal government nor prohibited to the state governments were reserved for anyone else but the people.

The Tenth Amendment confirms this idea of democracy in two ways. The first way is to refer to states meant in the sense of the powers of a collectivity of individuals residing within a given geographical area rather than meant in the sense of a set of governing institutions. The second way of confirming the aforementioned idea of democracy is by reiterating that the recipients of the reserved powers mentioned in the Tenth Amendment are "the people."

As such, the terms "states" and "or to the people" are not different ways of referring to the formally instituted bodies known as state governments, that many commentators have supposed to be the case. Instead, the two foregoing terms are different ways of referring to citizens as free individuals who are not mere thralls and subservient appendages of state governments and ruling elites. The Bill of

Rights establishes the protections of individuals – not state governments per se.

It is individuals who are being given Constitutional standing through the Ninth and Tenth Amendments. At best, state governments – as is true of the federal government – are only entitled to seek to borrow authority from the people in order to serve the legitimate interests of the people as opposed to the agendas of ruling elites. State and federal governments have constitutional standing only at the pleasure of the people although one would never recognize this principle at work in the way governments now, as well as in the past, often have conducted themselves in a manner that has sought to abolish, diminish, undermine, circumscribe, and constrain the rights and powers of the people under the Ninth and Tenth Amendments.

Some commentators have sought to argue that champions of states' rights have taken the Tenth Amendment to its logical conclusion by arguing for the supremacy of state governments in all matters not either specifically relegated to the federal authority or prohibited to the states. I tend to disagree with such commentators because if one wishes to take the Tenth Amendment to its true logical summit, then, the powers that are being reserved in the Tenth Amendment belong to the people and not to state governments or ruling elites.

It is states that are derivative from the people and not the other way around. The Tenth

Amendment is not about states' rights versus federal rights, but, rather is about the right of individuals to be free from the tendency of governments, at all levels, to encroach upon the rights of individuals. The Tenth Amendment guarantees that governments have not been empowered by the Constitution to encroach upon the rights of people and, thereby, do whatever such governments like in relation to the people, nor do governments have the right to seek to curtail the active expression of an individual's Tenth Amendment rights as long as such an exercise of rights does not infringe on the capacity of other individuals to seek to express their similar Tenth Amendment rights.

Governments – whether federal, state or local – cannot take away the powers, privileges, rights, or immunities of the people. The authority of the federal and state governments are both curtailed and limited by the powers given to the people under the Ninth and Tenth amendments.

Some might wish to argue that a clause – sometimes referred to as the 'Supremacy Clause -- in Article VI of the Constitution is the straw that stirs the drink of democracy. This clause states:

"This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in

the Constitution or laws of any State to the contrary notwithstanding."

Article I, Section 8 stipulates the areas where central government might make laws. This section begins with:

"The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States."

The foregoing clause – which is sometimes referred to as the 'elastic clause' due to its apparent ability to permit the federal government to expand into a whole host of unanticipated areas that concern issues of either providing for the common defense or the general welfare – is followed by a whole lest of areas where the Constitution has authorized Congress to make laws, including, but not exhausted by, the ability:

- To borrow money on the credit of the United States;
- To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;
- To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;
- To coin money, regulate the value thereof,

and of foreign coin, and fix the standard of weights and measures;

- To provide for the punishment of counterfeiting the securities and current coin of the United States;
- To establish post offices and post roads;
- To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;
- To constitute tribunals inferior to the Supreme Court;
- To define and punish piracies and felonies committed on the high seas and offenses against the law of nations;
- To declare war, grant letters of marquee and reprisal, and make rules concerning captures on land and water;
- To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years.

The foregoing list of permissions ends with the stipulation that in addition to all the powers that have been relegated to Congress with respect to various specified areas of law-making, Congress shall also be entitled:

“to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this

Constitution in the government of the United States, or in any department or officer thereof."

An advocate of strong central government might take all of the foregoing powers or directives and – over against those who claim to champion states' rights – assert that the federal government is entitled to govern people in just about any way it wishes. An argument also might be made by advocates of strong central government that suggests that all manner of legislation might be "necessary and proper for carrying into execution the foregoing powers" or that all manner of legislation might be enacted in order to "provide for the common defense and general welfare."

'Public policy' is the term that is often used to refer to the different kinds of philosophical, political, economic, and legal theories that are developed by government officials – elected and otherwise – as the means through which to actualize the powers granted to the federal government under the provisions of the Constitution. Public policy encompasses the guiding principles that are deemed "necessary and proper" in the way of legislation "for carrying into execution" the powers that allegedly have been delegated to the government as specified by Article I, Section 8.

Public policy encompasses all that government officials consider to be a means of providing "for the common defense and general

welfare of the United States" as allegedly required by Article I, Section 8. Public policy is the avenue through which the Supremacy Clause of Article VI – namely, that "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land" -- is brought to life as the law of the land.

However, there might be a few bumps along the road to democratic paradise as envisioned by the sort of centralized, federal government outlined in the Constitution. First of all, in Article IV, Section 4 one finds:

"The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion."

There are at least two different senses of the idea of what constitutes a republican form of government. One sense has to do with the idea of providing a means through which the people are able to elect or appoint representatives in government to work on the behalf of the citizens.

The other sense of republicanism involves the right of people to govern themselves independently of representational government – in other words, it alludes to the possibility that people can self-govern according to negotiated agreements drawn up directly among themselves and without needing to be filtered

through a system of representative government. In this form of republicanism, the people, considered as a whole, are the government and there is no layered bifurcation between, on the one hand, a body of government and, on the other hand, the people such that there is a coterie of bureaucrats and officials who serve as a protective buffer between the people and the government with the vast majority of the protections being in the favor of the government and not the people.

Obviously, those who aspire to power over others and who have a desire to control the lives of others (or their resources) are inclined to believe that republicanism means some form of representative government in which the elected officials get to assume power and exercise that authority as their consciences, interests, and ambitions dictate – even if this means that the people do not necessarily get represented with much, if any, moral integrity. This form of republicanism represents, for those so inclined, the best opportunity to acquire power and, then, either use it for one's own purposes and agendas or use it to impose one's own ideas about the general welfare on others even while claiming to represent the people.

Sometimes, there are even a few individuals who actually do employ representational government to try to sincerely represent the interests of the people. But, if this were the norm, then, this country would not be in the mess it is

because, unfortunately, the modality of republicanism known as representational government has been so egregiously abused for centuries now, that, in many ways government does not function very well and has been infected with so many forms of corruption. As Tom Paine noted in a slightly different but related context, truly: "these are the times that try men's souls" ... and the souls of women and children as well.

The foregoing sense of representative republican government – via elected representatives -- is the modality of governance that is most compatible with a centralized government seeking to assert its control over the people. Individuals whose ambition is the acquisition of power recognize themselves in the others who mirror their motivations and aspirations.

They recognize one another as those with whom one can do 'business' in conjunction with the divvying up of power and its concomitant rewards. The only matter that has to be settled among these partners in power is to decide how such power shall be apportioned among the ambitious, and, consequently, the conflicts such individuals will experience concern matters of who acquires what power to be able to fulfill their own purposes and/or to regulate the lives of others.

The Constitution does not specify the nature of republicanism that is to be pursued.

Consequently, the task of doing so is left to possibilities inherent in the Ninth and Tenth Amendments that -- with respect to all powers and rights not specifically relegated to the government or that have not been prohibited to the states – have been reserved for "the states or to the people."

Once again, this time in conjunction with the idea of republicanism, the Constitution has left a trail of ambiguity. Do states – considered as established bureaucracies and entrenched centers of power elites – have the right to determine what constitutes the republican form of government that has been promised to the states by Article IV, Section 4 of the Constitution, or, do the people -- quite independently of government and as the very source from which states, as institutional bodies, derive their authority -- have the right to determine what constitutes a republican form of government?

Since the Bill of Rights is about protecting the interests of people over against the tyranny of government of any kind, there is a prima facie case that can be built in support of the idea that it is not governments – even that of a state – which gets to determine what republicanism shall mean to the people. Congress has no say in this matter, and the President has no say in this matter, nor does the Supreme Court have any justifiable, non-arbitrary grounds (whether through judicial construction, or through some mystical theory of original intent, or via some other form

of adjudicating philosophy) through which to objectively and fairly dictate what the people must understand by the idea of republicanism. Furthermore, as previously noted, this matter of republicanism is not within the purview of states to decide whey states are considered as established governments that rule over people rather than entities that are totally dependent for their existence on the people.

Obviously, there might be many who will find the possible ramifications of the foregoing position to be rather disquieting. This is so because making the meaning of republicanism independent of government control also means that those who have vested interests secured through irresponsible representative government might no longer be able to use democracy as their personal playpen through which to satisfy their largely self-serving appetites.

So, what are some of the possibilities with respect to how people might develop the idea of a true republicanism in which the people and not governments were the determiners of that word's meaning within the context of Constitutional arrangements? A few areas that come to mind are the following: campaign finance reforms such that elections are completely funded by the public; the requirement that television and radio must, as part of their privilege of using public airwaves, provide free and qualitatively equal time to all candidates for public office; the elimination of any form of paid lobbying ... which does nothing to

interfere with the rights of people, as individuals, to petition their government; the removal of the status of personhood from corporations; altering the form of becoming chartered as a corporation such that corporations must serve the public interests [which was, actually, the original nature of corporations in America] and not just the private interests of stockholders; abolishing the artificial obstacles that the existing two-party system has placed in the way of independent parties; non-compulsory education; establish the right of citizen grand juries to investigate whether, or not, elected representatives have upheld their oath of office; promote the ability of the people, through citizen grand juries, to independently investigate, with full subpoena power, whether, or not, crimes have been perpetrated against the people and whether or not the people have been deprived of their Ninth and Tenth Amendment rights (The idea of citizen grand juries will be developed and delineated in the latter part of this essay).

How does the foregoing fit in with the alleged right of Congress to do whatever is "necessary and proper" in the way of legislation "for carrying into execution" the powers that allegedly have been delegated to the government as specified by Article I, Section 8? How does the foregoing possibilities fit in with the federal government's alleged responsibility to "provide for the common defense and general welfare of the United States" as stipulated by Article I, Section

8, or, in accordance with Article VI, that "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land"?

The federal government is not free to do whatever it likes. There are constraints on what the federal government can and can't do.

One set of constraints is the Bill of Rights -- especially, but not restricted to, the Ninth and Tenth Amendments. Another set of constraints is entailed by the republican form of government to which the people within the various states are guaranteed by the Constitution. Another set of constraints is expressed through the other Constitutional amendments that exist beyond the Bill of Rights. A further set of constraints comes in the form of the Preamble to the Constitution.

The Preamble states:

"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."

Consequently, whatever the President, Congress, and the judicial system do, they must act in accordance with the principles of the Preamble

that are intended to serve people, not governments.

Nowhere in the Preamble is either the term government or state specifically mentioned. The idea of a 'union' has an array of possible meanings, but whatever the nature of the meaning with which one invests the term "union", clearly, the constitutional intent of the Preamble is to ensure a process that serves the people as well as their posterity with respect to securing: justice, domestic tranquility, the common defense, the general welfare, and the blessings of liberty.

Indeed, the whole idea of the Preamble is to establish the purposes and functions of the Constitution and subsequent derivative forms of government. The formation of "a more perfect union" is one that serves the interests of the people rather than governments. Unions, in the form of governments, come into being in order to meet the needs of people, and such unions are sought only to the extent that they will assist people to realize the principles inherent in that Preamble.

Furthermore, the idea of union need not be restricted to some form of elected, representative government. As noted previously, the republican form of government that is guaranteed to the people by the Constitution might extend to extra-governmental arrangements agreed upon by the people among themselves and as such give expression to a non-governmental but fully constitutional and,

therefore, legal modality of union mentioned in the Preamble.

Democratic government comes into being in order to assist the people and their posterity to realize the principles set forth in the Preamble. Democratic governments have no raison d'être independently of what is set in motion through the Preamble – or through words of a similar nature -- as a service to the people.

Many government officials – elected or appointed – interpret what is meant by the various principles of the Preamble (namely, justice, liberty, domestic tranquility, the general welfare, or the common defense)? Many governments proceed to require people to adhere to what the federal or state governments determine is the practical or political or legal meaning of such words. Notwithstanding the foregoing considerations, one still might raise the following question: does the Constitution demand that citizens follow a given government's theory of public policy as the means through which the principles of the Preamble are to be implemented on behalf of the people?

I believe the answer to the foregoing questions is 'no'. I believe that the reasons why the answer to the foregoing question is 'no' has to do with the principle of republican government that has been promised to the people by the Constitution, but it has to do, as well, with not only the Ninth and Tenth Amendments discussed previously but also the First Amendment which, among other

things, is interpreted to mean that there must be a separation between church and state.

More specifically,

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof,"

And the effective meaning of this clause was to address the fears of the people concerning the possibility that government might be hijacked by forces of religious tyranny, and, as a result, people might be become enslaved by the whims and purposes of such a government. After all, many of the people who came to America were attempting to escape the various forms of religious tyranny that were being perpetrated, aided and abetted by governments elsewhere in the world, so, why wouldn't there be fears among the people in America that government in the United States might be so corrupted?

One problem with the foregoing is that nothing has been said about what constitutes a religion. However, religion, broadly construed, need not refer to just a theistic based form of worship, but could include any system of activity that entails, among other things, a perspective concerning the meaning and purpose of life; a code of conduct concerning how life should be lived; a set of practices that are claimed to help an individual get the most out of life; an array of warnings about what will happen to people who

do not adhere to such a perspective, code of conduct, or set of practices. Moreover, all of the foregoing is often done in a context of compulsion and oppression rather than through free-will offerings.

In light of the foregoing, it seems clear that most forms of government public policy constitute a religion -- in the sense of a philosophy concerning the nature, meaning, and purpose of life -- which is being imposed upon people, often against the will of the latter and without their consent. Government public policy seeks to establish a religion in the form of the arbitrary economic, political, and philosophical theories that underwrite any given instance of public policy concerning what government officials (both elected and appointed) believe the purpose of life should be, and how people should conduct themselves, and what practices are necessary to achieve the purposes of such theories, and what the consequences will be for those who do not abide by the teachings of such a religion.

Those who worship power, money, possessions, property, and wealth often see government as the means for pursuing the objects of their worship. They often lobby government to favor and promote their form of worship, and they often pay big sums of money to political action committees to ensure that government public policy will favor, establish, and impose their form of religion upon the people of the land.

However, even if governments were not subject to the constant evangelical fervor of money-worshipers and power-worshipers, the fact of the matter is that when governments advance public policy they are, in point of fact, seeking to establish a religion in the foregoing sense. In effect, public policy programs involve the establishing of a certain kind of economic and philosophical framework that is used as a proposed vehicle to transport the populace toward someone's arbitrary and artificial notion of political and economic salvation, and in accordance with which, citizens must live their lives on penalty of chastisement for disobeying the delusional self-aggrandizement of governmental officials who consider themselves to be the high priests and priestesses of the religion of public policy.

The foregoing scenarios are forms of religious abuse that have been transpiring almost from the inception of the United States as a legal entity. Consequently, when the Constitution says that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof", I take the document at its word and wonder why so many people within Congress, the executive office, and the judiciary have failed to understand what is going on through the agency of public policy as a religious-like activity.

I also wonder why the federal government has so consistently failed to live up to its

responsibilities under Article IV, Section 4 of the Constitution which says that:

"The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion."

In other words, why has the central government of the United States failed to protect various centers of population against the invasion of religious fanatics -- in the form of public policy advocates -- who seek to force upon the people forms of government that the Constitution prohibits because neither are those forms of government republican in any essential sense of this word, nor are they in accordance with the establishment clause of the First Amendment.

The Constitution does guarantee -- and cannot interfere with the free exercise thereof -- the right of people to pursue their respective individual ideas about religion, whether these are economically, philosophically and/or theologically based. However, the freedom to pursue such religious beliefs and practices is permissible only so long as such pursuits are commensurate with, and do not interfere with, the ability of other individuals to pursue -- or not -- similar principles.

Some might wish to argue that the foregoing discussion concerning public policy and religion is a bunch of nonsense because public policy is an

expression of purely secular concerns. Unfortunately, secularism has been fashioned into a religious system by many who believe that once one eliminates the usual bunch of religious suspects, the constitutional field should be clear for whatever brand of secularism one wishes to advance.

Secular positions are just as much faith-based sets of initiatives as are the traditional perspectives that have been labeled as 'religious'. This is because secular philosophies cannot prove any of their contentions as being either non-problematic or anything other than being arbitrary, artificial, or lacking in a justification and validity with which all might agree. Ultimately, the attractiveness of secular based philosophies are a matter of personal likes, dislikes, and what one is willing to place faith in as a way to proceed in life.

Secular philosophies are not value free. Furthermore, they rest on assumptions that often are not provable, and, as such, constitute little more than conjectures that are faith-based systems.

Why anyone supposes that, somehow, philosophy, of whatever variety, is somehow 'better' than, more rational than, less problematic than, or more acceptable than religion in the narrow sense of the term, is a mystery. Whether one is talking about religious oppression or philosophical oppression, one is still talking about tyranny.

In years leading up to the formation of the United States, most of the people had one concern – the specter of tyranny. Sometimes this reared its head in the form of religious oppression, and sometimes this was manifested in the form of political oppression, but the result in each case was the same ... the loss of control in one's own life.

Secularism gives expression to an individual's decision concerning the problems of life. However, when one seeks to impose such belief systems on people in general, then, there is problem, and, as such, the secular perspective becomes an attempt to establish a religion to which citizens must adhere as a matter of public policy.

Some might wish to argue that if one cannot use some form of religion or secularism to govern people, then, how will government be possible? Whatever the answer(s) to this dilemma might be, it cannot involve tyranny, and the problem should be reflected upon a lot more insightfully than has been the case, for the most part, for the last several centuries.

Neither religion, in the normal sense of this word, nor religion in the extended sense of this word (which includes secularism) has any constitutional basis to be established by Congress as the supreme law of the land. Faith-based initiatives of either kind ought to be off-limits as a way of seeking to govern people, although people should be perfectly free to enter into whatever arrangements they like in the form of truly

republican modes of non-representative self-governance that permit them to negotiate boundaries of life that respect, as much as is reciprocally possible, one another's personal predilections, interests, purposes, and orientations. Governments should assist people to explore, negotiate, and mediate these boundaries rather than insist on what those boundaries must be based on some arbitrary grounds of public policy that is imposed on the people and to which the people are compelled to adhere.

If people are uncomfortable with the fact that secularism has all the earmarks of an established religion, then, there are other constitutional issues to consider that also argue against using secularism to serve as a template on which to base the affairs of governance. For example, consider Section 1 of the Thirteenth Amendment:

"Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

Public policy often locks the citizenry into one, or another, form of involuntary servitude even though such people have committed no crime. As if in prison, people are required, under threat of punishment, to follow a set of rules

inherent in some piece of congressional legislation, judicial review, Presidential executive orders and signing statements, or state governance that is based on arbitrary and artificial philosophical/religious musings about what constitutes justice, domestic tranquility, the common defense, general welfare, liberty, or republican government.

For instance, although Article I, Section 8 of the Constitution gives the Congress the power to borrow money on the credit of the United States, nevertheless, when the Congress does this irresponsibly and, as a result, saddles the public, both now and in future, with a rapidly increasing national debt that is so huge and unmanageable that the interest payments alone destroy the capacity of the country to properly address issues such as hunger, homelessness, poverty, health care, and environmental degradation, then, Congress has imposed a form of involuntary servitude upon the people because the people – through the ineptitude and/or corruption in government – have involuntarily been forced into serving the agendas of the national government. Moreover, when the elected officials pursue public policy agendas that borrow money on the credit of the United States – money that is not paid back – then this can affect the international credit rating of the country and once again place people in a form of involuntary servitude that affects what the people can, and cannot do, for

years to come. If this is not involuntary servitude, I don't know what is.

Although under Article I, Section 8 of the Constitution, Congress does have the power to regulate commerce, both internationally and among the states, this does not entitle Congress to pursue public policy agendas that place people into involuntary servitude as a result of balance of payment issues or as a result of domestic employment losses through permitting the outsourcing of jobs to foreign countries, or as a result of giving corporations a pass on taxes, environmental pollution, and a lack of concern about the wages, health, and safety of workers.

According to Article I, Section 8 of the Constitution, Congress does "have power to lay and collect taxes." However, this does not entitle Congress to force the people into involuntary servitude by forcing people to subsidize those companies with public monies in the form of corporate welfare consisting of tax concessions, government subsidies, and lackadaisical regulatory oversight that allows such corporations to diminish the quality of life of citizens so that such companies can acquire ever greater profit margins.

Inequitable rights have been extended to corporations in the form of legal personhood – a status that enjoys limited liability, and, therefore, little or no accountability. Inequitable rights have been given to corporations in the form of charters that allow companies to pursue the interests of

the few – i.e., stockholders -- rather than the interests of the many – i.e., citizens considered as a whole.

These inequities exist to such an extent that corporations have filed more legal actions in an attempt to protect their alleged Fourteenth Amendment rights as 'persons' than have actual people. As such, Congress has placed real living people into various forms of involuntary servitude to corporations in order to accommodate the insatiable appetites of corporations and, in the process, have permitted the latter to gain a vice-like grip and control over large portions of the lives of citizens.

Even though Article I, Section 8, of the Constitution does empower Congress:

"to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water; to raise and support armies, but no appropriation of money to that use shall be for a longer term than two years; to provide and maintain a navy; to make rules for the government and regulation of the land and naval forces …"

and even though, under Article 2, Section 2 of the Constitution,

"the President shall be commander in chief of the Army and Navy of the United States, and of the

militia of the several states, when called into the actual service of the United States",

none of the foregoing powers entitles either of these branches of the government to invade other countries without a rigorously provable "clear and present danger" to the United States, nor do such powers entitle one to slaughter civilian populations in the countries that are being invaded, nor do such powers permit one to wage war on children or to torture the citizens of other countries, nor do such powers entitle one to issue warrant-less wiretaps that invade the privacy of American citizens. In addition, and most relevant to the present discussion, just because the Constitution cites certain powers belonging to Congress and the Executive Branch, these powers might not be employed in such a manner so as to force the citizens of the United States into a form of involuntary servitude that requires that the American people be inextricably tied to policies of terror, mass murder, or economic rape and enslavement that might be promulgated by either Congress or a given Commander in Chief with respect to the people or resources of another country. In fact, those who abuse their powers in any of the foregoing ways should be relieved of their duties.

The powers of the Congress and the Executive Branch are circumscribed and constrained in a number of ways. They are circumscribed and constrained by: The principles inherent in the

Preamble to the Constitution, as well as by the constitutional guarantee of a republican government for the people of the various states, and by the Bill of Rights and the remaining amendments – and by common decency, morality, and civilized behavior.

Having power does not entitle one to be an international criminal. Furthermore, if one cannot act in accordance with the principles of democracy on the home front, then, seeking to export democracy to other countries – even if and when this might be done in internationally acceptable ways – is nothing less than a crude hypocrisy that forces upon all citizens an involuntary servitude to a form of existence characterized by shame, embarrassment, and a general loss in quality of life.

When citizens are not free to pursue whatever forms of republican government they choose, then, such citizens exist in a state of involuntary servitude. When citizens are not free to tell corporations what the latter can and cannot do but, instead, are forced into being at the mercy of the whims and interests of corporations, then, such citizens exist in a state of involuntary servitude. When the citizens are virtually powerless to prevent Congress, the executive branch, the judiciary or state governments from behaving irresponsibly, corruptly, or foolishly, then, the citizens exist in a state of involuntary servitude with respect to government public policy agendas.

Voting someone into office does not mean that anything and everything that an elected official might do while in office has been voluntarily agreed to, beforehand, by the electorate – especially the ones who did not vote for that person. Electing someone to office is an exercise in trust on the part of a citizenry that hopes that such an individual will exercise the power of office judiciously and wisely in order to help the people to solve problems, rather than create them, and to not betray the trust that has been extended to that elected official.

When an elected official abuses the power of office, one of two things is likely to ensue. On the one hand, the official might vote for legislation or support public policy agendas that place the electorate into one form, or another, of involuntary servitude – such as: a form of national indebtedness that allows foreign countries to own a considerable amount of the future wealth of the American people; disadvantageous credit ratings; problematic balance of trade deficits; dysfunctional tax policies; inequitable treatment of actual people relative to artificial persons, sometimes referred to as limited liability corporations, and so on. Or, on the other hand, the official who abuses the power of office will fail to vote for legislation or pursue programs that actually would secure and advance the principles outlined in the Preamble to the Constitution or secure and advance the cause of true republican government – both of which the elected official

has taken an oath of office to secure, protect, and enhance.

In either of the foregoing cases, liberties, domestic tranquility, justice, the general welfare, and the common defense (and defense is not at all the same thing as offensive wars) are diminished. In either case people are drawn into various forms of involuntary servitude as a result of the slings and arrows of outrageous government that enslaves people against their will and, therefore, constitutes involuntary servitude.

When governments (through their peremptory notion of democracy) force citizens into various forms of involuntary servitude, then, the former bodies give expression to the fact that those governments are the ones that constitute a clear and present danger to the people. When governments insist on presuming that they have unlimited and unassailable powers through which to twist citizens in whatever way the delusional pathologies of such governments are inclined, then, one begins to have a very clear understanding of why Patrick Henry referred to the Philadelphia Convention as having the "stink of monarchy" about it, and one also begins to understand why it is that one must be ready to retain a healthy sense of skepticism with respect to virtually all forms of government.

To be sure, "in order to form a more perfect union" it is necessary for people to willingly give up certain expressions of liberty. However, such a

sacrifice is willingly done only to the extent that governments do not seek to exploit or leverage the situation by forcing people into involuntary forms of servitude that are neither necessary nor can be justified as being an inherent part of the 'deal' through which certain forms of liberty are willingly foregone in exchange for a set of compensations in the way of liberties, rights, privileges, immunities, and powers that would not be possible if people were not willing to impose certain constraints upon themselves.

During its infancy, the Supreme Court tended to rule in ways that supported the belief that so-called 'police powers' (the right to make laws governing the internal order of a given geographical area usually in the form of a state) were reserved for the states and did not belong to the federal government. In fact, so much was this belief part of the zeitgeist that subsequent to a Supreme Court judgment that upheld the constitutionality of the Second Bank in *McCulloch v. Maryland* (1819), Chief Justice John Marshall vigorously sought to rebuff critics of his ruling by arguing that the decision did not in any way expand the powers of Congress, and, instead, claimed that his ruling was only about the propriety of the means through which a constitutionally delegated power might be implemented.

Chief Justice Marshall can argue as vehemently as he likes about the nature of what he claims to have done in *McCulloch v. Maryland*, but the one thing he did not appear to do is to fully consider or protect the rights of the people under the Ninth and Tenth Amendments. In short, he did not appear to ask himself or the other Justices the following question: Independently of the question of federal versus states rights, what are the rights and powers of the people in the matter of the establishing of the Second Bank of the United States?

The people had Constitutional standing in the case under the Ninth and Tenth Amendments. Neither Congress, state legislatures, nor the judiciary can presume that they serve the interests of the people if their activities entail conditions that adversely affect what happens to the people as a result of the actions of the government or of the judiciary. Only the people have the right to say what is in their best interests, and neither the different levels of federalist government nor the judiciary might usurp such rights.

If the formation of a federally chartered bank leads to the devaluation of money, or if banking practices lead to various forms of financial speculation that injure the economy, or if lending practices are pursued that favor some patrons over others, or if the bank subsequently fails and, as a result, depositors lose their life's savings, then all of this has ramifications for the generality of

people and not just for state governments. Chief Justice Marshall might have thought that he was only focusing on determining what were permissible means for enabling Congress to exercise powers that he believed to have been delegated to it through the provisions of the Constitution, but he was doing so without rigorously asking the question of whether the principles of the Preamble, or the guarantee of republican government, or the Bill of Rights actually entitled Congress to sanction the formation of banks if that action did not serve the interests of the people quite independently of what the act did in relation to various state governments.

Up until the time of Lincoln's presidency, Jefferson's belief that the Tenth Amendment was at the heart of a constitutional union of state and federal governments seemed to be borne out. Indeed, state governments were so frisky in asserting the independence to which they believed they were entitled that many states openly defied the federal government on a variety of occasions.

For example, many of the New England states threatened to secede from the Union following the Louisiana Purchase of 1803 and did so again during the War of 1812. In addition, many of the same New England States actively sought to

undermine and oppose federal actions during the Mexican War that occurred between 1846 and 1848.

A number of southern states resisted the enforcement of a variety of federal laws in 1799 and again during the 1830s. And, of course, eleven southern states did not just threaten to defy the federal government in 1860-1861 but actually seceded from the Union.

Other states also engaged in a variety of on-going confrontations with the central government concerning the implementation of federal laws. Among these states were Wisconsin, Illinois, and Ohio.

One might note in passing that when states thwart the federal government, they are said to be exercising their Tenth Amendment rights, but when individuals assert their Tenth Amendment rights this is labeled as illegal acts of civil disobedience. This difference in stating the matter is merely a reflection of a belief propagated by both federal and state governments that notwithstanding the actual wording of the Tenth Amendment, nonetheless, as far as governments are concerned, the people have no independent standing when it comes to seeking to assess the meaning and significance of the Tenth Amendment.

When Lincoln sought to prevent Southern States from seceding from the Union, he not only denied both states and people their Tenth Amendment rights, but, as well, Lincoln also

denied to the states and the people of those states their constitutionally guaranteed right to a republican form of government. In short, Lincoln exceeded his authority under the Constitution, and, as such, his actions were unconstitutional and it speaks to the shame of the Supreme Court of the time that they did not confirm these facts.

The foregoing contention does not mean that I believe governments or anyone has a right to enslave others. In fact, most, if not all, of the Southern state governments were also seeking – just as the federal government was doing -- to deprive many people of their Tenth Amendment rights as well as to deny to various individuals their constitutionally guaranteed right to realize the constitutional promise of republican government. Apparently both federal government and southern government officials read the text of the Tenth Amendment only as far as the term "states" and, then, stopped reading.

Indeed, both the state governments and the federal government have been conspiring before, during, and after the Civil War to deprive the people of their Ninth and Tenth Amendment rights. The governments of both the North and the South cared little about human beings – and there were over 500,000 deaths and millions of more devastating, life-altering injuries that occurred as a result of the War Between the States that gives expression to the proof of the truth of what is being said here.

Instead, the American Civil War was a tussle between governments each -- in its own inimical and reprehensible style -- seeking to assert supremacy over the people. In the process the people were denied many of the rights that had been allegedly vouchsafed to them in the amended Constitution.

In short, the states have made the same mistake as the federal government has made. They each suffer from the delusion that only governments should have power, and, yet, the republican form of democracy is intended to return power to the people rather than take power away from the latter.

Following the Civil War – e.g., during the period of Reconstruction -- there was a substantial transformation in the way in which the federal government and the justice system thought about the Tenth Amendment. During the War, the federal government expanded its powers considerably, and even though, once the war was over, some of the air was gradually let out of the expanded sphere of centralized, federal power, nevertheless, the constitutional landscape was never quite the same again.

For all intents purposes, the Tenth Amendment became largely inoperative for a number of years during Reconstruction. This was especially true with respect to many of the southern states who had lost the war and became occupied by Union soldiers, northern Carpetbaggers, and the like.

However, looked at from a different perspective – namely, that of the individual -- the Tenth Amendment, up to and including the period of Reconstruction, actually had been suspended for virtually the entire duration of the American republic. After all, the rights and powers of the people under the Tenth Amendment consistently were ignored and undermined while different branches of government fought for control over the people and, in the process, frequently denied that people, per se, had any Tenth Amendment rights.

To be sure, following the war, Congress did create a series of Freedmen's Bureaus. These Bureaus were responsible for constructing and implementing a variety of police powers with respect to the former slaves.

If the former slaves – or any other individuals for that matter – actually had any governmentally recognized Tenth Amendment rights, they could have gathered together to construct and implement their own police powers with respect to education, health, safety, and the like, as long as what was agreed upon did not affect the right of other individuals to exercise similar rights. If this had been done, there would not have been any need to create the Freedmen's Bureaus.

In Congressional terms, the slaves had been freed. However, in constitutional terms, the people who were freed were still enslaved by governments who believed that governments

had the right to rule over the lives of individuals in a whole array of areas entailed by the idea of policing powers.

An imperial expansion of federal incursions into state governance was made possible through the passing of the Fourteenth Amendment:

"Section 1 – All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law that shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

As a result of this amendment, the federal government began to encroach upon areas of governance that previously had been assumed to be reserved for the states.

Ironically, within a hundred years after the passage of the Fourteenth Amendment, the three branches of federal government, along with the states began to act in collusion with one another to extend the protections of the Fourteenth Amendment to corporations who were required -- through the arbitrary, artificial, and unjustified invention of a legal fiction -- to be treated as 'persons' by the law and by governments. Over time, this legal fiction came to demand that all

constitutional provisions -- including those of the Fourteenth Amendment -- be extended to corporations due to their alleged dimension of 'personhood'.

As a result, corporations are often extended a variety of powers, rights, immunities, and privileges by state and federal governments to which actual human beings are not even entitled. Meanwhile, actual human beings are still not considered to have any Tenth Amendment rights independent of a government's trusteeship or agency.

In 1883, the Supreme Court ruled that the Civil Rights Act of 1875 was unconstitutional. The ground for striking down the statute was because it was repugnant to the Tenth Amendment.

Of course, what was actually meant by this sense of 'repugnance' was that it was perceived by the Supreme Court Justices of that time to be encroaching upon the rights of states. What is truly repugnant, however, is the manner in which the Supreme Court decided that the rights of states should have priority over the rights of people and that the Tenth Amendment rights of the people should be abolished once again and ceded to the states.

Despite a few judicial bones -- such as the foregoing decision -- which were thrown here and there by the Supreme Court to the states concerning the latter's alleged Tenth

Amendment rights -- albeit with no real, discernible, intelligible pattern to the process of throwing – the general tendency of the Supreme Courts over the next several decades was toward diminishing support for state claims argued on the basis of the Tenth Amendment. Thus, in 1895 Congress created a statute that restricted the transporting of lottery tickets as a permissible activity in interstate commerce, and the act was upheld as constitutional in *Champion v. Ames* (1903).

On the surface, the purpose of the act was to exercise Congress' constitutionally delegated authority to regulate commerce among the states. However, the real motivation underlying the statute's creation was to police gambling ... an activity that usually had been assumed by many to be reserved to the states.

While I don't condone gambling and believe that much harm comes into people's lives as a result of it, under the Tenth Amendment, people – not states -- should have a right to exercise their own authority in this area unless the exercise thereof can be shown to be harmful to the rights of others – such as one's family or children or one's emotional and psychological stability or one's ability to look after one's responsibilities and, then, one loses the right to use the Tenth Amendment as an argument for choosing as one would like to. The Ninth and Tenth Amendments do not give one license to act irresponsibly or to act in a way that undermines

the capacity of other individuals to enjoy their Ninth and Tenth Amendment rights.

Policing the morality of individuals is not necessarily the prerogative of either the state or the federal government. If individuals transgress the boundaries of community or neighborhood or family propriety through their choices and actions, then there are ways of handling such issues -- such as mediation, arbitration, group intervention and the like – other than through law enforcement.

Legally punitive methods of seeking to regulate people's behavior should only be a very last resort after all other non-punitive measures have been explored and exhausted. More often than not, all that governmental intervention into the realm of morality brings about is: An increase in crime; the establishment of self-serving and self-perpetuating forms of governmental bureaucracy; ineffective and inefficient methods of dealing with the problem; an increase of expenditures to the taxpayer, and a lot of lives that are ruined through the lowering of government-created legal hammers that often fail to address the underlying causes of pathological or problematic behavior.

In *McCray v. United States* (1904), the Supreme Court ruled in favor of a congressional law that placed a substantial excise tax on

oleomargarine. In effect, using the rationale that Congress was merely exercising its constitutionally granted power to levy taxes for the purposes of providing for the general welfare, Congress was actually seeking to leverage its power in order to be able to police the general populace in relation to health issues.

Even if one were to agree that by placing a high tax on oleomargarine in order to discourage its purchase while, simultaneously, encouraging people to choose, say, butter, and that, thereby, Congress accomplished something that we will assume for the purposes of discussion could be shown to be medically and scientifically of benefit to the general welfare of the people, this, in and of itself, does not justify Congress passing such an act. It is not the duty or right of Congress to take it upon itself and seek to unnecessarily constrain how people live their lives or to penalize them if the people do not choose to live in accordance with what Congress deems to be best for them.

The general welfare is not necessarily a matter of what Congress says such welfare is or would like it to be. The general welfare is a function of a complex set of variables that give expression to the choices that people make as they seek to maximize their quality of life choices that consist of a series of trade-offs between that which is potentially beneficial and that which is potentially injurious … choices that constitute so many explorations (whether

thoroughly done or superficially done) into the area of risk- assessment amidst the circumstances of life.

Congress doesn't have the right to take away the Ninth and Tenth Amendment powers of the people with respect to the manner in which citizens, each in her or his own individual way, go about making choices concerning: the character of life they would like to live, the risks that they are willing to run, or the overall shape of the welfare package that results from the many trade-offs of life. The people don't elect representatives so that the latter can establish a dictatorship about how the people must live their lives, but, rather, the people elect representatives to constructively assist the citizenry in ways that most people can agree upon as being good things to do without simultaneously oppressing the people or undermining the people's basic rights, powers, privileges, immunities and liberties.

The general welfare is a balancing act among three things: (1) enabling people to be able to take advantage of their basic rights, powers, and freedoms so that they might gain control over their own lives; (2) putting into motion programs (e.g., universal health care; livable wages for workers; the removal of all corporate influence from the running of government; elections that are free of the corrupting influence of donations from vested interests and free from the artificial barriers that are placed in the way of establishing a level playing field with respect to acquiring

public office) that are designed to constructively benefit everyone in a manner with which the vast majority of people (and not just a simple majority) agree and to which they consent; (3) placing only the sort of minimal constraints on the people as are necessary to achieve points (1) and (2). A shorter way of saying the foregoing is that:

"We hold these truths to be self-evident, that all [humans] are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness"

... and even if someone chooses not to believe in a Creator Who has endowed all humans with such rights, I believe they will agree that from whatever the source such rights might come, all human beings are entitled to certain inalienable rights that include -- but need not be restricted to -- life, liberty and the pursuit of happiness.

As pointed out earlier, the Ninth Amendment was originally introduced to specifically repel the possibility that Congress might seek to pass legislation that would undermine and abridge freedoms and rights that were not specifically mentioned in the first eight amendments of the Bill of Rights. When Congress begins to wave about the principle of the general welfare and attempts to use this principle as a rationalization for why it does what it does, Congress is moving into areas

that were specifically prohibited to it by the Ninth Amendment.

When elected representatives of the people begin seeking to entangle the people in various ideological theories about what constitutes the general welfare, the members of Congress are exceeding the authority that has been given to them by the amended Constitution. Congress has only as much power as is consistent with, among other things, the principles inherent in the Preamble, the guarantee of a republican government to the people of the various states, the Bill of Rights, and the protection against "involuntary servitude" inherent in the Thirteenth Amendment ... or, said in another way, the actions of the Congress are completely delimited by the rights, powers, liberties, privileges, and immunities of the people.

It is not the right of Congress to tell the people what to do. Rather, it is the right of the people to tell Congress (as well as other elected or appointed officials) what to do.

Some commentators note that the Supreme Court was not very consistent in its rulings concerning the Tenth Amendment during most of the first several decades of the Twentieth Century. For example, although the Supreme Court upheld the right of Congress to regulate interstate commerce and to provide for the

general welfare through such statutes as the 1906 Pure Food and Drug Act, the Meat Inspection Acts of 1906- 1907, the 1910 White Slave Traffic Act, the Phosphorous Match Act of 1912, and the 1914 Harrison Anti-Narcotics Act (despite the fact that Tenth Amendment arguments frequently were voiced in opposition to such statutes), nonetheless, the Supreme Court also ruled in *Keller v. United States* that it was a violation of a state's Tenth Amendment rights for the federal government to seek to place restraints on the trafficking of women for immoral purposes.

A distinction needs to be made between, on the one hand, (1) acts of Congress that seek to institute laws that are constructively designed to enhance the general welfare in ways with which the vast majority of people might agree – such as ensuring that foods and drugs are unadulterated, or that meat is fit for consumption and not likely to be injurious to those who purchase it, or that the construction of matches do not pose a threat to public safety, or that human beings (of whatever color) should not be enslaved or treated as commodities to be trafficked to the highest bidder – and, on the other hand, (2) acts of Congress that are intended to police morality and, potentially, violate the Ninth and Tenth Amendment rights of individuals or that potentially violate a person's right to be free from "involuntary servitude."

For example, rather than having Congress just pass laws that seek to abolish any form of the

slave trade, and rather than having members of the Supreme Court enter into philosophical debates about whether the federal or state government should have the right to pass laws concerning the trafficking of women for immoral purposes, perhaps, Congress and the Supreme Court should busy themselves with enacting provisions that assist women – or anyone -- to never have to be in a position of becoming vulnerable to various forms of 'involuntary servitude' – whether in the form of slave trade or prostitution. If the tax money that is levied on citizens were used, among things, to directly assist women to improve their lives through education, starting a business, gaining stable employment, acquiring housing, having access to counseling services, and being protected from predators rather than having tax money just being used to fund the bureaucratic, law enforcement, court, and prison/jail systems that are perceived to be necessary to regulate the constitutional and the unconstitutional, then, perhaps, Congress and the Supreme Court might find more effective and efficient ways of helping people without simultaneously undermining the basic rights, liberties, and powers of the latter.

In many cases, the solutions that Congress poses in an attempt to fix what are perceived to be moral problems affecting the general welfare often turn out to be more onerous than are the problems that supposedly are being addressed. Rather than using tax monies to subsidize

bureaucracies in an attempt to control and police issues of morality, maybe public money should be spent directly on helping people learn how to solve their own moral issues in a way that is beneficial to them but does not spill over into adversely affecting the rights and liberties and powers of others.

Furthermore, one of the reasons why the Supreme Court might not be consistent with respect to its various rulings on, for example, the Tenth Amendment is because the Justices who sit on the Court tend to use completely arbitrary and artificial theories of judicial review in order to generate judgments concerning the alleged meaning of the Constitution. Irrespective of whether a given Supreme Court Justice is a champion of some form of constructivism (e.g., seeking to balance competing interests) or a champion of some kind of 'originalism' (e.g., the original intent of the framers of the Constitution) they are seeking to impose their legal philosophy onto the people … legal philosophies that have potentially destructive ramifications for the Ninth and Tenth Amendment rights of the people … legal philosophies that have potentially destructive ramifications for the right of people to be free of religions being established by the state (and, as indicated previously, many forms of legal philosophy amount to the establishment of a religion-like process to which people must bow down and submit on penalty of hell fire and damnation -- i.e.,

state sponsored forms of punishment) … legal philosophies that have potentially destructive ramifications for the right of people to be free of all forms of "involuntary servitude" other than what is minimally necessary to live in peace with one another and secure domestic tranquility and, thereby, legal philosophies that have potentially destructive ramifications for the right of people to establish forms of republican governance that are not oppressively dependent on some Justice's theory of legal philosophy concerning what such republican governance must mean to the generality of people who would like to be able to negotiate with one another and establish their own mutually agreeable arrangements for giving expression to republican governance.

There is not one Supreme Court Justice -- living either in the present or in the past -- who can start from first principles of justice, powers, rights, and liberties concerning individuals and, then, go on to justifiably demonstrate (except to themselves perhaps) how or why the people should give up those principles, powers, rights, and liberties so that governments might make permanent wards of the people through centralized forms of power (whether local, state, or federal) that mysteriously become entitled to tell those individuals how they must live their lives. People existed before governments, and, therefore, unless governments oppress the people, then, everything that a government can and cannot do is derivative from

the consent of the people rather than from government.

The foregoing is especially important to keep in mind when one considers the following fact. Jurists tend to be agents of the government because it is the Executive Branch that selects Supreme Court Justices, and it's the Senate that confirms Supreme Court Justices and, as such, all of this gives very clear indication that the judiciary process is heavily influenced, if not controlled, by a centralized power structure from beginning to end … although, from time to time, there are jurists who run counter to what centralized centers of power wish them to do.

In many ways, Supreme Court Justices are not neutral moral entities who are umpiring the game of life in an impartial and fair manner for all concerned based on a rule book that everyone agrees upon. Supreme Court Justices are biased individuals who invent the rule book as they go along based on a variety of legal fictions – such as that corporations are 'persons' – which are rooted in their own personal legal philosophies of life complete with assumptions, interests, likes, dislikes, vested interests, conjectures, hypotheticals, and artificial forms of legal logic.

Shamelessly -- and in a rather preemptory, imperialistic manner -- Supreme Court Justices hand down their edicts from on high as if they were dispensing indisputable wisdom and truth. But, like the individual hidden behind the curtain in the Wizard of Oz, the Justices fear (or, at least

they would if they weren't so mesmerized and impressed with their own legal slights of hand, mind, heart, and soul) that the people will discover how the bells and whistles of democracy are being manipulated from behind a curtain and are little more than a dog and pony show of individuals who, unfortunately, all too frequently have a pathological-like ambition to control others in order to satisfy their own self-serving ideas about legal philosophy, and this is true irrespective of whether these Justices are liberal, conservative, libertarian, independent, or something else.

It would be one thing if the members of the Supreme Court were to serve as consultants for the people in order to try to assist the people to devise constructive methods of republican governance in which ultimate control belonged with the people rather than with centralized structures of power such as Congress, the Executive Branch, or the Supreme Court. However, the foregoing is not the sort of service that the Supreme Court is interested in providing for the people.

Instead, the Supreme Court is interested in engaging in an oppressive wielding authority over the people power … a power that has been usurped surreptitiously, and sometimes not so surreptitiously, from the people. Then said power is used against the very same people from whom it has been 'borrowed' in order to abolish, undermine, constrain, diminish, regulate, and

control citizens to such a degree that the people no longer understand that the mysterious legerdemain performed by the Supreme Court is itself, largely, unconstitutional because what they do frequently violates, at a minimum: the establishment clause of the First Amendment (legal philosophy as naturalized religion); the provisions of the Ninth and Tenth Amendments; the "involuntary servitude" clause of the Thirteenth Amendment, and the guarantee of republican government to the people of the various states that is stated in Article IV Section 4 of the Constitution.

Republican governance is not what the Supreme Court says it means. Rather, republican governance is what the people say it means.

Moreover, the judgments made by the Supreme Court often do violence to the principles inherent in the Preamble to the Constitution. This is so because their decisions do not form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, or secure the blessings of liberty for ourselves and our posterity in any way except in accordance with their own self-serving systems of arbitrary legal assessment that they feel justified in imposing on hundreds of millions of people. The extent of hubris inherent in such activity is so excessive as to defy calculation.

In 1918, the Supreme Court seemed to give indication that perhaps the tide had turned with respect to cases bearing upon the claims of states concerning their alleged Tenth Amendment rights. More specifically, two years earlier, Congress had passed a statute that prohibited the interstate shipping of any products arising from factories or mines that entailed the labor of children under the age of fourteen. However, in ruling on *Hammer v. Dagenhart* in 1918, the Supreme Court judged the congressional act of 1916 to be unconstitutional.

The majority opinion read in part:

"It must never be forgotten that the nation is made up of states, to which are entrusted the powers of local government. And to them and to the people the powers that are not expressly delegated to the national government are reserved."

The word "expressly" had been inserted before the word "delegated" by Justice William R. Day.

Once again, the term "people" assumes a largely cosmetic role in judicial reasoning. Clearly, according to the majority decision, powers are entrusted to governments – whether local or federal. Yet, nothing is said about what is involved in the dynamics of the entrusting process with respect to the permissions, conditions, duties, responsibilities, and constraints that circumscribe such a process, nor is anything said

with respect to what constitutes a betrayal of that trust by government.

Although there are some commentators who believe that the 1918 Supreme Court decision in *Hammer v. Dagenhart* sent a shot across the bow of congressional presumptions concerning the reach of its powers, nevertheless, in truth, the 1918 ruling was just another round in the ping pong match that had been going on between different levels of a federalist form of government. Either the federal government was entitled to win a point or the state governments were entitled to win the point, but individuals outside the government were not even permitted to step up to the table and take a swing, let alone win any constitutional points.

The role of the people was reduced to being one of a spectator in relation to the grand democratic game played among governments and branches of government. If the people wished, they (or, at least, some of them) were extended the privilege of being able to vote for their favorite players on the All-Star ballot ... sometimes referred to as a general election. Moreover, if any of the people wanted to be able to be invited to the 'big show' they had to come up with a lot of money and a covey of power patrons capable of convincing the owners of the two team league that other teams should be permitted to play in the game in an official capacity.

The Supreme Court continued on with its Tenth Amendment ping pong game by

upholding a substantial federal tax on the use of narcotics in 1919, thereby awarding a point to Congress. However, three years later, in *Bailey v. Drexel Furniture,* the Supreme Court ruled unconstitutional Congress' attempt to introduce a second child labor law that Congress sought to leverage through the government's taxing power and the allegedly companion right to that taxing power to provide for the general welfare through such taxation.

The people, Congress, and the states were often left to assume the tasks of a reader of fortunes who studies the written dregs left by the Supreme Court in the bottom of its cup of power in an attempt to figure out what the future portended. The one thing that everyone could be sure of in all of this is that the fate of the people was largely sealed and, to all intents purposes, the people had no Tenth Amendment rights independent of government … the people were treated as eternal wards of the state who were incompetent to look after their own affairs and who could only survive if their alleged interests were looked after through the fiduciary role of government.

In the early 1920s, Congress began to pass legislation that sent various kinds of aid grants to the states to assist with an array of issues ranging from certain kinds of medical care to fire-prevention in state forests. On occasion, this form of aid was challenged by some sates as a violation of Tenth Amendment rights.

The Supreme Court tended to rebuff such challenges (for example, see *Massachusetts v. Mellon*, 1923) by arguing that grants in aid do not undermine the Tenth Amendment rights of states because such grant programs are optional and, consequently, the states might reject or accept them. However, eventually, over a period of some 30-40 years, the federal grant programs became so ubiquitous that state governments were often reduced to merely serving in a subsidiary and largely silent role in relation to the relentless power of federal bureaucracies.

In the beginning, states might have been completely free to reject or accept such grant programs. Nonetheless, over time, those programs were capable of distorting the political landscape and place constraints on how, or whether, states would approach different problems, as well as affect the degree of control that a state might have in seeking to come up with solutions to problems that occurred in a political environment that was, in many ways, landscaped in accordance with federal wishes.

In one sense, the congressional advocates of federal grant programs are like so many dope dealers who seem rather innocuous in the beginning, and, yet, before one knows it, states have become locked into a pattern of addiction to grants in aid. Once hooked, federal pushers tend to exact various kinds of political prices as a means of shaping the behavior of states in

accordance with the public policy agendas of different branches of federal government.

One can say to the states that they are free to accept or reject the aid, just as one can say to an addict that she or he is free not to accept the drugs that are being offered to the addict. However, once the behavior of a state has been shaped in certain ways through the receipt of federal aid, the capacity of states to be able to freely exercise their Tenth Amendment rights often becomes adversely affected and undermined.

In addition, as with any distribution network of addictive substances – and both money and power can be extremely addictive – once federal grant money begins to flow into a state, the money and concomitant power (or the power and concomitant money) has a way of co-opting state officials. Instead of working on behalf of the people whom they are supposed to represent, those state officials who are co-opted by federal grant programs begin to serve the agenda and interests of the federal government rather than the needs and interests of the people within the state.

Quite frankly, I don't think the Supreme Court Justices thought their aforementioned decision all the way through. Although on the surface it seems as if the federal grant in aid leaves states with all their options on the table, the truth of the matter is that the presence of power and money has a way of undermining actual freedom of choice –

both for government officials and for ordinary everyday people.

In a 1931 Supreme Court decision involving the *United States v. Sprague,* the Court stated:

"The Tenth Amendment was intended to confirm the understanding of the people at the time the Constitution was adopted, that powers not granted to the United States were reserved to the States or to the people. It added nothing to the instrument as originally ratified."

I tend to disagree. In fact, I would maintain that the foregoing statement is a very good illustration of how many Supreme Court jurists live a life of delusion and fantasy far removed from the realities of life.

More specifically, if the Tenth Amendment added nothing to the Constitution, then, why was it added? Given that the Constitution was signed in 1787 – four years before the ten amendments were officially added to the Constitution in 1791 – then, if anything, the Tenth Amendment made manifest the concerns of those (such as George Mason of Virginia) who were reluctant to ratify the Constitution until the rights and powers of people had been adequately secured against the encroachment of governments ... whether state or federal.

The Ninth and Tenth Amendments gave expression to the concern of many people at the time the Constitution was written and that had not been specifically addressed by the Constitution as originally drafted. Although the idea of 'republican government' had been mentioned in the Constitution, its meaning, as was noted earlier, was vague and somewhat ambiguous.

While some might have felt that the protections entailed by the ten amendments were somehow inherent or implicit in the meaning of republicanism, nonetheless, the fact that many people insisted on adding the ten amendments to the Constitution as their price for ratifying the Constitution tends to indicate there was considerable distrust among the general population in relation to the likelihood that government would secure, protect, or promote the rights of the people over against the government. Indeed, if there is one common theme running throughout the history of man it is that governments and/or rulers often seek to oppress people.

Some people might wish to argue that the founding fathers had good reason to introduce the Tenth Amendment into the Constitutional mix because of an anticipation that various modalities of power struggle were likely to take place in the future between a central government and various state governments. Apparently, the logic of such an argument is that in the light of past experience with the central, monarchical governments of Europe, in general, and England, in particular, the

people needed some sort of protection against a central government that might, over time, seek to gain authoritative ascendancy in relation to the states.

However, there is a problem inherent in the foregoing sort of thinking. Relative to the people, any government – federal, state, or local -- is a body of centralized power whose tendency is to seek to extend its authority and control over the lives of individuals who are decentralized and, therefore, relative to established government, likely to be less powerful.

To be sure, because most of the thirteen colonies that were vying to become independent states were already run by power elites consisting of wealthy, propertied, and influential individuals within their respective geographical boundaries, the various members of those elite circles had vested interests that they wished to protect against the encroachment of a central, federal government. Consequently, arguing for some sort of constitutional safeguards concerning their vested interests would be to their advantage.

Nevertheless, none of the ten amendments is an exercise in protecting the rights of those who are among the elite power movers within a given state – although their rights as ordinary individuals (as opposed to wealthy or propertied individuals) would be entailed by the Bill of Rights. None of the ten amendments is a study in protecting the rights of power elites who were, or

would become, entrenched in the institutional business of state government.

The first ten amendments were intended to secure the rights of individual citizens apart from governmental bodies. Indeed, the first ten amendments were necessary to protect the people against the encroachment of all forms and levels of government ... federal, state, and local.

So contrary to the beliefs of the jurist who wrote, in relation to the 1931 decision on *United States v. Sprague*, that the Tenth Amendment "added nothing to the instrument as originally ratified", the jurist in question seems to have failed to understand that the only reason many people were willing to ratify the Constitution was because -- and only because -- something akin to the ten amendments were to be added to secure the rights of individuals over against government. It was the rights of states conceived of as being made up of extra-governmental individuals – that is, the people – that were being protected and not the rights of states conceived as centralized bodies of power that often sought control over the very people that were to be protected by the Tenth Amendment and, indeed, the states – in the form of centralized bodies of power -- often sought to use the Tenth Amendment to impose their will on the people of a given state.

The Tenth Amendment was not written just to emphasize the limited character of powers delegated to the federal government. The Tenth

Amendment was written to indicate that any form of government deserved powers of only a limited nature.

The states – as governmental bodies -- were not the ones to whom the Constitution was primarily bequeathing whatever was left over after eliminating what had not been specifically assigned to the federal government nor prohibited to the states. The Tenth Amendment was a way of enshrining the fact that people were the ones for whom such powers were being reserved, not governments. The Bill of Rights – from beginning to end – is about securing, protecting, and advancing the rights, powers, privileges and immunities of people as opposed to institutions or bodies of government.

The Tenth Amendment is not, and was not, about ensuring that the people – through their local state representatives -- have much more ready access to government policymakers. The Tenth Amendment is about the decentralization of power ... not in terms of what is being reserved by the Constitution on behalf of state governments but, rather, in terms of what is being reserved for the people independent of elected governments. In fact, elected government is but one of the tools among a whole set of possibilities through which people might exercise their right to republican government.

There were many people besides George Mason who opposed ratifying the Constitution of 1787 unless, among other things, provisions were

added that protected the people against the incursion of government. Among these were Patrick Henry, Tom Paine, Samuel Adams, Thomas Jefferson, Richard Henry Lee, George Clinton, Elbridge Gerry, Samuel Spencer and Robert Yates.

Interestingly enough, when Tom Paine came to feel that a power elite was hijacking the American Revolution, he wrote a letter to George Washington. Among other things, the letter said:

"The world will be puzzled to decide whether you are an apostate or an impostor; whether you have abandoned good principles or whether you ever had any."

In any event, each of the foregoing individuals, along with others, maintained that if appropriate protections were not added to the Constitution as originally drafted in 1787, there was a great risk that a powerful form of centralized government would emerge that would seek to undermine, curtail, limit, or abolish the individual liberties of the people. Collectively, such people were often referred to as anti-Federalists to distinguish them from individuals such as James Madison, Alexander Hamilton, James Wilson, and John Jay who were advocates of a strong, central government.

The terms are somewhat misleading. Some of the so-called anti-Federalists were actually federalists.

More specifically, federalism is a system of government that seeks to coordinate the activities of several levels of governance – for example, states and a national, central government. There were individuals among the so-called anti-Federalists who believed in federalism but championed a form of federalism in which state governments possessed significant powers that could not be usurped by the federal government. On the other hand, there were other individuals among the so-called anti-Federalists who accepted the idea of state governments but believed that the central government ought to have a degree or two of primacy beyond the powers of state and, as such, could constitute a strong modulating influence with respect to the direction that government took in the United States.

Nonetheless, there were also individuals who were classified as anti-Federalists who were not necessarily primarily interested in just the power struggles between federal and state governments but who also wanted to secure rights and protections for the people against government in general. When Patrick Henry said that he smelled the stench of monarchy in conjunction with the Philadelphia Convention -- during which the Articles of Confederation were thrown out and a new Constitution was drafted -- he was alluding to the fact that federalism of any species smacked of monarchical-like power that, quite correctly as it turns out, he feared would, sooner or later, be wielded against the common people to the

tremendous disadvantage of the latter, and he wanted no part of it.

These latter sort of individuals were the authentic anti-Federalists -- although, rather ironically, a number of years later, Patrick Henry joined the Federalists and seemed to abandon some of his earlier ideas concerning anti-Federalism. However, such anti-Federalists might more appropriately have been described as proponents of profound skepticism with respect to centralized sources of power because they tended to distrust government of any kind -- local, state, or federal.

Their fears were not just about a strong, federal government gaining ascendancy over state governments. They were concerned about any form of centralized power – local, state, or federal – which would seek to oppress the people, or to deny the people a true republican form of government, or which would seek to nullify and abolish the liberties of the people, or which would try to impose its own ideas onto the people with respect to what might be meant by ideas such as 'justice', 'domestic tranquility', 'general welfare', and 'the common defense'.

Indeed, Article I, Section 8 of the Constitution specifies that:

"The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States."

As previously noted, this portion of the Constitution is sometimes referred to as the 'Elastic Clause' because Congress -- as well as the Executive Branch with the advice and consent of Congress -- and, as well, the judiciary -- through its frequently arbitrary, interpretive renderings of alleged Constitutional meaning that are generated during the judicial review process – all these branches of the federal government seek to use the aforementioned section of the Constitution to make incursions into, and encroach upon, a vast array of areas that are claimed to "provide for the common defense and general welfare of the United States."

In doing so, all of the branches of central government, either knowingly or unknowingly, conspire with one another to deny, undermine, restrict, obstruct, and effectively abolish basic rights that belong to the people. These include – as noted earlier – the 'establishment' clause of the First Amendment; the Ninth and Tenth Amendments that are intended to preserve and reserve an extensive reservoir of rights, powers, privileges, and immunities to the people; the provisions of the Thirteenth Amendment concerning involuntary servitude; the constitutional promise of republican government, and the principles of the Preamble of the Constitution that concern people and not governments.

Who should get to determine what is meant by the idea of providing for the common defense and general welfare of the people? While elected and appointed officials do give expression to one kind of republican government, this need not exhaust what is entailed by the notion of republicanism.

When non-governmental organizations gather together, why should these sorts of collective be considered to have less Constitutional standing than do elected officials with respect to the issue of determining what it means to provide for the common defense and general welfare? Or, when individuals assemble among themselves to discuss the problems of the day and seek to have some kind of influence on the decision process in relation to the members of Congress or with respect to the Executive Branch in conjunction with matters of common defense and general welfare, why should such individuals have any less Constitutional standing in these matters than do the elected and appointed members of Congress, the Executive Branch, or the Judiciary?

The Constitution guarantees to the people that they will have a republican form of government. It is not up to the government to place limits on what is meant by such a republican form of government.

Moreover, it is not the prerogative of federal authorities (whether from Congress, the Executive Branch, or the Judiciary) to stipulate that the only form of republican government that will be

allowed is one involving elected officials. In fact, there are several other forms of republican government that have been operating within American for hundreds of years – forms of governance that have been enshrined in the Constitution.

More specifically, both the idea of a trial by a jury of one's peers (Article III, Section 2, Clause 3), as well as the institution of a grand jury (Fifth Amendment), are republican forms of governance that do not involve having elected representatives controlling the decision-making process of the members of those different kinds of jury. Determining what constitutes the common defense and general welfare of the people is, to a very substantial degree and on a daily basis, left up to the members of these two non-elected, but fully representational, forms of republican government.

The issue of republican government cannot be reduced down to being a matter of how close the people are to government such that local government is likely to be held more accountable to the people than is a distant federal government. The issue of truly republican governance is that no form of centralized power can be trusted not to seek to oppress, abolish, or curtail the rights of people. The principle implicit in the Bill of Rights is that all forms of government are to be distrusted ... whether local, state, or federal.

The purpose of democracy is not to empower government to have control over the lives of people but to empower people to have control over their own lives, provided this does not prevent other people from possessing similar autonomy, and, as well, to empower people to have control over the life of government. The ultimate form of decentralization is when people, rather than governments, have the kind of power that cannot be usurped or taken back by any form of centralized power at whatever level.

According to some ways of thinking, the Tenth Amendment constitutes little more than a truism which stipulates that "all is retained which has not been surrendered" (cf. *United States v Darby,* 1941). Underlying this mode of thought is the belief that if one examines the history surrounding the adoption of the Tenth Amendment, then one will discover (or so it is argued) that the purpose of the Tenth Amendment was only to allay the concerns of people in the various states in relation to the possibility that, sooner or later, a centralized government would try to exercise powers not explicitly granted in the Constitution and, as a result, the states might not be permitted to fully exercise the powers that had been reserved to them.

I do not believe such a perspective is tenable. To begin with, there is considerable

ambiguity surrounding the idea that "all is retained that has not been surrendered," and, as a result, the question immediately arises: retained by whom and surrendered by whom? Furthermore, as more than two hundred years of judicial review have demonstrated, there seems to be considerable controversy swirling about the issues of just what has been retained and just what has been surrendered.

If the Tenth Amendment was nothing but a truism, then individuals such as George Mason, Samuel Adams, Tom Paine, Patrick Henry, and Thomas Jefferson would not – each in his own way -- have pursued a rearguard action to ensure that the rights of people – rather than governments of whatever kind – were protected. If it was only a matter of federal versus states rights, the phrase "or to the people" never would have been added to the amendment.

The purpose of the Tenth Amendment was to give people a constitutional standing. This sort of standing had not been given in the original pre-Bill of Rights version of the Constitution, and, in fact a very strong argument can be made that although the first eight amendments of the Bill of Rights did afford a variety of protections to individuals, none of those first eight amendments firmly established the people with full Constitutional standing.

Prior to the forging of the Bill of Rights, the Constitution that had been drafted tended to talk exclusively in terms of the powers of different

branches of federalist governmental institutions. Article I was about Congress. Article II was about the Executive Branch. Article III was about the Judiciary. Article IV was about the States. Article V outlined the means through which Congress and State Legislatures might amend the Constitution. Article VI established the Constitution and the laws made pursuant to the ratification of the Constitution as being the supreme law of the land that all courts and elected representatives were obliged to uphold. And Article VII indicated that nine out of thirteen states would be enough to ratify the Constitution, although this last article said nothing about what would happen if the other four states chose to stay with the Articles of Confederation.

Considered apart from the various levels of federalist government and considered apart from the Preamble -- which many advocates of federalism merely interpret as being rhetorical window dressing that gives expression to literary style rather than constitutionally substantive issues – the people are hardly even mentioned in the Constitution except in little ways, almost in passing, when, for example, the vote of the people was seen as the means through which ambitious, frequently self-serving people acquired the power of elected office. Even here, the drafters of the Constitution exhibited their distrust of the people by establishing the convoluted and totally unnecessary procedures for operating an electoral college in clauses 2, 3,

and 4 of Section 2 in Article II that dealt with the Executive Branch.

If people could be trusted to vote directly for Senators and members of the House, then, why could they not be trusted to vote directly for the President and Vice President? Is the creation of an electoral college not an indication that the framers of the Constitution believed that the head of state should be selected by a 'power elite' rather than the people?

One can seek to try to justify the existence of an electoral college in any way one likes, and one can even argue that in most cases (but not in all) the popular vote and the vote of an electoral college tend to coincide. However, in the end, an electoral college exists as a buffering layer of centralized government that is intended to serve as a constraint upon the will of the people.

For example, there are some who argue that an electoral college is necessary because it serves to balance the interests of relatively unpopulated states with the interests of heavily populated states and, in the process, seeks to serve as a bulwark against heavily populated areas dominating the election process. Aside from the fact that one might say similar things in relation to Congressional elections in which heavily populated areas tend to have domination over rural areas within any given state, and, yet, no one felt a need to establish an electoral college for the states with respect to campaign races for Congressional seats, the fact of the matter is that

even under the electoral system, if one carries 10-12 of the right states, then how people in the rest of country vote is largely irrelevant.

Of course, the people – but only by implication – were alluded to in the Constitution with respect to the Congressional power to levy and collect taxes. Like the existence of voting, so too, in the matter of taxes, the people were seen as a means to an end – in this case, the acquiring of money.

Alternatively, the people – but, once again, only by implication rather than through specific mentioning – were alluded to by the Constitution as being the official source for cannon fodder in time of war. After all, what good is achieved if Congress can declare war and the President can serve as Commander in Chief if there are no people to fill the ranks of the military and the militias?

The people were also indirectly referred to in the Constitution when Section 9, Clause 2 of Article I indicated that:

"the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety might require it."

Consequently, the fate of people was left in the hands of centralized government with respect to whether or not evidence would have to be presented to prevent the possibility of unwarranted imprisonments by autocratic

governments who were in a position to label almost any kind of dissent as constituting rebellion.

Citizens were much more explicitly mentioned in Section 2 of Article III of the Constitution. Here the document stipulated that the people were subject to the jurisdiction and powers of the Judicial Branch.

In Article IV, the people are mentioned, more or less, in passing. More specifically, the Constitution indicates in Section 2 of this article that:

"The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

What this means in practical terms appears to be left to the discretionary powers that have been extended to the federal government and states by the Constitution.

In summary, according to the Constitution, without a Bill of Rights, people could vote (although in the case of the President, not directly or even definitively), pay taxes, die during war, be subject to the dictates of the judiciary, and enjoy "all privileges and immunities of citizens of the several states." These latter privileges seemed to consist of voting, paying taxes, dying, or being ruled over by the courts, while the immunities enjoyed by the citizens appeared to be a matter of being promised that the privilege of habeas corpus would not be suspended unless, of course, the government deemed this to be necessary.

Given all of the foregoing, is it any wonder that the first eight amendments of the Bill of Rights would be insisted upon by many as a promissory note for ratifying a Constitution in an attempt to counterbalance governments that often cared little for the citizenry except as a means to the various ends, purposes, and ambitions of those individuals who sought power through holding office – whether elected or appointed – in centralized government? Given the stark nature of the Constitution absent a Bill of Rights, is it any surprise that there were people who insisted on the last two amendments of the Bill of Rights to ensure that the people had a Constitutional standing independent of the different branches of federalist or layered government?

If by 'states' one understands the term to mean the kinds of institutional centers of power that were outlined in Article IV of the Constitution, then, one might well suppose that the Tenth Amendment is a truism in which "all is retained that has not been surrendered." In other words, since the Constitution without the Bill of Rights is largely about centralized forms of power (i.e., Congress, the Executive, the Judiciary, and the States) rather than people, then, it follows from such logic that because democracy is, or should be, according to advocates of this position, about centralized control (i.e., government power) over people, then for such a person, whatever powers have not been given to

one level of government belongs to the other level of government and the people be damned.

However, if by 'states' one understands this term to refer to the collectivities of people in certain geographical regions, then, just who (the people or the government) is retaining or surrendering powers, and just what powers are being retained or surrendered becomes a much more complex issue. The fact that the first nine amendments of the Bill of Rights are about the rights of people and not of government, and the fact that the Tenth Amendment ends with "or to the people" demonstrates that the use of the term 'states' in the Tenth Amendment was not necessarily just about bodies of centralized power and, instead, is likely to have referred to the people from whom states, as a federalist entity outlined in Article IV, derived their various powers.

In a 1975 decision by the Supreme Court concerning *Fry v. United States*, reference was made to a 1941 Supreme Court case involving *United States v. Darby* that characterized the Tenth Amendment as a 'truism' asserting that 'all is retained that has not been surrendered." The jurist writing the decision in 1975 stipulated that notwithstanding the aforementioned words in the 1941 judgment, nonetheless, the Tenth Amendment:

"is not without significance. The Amendment expressly declares the constitutional policy that Congress might not exercise power in a fashion that impairs the States' integrity or their ability to function effectively in a federal system."

As the main character of the movie entitled 'The Shawshank Redemption' says to the warden of the prison: "How can you be so obtuse?" Indeed, totally absent from the foregoing legal cases is any mention of the people as opposed to either the federal or state governments.

Unfortunately, the people in a system of federalism are often treated by the different levels of government in a way that is reminiscent of the manner in which so-called adults treat their children when engaged in a divorce involving bitter custody disputes. In other words, the people in relation to governments are, like children in all too many divorce cases, treated as if they were chattel to be disposed of in accordance with the likes and dislikes of those who presume themselves to be all that really matters in the grand scheme of things.

However, as modern family law has established, children have rights and entitlements quite independently of the wishes and desires of the parents. Just as the rights and entitlements of children need to be protected against the irresponsibility of parents who are engaged in self-serving power struggles with one

another, so too, the rights and entitlements of the people need to be protected against the self-serving power struggles that take place between different levels of government.

Supreme Court jurists in *Fry v. United States* (1975), as well as in *United States v. Darby* (1941), are committing errors that are variations on a theme. They each, in their own way, are seeking to frame the Tenth Amendment as purely a function of a power struggle between two levels of government.

The Tenth Amendment is truly revolutionary, and the courts have been eager to sidestep the ramifications of this fact in as many ways as possible. Through this amendment, people have been given full constitutional standing alongside the different levels of government.

Truly republican forms of governance (and not all forms of governance need be a function of government power) is when the people have as much, if not more, say in determining what constitutes the principles of justice, domestic tranquility, the common defense, general welfare, and liberty as do the federal and state forms of government.

For obvious reasons, acknowledging the foregoing point is not in the interests of governmental bodies that are founded upon the idea of wielding control over others, because once the underlying principle is fully admitted, recognized, and accepted, activities that are directed toward acquiring power and, then,

employing such power to impose, by force if necessary, various programs of public policy onto the people becomes very much harder to accomplish.

When different levels of government engage one another in a power struggle, everyone understands what is transpiring. The goal of the game is to establish who has power and how much power, as well as to establish what kinds of power belong to the victor in the tussle.

Why do governments seek power? The answer to this question is obvious.

The only reason why governments seek power is in order to be able to control, regulate, use, or exploit not only other human beings but, as well, existing resources. A person does not seek power to do good for others because if that were the goal, this could be accomplished without the need to either seek or acquire power.

One seeks power because, knowingly or unknowingly, one wishes to impose one's perspective, ideology, vision, theology, or agenda on others. Empowering citizens with the ability and means to counter such self-aggrandizing ambitions constitutes a fly in the democratic ointment ... at least from the perspective of those who wish to use that ointment as a means to advance their own purposes rather than the purposes and needs of the people.

A person might wish to argue that people, with the best of intentions, might seek office not due to self-serving motivations but in order to leverage

the power, resources, and money of Congress or the Executive Branch in order to accomplish good for others – a good that individuals operating through their own limited resources, money, and power could not possibly hope to accomplish. The reality of the political situation is such, however, that even when elected representatives sincerely struggle with the weighty questions swirling about the problem of trying to do what is best, nevertheless, what is considered to be the best choice is often only an expression of what such individuals deem to be best according to their own philosophy of life, and, as a result, the general populace often is held hostage to someone else's notion of what constitutes the common good, or citizens are the recipients of one form, or another, of political abuse when power is leveraged irresponsibly or ill-advisedly even with the best of intentions.

Some might wish to respond to the foregoing and contend that however problematic our system of elected representatives might be, this is all that can be done. Democracy cannot be better – or so the argument goes -- than the quality of the representatives who are elected, and if such elected officials prove themselves unworthy of the responsibilities of elected office, then, the people can vote to throw them out during the next round of voting.

I believe such arguments are incorrect. I believe there is a better form of republican government than simply voting for representatives

to serve as would-be surrogates of the people, and toward the latter part of this essay, I will outline what the nature of that better form of republican governance is although a number of hints already have been given in what has been said previously.

In the meantime, let it be said that the entire Bill of Rights does empower citizens to resist the incursions and encroachments of power-hungry centralized governments (whether local, state, or federal). However, the Ninth and Tenth Amendments are particularly significant in this respect because those two amendments indicate that it is the people who have the right and power to determine the meaning of the form of republican government that has been promised to the people in Article IV, Section 4, of the Constitution.

No one in her or his right mind or heart would be willing to give up their unfettered liberty so that Congress, the Executive Branch, the Judiciary, and the various states would have the power to arbitrarily dictate to people concerning what powers, rights, privileges, or immunities citizens should have, or so that different levels of government could have the right to oppressively regulate what form republican government might assume. Such a state of affairs would have been no better than the various forms of monarchy from which people were seeking to escape when they came to America. In fact, it might have been worse because the

people would have been swapping one monarch for a multiplicity of ego-driven power mongers, many of whom were deluded to believe that they possessed something akin to a Divinely-sanctioned mandate to rule over the lives of others as they saw fit.

If all democracy signifies is the right to vote on who gets to usurp one's rights, liberties, and powers, or if democracy only means one has the right to vote on who gets to control, regulate, oppress, and exploit the voters, then, democracy is not really a revolutionary step forward. Rather, it is just the exercise of monarchy and autocracy by another name.

If one is to give up the right of unfettered freedom, then, one must be offered something of value in return for that which is being sacrificed. Since all of us consider our freedom to be precious, then whatever is to be offered in exchange for giving up the unbridled exercise of such freedoms must also be very precious.

The only medium of exchange that is fair to those who are willing to sacrifice certain dimensions of freedom for the collective good would be to have an opportunity for self-regulation through the mediated negotiations that take place by means of some form of republican governance that seeks to establish, as much as is humanly possible, principles of justice, liberty, domestic tranquility, the common defense, and general welfare for all citizens and not just for those who possess governmental power who are

favored by such power. While -- when functioning properly -- Congress, the Executive, the Judiciary, and the states could all play substantial roles in helping the people to secure, protect, promote and realize the fruits of such mediated republican negotiations, one cannot deny to the people their own right to seek solutions to such negotiations through non-governmental means, nor can one insist that it is the peremptory duty and right of governments to seek to thwart, undermine, or constrain such non-governmental republican efforts (and one should not necessarily read into what is being said here as being an expression of advocacy or preference for private market solutions to such negotiations).

Governments are being empowered by people who are sacrificing their (the people's) ability to exercise freedom in unbridled ways. What is it that governments are sacrificing on behalf of the people in order to be able to come into existence?

Presumably, governments, like people, must be willing to sacrifice their capacity to act in oppressive ways toward those from whom they derive their existence and with respect to whom governments have a fiduciary responsibility that has been entrusted to them. Presumably, people must be empowered by the act of empowering governments, and one cannot necessarily guarantee this will be the case unless one can develop a means of establishing oversight (which extends beyond the capacity to vote people into and out of office)

with respect to those who have been elected to serve as representatives of the people.

There are two streams of republicanism inherent in the foregoing. One republican stream flows from the electoral process, and when this stream flows in a non-pathological manner, then, the representatives will assist the people to realize the principles inherent in the Preamble to the Constitution. The other republican stream flows directly from the people in a manner that is unmediated by elected representatives and that bears the responsibility of, among other things, ensuring that elected officials are faithful to their oaths of office.

The Constitution without the Bill of Rights is an invitation to abuse of power and oppression. The Constitution without a Preamble is an invitation to arbitrariness and lack of purpose.

If the Constitution does not exist to seek to assist people to secure liberties, justice, domestic tranquility, the common defense, and the general welfare, then, why should anyone bother with such a document at all? If the Constitution does not provide the people with the capacity to gain ultimate control over what transpires within government, then, by ratifying a constitution without such assurances, then the people are not empowering themselves, but, instead, they are empowering government over against the people, and in the process the people would have sacrificed their freedoms for nothing.

In *McCulloch v. Maryland*, Supreme Court Justice Marshall rejected the claim put forth by the State of Maryland that attempted to introduce an argument in support of the state's position based on a Tenth Amendment argument. More specifically, the State of Maryland noted in its legal argument that one of the fears of those who originally resisted ratification of the Constitution revolved around the concern that the rights of states might be abolished or diminished by a powerful central government.

The counsel for Maryland asserted that the Tenth Amendment had been added to the Bill of Rights in order to assuage such concerns and fears. The State of Maryland proceeded to argue that, under the Tenth Amendment, the power to create corporations was reserved for the states.

In response, Justice Marshall advanced a position that was rooted in the Constitution's 'necessary and proper' clause (Article I, Section 8) as a counter to the legal position of Maryland. In effect, Justice Marshall was indicating that the Constitution entitled Congress to make whatever laws it believed to be required in order to be able to execute the powers that had been given to Congress under Section 8 of Article I.

Moreover, Justice Marshall argued that in contrast to the Articles of Confederation, the Tenth Amendment was missing the word "expressly" with respect to the qualifying of powers being granted in relation to that amendment. As a result, he maintained that the

absence of the term "expressly" in the text of the Tenth Amendment left open the issue of "whether the particular power that might become the subject of contest has been delegated to the one government, or prohibited to the other" and that in order to be able to determine this one needs to "depend upon a fair construction of the whole instrument."

Aside from failing to spell out what might be entailed by a "fair construction of the whole instrument" (other than to express the presumption that what Justice Marshall was stating was the appropriately fair construction), and aside from failing, as well, to establish the criteria and means of evaluation through which the idea of "fairness" would be established for everyone to understand, Justice Marshall committed several errors in the construction of his argument. To begin with, contrary to what Justice Marshall says, the issue is not whether the term "expressly" does, or does not, appear before the word "delegated" in the Tenth Amendment, nor can the issue before the Court be reduced down to a matter of what powers have been either delegated to one government or another or what powers might have been prohibited to one government or another.

Justice Marshall erred by failing to take the Constitutional standing of people – apart from government -- into account during his deliberations. It is as if the Constitutional standing of people never even entered his mind and as if

the Constitution only were limited to matters of which level of government should be assigned which powers.

Under the Tenth Amendment, "a fair construction of the whole instrument" would include the involvement of the people independently of state and federal governments. Marshall did not cite this, and, therefore, he has misread and misunderstood the nature of the Tenth Amendment.

Justice Marshall's judicial 'take' on things is quite surprising and somewhat self-serving. After all, although Justice Marshall was prepared to note that the term "expressly" had been left out of the text of the Tenth Amendment, and, consequently, he seemed to believe that the term's absence was very significant, and, yet, he apparently failed to take into account the fact that the phrase "or to the people" did appear in the text of the Tenth Amendment and seemed to treat that phase as being completely insignificant ... as if there were no difference between states and the people.

On the other hand, the State of Maryland's argument was also self-serving in as much as it was only concerned about whether the rights of states might be swallowed up by a centralized federal government. The State of Maryland did not appear to be at all concerned with the possibility that the rights of people might be swallowed up by the centralized government of states, just as the rights of states could be swallowed up by the federal government.

Contrary to the argument put forth by the State of Maryland in *McCulloch v. Maryland,* power to create corporations was not necessarily reserved to the states by the Tenth Amendment. Like Justice Marshall, Maryland's lawyer conveniently forgot the fact that the people – independently of government -- should have had a say in the matter of whether corporations ought to be created at all, and that if the people – independently of government -- were agreed that corporations might, under certain circumstances, be a good thing, then, the people should have had some degree of significant influence in determining the kind of structure or powers to which corporations should be entitled, as well as a substantial degree of influence in determining what kind of control the people were entitled to have over such created entities.

Finally, if it is appropriate for Justice Marshall to take into account what the Articles of Confederation did, or did not, say with respect to the problem of how to understand the principle inherent in the Tenth Amendment, then, presumably, it should also be okay to take into account such documents as the Declaration of Independence during one's attempt to seek an understanding of that same amendment. The Declaration of Independence was an advocate for people and an opponent of government – especially tyrannical and unjust government.

The Declaration of Independence alluded to the need for a form of government that would

serve the interests of people rather than a form of government that must be served by the people and that was entitled to oppress them. Consequently, in reaching his decision, Justice Marshall engaged in a certain amount of 'cherry picking' in relation to the arguments that he advanced. More specifically, although he cited the Articles of Confederation because he felt that supported his legal position, nonetheless, he simultaneously seemed to ignore whatever might have contradicted the argument (e.g., the Declaration of Independence and the Tenth Amendment phrase "or to the people") he was putting forth.

Finally, Justice Marshall's citing of the 'necessary and proper' clause of Article I, Section 8, in his decision with respect to the *McCulloch versus Maryland* case might be incomplete as it stands. While the Constitution does entitle Congress to "make all laws as shall be necessary and proper for carrying into execution" its Constitutional powers, nonetheless, the enactment of those Congressional laws must be measured against whether, or not, they would help advance, or diminish, the principles inherent in the Preamble, and such laws must be measured against whether or not they could be passed in a manner that would not undermine the constitutional guarantee of republican government to the people and without infringing on any of the provisions of the Bill of Rights -- such as the establishment clause of the First

Amendment as previously discussed – and/or without transgressing any of the other constraints upon the laws of government -- such as the involuntary servitude clause of the Thirteenth Amendment.

During the period between 1934 and 1935, the Supreme Court issued a number of rulings that rendered unconstitutional several facets of Roosevelt's New Deal policy that had been intended to provide economic recovery for states and individuals hit hard by the Great Depression. The National Industrial Recovery Act -- which enabled the President to negotiate directly with industry with respect to trying to come up with legally enforceable principles of fair economic practice – was one of the measures that were ruled to be unconstitutional.

Typical of these judgments against federal public policy programs was the argument of Chief Justice Charles Evans, writing on behalf of a unanimous Court in the 1935 case of *Schechter Poultry v. United States.* He indicated that such programs were in direct conflict with the Tenth Amendment.

Beginning around 1937, however, Roosevelt was able to stack the Supreme Court with jurists who were likely to be favorable to his public policy programs. This led to a series of decisions

that effectively rendered Tenth Amendment arguments to be largely null and void.

For instance, in a Supreme Court judgment concerning *New York v. United States* (early to mid 1940s), the Court upheld (by a vote of six to two) the federal right to tax mineral waters obtained from state-owned property and sold to the public. Chief Justice Harlan Stone defended the majority ruling by arguing that:

"the national taxing power would be unduly curtailed if the State, by extending its activities, could withdraw from it subjects of taxation traditionally within it."

The foregoing remarks raise the following question: What, precisely, is meant by the Chief Justice's use of the phrase "unduly curtailed" in relation to the power of Congress to levy and collect taxes? What are the criteria for weighing and determining what constitutes a process of unduly curtailing the activities of the federal government with respect to taxation?

How much money does the federal government get to collect in the way of taxes? Are we to suppose that no matter how inordinate the appetites of the federal (or state) government might be with respect to its desire for money that the people operate under an obligation to supply tax monies that is without conditions, boundaries, or a need to be rigorously justified or empirically demonstrated?

Chief Justice Stone frets over the manner in which Congress' power of taxation might be "unduly curtailed" should states be able to become immune to the traditional practice of imposing taxes through which, in part, the federal government raises money. The Chief Justice seems far less concerned about the possibility that the actual needs of the people might be "unduly curtailed" through excessive, inappropriate, or injudiciously used forms of taxation.

There is something peculiar about the logic of an argument that claims a right to acquire money, via taxation of the people, in order to pay government debt or to provide for the general welfare while simultaneously placing obstacles, via the same taxation, in the way of the people's ability to pay their own debts or to contribute to the general welfare in their own manner. There is something peculiar about the logic of an argument that expects people to not live beyond their means while simultaneously enabling government to constantly push the envelope of living beyond its means – that is, the reasonable ability of the people to fund government agendas and ambitions.

How does one measure the idea of being "unduly curtailed" with respect to the government's desire to tax the people? Why should priority automatically be given to the government's right to tax over the people's right to have control over their own lives by, among other things,

determining for themselves what constitutes the meaning of being "unduly curtailed."

It is not the place of Supreme Court Justices to determine that governments have a right not to be "unduly curtailed" independently of examining the same issue with respect to the people's right not to be "unduly curtailed". To do so is to render people vulnerable to a form of involuntary servitude in relation to the desires, whims, and agendas of government. This is especially the case when such Justices do not provide a detailed and rigorous exploration into the structural character of the idea of being "unduly curtailed" with respect to the complex task of weighing the rights and duties of government over against the rights and duties of people.

According to Article I, Section 8, of the Constitution, the purpose for levying and collecting taxes is:

"to pay the debts and provide for the common defense and general welfare of the United States."

If the taxes that are collected are not used to pay down the national debt, or if they are not used to provide for the general welfare (and pork barrel gratuities at taxpayer's expense for federal or state projects that benefit the few rather than the majority of people do not necessarily constitute providing for the general welfare), or if such taxes are not used to provide for the common defense in

an efficient, reasonable, and collectively agreed upon manner, then, the taxes are being used for purposes other than those specified in the Constitution.

Now, who gets to decide whether, or not, the money collected for taxes is being judiciously and appropriately allocated with respect to the specified purposes of paying debts, providing for the common defense, and promoting the general welfare? Who gets to decide the priorities in such matters? Who gets to decide whether, or not, there are limits that should be placed on how much money the government has a right to raise through taxation and using the credit of the United States to borrow money that must be paid back primarily through the assessment of taxes on the people?

If the answer to all of the foregoing questions is that it is the government that should decide such matters or that it is the judiciary that should decide such matters, then, where does this leave the people? Or, if the only tool that the people possess is the ballot box, then, the way is open for tremendous destruction to be done to the people by the government and the judiciary in the years between the people's few opportunities to try to use the vote to change the direction of government.

Democracy should be about the people and not about governments. Unfortunately, this idea has been largely corrupted by a countless succession of governments and power elites who

believe that democracy should serve the interests, ambitions and agendas of the power elite rather than the needs of the people.

Frankenstein (the framers of the Constitution) has created his monster (government), and the monster has been let loose in the land to wreak havoc upon the countryside (the people). The villagers are rightfully upset and wondering how they might go about marching on the castle in order to bring under control the monster that is preying upon them, while the judiciary speaks in terms of its concern that the activities of the monster should not be "unduly curtailed".

Furthermore, with respect to the majority opinion penned by Chief Justice Stone in the aforementioned case of *New York v. United States*, Justices Rutledge and Frankfurter added that the Tenth Amendment entailed:

"no restriction upon Congress to include the States in levying a tax exacted equally from private persons upon the same subject matter."

Both the Justices who were arguing for the majority opinion in *New York v. United States* as well as those who were dissenting from that position have muddied the democratic waters.

Contrary to what the majority opinion of the foregoing Court judgment states, I am of the opinion that the Tenth Amendment does place restrictions upon the ability of Congress to tax the

people because the capacity of government to tax people is contingent upon the people's willingness to be taxed. If the people believe that Congress is exceeding the judicious exercise of its power to tax, then, Congress is seeking to exercise a power that the people did not give it, and in doing so, government is encroaching upon powers that have been reserved for the people.

In other words, in possessing the power to tax, Congress does not enjoy an absolute power. The scope of that power is to be determined by the people, and the people did not cast off the oppressive taxing powers of monarchies in order to become subservient to the oppressive taxing powers of the federal or state governments.

Congress has been given the power to tax contingent on the conditions that such taxes can be shown to be fair, reasonable, and judicious in the service of principles inherent in the Preamble, the promise of republican government, the Bill of Rights, and the remaining Amendments to the Constitution. The proper boundaries of governmental taxation are to be determined in accordance with the rights of the people and, as such, are derivative from, and not independent of, those rights.

The members of Congress (even though they might be representatives of the people) do not have, thereby, the authority to cede away the rights of the people. However Congress might desire to go about its business, its alleged supremacy in generating statutes cannot abolish,

undermine, constrain, deny, or regulate the fundamental rights to which the people are entitled, and, consequently, when Congress encroaches on the rights of the people, it ought to recuse itself from deliberations because a conflict of interest exists between, on the one hand, Congress's activities as a body of government and, on the other hand, the rights of the people whom the members of Congress are supposed to be faithfully serving through upholding the provisions of all dimensions of the Constitution and not just the provisions of Article I, Section 8.

Justices Black and Douglas disagreed with the majority opinion in *New York v. United States* by arguing that:

"If the power of the federal government to tax the States is conceded, the reserved power of the States guaranteed by the Tenth Amendment does not give them the independence that they have always been assumed to have."

The operative phrase here is "assumed to have."

To be sure, most, if not all, states have assumed that they had certain rights and powers under the Tenth Amendment. It is in the very nature of governments – whether local, state, or federal – to seek to enhance the perimeters marking their sphere of influence with respect to the wielding of power.

Governments don't like giving up power or being informed that there are determinate limits to their power. They fear that if others have power then those others will seek to do unto them what they have sought to do unto others – namely, control, regulate, restrict, enslave, use, oppress, harm, and exploit.

States, in the sense of governmental bodies, have long assumed that the Tenth Amendment is referring to them. The power elites who run state governments wish to leverage the Tenth Amendment in order to gain control over the people.

The states, in the sense of governmental bodies, try to argue that the agendas of state governments and the wishes of the people are one and the same. Consequently, they assume there really is no need to entertain the idea that the people, independent of government, might have powers that cannot be usurped by government ... whether local, state, or federal.

Apparently, Justices Black and Douglas in their dissenting opinion were assuming that the Tenth Amendment was about state governments. Indeed, when one ignores the phrase "or to the people" it is easy to see how Supreme Court justices and state governments come to assume what they do. Or, when one has been conditioned by years of constant lobbying on the part of the power elite to believe that it is not possible to speak about "the people" unless they have been properly constituted into some form of government, then

one understands why governments and jurists have difficulty in dealing with a concept such as 'the people' that existed long before such governments and courts came into being.

Even if the phrase "or to the people" did not appear in the text of the Tenth Amendment, it would be presumptuous of Justices Black and Douglas to suppose that the idea of a state refers only to a governmental body instituted in a given geographical location rather than refer to the people from whom the process of institution derives it authority and purposes. However, given that the phrase "or to the people" is embedded in the Tenth Amendment, one can only argue that what was allegedly meant by such a phrase is a function of states' rights rather than the rights of the people independent of such states if one becomes entangled in a rather pathological and tortured attempt to distort what is clearly stated and intended in a Bill of Rights that was added as a protection for people and not governments per se.

A 1941 unanimous decision of the Supreme Court upheld the Fair Labor Standards Act in *United States v. Darby.* Voicing the opinion of the entire Court, Chief Justice Stone stated:

"The power of Congress over interstate commerce 'is complete in itself, might be exercised to its utmost extent, and acknowledges no limitations

other than are prescribed in the Constitution.' . . . That power can neither be enlarged nor diminished by the exercise or non–exercise of state power. . . . It is no objection to the assertion of the power to regulate interstate commerce that its exercise is attended by the same incidents that attended the exercise of the police power of the states . . . . Our conclusion is unaffected by the Tenth Amendment that . . . states but a truism that all is retained which has not been surrendered."

The foregoing reasoning reflected the opinion voiced by Justice John Marshall more than a century earlier. Another way of stating the same thing is to say that the Court led by Chief Justice Stone continued to perpetuate a tradition of more than a century that not only failed to provide a logically and historically defensible understanding concerning the meaning of 'or to the people', but seemed not to be able to grasp the idea that in a social compact between those, on the one hand, who wish to institute government (i.e., the framers of the Constitution) and, on the other hand, those who were skeptical of government and wary about the uses to which a formalized government would put the powers that it gained through becoming institutionalized by means of a Constitution, those who were skeptical toward, and wary of, government would never cede to government the right to do whatever it pleased.

The nature of the foregoing social compact means that -- the assertions of Chief Justice Stone to the contrary -- the power of Congress over interstate commerce is not necessarily "complete". The nature of the social compact underlying the institution of the Constitution means that the power that Congress has over interstate commerce might not necessarily be "exercised to its utmost extent".

Furthermore, while it might, or might not, be the case that the power that Congress enjoys over interstate commerce might not "be enlarged nor diminished by the exercise or non–exercise of state power," the power of Congress – not only with respect to interstate congress but in relation to every single power that is listed in Article I, Section 8, might be enlarged or diminished in accordance with the powers that have been reserved for the people through the Ninth and Tenth Amendments. Moreover, those powers might be enlarged or diminished in accordance with the principles inherent in the Preamble to the Constitution and that are entailed by the constitutional promise of a republican form of government for the people of the various states, and that are expressed through the "involuntary servitude" clause of the Thirteenth Amendment.

People who have spent too much time in the toxic atmosphere of power (and this tends to refer to almost all, if not all, Presidents, Supreme Court Justices, members of Congress,

state governors, and state legislators that have served in public office over the years) such people are inclined to misunderstand what the actual relationship of the Tenth Amendment is to the rest of the Constitution. Most of the aforementioned individuals are likely to suppose that it is the federal government that has priority in determining the meaning and scope of its powers, when, in truth, it is the people who have priority in all such determinations – and not just in terms of their capacity to vote.

If a person were skeptical toward government and wary about the possible – if not likely -- abuses of power by such a government (as were many people back in the middle to late 1700s, as are many people today), why would such an individual (and this is likely to be the stance of the vast majority of people who are not employed by government) agree to the idea that it is the government that should have first right of refusal when it comes to dispensing with the right to exercise or determine the scope of any given power? The true democratic logic of the Constitution plus amendments is not to claim that whatever the government does not want in the way of power has been reserved for the people. Rather, the true revolutionary and democratic logic of the Constitution plus amendments and Preamble is to stipulate that the powers of the Congress begin only when, where, and to the extent to which the people knowingly consent.

By exercising the powers of their Ninth and Tenth Amendment rights, it is the people who will tell the government what is to be reserved for the people above and beyond what the people have ceded to the government as trustees of the people's collective needs and wishes. The direction of the constitutional dynamic is from the people through the Ninth and Tenth Amendments to the federal and state governments and, then, back to the people again in the form of the right to exercise whatever powers are not being actively ceded to the federal government and that, consequently, are actively reserved for the people to use.

To say that "all is retained which has not been surrendered" is not a truism. It is an expression of the fact that before the federal government can act, the people must first engage in an act of trust by surrendering a certain amount of power to the government so that the government might serve the people as the people wish to be served and not as the government wishes to serve them. To say that "all is retained which has not been surrendered" is to refer to the fact that the Ninth and Tenth Amendments are about the right and power of the people to determine what will be surrendered, and how – or if -- it will be surrendered, and the conditions under which it will be surrendered, and for what period of time it will be surrendered, and why it will be surrendered.

A loan of power is made by the people to the government through the Ninth and Tenth Amendments. As the issuers of the loan, the people are the ones who own the right to determine the conditions of that loan not the government. Not only must the government use the loan for the stated purposes stipulated by the people, but the people have as many rights and powers reserved for them as they do not cede -- on a temporary and conditional basis -- to the government, including the right to revoke or call in the loan, as well as the right to change the conditions of such a loan as the people deem necessary in order to protect their fundamental rights, liberties, and republican way of self-governance.

The judiciary cannot tell the people what loans of power to make, or how to do this, or when to do this, or why they should do this. Moreover, the judiciary cannot tell the people what powers have been reserved for the people once the people have made a loan of power to the federal government.

This is all a matter of collective, negotiated settlement among the people. And, by collective, negotiated settlement, I am not necessarily referring to what elected representatives do while in office. There are non-governmental republican ways of negotiating collective settlements that give expression to the will of the people other than through elected office (and more on this in the last part of the present book).

The loaning of power is not a legal matter, although the Supreme Court might have an opinion about whether such loaned power is being abused by the recipients of the loan. The loaning of power is not a function of government activity, although governments do come into being as a result of such a loan. The loaning of power is rooted in the qualitative nature of the willingness of a people to invest some degree of trust in individuals and/or institutions to serve as fiduciary agents on behalf of such people within certain prescribed limits that must not disadvantage the people with respect to the realization of the principles inherent in the Preamble to the Constitution and the promise of republican government.

According to Chief Justice Stone the powers enjoyed by Congress are such that Congress "acknowledges no limitations other than are prescribed in the Constitution." However, as previously indicated, the Constitution provides for manifold forms of limitation upon the Congress in the form of the Preamble, the guarantee of republican government, the Bill of Rights – especially in the form of Ninth and Tenth Amendments -- along with other protections afforded to the people such as in the form of the Thirteenth Amendment.

Congress is not entitled to pass laws that deny justice and fairness to the people. Congress is not entitled to pass laws that exploit the people. Congress is not entitled to pass laws that favor

corporations over people. Congress is not entitled to pass laws that generate homelessness and poverty. Congress is not entitled to pass laws that place obstacles in the way of all people having access to affordable and accessible health care. Congress is not entitled to pass laws that degrade the environment. Congress is not entitled to pass laws that permit unhealthy and unsafe working conditions. Congress is not entitled to pass laws that favor owners over workers or that favor workers over owners -- rather than passing laws that promote the welfare of both. Congress is not entitled to pass laws that are injurious to the consumer or that place consumers in harm's way. Congress is not entitled to regulate commerce in a manner that does not provide -- in a rigorously and empirically demonstrable manner that is acceptable to the people -- for the common defense and the general welfare. Congress is not entitled to pass laws that permit the rights of the people to be lobbied away by vested, corporate interests. Congress is not entitled to pass laws that create uneven playing fields with respect to any individual, rich or poor, being able to run for office and to freely communicate with all the people about representative government. Congress is not entitled to pass laws that provide tax breaks, subsidies, and handouts to corporations that will – collectively or individually -- undermine the rights, liberties, powers, or immunities of the people. Congress is not entitled to entangle the people in wars that are fought to

defend and advance corporate interests or ideologically-driven hidden political interests rather than the demonstrable interests of the people. Congress is not entitled to propose budgets that so excessively and disproportionately promote defense spending that many other needs of the people – such as health care, a reliable and safe national infrastructure (e.g., highways, overpasses, bridges, and dams), education, paying down the national debt, livable wages, and similar quality of life issues – are sacrificed to the no bid, cost-plus extravaganzas that are bestowed upon defense contractors.

In *United States v. Lopez* (1995) the Supreme Court struck down a federal statute that prohibited possession of a gun either at or near to a school. In the process of striking down the statute as being unconstitutional, the Court rejected the federal government's contention that the Commerce Clause could be used to penalize individuals who possessed guns at, or near, schools because the possession of such guns was likely to undermine the ability of the national economy to function properly.

According to the judgment of the Court, if one were to accept the federal government's perspective concerning *United States v. Lopez*, this would effectively abolish any "distinction between what is truly national and what is truly

local." Furthermore, to accept the government's position was tantamount to transforming Congress' power to regulate commerce into "a general police power of the sort retained by the States." In addition, the federal government's position would undermine a "first principle" of the Constitution that Congress is entitled to only certain enumerated and limited powers.

If the first principle of constitutional dynamics is that the Federal Government is an entity of enumerated and limited powers, then, the second principle of constitutional dynamics should be to affirm – if one wishes to be consistent -- that state and local governments are political structures that also are limited in power. Like their federal cousins, local (i.e., state, county, city, and town) governments should be equally limited by the principles that have been conferred to the people through the Preamble to the Constitution, as well as being limited by the guarantee of republican government to the people of any given state (which extends beyond the issue of elected representation), as well as being limited by the First, Ninth and Tenth Amendments, as well as being limited by the "involuntary servitude" clause of the Thirteenth Amendment.

Furthermore, although the Court's central concern appeared to be that by accepting the rationale of the Federal Government – that is, to regulate the possession of firearms by means of the Commerce Clause of the Constitution -- would, in effect, eliminate any "distinction between what

is truly national and what is truly local", nevertheless, a more fundamental principle of democracy in America is that treating the Tenth Amendment as a bipolar divvying up of powers between federal and local governments entirely ignores the fact that the first ten amendments are primarily about protecting, securing, establishing, and promoting the rights of individuals – not governments … whether federal or local.

Why is it that so many politicians and jurists understand the Tenth Amendment to be about securing states' rights with nary a mention of 'the people' – despite the fact that "the people" are specifically mentioned in that amendment? Perhaps, this is because inherent in every form of government, no matter how well intentioned, is an inordinate inclination to encroach upon the rights, liberties, privileges, immunities, and powers that inherently belong to the people.

Governments of whatever kind don't like to talk about the rights and powers of the people. This makes them very nervous because when people start speaking about their inherent rights and powers, such talk threatens to shrink the sphere of power enjoyed by government.

Governments prefer to be preoccupied with what they believe, in an often delusional manner, to be the rights and powers that are reserved only to governments and through which the people might be subdued, regulated, exploited, and oppressed before the latter take it upon

themselves to do that most dangerous of activities (from a politician's perspective) – namely, to seek to assert and defend rights, powers, privileges and immunities that have been acknowledged as belonging to the people by the Constitution when that document is taken in its entirety from Preamble to Amendments rather than just being engaged through the self-serving perspective of those who are ensconced in elected or appointed office.

All in all, since the early to mid-1970s, the Supreme Court has been closely divided with respect to, among other things, the degree and manner to which the Tenth Amendment does, or does not, constrain congressional authority in relation to the governmental activities of the state and local governments. When the Supreme Court has been in the mood, it has permitted Congress to stretch the elasticity parameters of the commerce clause, as well as to stretch the meaning of the taxation for the general welfare section of Article I, Section 8 toward the beginning of that section, along with expanding the sphere of influence of the "necessary and proper" clause that appears toward the end of Article I, Section 8. When the Supreme Court has not been in the mood, it has stonewalled attempts by Congress to have its way with state governments.

There appears to be no discernible pattern linking first principles of justice or fundamental concepts of liberty, rights, and powers with Supreme Court judgments other than ideological ones. Before they begin deliberating, the Justices all have their individual, philosophical orientations and predispositions, and, then, once a case comes before them, they go in search of a defensible (at least in their own minds) pathway of legal logic that will enable them to link that case with, on the one hand, some part or parts of the Constitution in a manner that, on the other hand, is in accordance with their underlying philosophical ideologies.

Judicial review is not independent. It is not science. It is not an art form. Rather, judicial review is about ideology and, more importantly, about having the power to impose that ideology on the citizenry.

Judicial review is about the shifting elements that lead to philosophical mood swings among jurists. Judicial review is about justice based upon mood swings that are driven by ideological considerations. The people deserve better than this ... much better.

In 1985, the Supreme Court ruled in *Garcia v. San Antonio Metropolitan Transit Authority,* that Congress has the power, via the Commerce Clause, to expand the scope of the Fair Labor Standards Act to include the employees of state

and local governments. Among the original provisions of that act is the requirement for private businesses to provide their employees with both minimum wage and overtime pay, and the 1985 Supreme Court ruling was extending these provisions to those who were employed by state and local governments.

The *Garcia* decision overruled a 1976 judgment of the Supreme Court in relation to *National League of Cities v. Usery*. In the earlier, 1976 decision, the Supreme Court maintained that Congress' desire to regulate the activities of state and local governments "in areas of traditional governmental functions" is unconstitutional because it violates the Tenth Amendment rights of states.

Here we have essentially the same set of issues yielding two diametrically opposed judgments within a period of ten years of one another. There is no underlying, unified theory of jurisprudence governing these decisions, but, rather, one has two more expressions of judicial review by ideological mood swings.

People who have to live with people suffering from some sort of mood disorders can testify to how difficult, frustrating, unpredictable, dangerous, and heartbreaking this can be. How much more difficult is it for citizens to have nine people running around in robes imposing their changing, ideological mood swings onto millions of people who feel entirely powerless with respect to ensuring that those individuals receive

the sort of professional help they so desperately need.

What is being said in the foregoing is perfectly sane. What the Supreme Court Justices have been doing over the years is frequently delusional if not downright pathological or worse.

Unfortunately, if one takes the idiosyncrasies of judicial review according to ideological mood swing as one's standard of normalcy, then, whatever critical comments are said against such a process are, by definition, insane. In sociological and psychological circles, this is known as 'framing' an issue so that people's perceptions concerning the truth of a matter might be skewed in an ideologically favorable direction.

Whether one is speaking in terms of the Supreme Court's handing of *Garcia v. San Antonio Metropolitan Transit Authority* (in which Congress was considered to have the right to regulate what states do in certain respects) or one is considering the Supreme Court's judgment in *National League of Cities v. Usery* (in which Congress was considered to be violating the Tenth Amendment rights of states), neither decision was in terms of the rights of the people per se. Rights were defined entirely in terms of governmental powers over one another and in terms of such powers over the people.

The justification cited by the Supreme Court in the *Garcia* case was that under the Commerce Clause, Congress had a right to regulate states

with respect to how the latter paid their employees. The principle cited by the Supreme Court in *National League of Cities v. Usery* was the Tenth Amendment rights of states. In neither instance does the Supreme Court cite a principle involving the rights of the people over against government, whether federal or state.

The more fundamental principle for deciding the Garcia case might have been stated not in terms of the congressional powers that are given through the Commerce Clause, but, rather, the right of the people in a state to have a republican form of government in which the Tenth Amendment rights of people are recognized and the people might be free of various forms of "involuntary servitude. When the elected and appointed officials of state government oppress their employees, this is not really a republican form of government. When the employees of state government are not given a constitutional standing through which to assert their Tenth Amendment rights to be given fair compensation for their labor and overtime, this is not a republican form of government nor are the provisions of the Bill of Rights being upheld.

Moreover, while most of us do not relish the idea of having to work for someone else in order to survive and, as such, there is an element of involuntariness to what we do, we all tend to recognize and accept this as a necessary form of involuntary servitude. However, what is not a

justifiable or acceptable form of "involuntary servitude" is when employers – whether in the private or public domain – seek to exploit the indigent circumstances of those who are in the general labor pool by claiming that people are free, or not, to accept the sort of compensation package offered by an employer however much such a package might render those workers vulnerable to the numerous problems and dangers inherent in lived contingencies.

In both *Garcia v. San Antonio Metropolitan Transit* and *National League of Cities v. Usery,* the discussion is entirely in terms of states' versus federal rights. The people are not much more than an afterthought.

The constitutional issues in these cases are all about vying for power to control, regulate, subdue, restrict, and constrain the activities of the people, as well as about which branch of government gets to call the shots in this respect. Like two selfish, self-serving, arrogant, mindless parents who are fighting one another about the issues of divorce and almost totally oblivious to the fact that what they are doing has adverse ramifications for others – namely, the children – state and federal governments go about their quarreling, bickering, whining, and self-serving power grabs with hardly a passing nod in the direction to the negative character of the impact their activities are having on the emotional, mental, physical, or spiritual well-being of the very ones to whom they have duties of care ... as if people should be so

presumptuous as to suppose that democracy is about them and not governments.

When overruling the 1976 Supreme Court decision in *National League of Cities v. Usery,* Justice Harry Blackmun stated in the 1985 Supreme Court decision in *Garcia v. San Antonio Metropolitan Transit Authority* that the *National League of Cities* test for:

"integral operations in areas of traditional governmental functions"

was

"both impractical and doctrinally barren."

Furthermore, Justice Blackmun argued that the Court in 1976 had "tried to repair what did not need repair." Moreover, according to Justice Blackmun, not only is it the case that states retain their sovereign authority:

"only to the extent that the Constitution has not divested them of their original powers and transferred those powers to the Federal Government,"

but, as well:

"Freestanding conceptions of state sovereignty" like those to which expression was given in the Supreme Court's *National League of Cities*

decision tend to undermine the federalist system of governance by depending on:

"an unelected federal judiciary to make decisions about which state policies it favors and which ones it dislikes."

Justice Blackmun went on to tiptoe his way through the states' rights versus federal rights issue by claiming that although the Court must acknowledge "Congress' authority under the Commerce Clause", nevertheless, the Supreme Court must also acknowledge:

"that the States occupy a special and specific position in our constitutional system."

Notwithstanding such dual acknowledgements, the Supreme Court proceeded to uphold the constitutionality of applying the minimum wage and overtime provisions of the Fair Labor Standards Act to state employers, and, in doing so, the Court held that it was not necessary to require identification of what the "affirmative limits" of Congress are with respect to the alleged status of state sovereignty.

There is a whole list of ambiguities inherent in Justice Blackmun's position. For example, what did he mean when he said that the *National League of Cities* test for "integral operations in areas of traditional governmental functions" was "both impractical and doctrinally barren"? What are

the criteria for identifying what is "impractical and doctrinally barren"? What is the methodology through which this is determined? What value systems are to be applied in weighing the nature of the impracticalities and doctrinal barrenness?

What did Justice Blackmun mean when he argued that the Court in 1976 had "tried to repair what did not need repair"? What were the motivations for seeking to repair things in *National League of Cities v. Usery* case? Why was this unnecessary? What are the criteria, methods, and values through which one arrives at the conclusion that it was unnecessary? What makes the latter modality of judicial assessment any more valid or correct than the earlier modality of judicial assessment? What does it mean to claim that states retain their sovereign authority:

"only to the extent that the Constitution has not divested them of their original powers and transferred those powers to the Federal Government"?

The foregoing statement is made as if the Constitution -- in and of itself and without judicial interpretive interference – specifically stipulates that the surrender of a state's sovereignty to the wishes of the federal government is all done in accordance with an identifiable calculus of political transfer of power. Heck, apparently, this process of transfer is apparently so automatically

transparent that one shouldn't even have to rely on the Supreme Court to point this out.

In fact, according to Justice Blackmun: "Freestanding conceptions of state sovereignty" such as those to which expression was given in the Supreme Court's *National League of Cities* decision tend to undermine the federalist system of governance by depending on:

"an unelected federal judiciary to make decisions about which state policies it favors and which ones it dislikes."

So, in effect, Justice Blackmun seems to be saying that the federal and state governments should leave the Supreme Court out of such matters and that these issues need to be settled on the playing field of politics.

Yet, despite having intimated the foregoing, Justice Blackmun, along with the other Justices on the Supreme Court at the time, seem to be compelled by an irresistible urge to issue a ruling anyway. Except this time – in *Garcia v. San Antonio Metropolitan Transit Authority* – the Supreme Court favored the rights and powers of the federal government over those of state sovereignty. Around and around the wheel of judicial review goes, and where it stops, nobody knows.

One might point out that when Justice Blackmun stated that while it was necessary for the Court to acknowledge:

"Congress' authority under the Commerce Clause",

nevertheless, the Supreme Court must also acknowledge:

"that the States occupy a special and specific position in our constitutional system,"

However, not only was Justice Blackmun not really saying much of anything in the foregoing except in a wishy-washy, non-committal manner, but what he said is totally devoid of any mention of the need to acknowledge the rather special and indispensable position of the people quite apart from governments. After all, without people, then neither an amended Constitution nor the governments that are made possible through such an amended Constitution would be possible.

The federal government does not illegally infringe upon the sovereign power of states when it acts to secure the rights and powers of the people that are protected by the Bill of Rights or that are provided for through the constitutional guarantee of republican government, or that are guarded by the "involuntary servitude" clause of the Thirteenth Amendment. As long as the actions of the federal government are directed toward protecting and advancing the rights of the people, then, the rights and powers of state governments are not being infringed upon.

Moreover, contrary to what Justice Blackmun claims in *Garcia*, the Tenth Amendment rights of states are not limited by what the Constitution entitles Congress to take in the way of surrendered powers, but, rather, first and foremost, the Tenth Amendment rights of states are limited by what the Constitution guarantees to the people. As long as state governments use their sovereignty to establish, secure, protect, and advance the rights, powers, liberties, privileges, and immunities of all of its resident citizens and does not seek to show favor to the rights, powers and liberties of some citizens to the disadvantage of the rights, powers, and liberties of other citizens, then states, under the Tenth Amendment, have a right to be defended against the incursions of federal government into the internal activities of state governance – especially when such incursions are motivated by public policies of the federal government that are intended to undermine, diminish, exploit, or abolish such individual rights and powers.

The duties of care owed to the people by the federal government are similar to the duties of care that are owed to the people by the state and local governments. Federal government has only as much power and state governments have only as much sovereignty as is needed in securing, protecting, promoting and providing for the rights, liberties, and powers of the people over against government

encroachment in relation to such rights, liberties, and powers of the people.

The people have the right to be protected against the unwarranted incursions upon their powers and liberties from all levels of government. Consequently, when federal, state, or local governments do anything to undermine the rights and powers of the people, then, the activities of such governing bodies are unconstitutional. The rights and entitlements of the people have prior standing to the power and sovereignty of any given level of government.

Alternatively, whenever any level of government seeks to secure, protect or promote the rights, powers, and liberties of the people, then such a level of government has greater constitutional standing than any other level of government that is in opposition to the former level of government. The determining principle here is a function of the rights, powers, and liberties of the people rather than being a function of the powers or sovereignty of a given level of government.

In 1988, with respect to its ruling in *South Carolina v. Baker,* the Supreme Court expanded the scope of its decision in *Garcia v. San Antonio Metropolitan Transit Authority.* More specifically, the Supreme Court stated in *South Carolina v. Baker* that there should be compelling evidence to indicate "some extraordinary defects in the national political process" before the Supreme Court would be inclined to use the process of

judicial review to place limits on the manner in which Congress was allegedly encroaching upon the Tenth Amendment rights of states.

The Tax Equity and Fiscal Responsibility Act (TEFRA) was passed into law by Congress in 1982. The Act specified that unless publicly offered long-term bonds offered by state and local governments were issued in a registered form, then, a federal income tax exemption would be withdrawn that previously had been extended to states with respect to interest earned on such publicly offered long-term bonds.

In *South Carolina v. Baker,* the state argued that since the 1895 decision of *Pollock v. Farmer's Loan and Trust Co.,* both the bearer, as well as the registered bonds issued by states and municipalities, had been free from taxation. The federal government countered with the argument that the Act in question did not abolish the state's power to issue bonds that were tax-exempt but, instead, was merely specifying the kind of bonds that might continue to enjoy such an exemption.

According to the Supreme Court's judgment in *South Carolina v. Baker,* the operative principle at work was that:

"limits on Congress' authority to regulate state activities"

are:

"structural, not substantive -- i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres"

concerning state activities that the Supreme Court considered 'unregulatable'. In effect, the Supreme Court was permitting the default value for the constitutional dynamic to be set by what the federal government wished to do in the way of regulation rather than be a function of the interests of states per se.

One wonders what basic principle of justice or human rights permits the Supreme Court to presume that central government has the preeminent authority when it comes to the regulation of human life. In the foregoing bias concerning the power of Congress, there seems to be an implicit allusion to an argument that states that since central government gives expression to the will of the people, then, perhaps such central governments are entitled to set the regulatory standards that are to govern the country. If such an allusion is being made in the aforementioned words of the Supreme Court decision in *South Carolina v. Baker* (and, if it is not, then, I really don't know what the basis is for the Court's giving preferential treatment to the federal government over that of either the states or the people), then, one might just as easily argue that because, in theory at least, the state governments represent the will of the people,

then, they should be the ones to establish regulatory control over things.

Whatever the Supreme Court might have meant in the previously quoted excerpt, I tend to disagree with the Court's contention that the "limits on Congress' authority to regulate state activities" are "structural, not substantive". In fact, the reality of the situation is quite the opposite – that is, the "limits on Congress' authority to regulate" activities in general – and not just those of the states – is entirely substantive and not structural.

The meaning, significance, character, scope, and potential associated with constitutional structure is entirely derivative from the substantive understanding of those who are engaging that structure and reflecting on its possibilities against a backdrop of a large array of philosophies, ideologies, interests, assumptions, beliefs, values, purposes, needs, desires, prejudices, and historical events that have expressed through a variety of individuals of very different hermeneutical orientations. To try to argue – as the Supreme Court appears to be doing in *South Carolina v. Baker* -- that one might perceive amidst all of this historical diversity a notion of constitutional structure that is capable of taking the many human variables that are present and synthesize these down to an essential structure of determinate limits and character that favors central government is, to say the least, rather naïve. Indeed, in practical terms,

such a contention is unlikely to be capable of being rigorously demonstrated to the satisfaction of all or even a substantial majority of the people.

In fact, the amended Constitution places a considerable variety of constraints and limits on Congress's authority to regulate either states or the people. This is true irrespective of what portion of the un-amended Constitution might be selected by a purveyor of the interests of centralized government in an attempt to justify what Congress seeks to do in the way of regulating the affairs of its citizens. Moreover, the amended Constitution places an equal number of constraints and limits on the rights of states to regulate the affairs of people.

The structure of the amended Constitution is entirely dependent on the substantive decisions of the people. Unfortunately, federal, state, and local governments often try to induce amnesia in the people with respect to the actual rights of the people concerning the republican dynamics inherent in the amended Constitution. If there is any default bias structurally present in the amended Constitution, that bias is pointed heavily in the direction of people rather than governments, and it is too bad that in all too many instances the Justices of the Supreme Court do not seem to understand this.

Interestingly enough, in the 1992 case of *New York v. United States,* the Supreme Court held that Congress did not have the right to "commandeer" state regulatory machinery to administratively

implement federal programs. This ruling not only placed a limitation on congressional power, but did so in a manner that seemed to have greater resonance with the Supreme Court judgment in *National League of Cities v. Usery* than it did to the Court's ruling in *Garcia v. San Antonio Metropolitan Transit Authority* that, in fact, had actually overturned the constitutionality of the judgment in the *National League of Cities* case.

In the Supreme Court ruling in *New York v. United States*, Justice Sandra Day O'Connor argued that:

"the Tenth Amendment thus directs us to determine . . . whether an incident of state sovereignty is protected by a limitation on an Article I power."

In addition, without specifically mentioning the *Garcia* case, the Court rejected the structure versus substantive argument contained within the *Garcia* ruling that counseled states to look for the protection of their rights in the political process rather than in the Tenth Amendment.

Finally, the Supreme Court's opinion in *New York v. United States* rejected the federal government's position that New York's sovereignty could not have been violated since its representatives had fully participated in the process through which a compromise had been achieved and, as well, consented to the statutory implementation of that compromise.

In rejecting the foregoing argument, Justice O'Connor noted that the:

"Constitution does not protect the sovereignty of States for the benefit of the States or State governments, [but instead] for the protection of individuals."

Therefore:

"State officials cannot consent to the enlargement of the powers of Congress beyond those enumerated in the Constitution."

Wow, it only took a little over two hundred years for the Supreme Court to state that in matters relating to the Tenth Amendment the sovereignty of the state is not the primary issue but, instead, that amendment is primarily about protecting the rights of individuals -- rights that neither state governments nor their representatives have the constitutional authority to surrender to the federal government in a manner that is above and beyond what already are enumerated as congressional powers in the Constitution.

Of course, there still is a great deal of ambiguity inherent in the Court's *New York v. United States* admission concerning the Tenth Amendment since the question of whether, or not, Congress actually even has the authority to regulate by means of the powers that are enumerated in the Constitution without being constrained by the

rights of the people to republican government, as well as by the provisions of Bill or Rights and by the 'involuntary servitude' clause of the Thirteenth Amendment is not really being addressed in the foregoing Supreme Court's decision. And, of course, conceivably, while the Supreme Court acknowledged that the:

"Constitution does not protect the sovereignty of States for the benefit of the States or State governments, [but instead] for the protection of individuals,"

nevertheless, it might be that what the Supreme Court might have had in mind by what it said is not that private individuals should have any form of constitutional standing under the Tenth Amendment but only that elected representatives had a fiduciary responsibility and duty of care to citizens that should be fulfilled, and, as such, the foregoing statement merely represented a reprimand to government officials for not having served the people.

In *Reno v. Cordon* (2000) the Supreme Court upheld the Driver's Privacy Protection Act of 1994 (DPPA). DPPA is a federal law that placed limits on the disclosure and/or resale of personal information contained in the drivers' records of

the motor vehicles departments of the various states.

The Supreme Court's position in *Reno v. Cordon* reiterated a principle given expression in the Court's decision concerning South *Carolina v. Baker.* More specifically, the Court distinguished between, on the one hand, congressional laws that seek to control the manner in which States go about regulating private parties within those states – laws that the Court considers to be unconstitutional – and, on the other hand, congressional statutes that merely regulate state activities directly.

In *Reno v. Cordon* the Supreme Court argued that DPPA:

"does not require the States in their sovereign capacities to regulate their own citizens,"

but, instead:

"regulates the States as the owners of databases."

In other words, the Supreme Court considered DPPA to be a matter of regulating and controlling the manner in which databases might be used rather than interfering with how states went about regulating their own residents.

The Court saw no need to decide whether a federal law might regulate the states exclusively. This is because DPPA was considered to be a law of general applicability

that regulates private individuals as well as states with respect to the reselling of such information.

Whether one is talking about the principle articulated in *South Carolina v. Baker* or the principle given expression in *Reno v. Cordon* (each of which, in its own way, seeks to distinguish between congressional laws that attempt to regulate the manner in which States regulate their own citizens [which, from the perspective of the Supreme Court, are improper or unconstitutional] and congressional laws that seek to place constraints on the structural form of some of the processes used by states as the latter goes about its various activities [which, from the perspective of the Supreme Court, are entirely permissible]), there seems to be a certain assumption present in the deliberations and decisions of the Supreme Court in such cases. This assumption revolves about the idea that Congress and the States have a constitutional right to regulate the activities of the people.

I would argue – as has been clear throughout the previous 98 pages -- that neither Congress nor the States have the right to regulate the people if such a process either undermines, interferes with, restricts, compromises, or abolishes the Ninth and Tenth Amendment rights of the people to regulate their own affairs independent of government intrusion, or if such a regulatory process involves the establishment of a religious-like ideology of public policy, or pushes the people into some form of "involuntary servitude" in relation to

government policies. When any of the branches of centralized power (federal, state, or local) seek to enlarge their sphere of control on the basis of an authority that they do not have under the Constitution, there are problems, and these problems have been a blind spot throughout the entire history of the Supreme Court as well as throughout the history of the American republic.

Furthermore, the fact that some people – even a majority of the people in a state – have consented to cede over their First, Ninth, Tenth, and Thirteenth rights to centralized power does not deprive the remaining people from re-asserting such rights and powers. No individual or group of individuals can cede away the rights of other individuals that have been secured for the latter under the amended Constitution – irrespective of what compact the former individual or individuals might have made with local, state, or federal governments -- any more than state governments might extend powers to the federal government that exceed the latter's Constitutional entitlements even though the state governments or its representatives might have consented to such enlargement of federal authority. All of these acts are unconstitutional because to do so would be to abolish the rights of the people as provided under the First, Ninth, Tenth, and Thirteenth amendments, as well as to deny them a truly republican form of government in which people gain direct control over their own lives rather than being mediated

by elected representatives who appear to be unwilling to protect the basic rights, powers, liberties, privileges, and immunities of the people.

In 1787, when Thomas Jefferson was representing the United States in France, he received a letter from James Madison that provided an overview of how the Constitution, as Madison envisioned it, would work:

"In the American Constitution the general authority [of the central government] will be derived entirely from the subordinate authorities [the States]. The Senate will represent the States in their political capacity; the other House will represent the people of the States in their individual capacity. ... The President also derives his appointment from the States [that is, through the system of the Electoral College through which the States elect the President], and is periodically accountable to them. This dependence of the General [central] on the local authorities seems effectually to guard the latter against any dangerous encroachments of the former; whilst the latter, within their respective limits, will be continually sensible of the abridgment of their power, and be stimulated by ambition to resume the surrendered portion of it."

The people are mentioned only once in the foregoing federalist perspective. Moreover, this single reference is in a context in which the people are to be represented by those with power … and how the authorities came to derive their power – namely, from the people -- is only alluded to in passing.

As has been pointed out earlier in this book, Madison was a believer in a federalist system that consisted of two levels of government. It was a plan for divvying up power among governments, not people. The people were merely a means to an end through which power was to be taken by governments from the people with a promissory note that supposedly obligated governments to "represent" the people, with the meaning of 'representation' being filled with unending nuances of ambiguity and betrayal.

The Declaration of Independence does not propose a federalist system. The Preamble to the Constitution does not propose a federalist system. The Ninth and Tenth Amendments do not propose a federalist system although the interpretation of the Ninth and Tenth Amendments by many proponents of federalism as well by many federalist-oriented jurists is to presume that such amendments are but mere truisms and tautologies following from the idea of a republic that – theoretically – through "representatives," would serve the people faithfully, selflessly, and honestly that is often not, and sometimes not even usually, the case.

As noted earlier, the idea of an electoral college mentioned in Madison's letter to Jefferson was introduced into the Constitution as a way of protecting the interests of those who sought centralized power ... to buffer the authorities against the common people whom seekers of power did not trust even though the most dynamic aspect of democratic governance comes in the form of grand juries and trial juries that consists of nothing but the common people. The people, on the other hand and with considerable good reason, did not trust government of any kind – federal, state, or local.

There were some people such as Tom Paine, Samuel Adams, Patrick Henry, George Mason and others who wanted to have protections in place that would serve the interests of the people over against the interests of the state. Indeed, as also has been indicated previously, the first ten amendments are not about protecting states' rights but about protecting the rights of people, and the Tenth amendment, especially, is not – contrary to the opinion of many -- primarily about securing states' rights but, rather, about ensuring that the people have constitutional standing.

The question that Madison did not address in his letter to Jefferson is the following. If the powers of the general government are dependent on the local authorities and, therefore, this arrangement supposedly would protect the latter from the encroachment of the

former, then, who would protect the people from the encroachment of either of these forms of government? If central government is to be constrained and distrusted, then, centralized government in any form -- including state and local government – needs to be included among the objects toward which citizens ought to exhibit a healthy and plentiful skepticism.

It was the amended Constitution -- including the Tenth Amendment -- which would help put into active form the foregoing element of skepticism -- an active form that is not primarily intended to take away power from the people but to secure it in two different manners – (1) through the activities of the states (if they perform their duties honorably and properly) and (2) through the activities of the people in maintaining constant vigilance against the encroachment of any form of government on the rights, powers, privileges, and immunities of the people with respect to government. As the orator and columnist Wendell Phillips declared in 1852:

"Eternal vigilance is the price of liberty."

As of 1997, a number of states, including: Hawaii, Illinois, Missouri, Colorado, and California have passed resolutions that call upon Congress to honor the provisions of the Tenth Amendment, and other states are in the process of doing so. However, there is considerable doubt as to whether any of these states would recognize

resolutions authored by the people -- independent of government – requesting that both Congress and the state governments honor the Tenth Amendment rights of the people.

During the 1840s a crisis occurred in Rhode Island that is known as the Dorr Rebellion. At the time of the rebellion, the state constitution consisted of a royal charter that originally had been issued in the 17th century.

According to the Rhode Island constitution, that was based on the earlier royal charter, the vast majority of free, white males in the state existed in an officially sanctioned condition of disenfranchisement (i.e., among other things, they had no right to vote). As a result, there was an attempt on the part of those who were disenfranchised to bring about some form of popular convention so that a new constitution might be written in which at least some of those who had been disenfranchised (namely, free white males) would gain some degree of control over their lives.

The Rhode Island charter government declared the activities of the disenfranchised protesters to be acts of insurrection, and, as a result, those who were actively seeking to establish a new constitutional convention were arrested as rebels. One of the leaders of the disenfranchised group – namely, Martin Luther --

filed a legal action in federal court that argued that because the Rhode Island state government was not "republican" in nature [i.e., Article IV of the Constitution -- Section 4: “The United States shall guarantee to every State in this Union a Republican Form of Government”], therefore, the arrest of the so-called rebels, as well as all of the other acts of the charter-based government of Rhode Island, were not, according to Luther, constitutionally valid.

In *Luther v. Borden* (1849) – Borden was the state official who had entered the house of Luther and allegedly damaged the property of the latter during a search -- the Supreme Court rejected the idea that the issue of whether a state government was, or was not, republican fell within the jurisdiction of the Supreme Court, maintaining that:

"it rests with Congress to decide what government is the established one in a State ... as well as its republican character."

If the meaning of what it means to have a republican government is not something that can be adjudicated by the courts, then this issue certainly is not something that can be adjudicated by Congress alone without taking into consideration the rights of the people under the amended Constitution. In theory, the amended Constitution was supposed to be a negotiated agreement among a federal government, state

governments, and the people, and, consequently, Congress, acting on its own, does not have exclusive jurisdiction in the matter of determining the meaning of what constitutes being a republican government.

On the other hand, states, acting on their own, do not have exclusive jurisdiction with respect to determining the meaning of what constitutes being a republican government because states derive their authority from the people. Moreover, the rights and powers of the people to have authority over their own lives has been guaranteed by, among other things, the Ninth and Tenth Amendments provided that the exercise of such rights does not interfere with the expression of similar rights by other individuals.

There are only two general forms of republican government. One form is via the electing or appointing of representatives to work on behalf of the people. The other form of republicanism is via the people representing themselves on their own behalf and largely independently of government.

Not everything that is constitutional is a function of government. Not everything that is legal is a function of government. It is possible for people to act both legally and constitutionally without this being a function of what governments do, or do not, permit ... and the Ninth and Tenth Amendments allude to such constitutional, legal, and nongovernmental activities.

The fact that in the 1840s there were disenfranchised people in Rhode Island who sought to gather together in a convention to establish a republican form of government is important because, in effect, almost all Americans have been disenfranchised through the persistent denial of their Ninth and Tenth Amendment rights by all branches of government. People have the right to establish a republican form of government that is responsive to their needs, circumstances, and aspirations, and the elected, representative form of republicanism has shown itself to be frequently incapable of serving the people faithfully or with integrity.

Perhaps, among other things, there is a need for a new round of citizen constitutional conventions through which a form of republicanism might be established that secures, protects, and advances all the rights, powers, privileges, immunities, and liberties belonging to the people that are promised by the amended Constitution. Such a form of republicanism would serve as a buffer against the encroachments of governments into the lives of individuals.

Part II – Sovereignty Regained

Article VI, Paragraph 2, of the Constitution states:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding."

This is often referred to as the 'Supremacy Clause'.

In other words, the Constitution and the laws that are generated in pursuance of actively implementing the provisions of the Constitution are to be considered the supreme law of the land ... notwithstanding any exceptions – either in the Constitution itself or in terms of the laws of the various states – which are in accordance with the provisions of the Constitution. Seemingly, this means that the three branches of federal government are the shapers and determiners of what will constitute the supreme law that is to govern all aspects of life in the United States.

For example, many commentators on, and participants in, the kind of federalist system of government that appears to have been created through the structural character of the

Constitution have long held that state laws that conflict with valid federal statutes are void. On the other hand, what constitutes a "valid federal statute" is not necessarily a straightforward issue.

In contradistinction to what commentators on, and participants in, an alleged federalist system of governance might have assumed concerning the meaning of the Supremacy Clause, the latter clause does not say that the federal government reigns supreme. What it says is that:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof"

are the supreme laws of the land. However, to be valid, none of the laws of the federal or state governments that are made in pursuance of the establishment of the Constitution might violate the principles inherent in the amended version of that document.

The amended Constitution has an entirely different dynamic than does the Constitution without amendments. In the latter case, it is very clear that a tremendous amount of power and authority lies as a potential within the grasp of the elected and appointed officers of a centralized federal government.

To be sure, there is that one little item about the guarantee of republican government to the states that could serve as something of a gadfly to federal aspirations. Nonetheless, other than the ambiguities surrounding the idea of

republicanism -- along with a few phrases in the Preamble which, surely (wink, wink), give expression to nothing more than cosmetic phraseology that can be trotted out every 4th of July only to be quickly retired and forgotten once the parade and fireworks are over -- the Constitution is a document that, prior to the time when amendments were added on, is almost exclusively about how different levels of government go about sharing power in relation to the regulation of the people and their resources.

Yet, once amendments were added to that document, the meaning of the Constitution became subject to a dynamic that was a function of a set of very different variables than existed in the not-yet-amended Constitution. For example, the existence of the 'establishment clause' (in relation to religion) in the First Amendment, the provisions of a grand jury in the Fifth Amendment, the principles and powers inherent in the Ninth and Tenth Amendments, as well as the "involuntary servitude" clause of the Thirteenth Amendment – not to mention the rest of the Bill of Rights and remaining amendments, totally alter the meaning of, among other things, the aforementioned Supremacy Clause.

All federal, state, and local laws are permissible only to the extent that they are consistent with the principles of the amended Constitution. The Declaration of Independence, the Preamble to the Constitution, the Bill of Rights, the promise of republican government to the people of the states,

as well as the Thirteenth and Fourteenth Amendment (especially Section 1) indicate that it is the people who are the ones who are to be served by government, not vice versa ... but, given the way things are today and have been for hundreds of years, the real meaning of the Supremacy Clause of the Constitution has been hidden from the people for quite some time.

Furthermore, the Article I, Section 8, provisions of the Constitution that enable the federal government to levy and collect taxes in order to provide for the common defense and promote the general welfare indicates that such money must be used to serve the purposes of the Constitution. This means, in turn, that in the amended version of the Constitution, the purposes of the people – as determined by the people and not necessarily by governments -- must be served through the use of such taxes.

In fact, although the Constitution does authorize Congress to levy and collect taxes, and although the Constitution does authorize Congress to establish "all laws which shall be necessary and proper for carrying into execution" the powers granted to Congress, none of this can be done if the principles inherent in: the Preamble to the Constitution; the guarantee of republican government; the establishment clause of the first amendment; the grand jury clause of the Fifth Amendment; the powers of the Ninth and Tenth Amendments; the 'involuntary servitude"

clause of the Thirteenth Amendment, and Section 1 of the Fourteenth Amendment are violated.

Many of these ideas already have been explored in the first part of this book, but let's take a look at the idea of a grand jury that is mentioned in the Fifth Amendment.

More specifically, the Fifth Amendment says:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger."

Normally speaking, grand juries are convened by federal and state prosecutors for purposes of conducting a preliminary investigation in order to determine whether sufficient evidence exists to proceed to trial in the case of an alleged crime.

As originally envisioned, a grand jury was intended to serve as a buffer between a powerful government and individuals who might have little power of their own so that a powerful government could not arbitrarily diminish, suspend, or abolish the liberties and rights of powerless individuals. As such, the grand jury was intended to serve as both a first line of defense and a last line of defense against the unwarranted encroachment of powerful branches of government into the lives of the people.

Neither the Constitution nor the Fifth Amendment specifies who might call a grand jury. Normally, as indicated earlier, this is presumed to be legal authorities representing either federal or state governments.

The Constitution does stipulate in Article III, Section 2, Paragraph 3, that:

"The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress might by law have directed."

Nonetheless, a grand jury is not conducting a trial concerning a crime but, rather, a grand jury is conducting an investigation into whether, or not, a crime might have been committed and, if it is determined that a crime was committed, who might have committed such a crime.

Once the grand jury has reached a determination in a matter, then the results of their investigation will be handed over to the appropriate legal authorities for further action in accordance with the constitutional provisions for, if necessary, a trial by jury in the relevant locality. However, prior to the point of determination, a grand jury is empowered to investigate any possibility or set of circumstances in which a crime might have been committed, and to assist

them in such an investigation, a grand jury has the power to subpoena anyone who it deems might have information or expertise relevant to the matter under investigation.

Do the people, as a result of the principles inherent in the Preamble (among which are to establish justice, provide for the common defense and the general welfare) or do the people, as a result of the principles inherent in the 'establishment clause' of the First Amendment, or the provisions of the Ninth and Tenth Amendment, or the 'involuntary servitude' clause of the Thirteenth Amendment, or the principles expressed in Section 1 of the Fourteenth Amendment … given the foregoing considerations, do the people have a right, on their own, to call for a grand jury investigation? What provision of the amended Constitution would prohibit this?

If the government wishes to impede the fundamental rights, powers, privileges, and immunities of the people from being given expression, then, it is up to the government to put forth an argument that is grounded in the amended Constitution that plausibly demonstrates its entitlement to ignore the will of the people. Nonetheless, although government officials who are inclined to thwart the will of the people might issue this or that statement citing a provision of some given state or federal statute, all such federal and state statutes are without constitutional authority unless they can be shown

to reflect the character of the amended Constitution more faithfully and substantively than does the right of the people to convene a grand jury at its discretion and not at the discretion of government.

In fact, there is a prima facie problem concerning conflict of interest on the part of any government official who would seek to throw obstacles in the way of the people asserting their Fifth Amendment rights to convene a grand jury for purposes of determining whether a crime might have been perpetrated. Under such circumstances, the most honorable thing for public officials to do is simply to recuse themselves and to not obstruct the right of the people to protect the community.

Calling for the establishment of a grand jury is not just the right of the people when seeking to ensure that government does not abuse its authority and unjustly seek to convict a person of a crime without proper evidence. Calling for a grand jury is also the right of the people when there is reason to suppose that the government, itself, has used its power to hide evidence of government wrongdoing or used its power to misdirect attention away from some form of injury to the people in which the government has played a role. In either instance, the grand jury is a protection of the people against the power of government.

The duty of a grand jury is not to the state, nor is the duty of the grand jury to the federal

government. The duty of the grand jury is to the people.

The federal government cannot control a grand jury or impose conditions upon it. The state cannot control a grand jury or impose conditions upon it. Rather, the only ones with the power to control what goes on within a grand jury are the people who are sitting on that democratic body.

The members of a grand jury are not bound by any laws except the laws of conscience, common sense, democratic sensibilities, and humane regard for their fellow human beings. Their deliberations need not be in accord with any book of evidential rules but only need to be in accord with, on the one hand, a healthy form of skepticism toward the abuses to which governmental power might be lent and, on the other hand, a rigorous regard for the truth, along with a willingness to ask the kind of questions that are likely to help the grand jury work its way toward establishing the truth of a given matter.

If the people have reason to believe that representatives of government – ranging from the members of city council, to members of state legislative assemblies, to governors, to representatives of the United States Congress, to appointed officials, including Supreme Court Justices, to the Executive Branch – have not faithfully upheld their oaths of office or have not acted in accordance with the requirements of the amended Constitution, then the people have the

right to form a grand jury and investigate such possibilities. The people do not have to wait on federal prosecutors and state prosecutors to convene a grand jury, but, in point of fact, they have the Constitutional right to do so quite independent of government interests and, often, it is not in the interests of government to convene a grand jury, and, therefore, they either do not call for a grand jury to be formed or they fail to clearly inform grand juries that are convened that the members of that grand jury have the right to pursue any matter of interest to them above and beyond the purposes for which a given prosecutor might have called them.

Even if one were to acknowledge the idea that the Constitution does admit to the foregoing idea of the people, independently of government, being able to convene a grand jury on their own, there are some potential practical problems surrounding this possibility. Not the least of these possible difficulties is who gets to convene a grand jury and under what circumstances?

Let's leave aside, for the moment, such considerations. Let's, for the moment, just focus on what a grand jury, as conceived above, might do if one were to permit such democratic forums to realize some of their potential power.

For example, some people's eyebrows might have risen a bit when certain possibilities were mentioned in the foregoing such as the idea that grand juries have a right to investigate the

Supreme Court. After all, isn't the Supreme Court sort of where the buck stops – apologies to Harry Truman notwithstanding? Isn't the Supreme Court sort of the supreme law of the land the place to which everyone looks for the final say on any Constitutional matter?

Well, actually, the answer to these questions is not necessarily. In Article III, Section 1, of the Constitution, one finds the following:

"The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour",

and, consequently, if the people have reason to believe that the Supreme Court Jurists have not behaved well with respect to their observing, honoring, and protecting all the provisions of the amended Constitution, then, the people, through grand juries, have the right to investigate such matters, and, as well, grand juries have the constitutional right to subpoena the Justices so they might be brought in for questioning.

Quite frankly, the Supreme Court Justices might have a lot for which to answer. As was discussed at some length in the first part of this book, Supreme Court Justices often use arbitrary and artificial theories of judicial review to determine what the Constitution allegedly means.

The Constitution did not give them this authority. The Constitution does say that:

"The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects."

However, the foregoing only indicates that the Supreme Court has been given jurisdictional standing to consider cases. Having jurisdiction does not necessarily entitle one to consider those cases in any way one likes.

In fact, being given jurisdiction to hear a case leaves open a whole set of questions concerning how cases for which one has been given jurisdiction are to be settled. What principles of justice and reasoning are to be used to decide such matters?

Obviously, according to the aforementioned 'Supremacy Clause', the Constitution and the laws that are issued in the pursuance of that Constitution are to be considered the law of the land. Presumably, the task of the Supreme Court is

to try to determine whether, or not, laws have been legitimately and validly issued in the pursuance of the Constitution, but this leads to two further questions.

Firstly, what is the nature of the Constitution? Secondly, what are the principles that will demonstrate to the people whether any given instance of laws generated in the pursuance of the Constitution do, or do not, faithfully reflect and serve the requirements of the Constitution?

Part 1 of this book was preoccupied with showing that since the inception of the American republic there has been a persistent and concerted attempt on the part of all branches of government, including the Supreme Court, to ignore the fundamental rights, powers, privileges, liberties, and immunities of the people that have been established through the amended Constitution. This is especially so in relation to the constitutional guarantee of republican government, as well as in relation to: the 'Establishment Clause' of the First Amendment, the powers of the people inherent in the Ninth and Tenth Amendments, the 'involuntary servitude' clause of the Thirteenth Amendment, and the provisions of Section 1 of the Fourteenth Amendment's Section.

Through their decisions, the Supreme Court has repeatedly thwarted the legitimate, constitutional rights, powers, and liberties of the people. Part 1 of this book – limited though it

might be -- has put forth numerous arguments that testify to the soundness of the foregoing claim.

Consequently, the principles inherent in the Preamble to the Constitution demand that there be, at the discretion of the people, the establishment of a true and pure expression of republican government. This includes the action of people in the form of a grand jury that truly represents the interests of the people and, yet, which does not consist of individuals who hold elected office – and that such a democratic and republican body should have the right to investigate the behavior of Supreme Court Jurists and determine whether or not their conduct warrants them continuing to hold office.

Ultimately, it is not the Supreme Court that gets to determine what the nature of the Constitution is, nor is it the Supreme Court that gets to establish whether their arguments -- which seek to establish or disavow the existence of viable and faithful bridges between constitutional provisions and the issuing of laws in pursuance of the amended Constitution – are of such a compelling nature that the people understand why obeying certain laws issued in pursuance of the Constitution is in the interests of the people. Ultimately, the responsibility for deciding the meaning of the Constitution and the extent of the legitimacy of the laws issued in pursuance of the Constitution rests with the

people, for this is the essence of any authentic form of democracy.

When deemed appropriate by the people (and not by the government), Supreme Court Justices must answer to citizens with respect to the theories and methods of judicial review that the Justices use to filter and perceive the Constitution and the laws that are issued in pursuance of the Constitution. When deemed appropriate by the people (and not by government), Supreme Court Justices must answer to the citizens' satisfaction as to why – through the decisions of the Supreme Court -- philosophical, economic, and political ideologies and agendas are being thrust upon the people like so many government-established religions, or why – through the decisions of the Supreme Court -- philosophical, economic, and political ideologies are being used to force the people into government mandated forms of 'involuntary servitude', or why – through the decisions of the Supreme Court – the Ninth and Tenth Amendment rights of the people are being ceded away to governments and corporations, or why – through the decisions of the Supreme Court – the people are being denied the right to establish republican forms of self-governance that are independent of, but complementary to, forms of republicanism that are restricted to elected representation.

Moreover, anyone who tries to say that the idea of republican forms of self-governance that are independent of, but complementary to, the idea

of elected, representative, republican government is a whimsical myth fails to see what is taking place in every city, county, and state within the United States nearly every day of the week. More specifically, grand juries and trial juries are both expressions of republican self-governance that are independent of, but complementary to, elected, representational republican government. Furthermore, there is absolutely no reason why the people – if not oppressively prevented from doing so by governments that fear losing power to the people – couldn't devise other modalities of republican self-governance that are independent of, but complementary to, that government that arises through elected representational forms of republican governance.

Just as Supreme Court Justices might be subpoenaed and questioned by a grand jury, so too, might members of Congress. Article I, Section 1, of the Constitution indicates that Senators and Representatives:

"shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place."

A grand jury subpoena does not constitute arrest and, therefore, the members of Congress are

not privileged to refrain from acting in accordance with the requirements of that subpoena (except, possibly, in the case of going to or from an active session of the House to which they have been elected). Moreover, if there is reason to believe that members of Congress might have been guilty of betraying their oath of office, or have failed to uphold the provisions of the amended Constitution, or have sought to cede away rights to different branches of government that, in reality, belong to the people, or have committed breaches of the peace through denying the people the rights, powers, privileges, immunities, and liberties that belong to the people, or might have committed some form of felony, then, members of Congress are just as much subject to answering to the people through the agency of a grand jury as is anyone else about whom there might be some question concerning whether, or not, a crime has been committed. And, while, according to the Constitution, Senators and Representatives might not be questioned in any other place concerning things said during speeches and debates within either House of government, the provisions of the Constitution do not protect members of Congress from having to answer to the people for a voting record that seeks to establish laws that are not in pursuance of the Constitution as required by Article VI, Paragraph 2 of the Constitution.

Notwithstanding the foregoing considerations, grand juries cannot be used as a tool of political

persecution. For example, if an elected or appointed representative happened to pursue his or her oath of office in a way that was not to the liking of a given group of individuals, then, the latter group cannot try to form a grand jury in order to harass the public official in question. Grand juries cannot be used for frivolous purposes or to further the agendas or political ideologies of its members, and, in fact, before being impaneled grand jurors must swear an oath that is a binding and sacred oath that is fairly detailed and exacting in its requirements for diligence, sincerity, honesty, impartiality, and a rigorous search for the truth on the part of the participants in such a grand jury proceeding.

Furthermore, if a no bill [of indictment] is passed by a grand jury, then whatever deliberations, testimony, and investigation have taken place must be kept secret. Therefore, such grand jury proceedings could not be used as a forum for trying to embarrass elected officials.

However, once a grand jury has been convened by a prosecutor, then it is free to pursue whichever events or issues it considers of relevance and importance that suggest the possibility that some sort of crime might have been perpetrated against the people of the jurisdiction within which the grand jury has been convened, and these events/issues need not have anything to do with the purposes for which the

grand jury might have been initially convened. While the judge who instructs the members of a grand jury concerning their duties is supposed to make it clear that the members of the grand jury are free to explore whatever issues they consider to be of importance with respect to possible criminal activity against the people even when this is unrelated to the purposes for which a prosecutor might have convened the grand jury, judges do not always properly instruct or educate the members of a grand jury about the incredible power that the latter individuals have to serve the interests of democracy.

In short, grand jurors have the right to take charge of the proceedings of a grand jury and determine the direction it will lead and the scope of those proceedings without needing the consent of the government to do this. Moreover, all of this is funded by money that has been levied on, and collected from, taxpayers.

Under Article I, Section 5, of the Constitution, one discovers that:

"Each House might determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member,"

but these are matters that concern the established procedures through which each institution seeks to go about its business in an orderly and agreed upon manner, and the above

mentioned section of the Constitution is not intended to encompass whether, or not, a given Senator or Representative has conducted herself or himself in a manner that upholds their oath of office – namely:

"I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter: So help me God."

So, in cases where a Senator, Representative, or an elected or appointed official at the federal level is engaged in some sort of activity that involves more than merely abusing the procedural rules of the House or Senate, and, instead, involves activity of a kind that gives expression to a failure to fulfill the duties and responsibilities to which the above sort of oath of office commits a person (such as permitting lobbyist and campaign contributions to influence or determine one's vote or such as permitting corporate interests to undermine and effectively deny the rights of the people), then, initially at least, such individuals might best be investigated through a means other than the House or Senate. This sort of investigation could be done by a grand jury.

Article 1, Section 2, Paragraph 5 of the Constitution stipulates that the House of Representatives:

"shall have sole power of impeachment."

Article II, Section 4, of the Constitution states:

"The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors."

Finally, the Constitution also stipulates in Article I, Section 3, Paragraph 7, that:

"Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law."

I'm not certain whether a failure to fulfill the requirements of the public oath of office quoted earlier (such as defending the Constitution against all enemies ... including domestic ones in the form of lobbyists or corporations) constitutes treason, and/or a high crime, and/or a misdemeanor, but whatever the case in such

instances, those acts are something that a grand jury could pursue as a legitimate area of investigation under its mandate.

Moreover, if a grand jury were to investigate a Senator or Representative within its jurisdiction in relation to, say, a failure to fulfill her or his oath of office with respect to defending the Constitution against all enemies -- including domestic enemies (which could be individuals or corporations that act against the interests of the people of the United States) -- and if that grand jury were to find sufficient evidence to warrant passing an indictment against such a person, then one possibility might be for the indictment to be passed on to the House of Representatives so that they might issue articles of impeachment concerning the Senator or Representative, and another possibility might be to pass on the indictment to a state prosecutor for appropriate disposition. One problem with each of the foregoing possibilities is that neither the House of Representatives nor a prosecutor is under any obligation to act on such an indictment, and so this raises the problem of what to do when governmental power is used to thwart the will of the people ... and the same problem arises when elected representatives might have become so corrupt that even if articles of impeachment were drawn up and a Senator or Representative was tried before the Senate that one could not achieve the required vote of two-thirds of its members because all of them might be

looking at the defendant with the sympathetic eye of self-preservation which acknowledged that 'there but for the Grace of God go I' and, as a result, vote not to have the individual removed from office even though a great disserve might be done to the amended Constitution and the rights of the people in the process.

Consequently, if a grand jury were to vote for an indictment on some given issue, but a prosecutor or the House of Representatives refused to act on that indictment, then the will of the people might have been effectively thwarted by representatives of the government. This is so because even though state prosecutors are elected to serve the people, and even though federal prosecutors are appointed through the Office of the Attorney General and are supposed to serve the people, and even though the House of Representatives was specifically given the task of representing the people, the fact of the matter is that elected and appointed officials of the government don't necessarily always serve the interests of the people, and a prosecutor's rebuffing or the House of Representatives rebuffing of an indictment from a grand jury might give expression to such a possibility.

The foregoing does suggest, however, that there might be limits on the extent to which he members of a grand jury might be able to help defend the Constitution, democracy, and their fellow citizens. However, as will be discussed shortly, the existence of such a problem in

relation to the idea of a grand jury might also point to a possible way of resolving this sort of dilemma.

I believe no one can put forth a successful argument that justifies why any form of man-made government should have the right to give itself priority over the needs and rights of people.

The possession of might does not justify such oppression. Nor does the advancing of various forms of philosophical, political, economic, or theological theories of life justify such oppression ... although, unfortunately, those who seek power frequently confuse rationalization with authentic justification.

In fact, for any individual to seek authority over another – i.e., the so-called 'leadership' quest -- is often an indication that some form of pathology is present. Yes, we each have a duty of care with respect to contributing to and protecting the welfare of others … both in relation to people we love as well as with respect to the stranger.

However, such duties of care have nothing to do with seeking power and authority over other human beings. Even a parent cannot justify seeking to control a child for the sake of control and authority, but, rather, this must be done in conjunction with principles of justice that respect and secure an individual's integrity as a person and

not as a piece of chattel, whether within a family or within society in general.

No democratic form of government gives up anything to come into existence as an institution. In fact such an institution could not have come into existence without the participation and sacrifice of people.

It is the government that owes a duty of care to those who have expressed willingness to forego certain actions in exchange for a faithful enactment of that duty of care. When governments abandon such a duty, then, the people are no longer required to obey such a government, and although such governments might seek to use threats, various forms of duress, and outright physical force in order to perpetuate their dereliction of duty, this sort of activity is understood by all people to give expression to acts of tyranny, corruption, and treason against the people.

A constitution is a social contract of a people amongst themselves. If the executors of this constitution – that is, government officials, representatives of the people, and the various systems of court – should betray the underlying contract, then, such a constitution stands null and void.

Each generation is required to reaffirm this compact – not in terms of how things were done in the 18th century – but in terms of the basic meaning of a constitution that gives expression to a promise to the people who exist subsequent to the formation of such a social compact that their

rights and powers will be secured, protected, promoted, and realized by the executors of the constitution. The glue that holds such a compact together is neither legal nor institutional nor governmental, but, rather, the necessary glue is the willingness of people to invest their trust in a process that does not seek to oppress them.

The executors of government are like the executors of a will who might get paid to serve as executors, but they do not have any right to change the nature of the will nor to use their position as executors to serve their own interests independently of the person or people who drew up the will. The purpose of the executors is to bring about the provisions of the will that were written to serve the people being provided for in the will and that were not meant to serve the interests of the people who are performing the function of being executors of that will. Unfortunately, government officials all too frequently have behaved like the executor of a will who, without authority or justification, have introduced all manner of foreign, alien, inappropriate elements into that document that specify -- although not part of the original will -- that, nonetheless, the will must now serve the interests of the executors.

Considered from another direction, the government, independent of the people, is an empty, lifeless container that has form and nothing else. The container has no rights of its

own; it has no life of its own; it has no purposes of its own; it has no desires of its own.

People become citizens by breathing life into the aforementioned inert container through their act of basic trust that proclaims that by investing political and legal life in such a container, the container will not seek to become an autonomous entity intent on oppressing the very individuals who give it life. Life is breathed into the container with the purpose of setting in motion the principles and processes inherent in the form of the container (placed there by people) that are intended to serve the people who are breathing life into such a container.

Like the Disney version of the 'sorcerer's apprentice', the apprentice -- in the form of government officials -- has decided to pick up the wand (the Constitution) of the conjuror when the Sorcerer (known, otherwise, as the people) momentarily leaves the room (i.e., the halls of government). The sorcerer assumes that the apprentice will behave in accordance with the rules and principles of ethical decorum by which sorcerers govern themselves.

Instead, the apprentice has taken it upon himself or herself to wave the sorcerer's wand about and mumble arcane phrases as if he/she knew what he/she was doing and, all of a sudden, corporations, among other ghoulish entities, have been conjured up to act as if they were real human beings (just like the water-bearing mops in the Disney cartoon). Yet, these nightmarish

monstrosities are completely devoid of any semblance of soul and are only intent on obeying their prime directive of making profits for the share holders (symbolized in the cartoon by the dumping of more and more water) irrespective of what damage this mindless pursuit might do to others, and, in the process, unleashing tremendous, unruly and ungovernable destructive powers onto the kingdom.

When Mickey Mouse finally was caught in the act by the returning sorcerer -- after things had gotten out of control -- Mickey was cute in his embarrassment, knowing that he had exceeded his role and function as nothing but an apprentice to the real source of power (which in our political morality tale represents the people). Unfortunately, government officials (including Supreme Court Justices) who have been caught in the act of waving the Constitutional wand about in an attempt to serve themselves are not nearly so cute – especially given that they seem to have no sense of embarrassment or shame with respect to the manner in which they have behaved so irresponsibly and unethically as a trusted executor of the will of the people in the absence of the sorcerer.

Moreover, just as it is only the sorcerer who could restore order to the mythical kingdom of Mickey Mouse through a wise exercise of power and proper use of the wand (i.e., the Constitution), so too, it is only the people who have the wisdom and power to stop the destructive activities of

government officials -- as well as stop the activities of the demonic corporations that such officials have spawned and set loose on the world through the ineptitude of the apprentices who were fooling around with the Constitution in the absence of the people.

Unfortunately, governments -- like corporations who mysteriously have become persons – have, somehow, arrogated to themselves the right to exist as autonomous entities that owe no rights to the people but only owe allegiance to their own self-serving agendas. People – not in the sense of legal fictions created by clever layers and politicians to be able to corrupt the Constitution – but people as real, living expressions of biological, psychological, emotional, and spiritual being who have rights and powers guaranteed to them by the Constitution ... rights that were not guaranteed to corporations.

A corporation is not a human being. Like government, it is an inert container that is given life by the people who do so on the grounds that such a container – or, more specifically, the individuals who have been appointed to serve as executors of its principles -- will not be permitted (by the judicious and wise activities of its executors) to betray the trust through which the corporation has been brought into existence.

However, when corporations seek to thwart, obstruct, undermine, constrain, diminish, abolish, or oppress the interests and will of the only beings on this planet who deserve and are

entitled to the term "person", then, the executors of corporations act in accordance with the same logic as do the executors of governments who operate under the delusion that they are the reason why a Constitution has been written. Unfortunately, the executors of government have betrayed actual biological people by permitting corporations to become 'persons' and to give them constitutional standing to assert their claims that government must serve the interests of such corporations as 'persons' rather than as purely economic entities that have no constitutional standing in the compact that was established among human beings as biological individuals of worth and integrity and not as institutions of a purely derivative, legal nature.

People existed before corporations. Corporations, like governments, should serve at the pleasure of all the people, and not just some of them.

I believe that much of what has taken place in government – both on a federal level and on a state level – give expression to unconstitutional activities. These unconstitutional activities have shaped virtually every aspect of life in America.

The First Amendment rights of people have persistently been ignored as governments and the Supreme Court have sought to establish

ideological equivalents to religion and force these ideological systems upon the people. The Ninth and Tenth Amendment rights of the people have consistently been ignored by both government and the Supreme Court. The 'involuntary servitude' clause of the Thirteenth Amendment has repeatedly been violated as governments and the Supreme Court have sought to induce the people to live in accordance with purposes, methods, values, and ideas that have relegated the people to a status of servants to government or judiciary programs of public policy. The aspirations for additional forms of republican self-governance have consistently been stymied by those in government who feel threatened by the idea that people should be able to exercise power to run their lives in mutually agreeable ways that are independent of government.

Out of control limited liability corporations, a despoiled environment, compulsory education whose costs are ever increasing despite diminishing returns, poverty, a huge national debt -- which, among other things, has rendered the people vulnerable to the agendas of foreign governments, a health care system that is a source of embarrassment with respect to the tens of millions of people who must survive without adequate health care and that places many others in imminent danger of financial collapse, endless wars, homelessness, the best democracy money can buy, a Supreme Court system that seeks to impose its

constitutional delusions onto the people, government officials who often are at the behest of special interest groups both through lobbyists as well as through campaign contributions, elections that are far from democratic either with respect to process or results, elected officials who often only represent themselves and/or are engaged in endless rounds of partisan bickering like quarreling children, a troubled tax system that exists largely for the purpose of subsidizing the defense industry and paying interest on an ever-increasing national debt, a decaying and increasingly unreliable infrastructure ... the foregoing issues and many more are what have been bequeathed to us by a system of governance that has taken the potential and promise of 1776 and almost completely has destroyed and corrupted that promise by pursuing courses of action that are consistently and persistently unconstitutional.

The Executive Branch, the Congress, and the Judiciary do not have a right to impose upon citizens the former's ideologically driven ideas about justice, domestic tranquility, the common defense, the general welfare, or individual liberties. The people ought to be working this out among themselves, in accordance with principles of republican self- governance, arrangements that are not vulnerable to the self-serving attempts of either presidents, members of Congress, or the Judiciary to undermine such republican efforts.

Grand juries work better than government. Trial juries work better than government. Both of these are non-elected expressions of republican government that are independent of, but work in association with, government institutions.

I propose that there needs to be a new amendment added to the Constitution. This amendment would give expression to the establishment of a form of republican government that would serve a very much needed function in America – the oversight of government on behalf of the people. This amendment would give expression to the principles inherent in the Preamble to the Constitution, as well as to the constitutional guarantee of republican governance, as well as to the right of the people to be free of the government's attempt to establish ideological-equivalents to religion through public policy, as well as to the provisions of the Ninth and Tenth Amendments, as well as to the right to be free of all forms of 'involuntary servitude' that governments and the Supreme Court devise through unconstitutional abuses of power, as well as to the protections of Section 1 of the Fourteenth Amendment.

The proposed amendment might be referred to as the Citizens' Oversight Grand Jury Amendment. It would be modeled on the already existing form of grand jury but with expanded powers ... powers that are in keeping with not only the constitutional guarantee of republican

government, but, more importantly, powers that are in keeping with the potential scope of both the Ninth and Tenth Amendments and that consistently have been denied to the people through the arbitrary fiats of both government and the Supreme Court as has been pointed out in some detail in Part 1 of this essay.

None of the three branches of government has been given express authority to oversee the workings of government. Rather, each, in its own way, carries out certain functions within the provisions of the Constitution.

Congress gets to make laws that, supposedly, are in pursuance of the Constitution. In addition, among other things, Congress gets to declare war.

The President gets to serve as Commander in Chief of the military, but this does not, it should be added, make the President Commander in Chief of the people. The Executive Branch also gets to affirm or veto laws that are made by Congress – or, more specifically, according to Article 1, Section 7, Paragraph 2 of the Constitution:

"Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that House shall

agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a law. ... If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law."

The Supreme Court is given jurisdiction to consider whether, in its opinion, Congress or the Executive Branch are operating in compliance with what allegedly is meant by 'being in pursuance of the Constitution'. Also, somewhat ironically, the Supreme Court also gets to pass judgment on whether past incarnations of the Supreme Court were functioning constitutionally, and, in a manner that has disquieting ramifications, the Supreme Court has, for more than two hundred years, gone on record and openly admitted that various decisions by different Supreme Court Justices were unconstitutional and needed to be overruled, and as a result, raises the question of whether anyone serving on the Supreme Court actually knows what he or she is doing in a way that can be clearly and convincingly justified to the people.

In any event, the Constitution has not given any of the branches of government express powers of oversight through which to monitor whether the interests, rights, liberties, powers, privileges, and immunities of the people are being secured, protected, and advanced by government. Although, in practice -- through the doctrine of judicial review -- the Supreme Court has taken it upon itself to make judgments about whether the different branches of government, including state governments, were acting in accordance with the idea of being in pursuance of the Constitution, and, in passing, this has affected the rights of individuals (sometimes constructively and sometimes destructively), there is nothing in the Constitution that gives exclusive rights and powers to the Supreme Court to provide the function of oversight to determine whether the people's interests are being served. In fact, individual citizens as private third parties are rarely given constitutional standing before the Supreme Court.

Instead, the Supreme Court has tended to view itself as guardians of what the Constitution does, or does not, permit in the sense of a structural process rather than in terms of seeking to establish substantive outcomes of that process. Notwithstanding the foregoing considerations, in practice, structure and substantive issues are often hard to disentangle.

Whatever the functions of the different branches of government might be under the Constitution, the people are much better able to look after their own interests, rights, powers, privileges, and immunities than are any of the branches of government. In fact, the different branches of government often suffer various kinds of conflict of interest with respect to both, on the one hand, serving the interests of the people and, on the other hand, serving the interests of government.

The proposed Citizens' Oversight Grand Jury Amendment would consist of one national, federal grand jury, and 50 state grand juries, and each would have jurisdiction in their respective areas. They would all be funded by public monies.

Each grand jury would consist of members who would be drawn from a pool of prospective participants who represent a cross-section of the population: women, men, rich, poor, Christians, Jews, Muslims, Hindus, Buddhists, the non-religious, blue-color workers, executives, Blacks, Latinos, Native Americans, Whites, Democrats, Republicans, Independents, and so on. Moreover, every effort would be made to ensure that the actual grand juries would actively reflect such a cross-section of individuals.

An initial 'Selection Committee' -- which would serve strictly as an organizer of what would be, in effect, a process of selection involving a designated pool of randomly selected candidates – is to be determined by a

lottery involving (and this is just one possibility) the 50 smallest high schools in America (the smaller the school, the harder it becomes for 'outsiders' to tamper with the process of organizing the truly random selection of grand jurors.) There would be one high school from each state involved in this process.

The designated high school in each state would involve mostly students (with some minimal faculty assistance) to select a pool of candidates of 100 people from their states who satisfied the basic criteria for serving on the proposed Citizens' Oversight Grand Jury and who would be willing to serve on such a grand jury for a period of two years. From this pool of candidates, the students and faculty would hold an open, public draw in which the names of two candidates would be selected from that pool in a blind manner, and these individuals would be the state's candidates for serving as representatives to the National Citizens' Oversight Grand Jury.

Subsequently, the 50 selected high schools would also go about establishing a pool of candidates, in a similarly random fashion, consisting of individuals who resided in each county in the state where the high school was located. The designated high school would proceed to have an open, public blind draw in which candidates would be drawn until every county in the state was represented.

The term of service would be for two years and could not be repeated. People whose

circumstances were such that they were not in a position to give two years of public service would be excused without having to show cause. Only people who were willing to offer such public service would be included.

The qualifications for serving could be roughly similar to what goes on with regular grand juries. The participants would have to possess some basic, minimal facility with English (including reading, writing and speaking), be of sound mind, be emotionally stable, not be suffering from some active form of addiction, not have been convicted of any felony or have been institutionalized for mental disturbance, and, as well, be a citizen of the United States.

People who worked for any branch or division of federal, state, or local government – including the military, National Guard, and law enforcement -- would not be eligible to serve on the Citizens' Oversight Grand Jury. In addition, anyone who was a professional, paid political lobbyist or who was a corporate executive or who sat on the Board of Directors of any limited liability corporation, or anyone else who could be shown to have a conflict of interest with respect to, on the one hand, either serving the interests of government over against the interests of the people, or, on the other hand, serving the interests of limited liability corporations over against the interests of the people (for example, there are many people who work in the media who march to the tune of corporate/ and or government

interests and, therefore, could not be trusted to fulfill their grand jury responsibilities with integrity) – none of these individuals would be permitted to serve on the proposed Citizens' Oversight Grand Jury.

In addition, there would be a minimum age requirement. This would be set as the same age as what is necessary for a person to run for the House of Representatives ... namely, being 25 years of age.

The National Grand Jury would consist of 100 people. There would be two individuals selected from each state.

The state grand juries would consist of one person from each county. Because different states vary in the number of counties that exist, the number of participants in state grand juries would vary from state to state.

With the exception of the first set of Citizens' Oversight Grand Juries that are established through the process outlined previously involving high schools, each succeeding set of grand jurors would be selected through a random process. This process would be conducted and organized by the currently sitting Citizens' Oversight Grand Jury members in accordance with the basic requirements for identifying potential future grand jury members and for ensuring that the succeeding grand jury was representative of a cross-section of the people.

The National Grand Jury would 'select' its successors through a random, blind process drawn from among a pool of randomly selected candidates. The state Grand Juries would also 'select' their successors through the same kind of random, blind process from among a pool of randomly selected candidates who satisfied the basic criteria of selection.

All candidates for either the National or the State Grand Juries would have to fill out an affidavit attesting to their compliance with the criteria for being a grand juror as well as to their willingness to serve for a two year period. Once selected, the prospective jurors would have their affidavits checked for accuracy by local law enforcement, and once the accuracy of the information had been verified such individuals would have been cleared to assume their positions on the various grand juries for which they had been selected.

The participants would be full-time and could not lose whatever position of work they held prior to being called to public service. The participants, and their families, also would be sequestered in gated, secure compounds to which the outside world would have limited access but that the participants could leave as needed as long as they kept a log of all contacts established in the external world. In addition, although sequestered, the participants would have access to whatever information, books, newspapers,

magazines, services, or witnesses they needed in order to fulfill their function.

The members of the grand juries would be compensated equally. They would receive a compensation that cannot be less than $50,000, adjusted for inflation and, as well, would include a full housing allowance, travel allowances, health care, daycare where needed, and educational provisions for the children of the participants.

All deliberations of the respective grand juries would be done in secret. Moreover, once completed, the deliberations of the various grand juries would be made available to the public through different means including a set of public broadcast channels that would be used exclusively to communicate with the public concerning the activities of the various grand juries.

The powers of these grand juries would be seven in number:

Firstly, the grand juries would be able to investigate, with full subpoena power, not just the possibility that elected officials might have failed to live up to their oaths of office, but, as well, investigate and criticize any aspect of governmental service or corporate activity that problematically impinges on the rights, powers, liberties, privileges and immunities of the people;

Secondly, in the case of the National Grand Jury, the grand jury would be able to issue indictments calling for the issuing of articles of

impeachment by the House of Representatives, and in the case of state grand juries they would be able to issue an indictment that would be forwarded to whatever state judicial authorities had jurisdiction in such matters;

Thirdly, such grand juries would be able to conduct citizen impact studies on all proposed legislation -- similar in character to environmental impact studies but focusing on the rights, liberties, and powers of the people -- and either prohibit legislation going forward prior to its being voted on by either Congress or state legislative assemblies (although subsequent to such legislation having been discussed and put in its final pre-vote form), or the grand jury could modify the nature of the legislation so that it did not undermine, compromise, diminish, exploit, or abolish the rights, powers, liberties, privileges and immunities of the people – for example, through the elimination of all riders to a bill that had nothing to do with the stated purpose of the bill ... Congress might have exclusive right to pass laws, but the Constitution does not specify that they are the only ones who might have a hand in shaping the form of the proposed statute that gets voted upon;

Fourthly, the federal and state grand juries would have the power to subpoena Supreme Court justices – on either the state or federal level respectively – to explain their decisions

and to demonstrate how their judicial opinions did not violate, diminish, undermine, compromise, weaken, or harm the rights and powers of the people in arbitrary ways that cannot be reconciled with the provisions of an amended Constitution as have been outlined in Part 1 of this essay, and if they could not do this to the satisfaction of two thirds of the National Grand Jury and two-thirds of the State Grand Juries, then, the ruling of the Supreme Court would be declared unconstitutional;

Fifthly, the National Grand Jury, in conjunction with the State Grand Juries, would have the right to decertify a war (Congress only has the right to declare war) that had been sanctioned by Congress provided that two-thirds of a sitting National Grand Jury and two-thirds of the sitting State Grand Juries voted in favor of such a decertification. In effect, this would mean that, among other things, Congress could no longer be entitled to fund any war that it had declared;

Sixthly, the grand juries would have the power to investigate the use of tax revenues to ensure that issues such as poverty, hunger, homelessness, health care (both mental and physical), education, and infrastructure are met prior to the demands of the Defense Department and Homeland Security. The very best way to establish and realize the principles of the Preamble -- such as: justice, domestic tranquility, common defense, the

general welfare, and liberty for ourselves and our posterity -- is to ensure that the people are well looked after and that their rights, powers, privileges, immunities, and liberties are properly secured, protected, and advanced. If this is done, the people on their own will be committed to struggle to ensure that no enemy, foreign or domestic, will be able to abolish, and they will do so in a way that neither the Defense Department nor Homeland Security will be, or has been, able to accomplish, as well as at a cost that will be hundreds of billions dollars less than what is required by the aforementioned government agencies to pursue their ends ... often in totally dysfunctional ways;

Seventhly, the proposed grand juries would have the right to effectively decertify whatever presidential signing statements or executive orders have been issued by the Executive Branch that are considered not to be in the interests of the people or that threaten the rights, powers, liberties, privileges, and immunities of the people. This would be accomplished through a two-thirds vote of the National Grand Jury and a two-thirds vote of the respective State Grand Juries.

The proposed Citizens' Oversight Grand Jury Amendment gives expression to a thoroughly republican form of self-governance which does not depend on elected representatives, campaigns, financial corruption

of the election process, poll-driven campaigns, the potential for various kinds of election fraud, or the possibility that once elected, representatives often go about their own ideologically and financially driven agendas which end in partisan gridlock and ineffective elective representation. The proposed Citizens' Oversight Grand Jury Amendment gives expression to an effective and powerful way for the rights, liberties, powers, privileges, immunities and aspirations of the people to be secured, protected, and asserted over against the machinations of governments that often are engaged in activities that seek, openly or clandestinely, to oppress and enslave people against their individual or collective will. The proposed Citizens' Oversight Grand Jury will ensure the accountability of all government officials – both elected and appointed.

Convening Constitutional Conventions

According to Article V of the Constitution:

"The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification might be proposed by the Congress."

However, the Constitution also guarantees a republican form of government to the various states. Consequently, although the provisions of Article V do indicate two ways in which the Congress might bring about amendments to the Constitution, these ways are not necessarily either expressly reserved for Congress nor are they exhaustive of possibilities concerning how the democratic process might make possible a truly republican mode for adding amendments to the Constitution.

The provisions of Article V are not exhaustively or expressly reserved for Congress because it is not possible for the people to have truly republican forms of self-governance if it is

left to government to dictate what rights the people do, and do not, have. The whole idea of the Bill of Rights is to prevent government from seeking to oppress the people in this and similar manners.

Under the Ninth and Tenth Amendments, the people have the right to establish constitutional conventions that are directed toward considering amendments to the constitution that protect the rights of the people over against government. Congress, the Executive Branch, the Supreme Court, and state governments all have a conflict of interest in seeking to deny the people their Ninth and Tenth Amendment rights to establish constitutional conventions for purposes of amending the Constitution to protect against government encroachment upon the rights, liberties, and powers of the people.

Just as the Declaration of Independence acknowledged the right of people to assemble among themselves to seek to work out arrangements of self-governance, so too, does the Declaration of Independence, the Preamble to the Constitution, the constitutional guarantee of republican self-governance to the people of the respective states, the Ninth and Tenth Amendments, the 'involuntary servitude' clause of the Thirteenth Amendment along with Section 1 of the Fourteenth Amendment acknowledge the right of people to establish their own constitutional conventions for considering the

introduction of whatever additional amendments to the Constitution as might be deemed necessary. However, the conventions that might be called in our times to explore such possibilities must be more reflective of the cross-section of the peoples who exist in America than was the case when the ones who were delegates to the constitutional conventions in the early days of this Republic tended to appoint themselves in a very undemocratic way.

Town Hall government and the jury system are the purest forms of democracy. In such circumstances, people assemble among themselves and negotiate their form of self-governance.

Surely, constitutional conventions can come together in each state for the same purpose. In the case of a possible convention for discussing and voting on a 'Grand Jury Oversight Amendment', people could gather among themselves and vote on a set of delegates who are inclusive and representative of different categories and classes of people. These delegates would then come together to discuss the proposed amendment and formalize some statement that gives expression to such an amendment.

These formalized statements could be shared with other state conventions to try to fashion some sort of unified, final statement that could be agreed upon by two-thirds of the participants. Once such a document existed,

the various state constitutional conventions could vote yea or nay to the proposal, and if two-thirds of these constitutional conventions voted in favor of the proposed amendment, then it would be incumbent upon the government to accept the will of the people on this matter.

Of course, Congress or the Executive Branch might rebuff such a vote, or, alternatively, the Supreme Court could, on the basis of completely arbitrary and indefensible grounds, try to rule that such a vote is unconstitutional. However, if the government pursued either avenue, it would precipitate a constitutional crisis from which America might never recover and, in the process, clearly demonstrate to everyone that governments only wish to have control over people and have no sincere interest in granting the people their fundamental rights, principles, liberties, powers, privileges, immunities, guarantees, and protections that are contained in the amended Constitution of the United States.

There may be some who might wish to argue that having average, unelected individuals play such a formative role in democratic governance is a mistake. Yet, the members of a grand jury or a trial jury are unelected, average individuals who play a fundamental role in the process of democratic governance that helps, in substantial ways, to improve the quality of life across the country.

In addition, I think that I might be more inclined to place my trust in honest, moral, hardworking, concerned, sincere, average individuals who use common sense and have a healthy skepticism toward government of any kind than I would be inclined to place my trust in people who considered themselves to be 'leaders' and are often arrogant, condescending, and indifferent to how average people look at the process of democracy. I believe that in many, but not necessarily all cases, average people see life a lot more clearly, insightfully, and compassionately than do many elected and appointed government officials.

Furthermore, one quality of many average people is that they seem to have a natural kind of resistance toward trying to tell other people how to live their lives. On the other hand, those who consider themselves to be leaders have a finely honed sense of entitlement concerning their presumed right to find ways to compel, manipulate, or induce others to act in accordance with the so-called 'leader's' agenda.

The oaths to which people attest when they begin serving on a regular grand jury vary from state to state. However, they all tend – each in its own way -- to give expression to the seriousness of the responsibility and the integrity with which a grand juror must seek to fulfill her or his duties

of care in relation to grand jury deliberations. The following is just one example and indicates how the duties of being a grand juror are often spelled out in more detail and somberness of purpose than is the case with respect to the oath of office that is taken by the President, Vice President, a Senator, or a Representative.

"Do you, and each of you, solemnly, sincerely, and truly declare and affirm that as members of the grand jury of the State of: _____ for the County of: _____ you will diligently inquire and true presentment make of all matters and things as shall be given you in charge, or otherwise come to your knowledge, touching this present service, and do you further swear (or affirm) that the counsel of the State, your fellows, and your own, you shall keep secret, and that you shall present no person for envy, hatred, or malice, nor shall you leave any person unrepresented because of fear, favor, affection, reward, or the hope of reward, and do you further swear (or affirm) that you shall present all things truly as they come to your knowledge, according to the best of your understanding, do you so affirm?"

The foregoing analysis and proposals are intended to generate discussion. What has been said here is not assumed to be definitive, and many

people who may come to read this book are likely to have ideas of their own to throw into the mix.

This is a good thing, but the time for discussion and emendations must not go on indefinitely. At some point, before it is too late, people are going to have to act in order to secure, protect, and assert their legitimate rights, liberties, and powers ... for, to paraphrase someone else, evils are able to perpetuate themselves to the extent that good people do nothing.

This document provides a peaceful way to seek a transition to a new mode of constitutional arrangement between the people and government. I believe that what is being proposed here would benefit both governments and the people. I believe that what is being proposed here is thoroughly democratic. I believe that what is being proposed here is thoroughly republican. I believe that what is being proposed here is completely consistent with the amended Constitution, and I believe that many readers will find resonance with much that has been given expression through the foregoing pages.

As previously noted, Wendell Phillips declared in 1852 that:

"Eternal vigilance is the price of liberty."

The proposed Citizens' Oversight Grand Jury Amendment could help all Americans to maintain

such vigilance in a peaceful, democratic, republican fashion.

THE CONSTITUTION OF THE UNITED STATES OF AMERICA

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.

Article I

Section 1. 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.

Section 2. The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a Representative who shall not have attained to the age of twenty five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may

be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term often years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each state shall have at least one Representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

Section 3. The Senate of the United States shall be composed of two Senators from each state, chosen by the legislature thereof, for six years; and each Senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall bebe divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no person shall be convicted without

the concurrence of two thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Section 4. The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Section 5. Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each House may provide.

Each House may determine the rules of its proceedings, punish its members for disorderly

behavior, and, with the concurrence of two thirds, expel a member.

Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one fifth of those present, be entered on the journal.

Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

Section 6. The Senators and Representatives shall receive a compensation for their services, to be ascertained bylaw, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time: and no person holding any office under the United States, shall be a

member of either House during his continuance in office.

Section 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other Bills.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of

Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Section 8. The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and

inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased

by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings; --And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Section 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto Law shall be passed.

No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to, or from, one state, be obliged to enter, clear or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

Section 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign

power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

Article II

Section 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected, as follows:

Each state shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the

President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each state having one vote; A quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President.

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty five years, and been fourteen Years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:--"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

Section 2. The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses

against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Section 3. He shall from time to time give to the Congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully

executed, and shall commission all the officers of the United States.

Section 4. The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

Article III

Section 1. The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Section 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more states;-- between a state and citizens of another state;-- between citizens of different states;--

between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

Section 3. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

Article IV

Section 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Section 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Section 3. New states may be admitted by the Congress into this union; but no new states shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states,

without the consent of the legislatures of the states concerned as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

Section 4. The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

Article V

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any

manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

Article VI

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Article VII

The ratification of the conventions of nine states, shall be sufficient for the establishment of this Constitution between the states so ratifying the same.

Done in convention by the unanimous consent of the states present the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty seven and of the independence of the United States of America the twelfth. In witness whereof We have hereunto subscribed our Names,

G. Washington-Presidt. and deputy from Virginia

New Hampshire: John Langdon, Nicholas Gilman

Massachusetts: Nathaniel Gorham, Rufus King

Connecticut: Wm. Saml. Johnson, Roger Sherman

New York: Alexander Hamilton

New Jersey: Wil. Livingston, David Brearly, Wm. Paterson, Jona Dayton

Pennsylvania: B. Franklin, Thomas Mifflin, Robt. Morris, Geo. Clymer, Thos. FitzSimons, Jared Ingersoll, James Wilson, Gouv Morris

Delaware: Geo. Read, Gunning Bedford, jun., John Dickinson, Richard Bassett, Jaco. Broom

Maryland: James McHenry, Dan of St Thos. Jenifer, Danl Carroll

Virginia: John Blair, James Madison Jr.

North Carolina: Wm. Blount, Richd. Dobbs Spaight, Hu Williamson

South Carolina: J. Rutledge, Charles Cotesworth Pinckney, Charles Pinckney, Pierce Butler

Georgia: William Few, Abr Baldwin

AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

Amendment I (1791)

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.

Amendment II (1791)

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.

Amendment III (1791)

No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV (1791)

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation,

and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V (1791)

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual

service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI (1791)

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for

obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment VII (1791)

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

Amendment VIII (1791)

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX (1791)

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

Amendment X (1791)

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

Amendment XI (1798)

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

Amendment XII (1804)

The electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;--The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;--the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of

those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Amendment XIII (1865)

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime

whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

Amendment XIV (1868)

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for

participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Amendment XV (1870)

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XVI (1913)

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census of enumeration.

Amendment XVII (1913)

The Senate of the United States shall be composed of two Senators from each state, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

When vacancies happen in the representation of any state in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies: Provided, that the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Amendment XVIII (1919)

Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2. The Congress and the several states shall have concurrent power to enforce this article by appropriate legislation.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the Congress.

Amendment XIX (1920)

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

Amendment XX (1933)

Section 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Section 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

Section 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a

President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Section 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Section 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Section 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several states within seven years from the date of its submission.

Amendment XXI (1933)

Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2. The transportation or importation into any state, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the Congress.

Amendment XXII (1951)

Section 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this article shall not apply to any person holding the office of President when this article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting

as President, during the term within which this article becomes operative from holding the office of President or acting as President during the remainder of such term.

Section 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several states within seven years from the date of its submission to the states by the Congress.

Amendment XXIII (1961)

Section 1. The District constituting the seat of government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a state, but in no event more than the least populous state; they shall be in addition to those appointed by the states, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a state; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXIV (1964)

Section 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXV (1967)

Section 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

Section 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Section 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he

transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

Section 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written

declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

Amendment XXVI (1971)

Section 1. The right of citizens of the United States, who are 18 years of age or older, to vote, shall not be denied or abridged by the United States or any state on account of age.

Section 2. The Congress shall have the power to enforce this article by appropriate legislation.

THE DECLARATION OF INDEPENDENCE:

In Congress, July 4, 1776,

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the Powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.

That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.

That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be

changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object, evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.

Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right

inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws of Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our People, and eat out their substance.

He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures.

He has affected to render the Military independent of and superior to the Civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from Punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

For imposing Taxes on us without our Consent:

For depriving us in many cases, of the benefits of Trial by Jury: For transporting us beyond Seas to be tried for pretended offences:

For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments:

For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the Lives of our people.

He is at this time transporting large armies of foreign mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.

Nor have We been wanting in attention to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the

support of this Declaration, with a firm reliance on the Protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

JOHN HANCOCK, President

Attested, CHARLES THOMSON, Secretary

New Hampshire

JOSIAH BARTLETT
WILLIAM WHIPPLE
MATTHEW THORNTON

Massachusetts-Bay

SAMUEL ADAMS
JOHN ADAMS
ROBERT TREAT PAINE
ELBRIDGE GERRY

Rhode Island

STEPHEN HOPKINS
WILLIAM ELLERY

Connecticut

ROGER SHERMAN
SAMUEL HUNTINGTON
WILLIAM WILLIAMS

OLIVER WOLCOTT

Georgia

BUTTON GWINNETT
LYMAN HALL
GEO. WALTON

Maryland

SAMUEL CHASE
WILLIAM PACA
THOMAS STONE
CHARLES CARROLL OF CARROLLTON

Virginia

GEORGE WYTHE
RICHARD HENRY LEE
THOMAS JEFFERSON
BENJAMIN HARRISON
THOMAS NELSON, JR.
FRANCIS LIGHTFOOT LEE
CARTER BRAXTON.

New York

WILLIAM FLOYD
PHILIP LIVINGSTON
FRANCIS LEWIS
LEWIS MORRIS

Pennsylvania

ROBERT MORRIS
BENJAMIN RUSH
BENJAMIN FRANKLIN
JOHN MORTON
GEORGE CLYMER
JAMES SMITH
GEORGE TAYLOR
JAMES WILSON
GEORGE ROSS

Delaware

CAESAR RODNEY
GEORGE READ
THOMAS M'KEAN

North Carolina

WILLIAM HOOPER
JOSEPH HEWES
JOHN PENN

South Carolina

EDWARD RUTLEDGE
THOMAS HEYWARD, JR.
THOMAS LYNCH, JR.
ARTHUR MIDDLETON

New Jersey

RICHARD STOCKTON
JOHN WITHERSPOON
FRANCIS HOPKINS
JOHN HART
ABRAHAM CLARK

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