

## Introduction

As we study the proper function of the federal government we quickly discover it is not currently operating as it was intended. The House of Representatives does not control the budget as it should. The president operates more like a king. And, the federal judiciary seems completely unmoored by the Constitution that created it. How do we restore the proper function of our Constitutional Republic?

History is always repeating.

The designers were students of history and human nature.

History proves two things:

1. that centralized government tends toward tyranny and
2. the people become inattentive to government abuses as they occupy themselves with their daily private lives.

These reasons are why Richard Henry Lee wrote in his Letter from a Federal Farmer to the Republic #6 that the Amendments within the Bill of Rights would need to:

**“...serve as sentinels for the people at all times, and especially in those unavoidable intervals of inattention.”**

The designers of our Constitutional Republic fully anticipated a day when our federal government could escape its constitutional moorings. With this knowledge, they wanted their posterity to know how to restore their government to its proper functioning.

Thomas Jefferson: **“when all government, domestic and foreign, in little as in great things, shall be drawn to Washington as the centre of all power, it will render powerless the checks provided of one government on another...”**

The powers delegated to the federal government are **“few and defined”** and the powers reserved to the States are **“numerous and indefinite.”** He is warning us that human nature dictates that we will have the tendency to violate that separation of powers and become politically federal centric. In that shift from the local to the federal we will eliminate the most powerful check and balance on federal power created by this Constitutional Republic system.

Notice he says **“the checks provided of ONE GOVERNMENT on another.”** Jefferson didn't say, the checks provided of one BRANCH upon another, he said ONE GOVERNMENT on another. So what “government” check upon the federal government is Jefferson referring to?

**If the States look with apathy on this silent descent of their government into the gulf which is to swallow all, we have only to weep over the human character formed uncontrollable but by a rod of iron...”**

The States were intended to be a constant check on their creation. If they fail in this duty then Jefferson says, the base nature of man would dominate our central government.

### The States are Born!

#### **“Which came first, the States or the Federal Government?”**

The States were formed by the Ratification of the Lee Resolution, a legislative act, made law.

Only June 7, 1776, Richard Henry Lee, delegate for the colony of Virginia to the Continental Congress proposed the Lee Resolution. This resolution would establish the following three legal necessities:

*Resolved, 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.*

*That it is expedient forthwith to take the most effectual measures for forming foreign Alliances.*

*That a plan of confederation be prepared and transmitted to the respective Colonies for their consideration and approbation.*

On July 2, 1776, The Lee Resolution was brought before the Continental Congress; it was debated, voted upon, and ratified into law.

This ratification of the Lee Resolution was no light matter for our American Colonists. John Adams expresses this importance and excitement in his July 3<sup>rd</sup> letter to his wife Abigail. Adams writes:

**The Second Day of July 1776, will be the most memorable Epocha, in the History of America. I am apt to believe that it will be celebrated, by succeeding Generations, as the great anniversary Festival. It ought to be commemorated, as the Day of Deliverance by solemn Acts of Devotion to God Almighty. It ought to be solemnized with Pomp and Parade, with Shews, Games, Sports, Guns, Bells, Bonfires and Illuminations from one End of this Continent to the other from this Time forward forever more.**

His jubilation is quickly abated, however, by the obvious consequences of this one grave act. He ends his letter by saying:

**You will think me transported with Enthusiasm but I am not. -- I am well aware of the Toil and Blood and Treasure, that it will cost Us to maintain this Declaration, and support and defend these States. -- Yet through all the Gloom I can see the Rays of ravishing Light and Glory. I can see that the End is more than worth all the Means. And that Posterity will triumph in that Days Transaction, even altho We should rue it, which I trust in God We shall not.**

The States became legal entities, independent of Great Britain, on July 2, 1776, prior to the Declaration, the Articles of Confederation, the Constitution, and the Federal Government.

The first plan (clause 3) - Articles of Confederation. The Constitutional debates reveal a lack of guidance to the central government which resulted in numerous conflicts and difficulties.

The States convened to amend the articles by outlining more clearly defined direction, but in fact the States dissolved the Articles and eventually replaced them with the Constitution.

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**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.**

- Based upon the principals of Natural Law, the people being inherently free and sovereign, the states declared themselves Free and Independent based upon the authority of the people.
- The drafters used the term state to in its meaning of – independent sovereign government, just like the governments of Great Britain, France or Germany. This is the nature of our states today. Even the Supreme Court supports what is called the “Equal Footing Doctrine” that says that every States that enters the Union, enters on the same footing as the first 13.
- The States did not surrender their sovereignty by creating a cooperative Union. They made this fact clear in the 10<sup>th</sup> Amendment.

### Summary

1. Our States were legally established as free and independent governments on July 2, 1776 with the ratification of the Lee Resolution by the Continental Congress.
2. These States created by the Authority of the People posses the same legal status as Great Britain, France, or Germany.
3. These States, in their independent Status, each possess the power **to levy War, conclude Peace, contract Alliances, establish Commerce.**
4. These States existed prior to any central government.
5. Prior to the ratification of the Constitution, the only governments that legally existed were the States.

### Federal Government Created!

The Constitution is a type of contract called a compact – a cooperative legal agreement between sovereign governments.

- The States are the Parties to the Compact
- The Compact created the central government, making the federal government the product of the compact;

The Constitution was not ratified by popular vote, but by representatives of the states. The central government came into being after the ratification, therefore cannot be a party to the compact.

## Delegation and Reservation

The 10<sup>th</sup> Amendment

**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.**

The states delegated authority to the central government to carry out certain functions and to make the laws that are necessary and proper to carry out those functions. Any functions not delegated are reserved to the states and any laws relating to undelegated authority are “unnecessary and improper.”

Rules of Construction: 9<sup>th</sup> and 10<sup>th</sup> Amendments - Whenever the delegation of power is enumerated within the Constitution, the application of those powers must first comply with these specific rules.

Rule 1. All the Rights belong to the People as recognized by the 9<sup>th</sup> Amendment.

Rule 2. All power originates in the People (9<sup>th</sup> Amendment) and the power possessed by the federal government is delegated by the States. Any power not specifically delegated is reserved to the States and remains in the People as the original possessors of that power.

## A Limited Government

James Madison, the father of the Constitution explains this power placement in Federalist #45. He begins by saying: **The powers delegated by the proposed Constitution to the federal government are *few and defined*. Those which are to remain in the State governments are *numerous and indefinite*. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected.**

The powers of War Peace, Negotiations (Alliances) and Commerce were all initially held by the States. Madison states in Federalist #45 that that the powers to be exercised by the federal government are powers that are DELEGATED.

**Delegate: A temporary trust of responsibility or authority by a higher power to a lower power**

James Madison explains the Powers Reserved, again in Federalist #45:

**The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.”**

They chose the word “reserved” because it has a very powerful and specific meaning. Something that is “reserved” authorizes the possessor to exercise dominion over that thing to the exclusion of all others. It establishes a property ownership.

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The designers of the Constitutional Compact wanted to establish, without a doubt, that the power that the people delegated to the States via the Lee Resolution and State Constitutions, were powers to be RESERVED to them in regard to the federal government.

1. The Constitution declares the Powers not delegated to the federal government are reserved to the States.
2. That means the States hold exclusive ownership over those powers and the States must have the right to protect those powers from any other government (foreign or domestic)
3. If the States DO NOT have the right to protect the reserved powers to them, then the power is not reserved and we must admit the following to be true
4. If the States do not have the right to protect the power reserved to them, then the federal government can exercise any power they choose.
5. If the federal government can exercise any power they choose, then it is the federal government that has the right to determine, exclusively and finally, the powers delegated to it.
6. If the States must submit to whatever power the federal government chooses to exercise, then the States are not sovereign.
7. If the States are not sovereign, then the Constitution is an illegally made contract and is not binding.
8. If the Constitution is an illegally made contract, then it is null and void of any legal force and America is not a Constitutional Republic but a totalitarian kingdom, where the States are mere colonies and the people are nothing but subjects.

### ***The Remedy***

Thomas Jefferson: **“Whenever the general government assumes undelegated powers, its acts are unauthoritative, void and of no force.”**

James Madison: **“...in the case of deliberate, palpable, and dangerous exercise of other powers not granted...the States...have the right, and are in duty bound, to interpose, ...for maintaining, within their respective limits, the authorities, rights, and liberties...”**

Interposition: to insert between one thing and another. Madison says that the States have a right to insert themselves between the unlawful exercise of power of the federal government and the rights and liberties of the people.

Madison says that States have a RIGHT to interpose. Why do the States have that Right? Because the power the federal government is exercising is the power that is reserved to the States! Because the power is reserved, the States have a Right to protect it.

He also says they have a DUTY!

**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**

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The only reason we created the States, the only reason they exist, is to secure our Rights. If the federal government is not operating within the limited and defined Constitutional boundaries, then the rights and liberties of the people are in jeopardy! If the States fail to step up, protect their reserved powers, if they fail to protect the rights of the people they fail to complete the only reason for their existence... to secure the Rights that have been endowed to us by our Creator.

HOW does the State interpose? Thomas Jefferson will explain this procedure. He says:

**“That the several states who formed [the Constitution], being sovereign and independent, have the unquestionable right to judge of its infraction; and, That a nullification, by those sovereignties, of all unauthorized acts done under the color of that instrument, is the rightful remedy.”**

Note that Jefferson is referring to the States as being sovereign and independent. Since they are sovereign and independent and they are the creators of the Constitution, they have the ultimate right to determine if that agreement has been compromised by an unauthorized exercise of power by the federal government. When that happens, as Madison described, the States must interpose. Jefferson says that interposition is completed when the States nullify those unauthorized acts, therefore treating them like the unlawful thefts of power that they are. He calls nullification the “rightful remedy” because remember when the federal government exercises unauthorized power their acts are null and void. There is no legal obligation for a State or its people to comply with a federal law that has no legal authorization.

Nullification is the exercise of the Sovereignty of the State. It is the exercise of the State’s right of the states to exercise their reserved powers and their duty to protect those reserved powers.

Nullification is NOT the rejection of all government and the commission of violence against government officials – it is the act of non-compliance to an unlawful decree.

**“The Supreme Court Bans Nullification.” - FALSE**

James Madison defeats this claim with his explanation of judicial power in the Virginia Assembly Report of 1800. Madison says:

**“If the decision of the judiciary be raised above the authority of the sovereign parties to the Constitution... dangerous powers, not delegated, may not only be usurped and executed by the other departments, but that the judicial department, also, may exercise or sanction dangerous powers beyond the grant of the Constitution... consequently, that the ultimate right of the parties to the Constitution, to judge whether the compact has been dangerously violated, must extend to violations by one delegated authority as well as by another--by the judiciary as well as by the executive, or the legislature.**

Madison says in 1789:

**If they (the Bill of Rights) are incorporated into the constitution, independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; they will be an impenetrable bulwark against every assumption of power in the legislative or executive; they will be naturally led to**



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**resist every encroachment upon rights expressly stipulated for in the constitution by the declaration of rights.**

Notice that Madison is asserting that the courts will be in a unique position to protect the rights of the people from the assumption of power in the LEGISLATIVE or EXECUTIVE, he never mentions the States. Why will the courts defend the rights of the people from the unlawful assumption of power by the legislative or executive? Because the courts understand that the Constitution is a compact, and in order to properly apply the compact they must follow the rules of contract law.

“meeting of the minds” - the courts must consider the intent of the drafters of the contract to determine the meaning of the contract.

Madison continues:

**Beside this security, there is a great probability that such a declaration in the federal system would be enforced; because the state legislatures will jealously and closely watch the operations of this government, and be able to resist with more effect every assumption of power than any other power on earth can do; and the greatest opponents to a federal government admit the state legislatures to be sure guardians of the people's liberty.**

Madison is saying, beside the internal checks and balances of the courts upon the legislative and executive branches, there is a GREATER check - the power of the States.

**“The Supremacy Clause Rules Out Nullification.” - FALSE**

Article 6 section 2 of the Constitution contains the Supremacy Clause it reads:

**This Constitution, and the Laws of the United States which shall be made in pursuance thereof; ...shall be the supreme law of the land.**

Alexander Hamilton gives one of the best explanation of the meaning of the Supremacy Clause in Federalist #78. He says:

**No legislative act, therefore, contrary to the Constitution, can be valid...**

This is exactly what the Supremacy Clause is saying. Let's read it again:

**This Constitution, and the Laws of the United States which shall be made in pursuance thereof; ...shall be the supreme law of the land.**

This clause explains that the Constitution is the supreme law of the land. Nothing else has to happen, it is the Constitution, therefore it is supreme. However, the laws made by Congress, and the regulations made by executive agencies, are only the supreme law of the land if they are made in pursuance OF the Constitution. Just as Hamilton said, if these laws and regulation are not consistent with the Constitution, they are NO LAW AT ALL!

Hamilton, in Federalist #78, continues to explain to us the consequences of allowing federal authority that is not delegated through the Constitution. He says:

**“To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that**

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**men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid.”**

Justice Roberts, In his first Affordable Care Act opinion, made the following declaration:

**“In the typical case we look to the States to defend their prerogatives by adopting “the simple expedient of not yielding” to federal blandishments when they do not want to embrace federal policies as their own. The States are separate and independent sovereigns. Sometimes they have to act like it.”**

Even a Chief Supreme Court Justice recognizes that the States are STILL, TODAY independent sovereigns. And independent sovereigns have a duty to nullify unconstitutional federal laws!

Some may agree that nullification is a lawful remedy, but it can only be exercised when all States agree that a law must be nullified, or at least 36 States agree. But remember the States are sovereign and independent. If they have to wait for other States to agree, then they are not independent. If they cannot act unless they get the approval of other States then they are NOT sovereign.

The States must stand up and lost their apathy. The governments at the State and local levels must get educated and empowered to defend their Sovereignty and the Rights and Liberties of the people. As a citizen of that State you can educate others and demand that your State governments fulfil their duty. Help them to create :

State and Local Legislation Asserting State Reserved Power

State and Local Legislation Denying Unauthorized Federal Power

Sheriff, State, and Local Officials Standing in Defense of the Rights and Liberties of the People

Demand that your State and the people of your State understand they have a duty to refuse to comply with these unlawful acts of the federal government.

You can help educate others by sharing my book *Sovereign Duty*. This book will help you reach others with this truth in a way that they can learn and understand on their own.

You can also encourage your friends and family members to sign up at Liberty First University, perhaps study these classes and the suggested reading materials together, build a Liberty Study Group. Our founders called them “Committees of Correspondence!”