

## How the Constitution Secures Our Liberty

### The Constitution Prevents the Accumulation of Power and We, the People, Can Restore It

By Jim Jess

In framing the Constitution, the Founding Fathers wisely understood that to protect liberty, they should not allow any single individual or council in the government to become too powerful. They designed our system of government to accomplish this.

#### Federalism

The Constitution established a *federal* government, one that exercised certain specific powers within the national government, but left most matters to be decided by the states. It did not establish a national government that would make all of the governmental decisions in one supreme council. The principle of federalism is the same basic truth that Moses learned from his father-in-law Jethro in Exodus 18. In the Scriptures below, Jethro gave Moses advice on how to organize governing authority among the children of Israel.

Exodus 18:20-22:

And thou shalt teach them ordinances and laws, and shalt shew them the way wherein they must walk, and the work that they must do.

Moreover thou shalt provide out of all the people able men, such as fear God, men of truth, hating covetousness; and place *such* over them, *to be* rulers of thousands, *and* rulers of hundreds, rulers of fifties, and rulers of tens:

And let them judge the people at all seasons: and it shall be, *that* every great matter they shall bring unto thee, but every small matter they shall judge: so shall it be easier for thyself, and they shall bear *the burden* with thee.

Moses took Jethro's advice and appointed men to help him teach and manage the affairs of the people. Only the truly weighty matters were to come to Moses.

Moses chose men with particular leadership qualities who would exercise governing authority. The men were to be "able," which means capable in mind and body. They had to have enough physical and mental strength to meet the demands of being capable leaders. Furthermore, they were to be "men of truth," meaning they followed God and His laws, as well as Moses' leadership, as he was God's representative to the people. Finally, they were to be men "hating covetousness." They were not to be motivated by a desire for dishonest gain, particularly attempts to gain wealth or power by violence.

Later, after Israel ended their time in the wilderness and settled into towns and villages in the Promised Land, God gave further direction about the nature of the men who should serve the people as judges and exercise the powers of local government.

Deuteronomy 16:18-20:

Judges and officers shalt thou make thee in all thy gates, which the LORD thy God giveth thee, throughout thy tribes: and they shall judge the people with just [righteous] judgment.

Thou shalt not wrest [pervert] judgment; thou shalt not respect persons, neither take a gift [bribe]: for a gift [bribe] doth blind the eyes of the wise, and pervert [twist or overthrow] the words of the righteous.

That which is altogether just [emphasized in the Hebrew text, meaning “absolutely righteous”] shalt thou follow, that thou mayest live, and inherit the land which the LORD thy God giveth thee.

The organizational structure was very important to provide an appropriate governing framework to serve a large group of people. But just as important – or maybe even more important – was the character of those who would serve the people.

In our nation, local or state governments can make the decisions about most questions of public policy. The federal government must handle some matters, such as national defense. The framers of our Constitution intended for most government authority to be exercised by competent and capable government officials with good ethics who are closest to the people, at the local and state levels. They never intended the federal government in Washington, D.C., to decide all matters of public policy. Only certain “great matters” need to be decided by the national government. A further limitation on the power of the federal government is that it may only act if the Constitution gives it the authority to do so. The Constitution gives specific delegated powers to the national government.

As we have seen from the Old Testament, the character and ethics of those who govern is a matter that demands careful attention from those who elect their leaders. The Founders understood that too much power in the hands of one man or a small group of men could endanger liberty, so they sought to establish governmental institutions that would split the exercise of government authority among several institutions. And the Founders understood that the vigilance and attention of ordinary citizens would be required to maintain a government that secured freedom for all.

We, the people, should not expect the federal government in Washington, D.C., to solve problems that we can solve in our communities. But that is not how most people think today. They assume that Washington and federal tax money should be used to solve every problem. This is due to a lack of understanding of the basic purposes of our local, state and national governments. Understanding some basic civics lessons will be required if we want government in the United States to function as it was intended.

*This principle of federalism – that the states would exercise most of the functions of government and the federal government would concentrate on truly national matters – left most of the power with state and local governments, closer to the people, where the people could most easily control the government and work to secure their own liberty. This principle needs to be restored by returning most of the functions of government from the national government to the state governments, so government will again operate within the boundaries set by our Constitution.*

## Separation of Powers

In organizing the United States government, the Founders separated the powers of government into three branches or departments:

- The Legislative Branch, which is Congress, composed of the Senate and the House of Representatives.
- The Executive Branch, which includes the president and federal departments, agencies and commissions.
- The Judicial Branch, which includes the U.S. Supreme Court and other federal courts.

These functions of government, which can be found in the Bible, are all attributes of God's authority:

Isaiah 33:22

For the LORD *is* our judge, the LORD *is* our lawgiver, the LORD *is* our king; he will save us.

God exercised judicial, lawmaking and executive authority. For God to exercise all of these functions is understandable. He's *God!* He won't violate our liberty. However, if a single individual exercises all of these functions as a governmental leader, the great temptation is to begin to violate the freedoms of his fellow men. Concentrating the power of all three functions with one individual or in one small group establishes the potential for tyranny over the rest of the people.

The Founding Fathers recognized that men are imperfect, that man has a sin nature. Because they understood this, they established a system of separation of powers and checks and balances. They divided governmental authority between the national government and the states and split power among three branches of government. In the national government, each branch of the government has the power to limit the exercise of power by the other branches.

The Legislative Branch is to establish policy by writing and passing laws.

The Executive Branch is to implement or carry out the policies established by the Legislative Branch.

The Judicial Branch is to rule compliance – to make certain that the policies established and implemented are consistent with the intent of the Constitution. The courts are not supposed to establish policy themselves nor should judges legislate from the bench.

By separating these functions of government into three separate branches, the Founders sought to protect the people from anyone in government who tried to concentrate power in one office or public body. Too much power in the hands of one or a few could be used to destroy the liberty of the rest of the people.

Today, many federal agencies exercise all three of these functions, in blatant violation of the principle of separation of powers. Members of Congress have ignored their oaths of office in

allowing these unconstitutional violations to continue, and our liberty is violated by federal agency rules and mandates on a regular basis.

*In order to restore the separation of powers, members of Congress need to feel enough pressure from their constituents to force them to restore the legislative authority that has been wrongly delegated to the executive branch by previous Congresses. Federal agencies have received broad grants of authority from Congress and now wield legislative power. A solution to this problem will require determined and specific legislative actions on the part of Congress. But something like this will never happen unless citizens speak up and demand that Congress do its job.*

## **Checks and Balances**

Each branch was given powers to “check” or limit the power of the other branches. The Founders understood the nature of man and knew that if men are left to their own devices, they will seek to rule over and oppress their fellow men.

As James Madison, who is considered the chief author of the Constitution, wrote, “If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary.”

Because man has a sin nature, checks and balances are needed.

- The president’s authority is limited because Congress has to approve all appropriations—that is, all spending of the taxpayers’ money by the federal government.
- The president’s power of appointment is limited because the Senate must approve many of his appointments.
- Congress’ power is limited by the president’s power to veto legislation.
- The veto power is limited by Congress’ power to override or “nullify” a veto by a vote of a 2/3 majority of both houses of Congress.
- Congress’ power is limited by the voters, who elect those who serve in Congress.
- The courts can limit the authority of Congress and the president by declaring legislation passed by Congress and signed by the president unconstitutional, or null and void.
- The authority of the courts is limited by Congress’ power to limit their jurisdiction, Congress’ power to pass laws, and the power of the president to appoint judges to the courts.

All of these checks on the power of government limit the authority of each branch and help to secure the liberty of the people.

*Citizens must be vigilant to demand that members of Congress exercise their powers to check the excesses and overreaches of the executive and judicial branches when they stray from the provisions of the Constitution. Without this vigilance, liberty is in jeopardy and our freedoms are not secure.*

## Limited Government

God limited Himself to His Word. He cannot do something that His Word says He cannot do. For instance, He cannot lie. (Numbers 23:19)

The Mosaic Law, including the Ten Commandments, was one of the earliest known written set of laws. The Code of Hammurabi was older, but it was not known to the western world until after it was discovered in 1901. The written laws of the Old Testament shaped the thinking of America's Founding Fathers and had an impact on how they viewed government.

Besides the Ten Commandments, there are many additional laws in the Old Testament. God even had limits to the power of the king written in the Mosaic Law hundreds of years before Israel had a king.

In Deuteronomy 17:14-20 is the "Law of Kings." In this section of the Law, God set standards for the king that Israel would choose. He had to be someone that God chose and "from among thy brethren," a native Israelite. God said further that "thou mayest not set a stranger over thee, which *is* not thy brother." Then, God set limits on the authority of the king:

1. He was not to "multiply horses to himself" or "cause the people to return to Egypt" for that purpose.
2. He was not to "multiply wives to himself" who might turn his heart away from the true God.
3. He was not to "greatly multiply to himself silver and gold."

These were all limits placed on the power of the king.

*The concept of limited government – limits to the powers of those serving in government – is a principle supported by Scripture. This principle of limited government has been ignored in the rush to put in place more and more government programs by our national government in Washington, D.C. Every time the government sets up a new program, it encourages more dependency and establishes a new class of clients who become dependent on the new program. As long as the people put up with this big-government approach to "solving problems," the government will continue to expand. Only an educated citizenry who understands the importance of limited government and holds its public officials accountable can put a stop to this.*

## A Written Standard for Governing

God gave specific instructions for how kings should be stewards of the law in the "Law of Kings":

Deuteronomy 17:18-20:

And it shall be, when he sitteth upon the throne of his kingdom, that he shall write him a copy of this law in a book out of *that which is* before the priests the Levites:

And it shall be with him, and he shall read therein all the days of his life: that he may learn to fear the LORD his God, to keep all the words of this law and these statutes, to do them:

That his heart be not lifted up above his brethren, and that he turn not aside from the commandment, *to* the right hand, or *to* the left: to the end that he may prolong *his* days in his kingdom, he, and his children, in the midst of Israel.

The authority of the king was limited by the written standards of the law. The king was to intimately acquaint himself with the written standards by writing out a copy of the Mosaic Law for himself. That's a lot of writing. In the process of making himself a copy, the king would certainly become acquainted with the laws of Moses.

The Founding Fathers, by drafting the Constitution, committed our nation to a written standard. And the people, through conventions in the states, ratified the Constitution and gave their consent to this written standard for our government.

*There is a great need for citizens to become educated about our founding documents. Without knowledge of our written standards for governing, it is impossible to be conscientious and engaged citizens and take on the responsibilities of representative government, which is required for us to maintain our freedoms in a free republic.*

## **Enumerated Powers**

The Constitution gave certain limited powers to the federal government. The powers of each branch of government were “enumerated,” which means counted or mentioned one by one. These enumerated powers were limited in scope. The federal government cannot do anything it wants to do. It is limited by the Constitution, so the liberty of the people can be secure.

### **Powers of Congress**

Article I, Section 8 of the Constitution gives Congress 24 powers. The final clause of Section 8 delegates to Congress the power “to make all laws which shall be necessary and proper” to carry out the previously mentioned powers, but nothing else.

The powers of Congress include the following:

1. The power to tax, in order to pay the debts and provide for the common defense and general welfare (well-being) of the United States.
2. The power to borrow money.
3. The power to regulate foreign trade.
4. The power to regulate interstate commerce.
5. The power to establish naturalization laws.
6. The power to establish uniform laws regarding bankruptcy.
7. The power to coin money.
8. The power to fix the standard of weights and measures
9. The power to provide for the punishment of counterfeiting securities and coins.
10. The power to establish post offices.
11. The power to promote science and useful arts.
12. The power to provide for copyrights and patents.
13. The power to establish courts inferior to the U.S. Supreme Court.

14. The power to define and punish felonies on the high seas.
15. The power to define and punish violations of international laws.
16. The power to declare war and related war powers.
17. The power to raise and support an army.
18. The power to provide and maintain a navy.
19. The power to make rules to govern and regulate military forces.
20. The power to call up the militia (forces from within the states) to suppress insurrections or repel foreign invasions.
21. The power to organize, arm and discipline the militia.
22. The power to exercise authority over the district that is the seat of government (Washington, D.C.).
23. The power to exercise exclusive legislative authority over land or facilities purchased from states with the consent of the state's legislature.
24. The power to "make all laws...necessary and proper" to execute the previously enumerated powers and "all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof."

These are the limits of the legislative authority of the Congress. It is our right and responsibility as citizens to choose representatives who will follow the Constitution's written standards.

*Congress has egregiously exceeded these limited, enumerated powers over many years. The great majority of the programs and functions that Congress has initiated and the executive branch now manages from Washington, D.C., have no constitutional justification. These responsibilities need to be returned to state and local governments that can manage them much more efficiently and with greater input from the people they serve. If this were done, the money required from the taxpayers to pay for these programs and services would be drastically reduced.*

### **Responsibilities of the President**

Article II of the Constitution describes the powers and responsibilities of the president.

1. Serves as chief executive of the government of the United States, and as such, must faithfully execute, or implement, the laws of the nation.
2. Preserves, protects and defends the Constitution of the United States.
3. Serves as commander-in-chief of the armed forces of the U.S. and of the militia of the states, if called into the service of the U.S.
4. May require opinions, in writing, from key executive branch officials.
5. Has the power to grant pardons, except in cases of impeachment.
6. Serves as the chief foreign policy maker for the nation and has the power to make treaties with other nations, but treaties must be ratified by a 2/3 majority of the Senate.
7. Appoints executive branch officials, ambassadors, military officers, Supreme Court justices and other federal judges, but the appointments must be confirmed by the Senate.
8. Has the power to fill vacancies that may occur during a recess of the Senate.
9. Reports periodically to Congress on the state of the Union.
10. Recommends legislation to Congress.
11. Power to convene and adjourn Congress on "extraordinary occasions."

12. Receives ambassadors and other public ministers from other nations.
13. Commissions all officers of the United States.

In Article I, Section 7, the president is given the power to veto bills passed by Congress.

The president has no constitutional authority to impose a policy without congressional action. For example, the president may not direct an agency to develop and implement a new policy without the consent of Congress. The president is to execute, or implement, the laws passed by Congress, not establish new policies himself.

The office of president has developed in a manner very different than the Founding Fathers envisioned. The Founders did not want an all-powerful monarch to rule the nation. They had just broken free from the king of England, who had suppressed their freedoms in many ways. They did not want a new king. They did not give the president the power to make laws on his own and impose those laws on the people.

The Founders never intended for the president to be the one to solve every problem of the nation, yet that is the expectation of many citizens today. Because the office of president has become so powerful, political activists flock to support candidates who run for president because they are attracted to the exercise of great power, the desire to make sweeping changes and the power of the president to appoint thousands of people to positions in the government. The presidency in the United States has become an obsession with many people, far beyond what the Founders intended.

Once a president is elected, his or her supporters want the new president to have all the power that might be needed to enact new policies. Yet, the Constitution, in Article I, says that “All legislative powers ... shall be vested in the Congress of the United States.” The idea of a president issuing executive orders to establish policies that should be enacted by Congress is an idea foreign to our Constitution.

What citizens should desire is less power in the office of the president. Citizens should be communicating their policy concerns to their members of the U.S. House and the U.S. Senate. These officials are supposed to be the ones who make the laws, not the president.

*Citizens need to become educated about the constitutional purpose of the presidency, not some twisted view of the presidency passed down to us by presidents who exceeded their authority and then institutionalized “the imperial presidency.” The Founders would be appalled at how we have abandoned the original intent of the Constitution regarding the powers of the office of president. It is vital that we, the people, force our elected officials to change course by electing men and women truly committed to restoring the original intent of our Constitution.*

### **Areas of Jurisdiction for the Federal Courts**

Article III describes the jurisdiction and powers of the federal courts and the Supreme Court.

The responsibility of the courts is to rule compliance by applying the provisions of the Constitution in reviewing laws that come before the courts – if the constitutionality of a law is being questioned.

In cases that do not involve a constitutional question, they are to uphold the written laws of our nation. They may not make new laws themselves. Making new laws is a legislative function, and Article I, Section 1, of the Constitution says, “All legislative powers herein granted shall be vested in a Congress of the United States.”

The Constitution originally granted 11 areas of jurisdiction to the federal courts, but one of these was removed by the Eleventh Amendment, leaving these 10 areas of federal jurisdiction:

1. Cases where the meaning and/or the application of the Constitution is in question.
2. Cases arising under the laws of the United States.
3. Cases involving treaties made to which the U.S. is a party or other matters involving the U.S. and foreign powers.
4. Cases affecting ambassadors or other public officials of the U.S. government.
5. Cases involving admiralty and maritime law.
6. Controversies to which the United States is a party.
7. Controversies between two or more states.
8. Controversies between citizens of different states.
9. Controversies between citizens of the same state claiming lands under grants of different states.
10. Controversies between a state, or citizens of a state, and the government or citizens of a foreign nation.

The area of federal court jurisdiction removed by the Eleventh Amendment was jurisdiction over cases in which citizens of one state sued another state.

The jurisdiction of the federal courts is limited, and can be limited further by Congress, since Congress has the power to both establish and abolish all federal courts, with the exception of the U.S. Supreme Court.

Article III, Section 2, Clause 2, of the Constitution says that the Supreme Court has jurisdiction over appeals that arise from the inferior federal courts. This appellate jurisdiction *is not without limits*. The Supreme Court’s appellate jurisdiction is exercised according to “such exceptions, and under such regulations as the Congress shall make.” Congress can limit the Supreme Court’s authority.

Jurisdiction of the courts is an area where Congress has rarely, if ever, exercised its authority. Congress could limit the jurisdiction of the federal courts by designating certain cases as “off limits.” Congress can also ignore a ruling of a court if they believe a court has ruled in error about a legislative matter. Congress can legislate as it sees fit, even if the Supreme Court says it may not. The idea that the U.S Supreme Court has “final say” on constitutional matters is written nowhere in the Constitution. The members of each branch of government have a responsibility to uphold the Constitution.

*Courts continue to legislate from the bench and support bad precedents. One way to change this behavior is to support a reformation in the legal profession, focused on restoring the original intent of the Founders. Some progress is being made in this regard, but much more is needed. Citizens must reach out to members of Congress and explain that they support judicial nominees who wish to restore our Constitution on the basis of original intent. We should also encourage members of Congress to take bold action and limit the jurisdiction of the courts when it is warranted.*

## **Conclusion**

We have no kings or dictators in the United States of America. The framers of our Constitution gave us a representative form of government limited in scope and power and reserved most of the functions of government to the states and their citizens.

The federal government was structured with specific delegated powers and responsibilities for each branch. A quick review of these powers makes one thing very clear: The idea that the Constitution set up three “co-equal branches” in the federal government is nothing more than a myth. The Constitution clearly gives most of the power of the national government to Congress. Yet, Congress has wrongly delegated much of its authority to executive branch agencies and commissions, destroying the principles of separation of powers and consent of the governed. Unelected bureaucrats in federal agencies who make regulations that carry the force of law are not accountable to the voters, so they do not rule with our consent. Congress needs to reclaim its legislative powers from these agencies so those making our laws can once again be held accountable.

The Founding Fathers took great pains to carefully describe what powers were to be delegated to the national government. The rest of the powers of government were to be reserved to the states. This is clearly stated in the Tenth Amendment to the Constitution.

### **Tenth 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.

Our political leaders – for the greater part – have abandoned our Constitution. They ignore provisions like the Tenth Amendment, and few, if any, are calling for a return of governmental power to state and local governments – where most governing authority belongs.

Why have our leaders abandoned our Constitution? Because we, the people, have allowed them to do so. Until we begin electing men and women to Congress who will fight to return power to the states, restore lawmaking power to Congress, reduce the power of the imperial presidency and halt legislating from the courts, our national government will continue to grow out of control and further threaten our freedom.

We, the People, must claim and exercise our God-given rights that are secured in the Constitution. We must make better decisions when we vote. We must communicate our concerns and policy preferences to our elected officials. And we must replace some of those currently in office with those who will enact the reforms that are needed to restore constitutional government.

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