

“America’s Fabric,” September.26,2010
Final broadcast of eight on the Constitution

This morning’s broadcast is the concluding program in an eight-part series on the Constitution of the United States. It examines constitutional principles and present-day abuses and suggests ways to restore obedience to the Constitution.

Let me begin by stating the fundamental principle of constitutionalism in the United States, which is: **divided government and single sovereignty exercised through written constitutions ratified by the people of the states.**

What do we mean in saying the United States has “divided government”? We mean that governmental power is divided between the governments of the states and the national government and that the national government has powers divided among its legislative, executive, and judicial branches.

Divided government is a way to prevent a concentration of power that would lead to corruption and tyranny.

What do we mean by “single sovereignty”? George Washington, described this sovereignty in saying: “The basis of our political systems is the right of the people to make and to alter their Constitutions of Government.” Note that Washington spoke of “political systems” (not system) and “Constitutions of Government” (not Constitution). He was talking about the division of power between the state governments and the national government, and pointing out that the people of the states have the sole, sovereign power to institute governments at both the state and the national levels. Washington was describing **divided government and single sovereignty exercised through written constitutions ratified by the people of the states.**

As we all know, the subjects of His Britannic Majesty’s thirteen colonies in North America revolted against his royal authority in 1775 and in the following year declared their own sovereignty. The people of these former colonies subsequently ratified a (quote) “firm league of friendship” in a treaty-like document called “The Articles of Confederation and Perpetual Union.” It was the Constitution of the United States, however, that created a truly national government after enough people of the states ratified it. At every stage in this

history—in declaring independence; in forming a confederation of “perpetual friendship”; and in creating a national government in the Constitution of the United States, **the consent of the people of the states** was mandatory because only they have the sovereign power to institute and alter governments.

The states are where the American people have their day-to-day lives and exercise their freedom and rights; where they work, find their opportunities, and earn their livings; where they have created schools, governments, and churches, and multitudes of other organizations to promote knowledge, property rights, civic and moral order, the owning and bearing of arms, charity for the needy, businesses, and a great many other institutions to benefit themselves and their posterity. In doing such things in the states, they have manifested their sovereignty.

Unless we understand the sovereignty the people of the states have and exercise, we cannot understand American government and defend our liberties by sternly reversing the alarming concentration of power in the national government.

More and more often these days, one sees and hears references to whichever political party has the most seats in Congress as being “in power.” We must be wary of the officeholder and the political party that thinks in terms of being “in power”—rather than “in office” or “in the majority.” For there is but one power in the United States: the power inherent in the people of the states.

Beware, too, of anyone or any organization that uses the term “social justice” approvingly for that is only a honey-coated synonym for socialism: the ideology that happiness is to be found through Big Government taking care of your needs.

We the people of the states of the United States stand in danger today of losing our sovereignty because we’re losing our confidence in ourselves. We have only ourselves to blame.

We have let ourselves be deceived into thinking that free lunches are possible and that we deserve them. We have found it pleasant to receive personally, or for institutions in our states to receive, money from the national

government, which, we have been told, has a boundless solicitude for our happiness and wishes only to see victims of “social injustice” get what they should have by way of “fairness” and equality of condition.

But the many hundreds of billions of dollars the federal government hands out is money taken from the people of the states through federal taxation, or borrowing on our credit-worthiness because Americans have a reputation in the world for being productive and paying their debts. The dollars we and our state institutions receive from Washington, DC, because of the national government’s concern for “fairness” and “social justice,” is **a bribe** to make us think and act in politically correct terms

Permit me to read to you from a poem about the sort of national government we have allowed to arise in our midst. The poem is by Drum Hadley, a cowboy-poet. It was published five years ago in a book of his called Voice of the Borderlands published here in Tucson by Rio Nuevo Press. The poem is titled simply “Government,” and is written in the voice of an old-time rancher.

“You know, [the government’s] just like chickens peckin’,
 You throw some mixed grain onto the ground,
 And the biggest ones begin pickin’ up the best grain.
 Then the others take their turn,
 Till pretty soon all that grain’s gone.
 That’s politics and politicians and the way
 The government throws money away. . . .
 The whole system would come unglued
 If anybody really began to question it.
 In politics, the winner is the one who can fake
 Sincerity and still get done what he wants.
 Government departments and agencies are
 A lotta people doin’ somethin’ on paper,
 And on the paper, what they’re doin’ looks real good,
 But off that paper, what they’re doing [is]

More and more of nothin'. . . .
 Ranchers and farmers don't want them nitpickin' programs
 That are supposed to be helpin' them. . . .
 The name of the game in government is,
 'Don't make any decision you can be held responsible for'....
 That whole dang system corrupts people."

This poem hits the nail on the head. The national government **is** corrupt, because too many people in Washington have come to regard **one million dollars** of our money—even **two or three billion** dollars of it—as chicken feed.

The men who framed the Constitution of the United State in 1787 thought they had created a national government with only specified powers to accomplish only specified purposes, **reserving to the people of the states and their state governments all other governing powers**. But for eighty years and more now, officers in the national government have steadily taken, bit by bit, powers not granted them by the Constitution. These encroachments on the powers the Constitution reserves to the people of the states and their state governments must cease. As George Washington said as he stepped down from the presidency in 1796, until the people of three-fourths of the states in the Union change the Constitution by amending it, obedience to its dictates **as written** is a sacred duty of every American.

The Constitution is, as its Sixth Article proclaims, "the supreme Law of the Land," but only because the people of the states consented to it being that. And the first ten constitutional amendments, or "Bill of Rights," particularly the Ninth and the Tenth Amendments, demonstrate that the people of the states did not ratify the Constitution to make it a license for the national government to exercise unlimited power. Quite the contrary is true. As the Constitution was being ratified in 1787-1788, the people in several states demanded that a Bill of Rights be added to it for the express purpose of keeping the national government from encroaching on their day-to-day lives in the states. The Bill of Rights incorporated into the Constitution because of this insistence was intended to be a wall of separation delineating where the power of the national government ends

and the powers retained by the governments of the states begin—a boundary wall to protect the people of the states against federal trespassing on their day-to-day lives.

Nevertheless, in recent decades, Presidents (both Democrats and Republicans) and Congresses (both Democratic and Republican), and majorities on the Supreme Court, have usurped constitutional powers of regulation belonging to the states in matters of property, health, education, sexual conduct, permissible speech, marriage, worship, commerce, judicial procedures, the right to bear arms, and many other day-to-day concerns of Americans.

The Constitution's positive imperatives have also been ignored. For example: Article II, Section 3, of the Constitution requires the President to: "take Care that the Laws be faithfully executed." Despite this constitutional commandment, successive presidents have **not** executed the federal laws regarding the illegal entry of foreign nationals into the United States.

And when the government of one of state, whose citizens currently suffer 2.9 billion dollars of annual expense and escalating physical dangers because of this protracted failure of the executive branch of the federal government to enforce federal laws, recently authorized its state law enforcement officers to question anyone they had reason to suspect might be illegally in Arizona, what did the executive branch of the federal government do? It sued the state of Arizona, claiming that the enactment of this simple law violated the Constitution of the United States by infringing on the national government's duty to enforce federal laws regarding illegal entry into the United States!

Moreover, the federal government's lawsuit against the state of Arizona was not undertaken in compliance with the plain language of Article III of the Constitution (Section 2, paragraph 2) requiring: "In all Cases...in which a State shall be a Party, the supreme [sic] Court shall have original Jurisdiction." Instead of following this constitutional injunction, the executive branch of the U. S. government brought its lawsuit against Arizona before a federal judge in Phoenix rather than before the Supreme Court in Washington, DC.

What can be done when the national government disobeys the positive commands and the prohibitions of the U. S. Constitution?

First of all, we, the people of the states, should petition our state governments to initiate a Constitutional Convention (as provided for in Article V of the Constitution) to propose amendments to stop the national government's violations of the Constitution. Congress will never write and send to the states for ratification the kind of amendments that are needed, because too many members of Congress, both Democrats and Republicans, like the present situation in which the Constitution means whatever they want it to mean to serve their political or policy needs. Persons who believe not only in open borders but in open interpretations of the Constitution warn us against trying to convene a Constitutional Convention initiated by the states. They say such a move would lead to corrupting the Constitution.

Consider for yourself whether the following proposals for amendments to the Constitution would corrupt it.

The first problem which ought to be addressed, in my opinion, is that members of Congress stay in office for such a long time that they get the mistaken notion they are (quote) "in power" instead of the people of the states who elected them to office. This situation could be remedied through a pair of amendments: the first limiting the terms of members of Congress—one eight-year term for a Senator and two four-year terms for a Representative would perhaps be sufficient—and the second one taking away from Congress the authority to determine congressional salaries and benefits and giving that authority to the legislatures of the respective states the members of Congress come from. These changes to the Constitution would (1) eliminate the greatest part of the need for members of Congress to be incessantly raising funds for the next election, with all the attendant temptation to corruption and neglect of constitutional duties which that entails, and (2) give every member of Congress a vivid sense of who they work for.

(The terms of federal judges ought also to be limited in a constitutional amendment. Twenty years, or age 80, whichever comes first, should be enough.)

Another component of the gathering governmental crisis in America is how bills are constructed in Congress. An amendment to address this problem would require every bill introduced in Congress to be on a single topic. At present, many diverse matters are often bundled into a single bill that can run upwards of a thousand pages. These too-long-to-read-in-their-entirety, "omnibus bills" are how the "pork" benefiting just one congressman's district becomes law. A constitutional amendment to make bills short and coherent, and limited to one subject, would go a long way toward getting members of Congress to behave as the Framers of the Constitution intended them to behave: as the legislators of a general government empowered to serve only "the general welfare" of the United States, not the inhabitants of one state or one district in a state. As it presently operates, Congress too often is just a machine spewing forth bribes to keep its members in office. For someone in Congress to vote on a bill without knowing everything in it makes a mockery of the legislative process.

It would also be advisable to put the fear of impeachment by representatives of the people in the states for disobedience to the dictates of the Constitution by extending the power to impeach and try federal officers, including judges and the President. This amendment would empower the chief justices of the state supreme courts to bring an impeachment charge against a federal officer for unconstitutional conduct and grant the governors of the states the power to try the charge.

Another amendment, to prevent and correct a good deal of the national government's unconstitutional spending, would institute a periodic investigative review of every federal program, agency, committee, bureau, department, and so on established by any of the three branches of the national government. This great service to the nation's taxpayers could be accomplished by a college of distinguished citizens chosen every twenty years by the state legislatures from among each state's residents, in proportion to one member per million, or fraction

of a million, of a state's population. It might be called the College of Inquiry, and would have constitutional power to continue or to cancel, either entirely or in part, the entities it assessed.

An amendment might also be proposed to restore the original intention of the Bill of Rights by freeing it from the Supreme Court's pernicious doctrine that the Fourteenth Amendment transformed the Bill of Rights from a set of restraints on the national government into an instrument of federal regulation over the states—the exact opposite of what it was meant to be. This constitutional amendment could be worded as follows: “The judiciary branch of the government of the United States shall construe the first ten Articles of Amendment to this Constitution as limitations on that government and applying only to it, not the governments of the states; and each state's judiciary shall have exclusive jurisdiction, both original and appellate, in cases arising within a state from the privileges, immunities, and rights guaranteed to the citizens of every state in this part of the Constitution.”

Perhaps it would also be advisable to change the Constitution so that only federal taxpayers could elect persons to the house of Congress where spending bills originate. “No representation without taxation” isn't a bad idea when half of Americans currently are receiving some form of benefit or subsidy from Washington and approximately forty percent pay no federal taxes.

Some sort of constitutional changes are certainly needed to check our out-of-control national government and its pathological spending habits, and to keep officers of the national government faithful to the pledge they take on assuming office to “support and defend” the Constitution of the United States.

John H. McElroy, PhD
Professor emeritus, University of Arizona
host of “America's Fabric” KVOI-AM 1030
author of American Beliefs: What Keeps a
Big Country and a Diverse People United

