The BEACON SpotLight
A Study of Constitutional Issues by Topic

Issue 13: The Foul Stench of Inherent Federal Discretion

Name a topic of political concern and rest assured that conservatives, libertarians and strict-constructionists have already rallied to defend it against the growing Administrative State and its thriving bureaucracy.

Sadly, however, patriots have long been losing precious ground, because we foolishly play by progressives' ever-changing rules.

While other countries may not have it so easy, in the United States, it is important for patriots to realize that we unknowingly give up our Republic if we argue matters that were never formally delegated to the federal government.

Instead of wasting our time arguing, patriots should learn how topics the Constitution holds off-limits to federal concern ever got placed on the national discussion table in the first place.

While the particulars of the individual cases differ, one should notice the unchanging political constant among them, which is the lie that members of Congress and federal officers may exercise inherent discretion as they see fit, throughout the Union.

For instance, we are told with a straight face that supreme Court judges may redefine words found in the U.S. Constitution to mean something else entirely, for the whole country.

Thankfully, the founding principles of these United States of America stand fully opposed to the idea that government servants in this Union may become our political masters.

To understand our present predicament, it is important to step back and concentrate on the thread common to all federal intrusions (entitlements, foreign aid, business regulation, property rights restrictions, gun control legislation, health care mandates, climate change initiatives, and scores of other examples)—that of federal officials and members of Congress being able to exercise inherent discretion as they see fit.

In other words, fighting the extension of federal authority into all imaginable topics, directly, is to confuse the single underlying political problem with its more apparent symptoms.

Indeed, the only thing that matters is inherent federal discretion; everything else is but a distraction.

Contain or eliminate discretion and all the countless symptoms evaporate without additional effort.

While inherent discretion exercised throughout the Union is antithetical to the founding principles of these United States, it is nevertheless vital to realize that under the U.S. Constitution, it has always been an enumerated power *for a very special place*.

Undeniably, the District constituted as the Seat of Government of the United States—the District of Columbia (under Article I, Section 8, Clause 17 of the Constitution)—exists as the special place where members of Congress may exercise "exclusive" legislation "in all Cases whatsoever."

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"In all Cases whatsoever" is a term of art that reflects inherent government discretion. It was first asserted by King George III and British Parliament in their 1766 Declaratory Act. It was there and then that Great Britain claimed the divine right and absolute power to bind her North American colonies against the colonists' will and without their consent, "in all cases whatsoever."[1]

Unable to get Britain to retract her arbitrary position after a difficult decade of trying, the patient Americans revolted against that capricious mindset a decade later.

Nevertheless, the Framers—perhaps understandably—yet included that same phrase within the Constitution for the District Seat (rather than list within that brief document [meant for the whole Union] instead a lengthy, State-like Constitution for just the highly unusual exception to all the normal rules).

In other words, under the power for the District of Columbia, members of Congress have always been specifically empowered to exercise exclusive legislation in every case, without extraneous parameters beyond their own discretion.

Thus, the only component patriots must actually discover is how clever scoundrels ever figured out a way to bypass the strict geographic constraints that should have limited this omnipotent power to ten-miles-square (100 square miles).

Before concentrating on the "leaking out" of allowed oppression beyond its rightful confines, it is proper to confirm that absolute power exists, and ensure it reaches the extent of power being witnessed today.

The District Seat (and exclusive legislative jurisdiction "Forts, Magazines, Arsenals, dock-Yards and other needful Buildings" [where "like Authority" may also be exercised]) is (are) different from all other places in the United States. Elsewhere, governing power is divided into State and federal authority by the U.S. Constitution itself.

In the District Seat, however, all governing power is united in Congress. Fundamental and even opposing differences necessarily follow.

1. avalon.law.yale.edu/18th_century/declaratory_act_1766.asp

It is important to understand this special place where normal constitutional restraints simply do not apply.

Throughout the Union, members of Congress and federal officials may only pursue enumerated ends using necessary and proper means.

In the District of Columbia, however, members of Congress may do anything within their discretion except those things expressly prohibited (such as found in the Bill of Rights, for instance ["Congress shall make no law respecting an establishment of religion…"]).

The District Seat was created after the "particular" States of Maryland and Virginia voluntarily ceded specific tracts of land—and the ability to govern those tracts (in a local, State-like manner)—to Congress and the U.S. Government, in 1791.

Once Congress "accepted" the tracts, no longer could those States (or any others) continue to govern therein.

Since someone had to be able to enact local laws, the U.S. Constitution specified that that the responsibility would be vested in Congress (even if members delegated secondary responsibility on particular matters to a local government therein).

Not only could members of Congress enact normal national-type of legislation in the District Seat (like they could for the Union), they could in D.C. also exercise a local type of government authority in the place of the States which no longer could function there (which local powers had nothing otherwise to do with the U.S. Constitution).

Indeed, Maryland and Virginia gave up all of their respective governing powers over their particular parcels, to conform to the constitutional imperative that Congress would thereafter exercise "exclusive" legislation "in all Cases whatsoever."

With no State reserving any powers in the District Seat, the necessary implication results in the Tenth Amendment being wholly inapplicable therein. Indeed, without any State reserving any powers in the District Seat, the Tenth Amendment cannot have validity in D.C. (meaning assertions by conservatives that members of Congress or federal officials could *never* enact or enforce laws beyond those strictly enumerated are clearly wrong).

While the old, local State laws would remain applicable in D.C. until Congress enacted new laws on the topic, it is important to realize that no State Constitution remains relevant in D.C. to guide or restrict Congress. Members enact new law within their discretion, except as specific topics are expressly prohibited.

With the District Seat having no local, State-like or District Constitution, just think of all the actions which a State legislature could perform if no State Constitution existed to guide and direct them. Well, that is exactly the situation for Congress in the District Seat.

And, while the U.S. Constitution imposes a number of named prohibitions on "States" (such as no State may enter into agreement or compact with a foreign power, keep troops or ships of war in time of peace or engage in war), the "District" is NOT a "State." Thus, express constitutional prohibitions on "States" do not apply on the "District."

The District Seat is a veritable No-Man's-Land where limitations or restrictions simply do not apply, allowing inherent federal discretion.

Alexander Hamilton said of this power—of being able to exercise exclusive legislation "in all Cases whatsoever"—that "language does not afford a more complete designation of sovereign power than in those comprehensive terms."[1]

And, Hamilton should know, being the scheming mastermind who devised this domineering system of constitutional bypass, that allowed his favored strong central government to develop into its oppressive potential.

The only (local) parameters listed in any Constitution applicable in the District Seat are found in the U.S. Constitution with its express words that Congress may legislate exclusively, "in all Cases whatsoever" (how's that for a fount of absolute power?).

Rather than list an entire State-like local Constitution for the District Seat within the federal Constitution, the Framers of the Constitution simply allowed members of Congress to legislate there exclusively (without sharing power with any State of the Union) "in all Cases whatsoever."

2. avalon.law.yale.edu/18th_century/bank-ah.asp

In the District Seat, members of Congress may and must make up all their own rules, as they go along. In the District of Columbia, members exercise INHERENT DISCRETION, as they see fit.

Of course, since Article I of the U.S. Constitution only allows "States" of the Union to elect U.S. Representatives and U.S. Senators to Congress, residents of the District Seat do not have legislative representation in Congress, even though representation is the fundamental building block of the Union.

And, without legislative representation (or its guarantee of a Republican Form of Government [under Article IV, Section 4]), there is no crime nor foul if members of Congress delegate local legislative powers in D.C. to executive agency bureaucrats who thereafter issue binding regulations held as law.

Neither is it a crime or foul if supreme Court judges therein "legislate from the bench."

It is no crime or foul if members of Congress or supreme Court judges take words found in the Constitution otherwise meant for the Union but redefine them differently to mean something else for the District Seat (while implying it is for the Union).[3]

It is not even a crime or foul if members of Congress delegate local legislative powers for the District Seat to foreign dignitaries of the United Nations.

After proving that this enumerated power to legislate exclusively in all cases whatsoever allows inherent discretion, the only piece of the oppression puzzle remaining to be discovered is how this allowed tyranny ever escaped beyond its rightful geographic constraints.

Actually, that barrier proved rather simple to evade—Chief Justice John Marshall, following Hamilton's earlier lead, simply held that (Article I, Section 8) Clause 17 was necessarily part of "This Constitution" which Article VI, Clause 2 mandates as the "supreme Law of the Land."

3. As the court would imply, in (and ever since) the 1803 *Marbury v. Madison* case.

The most important factor for understanding the conclusions of *Marbury* is to realize that it involved a Justice of the Peace, *for the District of Columbia!* What the court may do and decide for D.C. is NOT the same as it may do and decide for the Union!

Marshall merely wrote;

> "The clause which gives exclusive legislation is, unquestionably, a part of the Constitution, and, as such, binds all the United States."[4]

To support expansive federal powers, Marshall needed only to uphold the Constitution's strictest letter, even when it surprisingly clashed with its spirit.

As long as proponents of limited government never discovered the actual source of inherent discretion, it would remain well-protected (thus, incomprehensible laws and unintelligible court rulings [all to obscure the truth] which implied that the reinterpreted words were meant for the Union).

By the strictest interpretation of the Constitution possible (indeed, progressive interpretation doesn't exist [in the Union]), the supreme Court held that laws enacted by Congress, even in pursuance of Clause 17, also form part of the supreme Law of the Land that bind judges in every State.

Even though the court routinely implies that it may reinterpret the words of the Constitution into meanings their opposite, only the discretion inherent in the District Seat allows it. In the Union, none who swear to support the Constitution may ever change its meaning.

To stop this invalid expansion of absolute discretion beyond rightful confines, it is proper to either contain it to its proper boundaries or eliminate it altogether.

Understanding Federal Tyranny is Matt Erickson's public domain book which serves as the blueprint necessary for Restoring Our American Republic. It exposes inherent discretion as a fraud that has escaped its lawful boundaries.

Understanding Federal Tyranny offers the path forward to correct inherent discretion—to either contain allowed tyranny to D.C. (exempt Clause 17 from the supreme Law of the Land wording of Article VI, Clause 2) or eliminate tyranny from every square foot of American soil (repeal Clause 17 entirely).

4. *Cohens v. Virginia*, 19 U.S. 264 @ 424 (1821).

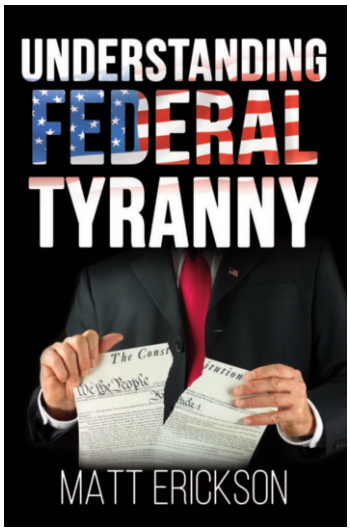
Attacking irrelevant symptoms can never be successful—for it fails to reach the underlying problem—while it imprudently concedes the Republic to a mob-rule democracy where anything goes.

Inherent federal discretion must be exposed as a fraud beyond rightful confines. Tyranny must be eliminated, or at least prohibited beyond its rightful boundaries.

The complete and permanent restoration of our Republic of limited powers is fully attainable, if we directly fight the centuries-long attack on it using founding principles.

Learn to throw off two hundred years of tyranny—read *Understanding Federal Tyranny*, freely available electronically at www.PatriotCorps.org.

Thank God the truth sets us free!



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