The BEACON SpotLight
A Study of Constitutional Issues by Topic

Issue 24: Up-Ending the Republic—Alexander Hamilton's True Legacy

At the Constitutional Convention of 1787, Alexander Hamilton announced his plan (on June 18th) that pushed for virtually unlimited federal power.

Hamilton's first pillar for implementing inherent federal discretion lay in giving Congress the express power "to pass all laws whatsoever"—subject, as he put it, only to "the Negative hereafter mentioned."[1]

As if the express power to do everything members wanted—except those few things that would be expressly prohibited—wasn't enough, Hamilton also wanted to abolish the States themselves.

To be fair, he later admitted the possibility of leaving the States intact, but directly subordinate to, and under the thumb of, the national government.

And, the third and final major plank of Hamilton's oppressive scheme was to give U.S. Senators and American Presidents their respective positions *for life* (although he later admitted holding their positions *during good behaviour* would satisfy him).

Thankfully, Hamilton's contemporaries ignored his recommendations—instead they proposed a limited-role federal Republic that would, upon ratification, delegate only the enumerated powers expressly listed, that could only be implemented using means both necessary and proper for carrying them out.

Almost immediately after ratification, however, Hamilton set out to get indirectly over time, what he could not and did not directly get at the Convention.

In his 1791 Treasury Secretary's opinion on the constitutionality of the bank of the United States, Hamilton began laying out the groundwork to implement his devious conversion scheme.

He would simply use the clause of the U.S. Constitution where members of Congress were actually given inherent power—Article I, Section 8, Clause 17—and seek to extend that essentially limitless power allowed Congress for the District Seat and other exclusive legislation properties (forts, magazines, arsenals, dockyards, and other needful buildings) far *beyond* their proper geographic boundaries.

In his long-winded support for the bank, it isn't necessarily surprising that largely hidden within its words were a few precious jewels, including:

> "Surely it can never be believed that Congress with exclusive powers of legislation in all cases whatsoever, cannot erect a corporation within the district which shall become the seat of government...And yet there is an unqualified denial of the power to erect corporations in every case on the part both of the Secretary of State and of the Attorney General."[2]

1. *James Madison's Notes of the Federal Convention,* June 18th. https://nhccs.org/dfc-0618.txt

2. *George Washington Papers at the Library of Congress,* Series 2, Letterbook 32, Page 137: http://memory.loc.gov/ammem/gwhtml/gwseries2.html

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Thomas Jefferson (as Secretary of State) and Edmund Randolph (as Attorney General) had both earlier asserted that Hamilton's banking bill was "unconstitutional"—i.e., that not even a single clause of the Constitution could support it.

To prove them wrong, Hamilton needed only point to the one clause where Congress could enact the bill. Hamilton drove home his point, by saying:

> "Here then is express power to exercise exclusive legislation in all cases whatsoever over certain places, that is, to do in respect to those places all that any government whatsoever may do; For language does not afford a more complete designation of sovereign power than in those comprehensive terms."[3]

Hamilton was correct in his specific point—members of Congress *do have the enumerated power*, to largely do as they please, at least when they exercise "exclusive" legislation "in all Cases whatsoever," for the District Seat (an inherent power, with few limitations).

The *spirit* of the Constitution, however, would hold exclusive legislation power *to the exclusive legislation lands,* where no State yet holds any governing authority. In these special areas, all governing power is *united* in Congress (everywhere else, governing power is *divided* by the U.S. Constitution, into enumerated federal powers, and reserved State powers).

But, the *letter* of the Constitution, Hamilton inferred (and Chief Justice John Marshall later ruled), allowed a *different* conclusion—i.e., that even D.C.-based congressional laws yet "bind" the States.

Hamilton (and Marshall) would simply exploit the clever loophole they created by using the letter of the Constitution to overrule is spirit, and then keep quiet.

Simply put, Article VI, Clause 2 expressly details that "This Constitution" (and all laws enacted "in pursuance thereof") are the "supreme Law of the Land" that bind the States, through their judges.

The U.S. Constitution contains no express exception to that rule therein established, allowing Hamilton and Marshall to exploit the devious loophole they created.

And, Marshall expressly laid down that rule in 1821 *Cohens v. Virginia*, when and where he explicitly said:

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

But, this wasn't Marshall's first foray into implementing Hamilton's devious plan, but merely the final nail needed in the limited-government coffin he and Hamilton had been building to expand federal power exponentially, over time.

In 1803—in *Marbury v. Madison*—Marshall sought to establish "Judicial Review;" that the Supreme Court was the arbiter of things constitutional (i.e., that the Court could interpret the words and phrases of the Constitution and ultimately divine their meaning).

But, what people don't seem to realize, is the fact that Marbury had sued to get his commission for a Justice of the Peace—*for the District of Columbia*—under Section 11 of the February 27th, 1801 *Organic Act for the District of Columbia* (II Stat. 103), as Marshall noted in his first 300 words of his *Marbury* ruling!

Now, what Congress (or the Court) may do in and for the District of Columbia under the exclusive federal authority of Congress under Clause 17 (acting largely like a State legislature) is another thing entirely, as compared with what members (or judges) may do, under the remainder of the Constitution, for direct excercise throughout the whole Union.

Indeed, in D.C., there exists no State, State-like, or District Constitution that guides and directs Congress and federal officials who may act therein in the place of a State (since no State has any governing authority in D.C.—all governing authority is vested in Congress).

Thus, it is up to members of Congress to make up their own [otherwise local] rules in D.C., as they go along, for none elsewhere exist.

It was 1819 *McCulloch v. Maryland* that best shows Marshall merely implemented Hamilton's plan.

Recall, in 1791, Hamilton, as Secretary of the Treasury, wrote his support on the constitutionality of the [*first*] bank of the United States.

In his opinion, Hamilton gave his "allowable-means test" that he sought to establish as a standard for determining allowable government action. He said:

3. *Ibid.*

4. *Cohens v. Virginia, 19 U.S. 264 @ 424 (1821). https://supreme.justia.com/cases/federal/us/19/264/*

> "If the end be clearly comprehended within any of the specified powers, and if the measure have an obvious relation to that end, and is not forbidden by any particular provision of the Constitution, it may safely be deemed to come within the compass of the national authority."[5]

In *McCulloch*, Marshall—as Chief Justice—wrote in support of the constitutionality of the *second* bank.

Looking at *McCulloch*, one discovers that Marshall's allowable-means-test is almost verbatim at that given by Hamilton in 1791, as Marshall said:

> "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional."[6]

Both "standards" essentially assert that "whatever isn't expressly prohibited, is allowed." Now, this author does not argue that these standards aren't the proper standards for determining allowable federal action *in the District Seat*, under Clause 17. In the U.S.A., however, Article I, Section 8, Clause 18 specifically details that only "necessary and proper" means may be used to implement enumerated ends.

Apologists for extreme federal power may counter that "necessary and proper" only means "convenient," as the 1871 *Legal Tender Cases* Court later paraphrased what Marshall had concluded in *McCulloch*.

Now, the idea that all those who must swear an oath to support the U.S. Constitution (signifying their subservience to it) may instead "interpret" and redefine words and phrases found in the Constitution to mean something else, for the Union, is wholly false.

But, there isn't anything in the U.S. Constitution that prevents those same people from reinterpreting those same words and phrases found in the Constitution, *differently, for use in the District Seat!*

Therefore, all words "reinterpreted" over the past two centuries (such as "necessary and proper", "Commerce," "general Welfare," and "supreme Law of the Land"), may *only* have a *new* meaning *for use in D.C.* (where no local, State-like Constitution exists to guide and direct Congress or the Court [so they must make up all their own rules, as they go along]).

In other words, all the wrong we face politically at the federal level is simply members of Congress and Supreme Court justices taking the essentially-unlimited power allowed them under Clause 17 but extending it beyond its proper geographic boundaries.

Of course, Marshall never detailed the very limited degree to which Clause 17-based congressional legislation may actually "bind" the States. That federal marshals may directly chase down criminals who violate D.C.-based laws and then flee the District, without seeking extradition through the States, doesn't mean the States are truly bound in any (or at least many) other instance(s).

This information—properly exposed to the bright light of day—means that there is finally a path for throwing off everything that members of Congress and federal officials do against the spirit of the Constitution.

It is simply time to propose and ratify a new amendment to bring back into harmony the letter and spirit of the Constitution, by saying that Article VI *shall not be construed* to include the seventeenth clause of the eighth section of the first article—that Article I, Section 8, Clause 17 is not "part" of "the supreme Law of the Land" wording of Article VI.

Or, we repeal said Clause 17 entirely, and retrocede all exclusive legislation lands back to the State which originally ceded each parcel.

Either we finally *contain* D.C.-based congressional law enacted under Clause 17 to exclusive legislation boundaries, or we *repeal* the clause which allows inherent federal jurisdiction to exist in a special case.

Either we finally restrict excessive federal action to the District Seat, or we repeal it entirely, over every square foot of American soil. **www.PatriotCorps.org**

5. https://press-pubs.uchicago.edu/founders/documents/a1_8_18s11.html

6. *McCulloch v. Maryland*. 17 U.S. 316 @ 421. 1819 https://www.law.cornell.edu/supremecourt/text/17/316 (@ 81)

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