The
BEACON SpotLight
A Study of Constitutional Issues by Topic

Issue 25: Are Members of Congress and Federal Officials Powers unto Themselves?

In this day and age—when and where federal servants have seemingly become our political masters—it is appropriate to ask how members of Congress and federal officials ever became powers unto themselves, because they certainly didn't begin that way.

The author of this paper asserts that our true Republican principles are still valid and fully operational—even as he acknowledges that by every cursory appearance, they certainly do not seem to be.

To prove that assertion when routine political practices commonly counter fundamental, bedrock principles of our American Republic, one must dig deeper to discover what is going on under that false surface, because our ignorance is enslaving us.

Said again, because it is so important—when false appearances appear to rule the day, it is appropriate to go back to the beginning, to discover what we are missing, that is enslaving us, in the Land of the Free, so we may once again be the Home of the Brave.

In the normal case, it is important to realize that ratification of the U.S. Constitution by the several States of the Union *divided* allowable governing powers in the United States, into enumerated federal powers and reserved State powers.

In the normal case, members of Congress and federal officials may use necessary and proper means to implement enumerated ends, leaving everything else reserved to the States, or to the people thereof.

But, we're not interested only in the normal case, but even in the extraordinary case, if looking to the latter circumstance answers our questions. We simply need to learn how members of Congress and federal officials may ever ignore their constitutional constraints, with impunity, so we may respond accordingly, to end their false reign.

Before digging into the extraordinary case, however, it is appropriate to review how members of Congress and federal officials were given enumerated powers in the first place.

Article VII of the U.S. Constitution informs us that the proposed Constitution would be established once nine States ratified it, even as it further details that the Constitution would be established only in "the States so ratifying the Same."

In other words, no State could be initially forced to give up any of its own sovereign powers, but by its own decision.

Once nine States had ratified the U.S. Constitution in 1788, time was set aside the following spring to begin new government under the Constitution. By the time the selected date had rolled around, two more States had ratified it.

Thus, on March 4, 1789, the 11 States that had ratified the U.S. Constitution to date began to meet in Congress, through their elected U.S. Representatives and U.S. Senators.

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By 1790, the two remaining States (North Carolina and Rhode Island) came on board.

So, in the normal case, *ratification* of the U.S. Constitution by each individual State gave members of Congress and federal officials their listed powers.

Of course, there are also today 27 ratified amendments, ratified in the amendment process described in Article V of the U.S. Constitution.

Article V details that the amendment process requires two-thirds of both Houses of Congress come to agreement on formal amendment proposals, that would be sent to the States for approval.

The same article also details an alternate proposal process, bypassing Congress, which allows two-thirds of the States to call for a convention, for the purpose of proposing amendments.

Formal amendments proposed by either method become operational in [all] the States only when at least three-fourths of the States voluntarily ratify them.

Neither the Supreme Court justices, nor the President or his officers, have any ability whatsoever, to propose or ratify amendments.

And, remember, while members of Congress may *propose* formal amendments—to request their powers be changed—they have no authority whatsoever to *ratify* any amendments themselves.

In other words, no person who is delegated federal authority may *ever* change their own powers for direct exercise throughout the Union.

Their sworn oaths to support the Constitution as required in Article VI, Clause 3 signify their subservience to the Constitution. Those who swear an oath to support the Constitution before they may exercise any federal powers, cannot change it, period.

Thankfully, therefore, *nothing* any federal servant has *ever* done has actually changed the U.S. Constitution, to any degree, whatsoever.

Thus, everything federal servants have *ever* done—contrary to the spirit or letter of the Constitution—may be swept aside, by understanding what they have actually done, and finally putting appropriate constraints upon their false and devious actions.

Only the States of the Union—as the principal parties to the U.S. Constitution—may ratify changes to that Constitution. Thus, only the sovereign States may change allowed federal powers, for direct exercise, throughout the Union.

To keep this paper brief, the author will make the following assertion—without listing much support—arguing that none of the ratified amendments have drastically changed the Constitution, to support all the extra federal action that is carried out today, day in and day out (even though a number of amendments have caused significant changes [i.e, the 14th, 16th, and 17th Amendments, for instance]).

The only evidence listed here in support of that assertion is that federal servants began ignoring the Constitution long before the 16th and 17th Amendments were ratified in 1913, and even before the 14th Amendment was ratified in 1868. Thus, those changes to the Constitution cannot be the source of essentially unlimited federal actions longer exercised.

Thus, it is appropriate to look to the Constitution *as ratified*, to figure out how members of Congress and federal officials could ever bypass it, with impunity.

The author asserts that the main body of the Constitution, as originally ratified, *must* yet provide federal servants an alternate means to ignore their normal constitutional constraints, without punishment.

And, the author asserts that authorization to ignore normal constitutional constraints exists in the highly-unusual exception to all the normal rules of the U.S. Constitution, because it isn't really *for the Union*.

While the normal process for giving express powers to members of Congress (and federal officials) was detailed hereinabove, it is important to realize that the U.S. Constitution yet details an *alternate* mechanism for giving federal servants *additional* powers.

Said plainly, the author of this paper primarily asserts that resting at the devilish base of inherent federal discretion growing increasingly rampant for over 200 years is an allowed power, inappropriately extended beyond its rightful geographic confines.

Article I of the U.S. Constitution discusses the legislative powers allowed Congress.

Section 8 contains the primary listing of those delegated legislative powers.

Clause 17 details the highly-unusual exception to all the normal rules, reading:

> "Congress shall have Power…To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the erection of Forts, Magazines, Arsenals, dock-Yards and other needful Buildings;"

Reading Article I, Section 8, Clause 17 carefully, makes one realize that it enumerates an alternate method for giving Congress exceptional powers—*exclusive* powers—in special cases.

The exceptional cases involve first the District constituted as the Seat of Government of the United States (the District of Columbia). The exceptional cases secondarily reach to special areas used for "Forts, Magazines, Arsenals, dock-Yards and other needful Buildings" that are scattered throughout the Union.

Two things of absolute, crucial importance stand out.

First, members of Congress in these special circumstances may exercise *exclusive* legislation, not only in the occasional case, but "in all Cases whatsoever."

In other words, in these special cases, government powers are NOT *divided* into enumerated federal powers and reserved State powers, like they are in the normal case, discussed earlier. *All* governing powers in the District Seat are *accumulated* in Congress—NOT shared with any State or States of the Union.

Note, secondly, the alternate transfer process expressly detailed, for giving Congress this special power.

Recall in the normal case, *ratification* of the U.S. Constitution by each and every State of the Union gave members of Congress and federal officials their originally-allotted federal powers, for direct exercise throughout the Union of States.

And, recall the normal case, where formal amendments proposed by two-thirds of Congress and ratified by three-fourths of the States bound all of the States, to formal changes in federal powers.

But, now, in this *special* case, here we find that "particular" States are able to cede *additional* authority, which reaches to "exclusive" federal powers, simply by the "Cession" of *particular* States, and the acceptance by Congress.

Please realize that this transfer of exclusive legislation authority *is complete* once a *single* State offers to cede Congress a specific parcel of land, for exclusive federal purposes, and Congress accepts the land and all the governing power over it.[1]

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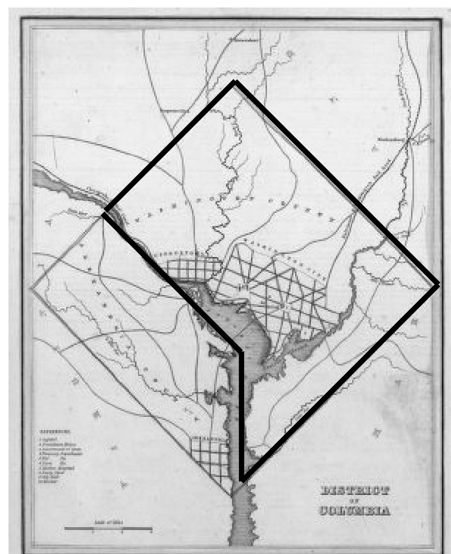
1. Realize that any given parcel of land is governed locally but by *one* State. That Clause 17 speaks to "*particular* States"—in plural form (two or more States)—simply allows for multiple States to each give adjoining parcels of land, to form one exclusive legislation property.

For instance, in 1791, both Maryland and Virginia each individually gave adjoining parcels of land, to form the one District of Columbia, that could not exceed ten miles square.

Note, however, that the Alexandria portion of D.C. (south and west of the Potomac River) was retroceded—given back—to Virginia, in 1846, because it was deemed unnecessary for District purposes.

Today, only the former lands of Maryland (north and east of the Potomac River) remain in the District of Columbia, as shown below.



It is vital to realize that the District of Columbia is 100% exclusive federal lands (except for foreign embassies)—that in no part of the District Seat is any power reserved unto any State of the Union (in conformance with the constitutional command of Clause 17, for Congress to be able to "exercise *exclusive* legislation, *in all Cases whatsoever*").

In other words—in the District Seat—all governing power is *united* in Congress; none of it is shared with any State of the Union.[2]

And, since no governing power in the District Seat is shared or reserved to any State, then not even the Tenth Amendment has any validity therein![3]

And, while the local powers of the States are carefully detailed in the State's respective State Constitution, please realize that no State, State-like, or District Constitution exists to guide and direct Congress, when acting in place of a State, in the District of Columbia.

Thus, necessarily, it is left up to members of Congress, and perhaps federal officials (if Congress deems it appropriate[4]), to make up all their own rules, as they go along, on the wide complement of powers normally exercised by States, that Congress may issue in D.C.

This Clause 17 exclusive legislation authority *is the fount of unlimited power* under which members of Congress and federal officials have long acted, even as they carefully shield it as the source of their absolute federal discretion, to keep their game going.

2. Ignore as irrelevant any delegation by Congress to a local D.C. government, since the Constitution expressly vests *with Congress* the power to exercise exclusive legislation. The buck that is exclusive legislation power starts and stops with Congress.

3. The Tenth Amendment speaks to powers "not delegated" to the United States, but one may see *by Maryland's 1791 cession*, that Maryland specifically delegated to Congress and the U.S. Government all the State's remaining ability to govern that ceded parcel of land. By Maryland's 1791 cession, Maryland expressly gave up all of its reserved powers over the ceded land—thus the Tenth Amendment cannot reserve to the State any powers expressly given up by it, in 1791.[5]

4. Realize that there is no *legislative representation* in the District Seat, so bureaucrats may issue regulations held as law, and judges may "legislate from the bench" there, *without* violating the Republican Form of Government principles elsewhere applicable.

Thus, one *does find* that one clause of the U.S. Constitution *does allow* members of Congress and federal officials, the essentially unlimited discretion, to do as they please—it is simply not truly *wherever* they please (and thus, their need to keep quiet their source).

Members of Congress, and federal officials, may actually act as powers unto themselves, *but only within the District of Columbia, and other exclusive federal enclaves,* used for forts, magazines, arsenals, dockyards and other needful buildings.

It is true that the *spirit* of the U.S. Constitution would hold this special exclusive legislation power to the special geographic areas, so as to prevent it from "infecting" the States, and, in effect, nullifying them.

However, interestingly enough, the *letter* of the U.S. Constitution allows otherwise, as the U.S. Supreme Court has held, formally, since 1821, when Chief Justice John Marshall, ruled:

> "The clause which gives exclusive jurisdiction is, unquestionably, a part of the Constitution, and, as such, binds all the United States."[6]

To make this holding, Marshall needed only hold that even Clause 17 was "a part of the Constitution," and, as such, then he could conclude that even Clause 17-based congressional laws *bind the States*.

5. Maryland's December 19, 1791 Land Cession law ceding the land for the District Seat may be found in the *Laws of Maryland 1785-1791*, Vol. 205, Page 572.
Chapter XLV, Section 2 reads:
"Be it enacted, by the General Assembly of Maryland, That all that part of the said territory, called Columbia, which lies within the limits of this state, shall be and the same is hereby acknowledged to be for ever ceded and relinquished to the congress and government of the United States, in full and absolute right, and exclusive jurisdiction, as well of soil as of persons residing, or to reside, thereon, pursuant to the tenor and effect of the eighth section of the first article of the constitution of government of the United States; provided...that the jurisdiction of the laws of this state, over the persons and property of individuals residing within the limits of the cession aforesaid, shall not cease or determine until congress shall by law provide for the government thereof, under their jurisdiction, in manner provided by the article of the constitution before recited."

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

Indeed, Article VI, Clause 2 specifically details:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thin in the Constitution or Laws of any State to the Contrary notwithstanding"

This passage details that "This Constitution" is the "supreme Law of the Land" that binds the States through their judges.

Since Article I, Section 8, Clause 17 of the Constitution for the United States of America is necessarily *part* of "This Constitution," then by the strictest letter of the Constitution, then even Clause 17 necessarily also forms part of the supreme Law.

There are no words found in the Constitution which expressly exempt Clause 17 from this supreme Law of the Land holding. There is only the spirit of the Constitution, to keep the other clauses operational.

But, Marshall (rather covertly) ruled in 1821, that in a conflict between the letter and the spirit of the Constitution, the written words would win out.

Ever since, in escalating fashion, exclusive legislation laws enacted by Congress "in pursuance" of Clause 17, have nevertheless bound the States, without the States' understanding what is going on, under the surface.

In anticipated response to those who would today falsely assert that Congressional laws enacted in pursuance of Clause 17 are necessarily restricted to exclusive legislation lands, Marshall presciently wrote:

> "Those who contend that acts of Congress, made in pursuance of this power, do not, like acts made in pursuance of other powers, bind the nation ought to show some safe and clear rule which shall support this construction, and prove that an act of Congress, clothed in all the forms which attend other legislative acts and passed in virtue of a power conferred on, and exercised by Congress as the legislature of the Union, is not a law of the United States and does not bind them."[7]

In other words, those who would assert that Acts of Congress made in pursuance of Clause 17 do NOT "bind the nation" need to point to the express rule found within the Constitution which supports their contention, because the justices looked, and found nothing expressly listed, that would give that answer.

Thankfully, however, the Article V amendment process gives us the simple means today to rectify that glaring omission, which has allowed devious federal servants, for 200-plus years, to bind the States even with Clause 17-based exclusive legislation law.

We need only propose and ratify a new constitutional amendment which simply says that congressional laws enacted in pursuance of the seventeenth clause of the eighth section of the first article of the Constitution *shall not be construed* to be any part of the supreme Law of the Land under Article VI, Clause 2.

Thereafter, none of the congressional laws enacted in pursuance of Clause 17 could again "bind" the States.

No laws of any State legislature bind any other State—neither should the laws of Congress enacted in pursuance of Clause 17, because members are involved.

Or, alternatively, we may propose and ratify a new constitutional amendment to *repeal* Article I, Section 8, Clause 17 entirely (retroceding all exclusive lands back to the State which originally ceded them).

The first alternative allows all of exclusive federal legislation to remain, but thereafter *constrains* exclusive legislation to exclusive legislation lands, while the second alternative *repeals* all exclusive legislation laws, entirely, over every square foot, of American soil.

Liberty-minded Americans may throw off federal tyranny, only by understanding how it ever came into being, and responding appropriately, as above noted.

For more info, see **www.PatriotCorps.org.**

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7. *Ibid.,* Pages 424 - 425 (1821). *https://supreme.justia.com/cases/federal/us/19/264/*

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by Matt Erickson
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