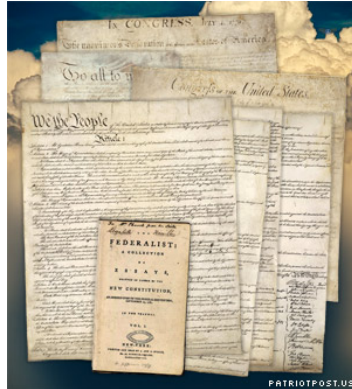




ESSENTIAL LIBERTY (PART 1) A Treatise on Restoring the Primacy of Rule of Law over the rule of men to ensure Liberty prevails over tyranny

"They who can give up essential Liberty to obtain a little temporary safety, deserve neither Liberty nor safety."

—Benjamin Franklin



Publisher's Note: This essay is the first of a two-part seminal treatise on constitutional Rule of Law. (Read "[Essential Liberty Part 2](#)".) This essay is published as the introduction to our Essential Liberty Project [Constitution booklets](#). The mission of the "Essential Liberty Project" is to support the restoration of constitutional integrity and Rule of Law. Our objective is to distribute millions of Essential Liberty booklets to students, grassroots organizations, civic clubs, political alliances, military and public service personnel, professional associations, etc. As a primer on Liberty, as "endowed by our Creator" and codified by our Founders in the Declaration of Independence and the U.S. Constitution, these booklets have a proven record as an outstanding resource for Patriots of all ages. Please support the Essential Liberty Project at our [sponsorship page](#), or by purchasing Essential Liberty Guides from [The Patriot Post Shop](#).

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Sons of Liberty -- The Fight for Freedom

"The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants." --Thomas Jefferson

On December 16th, 1773, "radicals" from Boston, members of a secret organization of American Patriots called the Sons of Liberty, boarded three East India Company ships and threw 342 chests of tea into Boston Harbor. This iconic event, in protest of oppressive taxation and tyrannical rule, is immortalized as "The Boston Tea Party."

Resistance to the British Crown had been mounting over enforcement of the 1764 Sugar Act, 1765 Stamp Act and 1767 Townshend Act, which led to the Boston Massacre and gave rise to the slogan, "No taxation without representation."

But it was the 1773 Tea Act, under which the Crown collected a three pence tax on each pound of tea imported to the Colonies, which instigated the Tea Party protest. In turn, that uprising galvanized the Colonial movement opposing British parliamentary acts, as such acts were a violation of the natural, charter and constitutional rights of the British colonists.

In response to the Colonial rebellion, the British enacted additional punitive measures, labeled the "Intolerable Acts," in hopes of suppressing the burgeoning insurrection. Far from accomplishing their desired outcome, however, the Crown's countermeasures led colonists to convene the First Continental Congress on September 5th, 1774, in Philadelphia.

By the spring of 1775, civil discontent was at its tipping point, and American Patriots in Massachusetts

and other colonies were preparing to cast off their masters.

On the eve of April 18th, 1775, General Thomas Gage, Royal military governor of Massachusetts, dispatched a force of 700 British Army regulars, under Lieutenant Colonel Francis Smith, with secret orders to capture and destroy arms and supplies stored by the Massachusetts militia in the town of Concord. However, Patriot militiamen under the leadership of the Sons of Liberty anticipated this raid, and the confrontation between militia and British regulars en route to Concord, was the fuse which ignited the American Revolution.

Near midnight on April 18th, 1775, Paul Revere, who had arranged for advance warning of British movements, departed Charlestown (near Boston) for Lexington and Concord in order to warn John Hancock, Samuel Adams and other Sons of Liberty that the British Army was marching to arrest them and seize their weapon caches. (Notably, the catalyst that launched the eight-year struggle for American independence had its beginnings with an effort by the government to disarm the people.) After meeting with Hancock and Adams in Lexington, Revere was captured, but his Patriot ally Samuel Prescott continued to Concord and warned militiamen along the way.

In the early dawn of April 19th, the first Patriots' Day, 77 militiamen under the command of Captain John Parker assembled on the town green at Lexington where they soon faced Smith's overwhelming force of British regulars. Parker did not expect shots to be exchanged, but his orders were, "Stand your ground." When a few links away from the militia column, the British Major John Pitcairn swung his sword, and said, "Lay down your arms, you damned rebels!"

Not willing to sacrifice his small band of Patriots on the Green, as Parker later wrote in sworn deposition, "I immediately ordered our Militia to disperse, and not to fire." But the Patriots did not lay down their arms as ordered, and as Parker noted, "Immediately said Troops made their appearance and rushed

furiously, fired upon, and killed eight of our Party without receiving any Provocation therefor from us."

The British continued to Concord, where they divided up and searched for armament stores. Later in the day, the second confrontation between regulars and militiamen occurred as British light infantry companies faced rapidly growing ranks of militia and Minutemen at Concord's Old North Bridge. From depositions on both sides, the British fired first on the militia, killing two and wounding four.

This time, however, militia commander, Major John Buttrick, yelled the order, "Fire, for God's sake, fellow soldiers, fire!" Fire they did, commencing with "the shot heard round the world," as immortalized by poet Ralph Waldo Emerson. Farmers and laborers, landowners and statesmen alike, pledged through action what Thomas Jefferson would later frame in words as "our Lives, our Fortunes, and our Sacred Honor." In the ensuing firefight, the British took heavy casualties and in discord retreated to Concord village for reinforcements, and then retreated back toward Lexington.

In route to Lexington, the regulars took additional casualties, including those suffered in an ambush by the reassembled ranks of John Parker's militia -- "Parker's Revenge" as it became known. The British were reinforced with 1,000 troops in Lexington, but the King's men were no match for the militiamen, who inflicted heavy casualties upon the Redcoats along their 20 mile tactical retreat to Boston.

Thus began the great campaign to reject tyranny and embrace the difficult toils of securing individual Liberty. "[T]he People alone have an incontestable, unalienable, and indefeasible right to institute government and to reform, alter, or totally change the same when their protection, safety, prosperity, and happiness require it," wrote Samuel Adams.

By the time the Second Continental Congress convened on May 10th, 1775, the young nation was in open war for Liberty and independence, which would not be won until a full decade later, at great cost of

treasure and blood. Of the contest for Liberty, Thomas Paine noted, "These are the times that try men's souls. The summer soldier and the sunshine patriot will, in this crisis, shrink from the service of his country; but he that stands it now, deserves the love and thanks of man and woman."

On May 15th, Congress adopted a resolution calling on the states to prepare for rebellion. In its preamble, John Adams advised his countrymen to sever all oaths of allegiance to the Crown.

On July 6th, Congress approved the "Declaration of the Cause and Necessity of Taking up Arms," drafted by Thomas Jefferson and John Dickinson, which noted: "With hearts fortified with these animating reflections, we most solemnly, before God and the world, declare, that, exerting the utmost energy of those powers, which our beneficent Creator hath graciously bestowed upon us, the arms we have been compelled by our enemies to assume, we will, in defiance of every hazard, with unabating firmness and perseverance employ for the preservation of our liberties; being with one mind resolved to die freemen rather than to live as slaves."

"Endowed by their Creator"

"In the supposed state of nature, all men are equally bound by the laws of nature, or to speak more properly, the laws of the creator." --Samuel Adams

A year later in Philadelphia, on July 4th, 1776, Jefferson and 55 merchants, farmers, doctors, lawyers and other representatives of the original 13 colonies of the United States of America, in the General Congress, Assembled, pledged "our lives, our fortunes and our sacred honor" to the cause of Liberty. They declared, "When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation."

Our Founders further avowed, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness."

Our Declaration of Independence was derived from common law, "the Laws of Nature and Nature's God," all men being "endowed by their Creator with certain unalienable Rights." It calls upon "the Supreme Judge of the world for the rectitude of our intentions" and "the protection of Divine Providence."

The Declaration's common law inspiration for the Rights of Man has its origin in governing documents dating back to the *Magna Carta* (1215), and was heavily influenced by the writings of Charles Montesquieu and John Locke.

However, its most immediate common law inspiration was William Blackstone's 1765 "Commentaries on the Laws of England," perhaps the most scholarly historic and analytic treatise on Natural Law.

Blackstone wrote, "As man depends absolutely upon his Maker for everything, it is necessary that he should in all points conform to his Maker's will. This will of his Maker is called the law of nature. ... This law of nature, being coeval [coexistent] with mankind and dictated by God Himself is, of course, superior in obligation to any other. It is binding over all the globe, in all countries, and at all times; no human laws are of any validity if contrary to this. ... Upon these two foundations, the law of nature and the law of revelation, depend all human laws; that is to say, no human laws should be suffered [permitted] to contradict these."

Justice James Wilson, a signer of both the Declaration of Independence and Constitution, and one of George Washington's first nominees to the Supreme Court, wrote, "Law ... communicated to us by reason and conscience ... has been called natural; as promulgated by the Holy Scriptures, it has been called revealed... But it should always be remembered, that this law, natural or revealed ... flows from the same divine source; it is the law of God. Human law must rest its authority, ultimately, upon the authority of that law, which is divine."

In 1776, the Second Continental Congress appointed a committee representing the 13 states to draft a formal document of incorporation, and then approved the Articles of Confederation and Perpetual Union for ratification by the states on November 15th, 1777. The Articles of Confederation were finally ratified on March 1st, 1781, and "the United States in Congress assembled" became the Congress of the Confederation.

"We the People"

"We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America." --George Washington and the delegates to the Convention

The Revolutionary War was hard fought and nearly lost on many fields. But its Commander, George Washington, was much more than a military leader -- he was Divinely inspired.

Of the imminent conflict, Washington wrote in his General Orders, "We have therefore to resolve to conquer or die: Our own Country's Honor, all call upon us for a vigorous and manly exertion, and if we now shamefully fail, we shall become infamous to the whole world. Let us therefore rely upon the goodness of the Cause, and the aid of the supreme Being, in whose hands victory is, to animate and encourage us to great and noble Actions -- The Eyes of all our

Countrymen are now upon us, and we shall have their blessings, and praises, if happily we are the instruments of saving them from the Tyranny mediated against them. Let us therefore animate and encourage each other, and shew the whole world, that a Freeman contending for Liberty on his own ground is superior to any slavish mercenary on earth."

Washington continued, "The hour is fast approaching, on which the Honor and Success of this army, and the safety of our bleeding Country depend. Remember officers and Soldiers, that you are Freemen, fighting for the blessings of Liberty -- that slavery will be your portion, and that of your posterity, if you do not acquit yourselves like men."

There were bloody battles between the onset at Lexington/Concord and conclusion with the Treaty of Paris, including the battles of Ticonderoga, Bunker Hill, Trenton, Bennington, Saratoga, Valley Forge, Monmouth, Kings Mountain, and finally Yorktown.

At the War's end in 1783, Washington wrote, "It is yet to be decided whether the revolution must ultimately be considered as a blessing or a curse: a blessing or a curse, not to the present age alone, for with our fate will the destiny of unborn millions be involved."

John Adams wrote in retrospect, "But what do we mean by the American revolution? Do we mean the American war? The revolution was effected before the war commenced. The revolution was in the minds and hearts of the People; a change in their religious sentiments, of their duties and obligations... This radical change in the principles, opinions, sentiments, and affections of the People was the real American revolution."

Returning focus to the issue of self governance, it was evident to most American leaders that the Articles of Confederation between the states did not sufficiently ensure the interests and security of the Confederation. In September 1786, at the urging of James Madison, 12 delegates from five states (New Jersey, New York, Pennsylvania, Delaware and Virginia) met in

Annapolis, Maryland, to consider amendments to the Articles.

Those delegates called for representatives from all of the states to convene at the Pennsylvania State House in Philadelphia for full consideration of the revisions needed, and 12 states (Rhode Island declining) sent 55 delegates, a third of whom had signed the Declaration of Independence.

The most noted delegates were George Washington, Roger Sherman, Alexander Hamilton, Benjamin Franklin, James Madison and George Mason. (Thomas Jefferson was in Europe in his capacity as Minister to France, but he expressed his cautious support for the new Constitution in correspondence with Madison.)

Noticeably absent from the proceedings were Patrick Henry, Samuel Adams and Thomas Paine, who believed the Articles did not need replacement, only modification. They were concerned that a proceeding aimed at establishing a new constitution could place in peril our fundamental liberties. Summing up their sentiments, Henry wrote that he "smelt a rat in Philadelphia, tending toward the monarchy."

The Philadelphia (Constitutional) Convention opened its proceedings on May 25th, 1787, and soon decided against amending the existing Articles in favor of drafting a new constitution. The next three months were devoted to deliberations on various proposals with the objective of drafting a document that would secure the rights and principles enumerated in the Declaration and Articles of Confederation, thus preserving Essential Liberty.

In late July, after much debate, a Committee of Detail was appointed to draft a document to include all the compromise agreements, but based primarily on James Madison's Virginia Plan, establishing a republican form of government subject to strict Rule of Law, reflecting the consent of the People and severely limiting the power of the central government.

A month later, the Committee of Style and Arrangement, which included Gouverneur Morris, Alexander Hamilton, William Samuel Johnson, Rufus King and James Madison, produced the final draft of the Constitution, which was submitted for delegate signatures on September 17th, 1787.

Said Benjamin Franklin of the new document, "I confess that there are several parts of this constitution which I do not at present approve, but I am not sure I shall never approve them: For having lived long, I have experienced many instances of being obliged by better information, or fuller consideration, to change opinions even on important subjects, which I once thought right, but found to be otherwise. ... Thus I consent, Sir, to this Constitution because I expect no better, and because I am not sure, that it is not the best."

Of the 55 delegates, 39 signed the new Constitution while the remaining delegates declined, most out of concern that the power apportioned through the new plan was a threat to the sovereignty of the several states, and thus, to individual Liberty.

The ensuing ratification debates among the states were vigorous.

James Madison, John Jay and Alexander Hamilton authored *The Federalist Papers*, which advocated ratification of the new Constitution.

Patrick Henry's Anti-Federalists opposed the plan under consideration because they believed it allocated too much power to the central government. Henry, Samuel Adams, George Mason, Robert Yates, Thomas Paine, Samuel Bryan and Richard Henry Lee were among those who spoke against ratification, and some authored several essays that were aggregated and published as *The Anti-Federalist Papers*.

The new Constitution stipulated that once nine of the 13 original states ratified it through state conventions, a date would be established for its implementation. This created controversy, as the document in question had no standing authority to make such a stipulation.

However, once the ninth state, New Hampshire, reported its convention's approval on June 21st, 1788, the Continental Congress set the date for enactment of the Constitution for March 4th, 1789.

With Rhode Island's ratification on May 29th, 1790, all 13 states had endorsed the Constitution.

Though critical of many of its provisions, Thomas Jefferson wrote in reflection of the Convention and its product, "The example of changing a constitution by assembling the wise men of the state, instead of assembling armies, will be worth as much to the world as the former examples we had given them. The constitution, too, which was the result of our deliberation, is unquestionably the wisest ever yet presented to men."

"To secure these rights"

"In order to prevent misconstruction or abuse of [the Constitution's] powers..." --Preamble to the Bill of Rights

Endeavoring to further define our Constitution's limits on government to encroach upon the innate rights of the People, James Madison, its primary architect, introduced to the First Congress in 1789 a Bill of Rights -- the first ten Amendments to our Constitution -- which was then ratified on December 15th, 1791.

The Bill of Rights was inspired by three remarkable documents: Two Treatises of Government, authored by John Locke in 1689 regarding protection of "property" (in the Latin context, proprius, or one's own "life, Liberty and estate"); the Virginia Declaration of Rights, authored by George Mason in 1776 as part of that state's constitution; and, of course, our Declaration of Independence, authored by Thomas Jefferson.

There was great consternation regarding the enumeration of these rights, as such registration might be taken to suggest that they were subject to amendment rather than unalienable; granted by the state rather than "Endowed by [our] Creator."

As Hamilton argued in Federalist No. 84, "Bills of rights, in the sense and to the extent in which they are contended for, are not only unnecessary in the proposed Constitution, but would even be dangerous. ... For why declare that things shall not be done which there is no power to do?"

On the other hand, George Mason was among 16 of the 55 Constitutional Convention delegates who refused to sign because the document did not adequately address limitations on what the central government had "no power to do." Indeed, he worked with Patrick Henry and Samuel Adams against its ratification for that reason.

As a result of Mason's insistence, the first session of Congress placed these 10 additional limitations upon the federal government for the reasons outlined by the Preamble to the Bill of Rights: "The Conventions of a number of the States having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government, will best insure the beneficent ends of its institution."

Read in context, the Bill of Rights is both an affirmation of innate individual rights (as noted by Thomas Jefferson: "The God who gave us life gave us Liberty at the same time") and a clear delineation of constraints upon the central government.

The Rule of Law

"They define a republic to be a government of laws, and not of men." --John Adams

Article VI of our Constitution proclaims: "This Constitution ... shall be the supreme Law of the Land."

For its first 150 years (with a few exceptions), our Constitution and the Rule of Law it enshrined, stood as our Founders and "The People" intended -- as is -- in accordance with its original intent. In other words, it was interpreted exegetically rather than eisegetically

-- textually as constructed, rather than as a so-called "living" document, altered to express the biases of later generations of politicians and jurists.

But incrementally, constitutional Rule of Law in the United States has been diluted by the actions of those in the executive, legislative and judicial branches -- most notably, the latter -- at great hazard to the future of Liberty.

As Thomas Jefferson warned repeatedly, the greatest threat to the Rule of Law and constitutional limitations on central government was an unbridled judiciary: "The original error [was in] establishing a judiciary independent of the nation, and which, from the citadel of the law, can turn its guns on those they were meant to defend, and control and fashion their proceedings to its own will. ... The opinion which gives to the judges the right to decide what laws are constitutional and what not, not only for themselves in their own sphere of action but for the Legislature and Executive also in their spheres, would make the Judiciary a despotic branch."

Jefferson understood that should our Constitution ever become a straw man for a politicized judiciary to interpret according to executive and legislative special interest constituencies, Rule of Law would gradually yield to rule of men -- the terminus of the latter being tyranny, as evidenced throughout history.

Our Framers did not subject judges to election to avoid political corruption, assuming judges would remain above such influences and true to the Rule of Law, thus protecting our Constitution from avarice and populist adulteration. Our Founders and early members of the judiciary were certainly men of such character, and singularly devoted to Liberty and Rule of Law.

But as Jefferson predicted, many in the executive and legislative branches would eventually abandon their oaths of obligation to our Constitution, and consequently, as they nominate and appoint judges, the judiciary would suffer a similar fate of corruption, which would then be difficult to correct because

judges are protected from electoral eviction. In effect, it may be argued that all three branches of government have devolved into "despotic branches."

Regarding the process of amendment prescribed by our Constitution, George Washington wrote, "If in the opinion of the People the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates, but let there be no change by usurpation; for though this in one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed."

Alexander Hamilton concurred, "A sacred respect for the constitutional law is the vital principle, the sustaining energy of a free government." He also wrote, "[T]he present Constitution is the standard to which we are to cling. Under its banners, bona fide must we combat our political foes -- rejecting all changes but through the channel itself provides for amendments."

On the subject of constitutional interpretation, Jefferson wrote: "The Constitution on which our Union rests, shall be administered ... according to the safe and honest meaning contemplated by the plain understanding of the People of the United States at the time of its adoption -- a meaning to be found in the explanations of those who advocated it. ... On every question of construction, carry ourselves back to the time when the Constitution was adopted, recollect the spirit manifested in the debates and instead of trying what meaning may be squeezed out of the text or invented against it, conform to the probable one in which it was passed."

Jefferson concluded, "Our peculiar security is in the possession of a written Constitution. Let us not make it a blank paper by construction."

James Madison agreed: "I entirely concur in the propriety of resorting to the sense in which the Constitution was accepted and ratified by the nation. In that sense alone it is the legitimate Constitution. And if that is not the guide in expounding it, there

may be no security for a consistent and stable, more than for a faithful exercise of its powers."

Justice James Wilson set forth, "The first and governing maxim in the interpretation of a statute is to discover the meaning of those who made it."

The Federalist Papers, considered to be the definitive explication of our Constitution's original intent, clearly delineate constitutional interpretation. In Federalist No. 78, Alexander Hamilton wrote, "[The Judicial Branch] may truly be said to have neither FORCE nor WILL, but merely judgment. ... Liberty can have nothing to fear from the judiciary alone, but would have everything to fear from its union with either of the other departments."

In Federalist No. 81, Hamilton declared, "[T]here is not a syllable in the [Constitution] which directly empowers the national courts to construe the laws according to the spirit of the Constitution. ... [T]he Constitution ought to be the standard of construction for the laws, and that wherever there is an evident opposition, the laws ought to give place to the Constitution." And yet this non-existent "spirit" is the essence of the so-called "living constitution," as amended by judicial diktat rather than its prescribed method in Article V.

The rule of men

"The basis of our political systems is the right of the People to make and to alter their Constitutions of Government. But the Constitution which at any time exists, until changed by an explicit and authentic act of the whole People is sacredly obligatory upon all." - George Washington

The first significant instance of constitutional interpretation by the federal judiciary was the 1803 case of *Marbury v. Madison*. The Supreme Court, under Chief Justice John Marshall, denied a plaintiff's claim because it relied on the Judiciary Act of 1789, which the court ruled unconstitutional.

In the 20th century, the *Marbury* precedent, in the hands of anarchic judicial activists, would serve to

greatly expand the limits of judicial powers outlined in Article III of our Constitution in a frontal assault on the Rule of Law rivaled only by the constitutional disputes leading to the War Between the States.

Prior to Woodrow Wilson's establishment of the socialist framework upon which Franklin Roosevelt built his "New Deal" expansion of central government authority in the 1930s, the courts were still largely populated with originalists, those who properly rendered legal interpretation based on the Constitution's "original intent." But Roosevelt grossly exceeded the constitutional restrictions on his office and that of the legislature in his failed "New Deal" policies during the Great Depression.

So determined was Roosevelt to enact his social welfare policies in defiance of constitutional limitations on the role of the central government, that in 1937 he sought to increase the number of justices on the Supreme Court from nine to 15, with the expectation that his appointees would give him a favorably predisposed activist majority. (It is no coincidence that the term "living constitution" was coined the same year.)

Roosevelt failed in this attempt to overtake the High Court, but during his unprecedented three terms in office, he managed to appoint eight justices, whose activist interpretation of the Constitution consistently validated his efforts to expand the power and scope of the central government.

In effect, Roosevelt had successfully converted the Judicial Branch from one of independent review according to Rule of Law to one of subservience according to political will.

In the decades that followed, the notion of a "living constitution," one subject to contemporaneous judicial interpretation informed by political agendas, became the standard in federal courts. With increasing frequency, judicial activists, jurists who "legislate from the bench" by issuing rulings at the behest of like-minded special-interest political constituencies, were nominated and confirmed to the Supreme Court.

This degradation in the Rule of Law was codified by the Warren Court in *Trop v. Dulles* (1958). In that ruling, the High Court noted that the Constitution should comport with "evolving standards ... that mark the progress of a maturing society." In other words, the Warren Court concluded the Constitution should be a fully pliable document, "a mere thing of wax in the hands of the judiciary which they may twist and shape into any form they please," as Thomas Jefferson had forewarned.

Since then, judicial despots have not only undermined the plain language of our Constitution, but have done equal injury to the Bill of Rights.

By the 1980s, judges had seemingly become the final arbiter of our Constitution, and its adulteration was so commonplace that Supreme Court Justice Thurgood Marshall would frequently lecture on "The Constitution: A Living Document," in defense of constitutional interpretation based upon contemporaneous moral, political and cultural circumstances.

More recently, Justice Antonin Scalia wrote, "[There's] the argument of flexibility and it goes something like this: The Constitution is over 200 years old and societies change. It has to change with society, like a living organism, or it will become brittle and break. But you would have to be an idiot to believe that; the Constitution is not a living organism; it is a legal document. It says something and doesn't say other things."

Justice Clarence Thomas followed, "[T]here are really only two ways to interpret the Constitution -- try to discern as best we can what the framers intended or make it up. No matter how ingenious, imaginative or artfully put, unless interpretive methodologies are tied to the original intent of the framers, they have no basis in the Constitution. ... To be sure, even the most conscientious effort to adhere to the original intent of the framers of our Constitution is flawed, as all methodologies and human institutions are; but at least originalism has the advantage of being legitimate and, I might add, impartial."

On the political consequences of a "living constitution," Justice Scalia concluded plainly, "If you think aficionados of a living constitution want to bring you flexibility, think again. ... As long as judges tinker with the Constitution to 'do what the people want,' instead of what the document actually commands, politicians who pick and confirm new federal judges will naturally want only those who agree with them politically."

Indeed, as Thomas Jefferson wrote, "In questions of power, then, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution."

A "Wall of Separation"?

"I contemplate with sovereign reverence that act of the whole American People which declared that their legislature should 'make no law respecting an establishment of religion, or prohibiting the free exercise thereof,' thus building a wall of separation between church and State." --Thomas Jefferson

A tragic example of the how judicial activists have undermined our Constitution is the plethora of fraudulent opinions rendered in regard to the First Amendment, particularly in regard to religious freedom. That Amendment reads plainly: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the People peaceably to assemble, and to petition the Government for a redress of grievances."

Once again, in plain language: "*Congress shall make no law...*"

But the courts have ruled that this prohibition applies to virtually every public forum, from public schools and sporting events, to public squares.

There is no more ominous defilement of our Constitution than that of the errant notion of a "Wall of Separation" between our constitutional government and our Creator -- ominous because if the knowledge of our Creator (at one time proliferate in every

educational institution) is constrained, then the general knowledge that Liberty is "endowed by [our] Creator" will be equally diminished.

As noted in the previous section, our Founders' intent was that the central government would not appoint any state church by act of Congress. "Congress shall make no law..." It is just that which Thomas Jefferson referenced when noting the Constitution built "a wall of separation between church and State," and nothing more.

But judicial activists have for decades "interpreted" the First Amendment to suit their political agendas, placing severe constraints upon the free exercise of religion and invoking the obscure and wholly misrepresented "Wall of Separation" to expel religious practice from any and all public forums.

As noted by the late Chief Justice of the Supreme Court William Rehnquist, "The wall of separation between church and state is a metaphor based upon bad history, a metaphor which has proved useless as a guide to judging. It should be frankly and explicitly abandoned. ... The greatest injury of the 'wall' notion is its mischievous diversion of judges from the actual intention of the drafters of the Bill of Rights."

Our Founders affirmed that the natural rights enumerated in our Declaration of Independence and, by extension, as codified in its subordinate guidance, our Constitution, are those endowed by our Creator. Regarding the supremacy of the Declaration's enumerations, Madison wrote to Jefferson, "On the distinctive principles of the Government ... of the U. States, the best guides are to be found in ... The Declaration of Independence, as the fundamental Act of Union of these States."

Thomas Jefferson proclaimed, "The God who gave us life, gave us Liberty at the same time. ... Can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the People that these liberties are the gift of God? That they are not to be violated but with his

wrath? Indeed I tremble for my country when I reflect that God is just: that his justice cannot sleep for ever."

Alexander Hamilton insisted, "The sacred rights of mankind are not to be rummaged for, among old parchments, or musty records. They are written, as with a sun beam, in the whole volume of human nature, by the hand of the divinity itself; and can never be erased or obscured by mortal power."

"Life, Liberty and the pursuit of happiness..." These are natural rights -- *gifts from God*, not government.

Moreover, it was with firm regard to this deeply held belief that our Constitution was written and ratified "in order to secure the Blessings of Liberty to ourselves and our Posterity." As such, it established a constitutional republic ruled by laws based on natural rights, not rights allocated by governments or those in positions of power.

John Quincy Adams wrote, "Our political way of life is by the Laws of Nature and of Nature's God, and of course presupposes the existence of God, the moral ruler of the universe, and a rule of right and wrong, of just and unjust, binding upon man, preceding all institutions of human society and government."

George Washington wrote in his 1796 Farewell Address, "Let it simply be asked where is the security for property, for reputation, for life, if the sense of religious obligation deserts the oaths, which are the instruments of investigation in the Courts of Justice? And let us with caution indulge the supposition, that morality can be maintained without religion. Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that National morality can prevail in exclusion of religious principle."

Notably, the conviction that our rights are innately bestowed by "the Laws of Nature and of Nature's God" is enumerated in the constitutional preambles of every state in our Union.

But, for many decades, those who advocate a "living constitution" have used the "despotic branch" to remove faith from every public quarter, ironically and erroneously citing the "Wall of Separation" metaphor -- words from Jefferson's 1802 letter to the Danbury Baptists. The letter, in fact, denoted the barrier between federal and state governments, not a prohibition against faith expression in any and all public venues.

The intended consequence of this artificial barrier between church and state is to remove the unmistakable influence of our Creator from all public forums, particularly government education institutions, and thus, over time, to disabuse belief in a sovereign God and the notion of natural rights. This erosion of knowledge about the origin of our rights, the very foundation of our country and basis of our Constitution, has dire implications for the future of Liberty.

Meanwhile, judicial and legislative efforts endeavor to supplant authentic freedoms of speech and of press, while asserting that virtually all other mediums of expression constitute "free speech."

The Palladium of Liberties

"A well regulated Militia, being necessary to the security of a free State, the right of the People to keep and bear Arms, shall not be infringed." --The Second Amendment

As with the adulteration of the plain language of the First Amendment, judicial assaults endeavoring to enfeeble the Second Amendment are unceasing -- and they are joined by assaults from statist proponents of the executive and legislative branches. But as with all amendments in the Bill of Rights, the Second was written as a proscription on government interference with the natural rights of the People.

During the 1788 Massachusetts Convention debates to ratify the U.S. Constitution, Samuel Adams stated, "The Constitution shall never be construed ... to prevent the People of the United States who are peaceable citizens from keeping their own arms."

That same year, James Madison wrote in Federalist No. 46, "The ultimate authority ... resides in the People alone. ... The advantage of being armed, which the Americans possess over the people of almost every other nation ... forms a barrier against the enterprises of ambition."

In his Commentaries on the Constitution (1833), Justice Joseph Story, appointed to the Supreme Court by James Madison, affirmed the pre-eminence of the Second Amendment: "The right of the citizens to keep and bear arms has justly been considered as the palladium of the liberties of the republic; since it offers a strong moral check against usurpation and arbitrary power of the rulers; and will generally, even if these are successful in the first instance, enable the People to resist and triumph over them."

Similarly, Founder Noah Webster wrote, "Tyranny is the exercise of some power over a man, which is not warranted by law, or necessary for the public safety. A people can never be deprived of their liberties, while they retain in their own hands, a power sufficient to any other power in the state."

"The Powers Not Delegated..."

"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." - -Tenth Amendment

The central government has routinely violated this amendment with all manner of legislation and regulation over what should be, according to the Rule of Law, matters "reserved to the States respectively, or to the People."

Equally injurious to the Constitution is the manner in which the Tenth Amendment's assurance of States' Rights has been eroded by legislative malfeasance and judicial diktat.

In Federalist No. 39, James Madison expounds upon the covenantal nature of the states' would-be federal arrangement, voluntarily bound by mutual obligation. "Each State," he wrote, "in ratifying the Constitution,

is considered as a sovereign body, independent of all others, and only to be bound by its own voluntary act. In this relation, then, the new Constitution will, if established, be a FEDERAL, and not a NATIONAL constitution."

In Federalist No. 45, Madison highlights the definite limits placed upon power in such a federal structure, writing, "The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite."

In assurance that the central government would not overstep its constitutional authority, Madison wrote in Federalist No. 46, that "ambitious encroachments of the federal government, on the authority of the State governments, would not excite the opposition of a single State, or of a few States only. They would be signals of general alarm. ... But what degree of madness could ever drive the federal government to such an extremity."

But by 1794, Madison foresaw the potential for abuse, and protested loudly against the prospect of the new government's urge to redistribute the wealth of its citizens for purposes other than those expressly authorized by our Constitution: "If Congress can do whatever in their discretion can be done by money, and will promote the General Welfare, the Government is no longer a limited one, possessing enumerated powers, but an indefinite one, subject to particular exceptions."

Jefferson wrote: "[G]iving [Congress] a distinct and independent power to do any act they please which may be good for the Union, would render all the preceding and subsequent enumerations of power completely useless. It would reduce the whole [Constitution] to a single phrase, that of instituting a

Congress with power to do whatever would be for the good of the United States; and as sole judges of the good or evil, it would be also a power to do whatever evil they please. Certainly no such universal power was meant to be given them. [The Constitution] was intended to lace them up straightly within the enumerated powers and those without which, as means, these powers could not be carried into effect."

In his remarkable wisdom, Jefferson also warned that the legislature and courts should not make laws so complex as to conceal their meaning and make the understanding of their implications so convoluted as to render them incomprehensible by those for whom they were, ostensibly, created: "Laws are made for men of ordinary understanding and should, therefore, be construed by the ordinary rules of common sense. Their meaning is not to be sought for in metaphysical subtleties which may make anything mean everything or nothing at pleasure."

Unfortunately, the law today is barely comprehensible in its scope to even those who legislate and interpret it, with dire implications for the federalist system of government established by our Constitution.

(Read "[Essential Liberty Part 2](#)".)

Pro Deo et Constitutione -- Libertas aut Mors

Semper Vigilo, Fortis, Paratus et Fidelis

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Link to the official page of the [Essential Liberty Project](#) for more information and to affirm or reaffirm your oath to support and defend our Constitution.