Volume I: Summary Issue

The BEACON OF LIBERTY

A Structured Curriculum of Constitutional Study

Clauses Discussed:

- Preamble - Article I, Section 3

Concepts Discussed:

- Volume I Summary

The British Colonies in North America

Prior to European "discovery" and exploration of North America, the various American Indian tribes occupied the land as they had for thousands of years. Indian culture centered principally around hunting and gathering from that which nature abundantly provided.

Property[1] ownership was a concept foreign to Indian culture; mere *use* of land gave little inherent security to continued future use. Without express claims of *ownership* of the land, it was fair game to the most aggressive Indian Nation. It was also inevitable that claims of ownership would be declared by the first groups to reach the continent who thought in such terms (the land, by definition, being *un-owned*).

Property was a concept foreign to Indian culture.

Government laws supporting property and enforcing contracts are a necessary precondition for society to advance. Before the *physical* infrastructure (roads, buildings, etc.) can be built, the *conceptual* infrastructure must be in place to support it (even today, many third-world countries refuse to build the conceptual support structure for property — and then wonder of their poverty).

Spanish, Portuguese, French, Dutch and British explorers claimed large tracts of lands in North America unsettled by Christian peoples by the right of discovery for their respective governments.

1. *Property* is that right which a man has to a particular item to the exclusion of all others. Inherent in property is *the right to it.* (to speak of a property *right* is therefore needless repetition).

Indian claims of *occupation* for particular areas were settled by government negotiation through treaty prior to settlement. Once *possession* and *ownership* of large land areas were united in government, successful *settlement* became possible.

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Royal colonies and proprietary governments were formed by royal charter and by the issuing of numerous (land) patents. Separate colonial governments resulted from distinct histories, dissimilar powers, and diverse circumstances.

The African slave trade made substantial inroads into the Caribbean Islands and South America. The English colonies in America followed suit to a lesser degree (1 in 20 of the African slaves could be found in North America) and began enacting legislation favorable to slavery.

The American Colonies did not allow the making of anyone a slave — one could not be put into slavery in America (though a newborn child followed the status of his or her mother). The principle held that whether or not one was a slave depended not on the location of where one happened to be found, but one's status at the location of one's origin.

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1500 Highway 2
Leavenworth, WA 98826

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The colonies grew in importance as they grew in size and complexity, yet their legislation occurred across the Atlantic ocean. As time passed, dissatisfaction of the colonists grew as inequity grew. Formal complaints by the colonist of oppressive, distant rule without representation fell on deaf ears. With each passing year, action bent toward liberty became emboldened. By 1765, much was being written in newspapers and leaflets about *Liberty* (economic self-determination).

12 of the colonies sent delegates to the First Continental Congress, meeting on September 5th, 1774 in Philadelphia. The delegates met for approximately six weeks before issuing their Declaration of Rights.

All 13 colonies met together on May 10th, 1775 as the Second Continental Congress; which continued to meet in session until the Articles of Confederation were formally adopted in 1781. It was under this Congress that most events of Independence occurred, including their unanimous Declaration of their Independence.

Several colonies declared their freedom as independent States even prior to the States' unanimous Declaration (such as Virginia).

The Declaration of Independence

Separate colonial charters prove separate colonial governments. Similar circumstances bonded the colonies together loosely, but no legal bond tied them together lawfully. When allegiance to the British crown was thrown off, they maintained their separation from one another and became "Free and Independent States".

The unanimous Declaration of the thirteen united States of America of July 4th, 1776 dissolved all residual British rule in America; with the Revolutionary War necessary to enforce that declaration.

The said Declaration of Independence establishes the principles of American government.

The States held as self-evident truths that "all men are created equal" by "Nature's God" and that He endows them "with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness".

The Declaration outlined that that "Governments are instituted among Men" to "Secure these rights" and only derive "their just Powers from the consent of the governed".

The Declaration outlines the hierarchy of power to be strictly followed by governments later organizing under it. The Constitution therefore rests on this social structure: of God creating man; of God endowing man with inalienable rights; of government instituted among man to better secure man's God-given rights.

The States, upon independence and prior to the adoption of the Articles of Confederation in 1781, individually enacted laws normally regarded as signs of sovereignty: coinage of money; emission of bills of credit; enacting rules of naturalization; establishing Courts of Admiralty jurisdiction; arming vessels; mustering the militia; granting Letters of Marque & Reprisal; and defining and punishing Treason.

Articles of Confederation and Perpetual Union

Not until the Articles of Confederation and Perpetual Union were finally adopted in 1781 did the States voluntarily relinquish any sovereign authority and grant this over to their unified agent (the States confederating together and meeting for common benefit).

Only States specifically agreeing to the Articles came under their authority (Canada did not accede to the Articles, though expressly allowed under Article XI). Article XIII mandated confirmation of every State legislature to change the Articles themselves to *any* degree.

The Congressional Resolution of February 21st, 1787 (issued by the Congress meeting under the Articles of Confederation) provided authority to hold a convention. The resolution read:

> "*Resolved*, That in the opinion of Congress, it is expedient, that…a convention of delegates…be held…for the sole and express purpose of revising the Articles of Confederation, and reporting to Congress and the several legislatures, such alterations and provisions therein, as shall, when agreed to in Congress, and confirmed by the States, render the federal constitution adequate to the exigencies of government, and the preservation of the union."

During the convention, William Patterson, a delegate from New Jersey, regarding the direction the convention headed (toward creating a new Constitution rather than modify the existing Articles), announced:

> "We ought to keep within its (Articles) limits, or we should be charged by our Constituents with usurpation...If the confederacy was radically wrong, let us return to our States, and obtain larger powers, not assume them of ourselves…Our object is not such a Government as may be best in itself, but such a one as our Constituents have authorized us to prepare."

James Wilson responded:

> "With regard to the power of the Convention, he conceived himself authorized to conclude nothing, but to be at liberty to propose any thing."

Alexander Hamilton, of New York, likewise countered:

"The States sent us here to provide for the exigencies of the Union. To rely on and propose any plan not adequate to these exigencies, merely because it was not clearly within our powers, would be to sacrifice the means to the end."

The latter responses of political expediency fail when one considers a proper delegation of authority given a delegate. The convention delegates acted in a fashion far greater than allowed, but their activities were ultimately sanctioned retroactively by the States.

Constitution

The style of laws enacted by the individual State General Assemblies after independence used words indicative of their sovereignty. For example, when laws were enacted appointing delegates to attend the Constitutional Convention in 1787, they were signed under the seal by the various Governors, such as in the following manner:

"His Excellency Thomas Collins, Esquire, President, Captain General, and Commander in Chief of the Delaware State…In the Eleventh Year of the Independence of the Delaware State."

The style of Georgia's delegation of authority began and ended as follows (emphasis added):

"The State of Georgia by the grace of God, *free, Sovereign and Independent…*

"WITNESS…this Seventeenth day of April in the Year of our Lord One thousand seven hundred and eighty seven and of our *Sovereignty* and *Independence* the *Eleventh*."

If the States individually had not the original power which they ultimately delegated to the United States under the Constitution, then there would have been no real purpose to have State conventions ratify the Constitution to transfer this authority in the first place.

Rather, Citizens would have voted for a charter, not as State Citizens, but as national citizens voting to create a master government; independent and superior to State governments (bypassing the States altogether).

The Constitution became operational only where it was ratified (in those States voluntary choosing to cede specified authority). **Article VII** of the Constitution, **Clause 1** declares:

"The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same."

The principle that States independently decided to ratify the Constitution shows a complete independence of the States to decide if they would abide by the Constitution prior to their decision to join. No State could be coerced by any lawful authority to give up any degree of sovereignty except by voluntary action. Until authority was lawfully ceded, it was fully retained.

The Constitution provides the form and framework for a structure of government capable of better-securing our inalienable rights endowed by God.

It is vital to have a firm foundation upon which to build a proper understanding of the relationship between the States in their separate capacities with that of their united capacity. To correctly understand the Constitution for the United States of America, one must realize that *United States* is a plural term representing many States united together, as in these united States. The Constitution confirms this literal connotation, showing a plural form in many of its clauses.

Every instance in the main body of the Constitution referring to the United States which shows any indication of word form shows *the United States* as a plural term. **Article III, Section 3, Clause 1** provides one of the most direct examples (emphasis added):

"Treason against the United States, shall consist only in levying War against *them*, or in adhering to *their* Enemies."

The United States, as the term is used in the Constitution, denotes the separate States united together. There is no United States without consideration of the separate States. This concept is similar to a family; there being no single, distinct family entity; actually only a collection of individual persons.

Article VII, Clause 2 of the Constitution touches upon to the origin of the United States, proclaiming:

"Done in Convention…in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth."

The *twelfth* year of Independence of the United States (in 1787) points to the year 1776 (11 years had passed, going on the 12th).

The founding of the United States — the Union — wasn't actually with any FORM of government, it was with an ACTION — the declaration of their Independence. One will find that all documents relate back to July 4th, 1776 — the Independence of America — as the beginning of these United States of America.

The form of government for the Union was and is a matter of policy, the Union and the principles under which they were established remain unvaried. The Declaration of Independence acknowledges our unchanging principles of government in these United States.

Due to the specific wording used in the Preamble — "We the People…do ordain and establish this Constitution" — it would seem logical to expect that the *people* in each State would have voted for or against the ratification of the Constitution.

Article VII provides that the Constitution would be established by ratification of the *State conventions* (rather than a direct vote of the people in each State).

The Constitution, in other words, had nothing directly to do with the *People* of the United States; action only occurred through *State* authority. The Convention was *called* by States; it was *attended* by States; and all voting *occurred* by States, including final *ratification*.

Oaths

The Constitution mandates (Article VI, Clause 3 and Article II, Section 1, Clause 8) that all Legislative Members and Executive & Judicial Officers be "bound by *oath* or affirmation to support this Constitution". Before any such individual can act with proper government authority, that individual must be give such an oath or affirmation.

Oaths and affirmations fulfill contractual purposes. The signatures of the State convention delegates amount to the contract being signed by the *principals* of the contract. The second parties to the contract, the *agents* (government officers & Legislative members) do not sign any document agreeing to any terms. A contract requires confirmation of both parties to be binding.

The oath and affirmation substitute for the signature of the agent; they are verbally-binding promises made by the agents agreeing to the terms and the conditions of the constitutional contract, to complete the proper delegation of authority. The oath and affirmation to support the Constitution amount to the acceptance of members and officers to the express terms of the constitutional contract.

The significance of the mandate that all government officials and legislative members "shall be *bound*…to support this Constitution" must be understood. Indentured servants were those persons alluded to in the Constitution who were *bound* to service. Slaves were those *bound* to labour.

The concept of servants and slaves being *bound* gives understanding of the significance and to the degree to which Legislators, Congressmen, and executive and judicial officers are *bound* to support the Constitution.

Government officials being *bound* to support the Constitution shows that in America, legislative members and government officers are really meant to be government *servants*. Government servants have obligations and duties; highest on the list being to uphold the Constitution. They have no discretion as to the *extent* of their power, they only have a degree of discretion on how they use the power which they have been delegated.

Understanding this obligation gives an indication of the inability of Congressmen and executive or judicial officers to overrule or ignore the Constitution — even if they are personally unfamiliar with it.

Further study will show that oaths are not minor, trivial, or inconsequential relics of a bygone era, but that they are the fundamental starting point for the proper delegation of authority in representative government.

The very first *Act* of the very first *Session* of the very first *Congress* (Statute I, Chapter I) was an act for the regulation of Oaths.

American government is but a delegation of authority from the people themselves to the representatives they elect. The purpose for electing representatives in government is to enact laws according to delineated powers to better secure the inalienable rights of man. Government authority is used to *protect* persons and property from force and fraud within a framework of laws passed by legislatures who operate within confined parameters.

Congress

Article I, Section 1 of the Constitution for the United States of America reads, in part:

> "All legislative Powers herein granted shall be vested in a Congress of the United States."

The *legislative* powers are the *law-making* power; the power to enact laws. The clause specifically *vests* all legislative Power (which was granted) to a Congress *of the United States*.

The literal meaning of Article I, Section 1 of the Constitution is:

> "All legislative Powers herein granted shall be vested in a Congress of the States of New Hampshire, Massachusetts, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia..."

A *Congress* of the States means literally an *assembling* of the States together. The States (colonies) have been assembling in a Congress together since 1774 and passing resolutions and legislation for common benefit.

Congress is not a distinct federal body *apart* from the States, it is the federal body ***of*** the States. Congress is an assembling of the States through persons chosen by the electors of the States to represent the State's interests when passing legislation of concern to all the States. Article I, Section 1 vests all legislative powers which are given to the United States in a Congress of the States.

Article I, Section 8, Clause 18 further provides that only Congress has the Power to enact law. It reads:

> "(The Congress shall have Power…) To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

Both Article I, Section 1 and Section 8, Clause 18 acknowledge that Congress is to make *all* laws. Congress is to make *all* laws both necessary and proper for carrying into execution *all* power vested in the Government of the United States; in any Executive Department of the United States; and in any Officer of the United States.

Citizens electing Representatives who pass law according to their powers was the fundamental concept of our revolution and the government set up by the framers of the Constitution. Both clauses preclude any law from being enacted by an executive Department or the Officers themselves.

Congress passes laws according to the powers vested with them; the Executive executes or puts into action that law; the Judicial branch issues decisions to settle disagreements brought before it (issues rulings according to law). The core responsibilities of these three branches are separate and not intermingled. It is upon these principles that the entire concept of our federal republic rests.

Article IV, Section 4 of the Constitution mandates that:

> "The United States shall guarantee to every State in the Union a Republican Form of Government."

A *Republican* form of government means, in basic form, a *representative* government. *Representation* means having laws passed by the persons elected to represent us. It is not representation to have the majority of that treated as law — codes & regulations — decreed by un-elected, appointed bureaucrats within the executive branch.

Representation means having laws passed by members elected to represent us.

One must notice that Article I discusses legislative *Power*. One will also find that Article II discusses Executive *Power* and Article III — Judicial *Power*. It is imperative for later discussion that one realizes that government has *Power* (which is granted to it).

Article I, Section 8, Clause 1 grants to Congress the *Power* to lay and collect Taxes; Clause 2 the *Power* to borrow Money; Clause 5 the *Power* to coin Money; Clause 10 the *Power* to punish Piracies and Felonies committed on the high Seas; Clause 11 the *Power* to declare War; Clause 12 the *Power* to raise and support Armies; and Clause 15 the *Power* to call forth the Militia to execute the Laws of the Union, suppress Insurrections, and repel Invasions.

The Tenth Amendment, besides conceding that *government* has *Power*, also acknowledges that *People* have *Power* (at least *reserved* powers).

The **Declaration of Independence** acknowledges that Men have *Rights*. It states:

> "*men*…are endowed by their Creator with certain unalienable *Rights*."

The **Ninth Amendment** (as also the others) further recognizes that People have *Rights*:

> "The enumeration in the Constitution, or certain *rights*, shall not be construed to deny or disparage others retained by the *people*."

Nowhere in the Constitution (nor the Declaration, nor Articles of Confederation) is it ever proposed that *governments* have *Rights*. Nor does it follow that a man-made entity, a legal fiction, could have *Rights* which are *inherent* to it. The re-occurring principle throughout our government is that *human beings* created by *God* have *inherent rights*; entities created at law by *man* have but *enumerated power* and *delegated authority*.

The re-occurring principle is that *human beings* created by God have inherent *rights*; *entities* created at law by man have but *enumerated power* and *delegated authority*.

Therefore, everywhere *rights* are being discussed are places where the *rights* belong to *people*. People have inherent rights and they also have inherent and reserved powers; government has but delegated power and authority.

Granted Power

As covered above, **Section 1** of the **First Article** of the Constitution declares that:

> "All legislative Powers herein granted shall be vested in a Congress."

It necessarily follows that when an entity is *granted* power, there is an *extent* and *limitation* of that power; that there is no power given other than that listed.

The powers granted are limited to those enumerated. The enumeration of that granted (Legislative) power is listed primarily in Article I of the Constitution.

For those people not understanding this principle of the limitation of granted power in the Constitution, the States ratified the **Tenth Article in Amendment**, which declares:

> "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."

The Tenth Amendment essentially declares that the States hold all powers held by government not delegated expressly to the United States (with the people holding all powers not delegated to any government). This necessarily follows from the principle of delegated powers: the party giving power retains all power not given.

> The principle of delegated powers establishes that the party giving power retains all power not given.

It also necessarily follows that if one is granted power, *another* must be doing the granting. The States, being the entities who not only called the convention, but who ratified the Constitution and all of its amendments, are the entities granting power to the Congress.

The States, of course, would be unable to give powers which they did not have. The fundamental principle of our Constitution and confirmed by our history, is that the sovereign States each extracted a portion of their own governing authority; enumerated these powers in a constitution; and gave these enumerated powers to the collective agent they created.

Members

Article I, Section 2 Clause 1 states:

> "The House of Representatives shall be composed of *Members* chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature."

Senators and Representatives in their proper role are referred to as *Members*, never *Officers*, repeatedly in the Constitution.

Article I, Section 5, Clause 1 declares that:

> "Each House shall be the Judge…of its own *Members*, and…may be authorized to compel the Attendance of absent *Members*."

Article I, Section 5, Clause 2 declares similarly:

> "Each House may determine the Rules of its Proceedings, punish its *Members* for disorderly Behaviour, and, with the Concurrence of two thirds, expel a *Member*."

Offices pertain only to the Executive and Judicial branches of government. **Article II, Section 1, Clause 1** verifies that the President holds an *Office*:

> "The executive Power shall be vested in a President of the United States of America. He shall hold his *Office* during the Term of four Years."

Article II, Section 2, Clause 1 acknowledges that other executive workers are *officers* and hold *offices*:

> "The President…may require the Opinion, in writing, of the principal *Officer* in each of the executive Departments, upon any Subject relating to the Duties of their respective *Offices*."

Article III, Section 1 admits that Judges also hold *offices*:

> "The Judges…shall hold their *Offices* during good Behaviour."

The only *offices* (or *officers*) in the proper sense of the word in the Legislative branch are the Presiding Officers and those appointed officers who are not Senators or Representatives (Secretary, Clerk, etc).

There is a stark difference between *Members* of the Legislative Branch who enact law and *Officers* of the Executive and Judicial Branches who merely administer law or adjudicate controversies according to law.

Members debate; officers standby. Members speak; officers listen (with the President being able to offer suggestions). Members vote; officers follow orders. Members create law; officers carry it out. Officers march to the beat determined by Members within their powers.

Members of the Legislative Branch are elected in each State to represent that State when the States assemble in Congress to pass legislation of common concern according to their powers. The Executive Branch is merely an appendage which puts the collective will of the States into motion, with the Judicial Branch helping to keep that will in motion as referee.

The difference between *Officers* and *Members* is so important, in fact, that if one is an *Officer*, one is specifically prevented from becoming a Legislative *Member* until such time as he is no longer an *Officer*. **Article I, Section 6, Clause 2** states, in part:

> "No Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office."

Those who execute or enforce the law do not have the ability to make law. The very fact that one is an *Officer* precludes one from being a *Member*. The very fact that one executes or enforces law prevents that same one from making law.

Those seeking to reverse the relative importance between *members* and *officers* generally do so to attempt to give officers the ability to enact legislation to bypass constitutional limitations and safeguards. To give officers equal (or greater) authority, as compared with legislative members, is to ignore the very structure of the Constitution and representative government.

Every Representative is thrown out of his or her seat by the very command of the Constitution itself that members are to be chosen every *second* year.

Each new Congress is numbered to differentiate between them. In the year 2002, the current Congress is the 107th Congress (Second Session).

Numbering of the Congress' helps denote the very structure of Congress; that of delegates representing separate States meeting together under predetermined authority to institute common objectives.

Electors

Given that Clause 1 of Section 2 pointedly declares that Members shall be "chosen…by the *People* of the several States", it would certainly seem logical to expect that the *People* (i.e., nearly everyone) would elect Representatives.

Reading the rest of the clause dispels such logic, however. Further reading shows that there are qualifications being imposed by the States as to *which* People could qualify to vote — only those meeting the qualifications necessary could become an *Elector*.

Article I, Section 2, Clause 1 uses the word *People* with broad meaning and is actually quite inclusive. The word *Electors* is then used to denote a specific sub-group of *People* with differing rights. Only certain members of the general class of *People* were allowed to vote; these *People* being called *Electors*. To limit who was capable of voting was as simple as *defining* who was an *Elector* — making the qualifications as loose or as restrictive as desired for the effect sought.

To concentrate on *who* happened to qualify as an *Elector* at any given point in time and ignore the process used to exclude certain groups, however, is to ignore a fundamental lesson which is critical to understand. Sometimes it is more important to first understand the *means* used to achieve a desired end rather than to quarrel about which particular *end* should be chosen at any given point in time.

Status

The most glaring example of *who* did not initially qualify as an *Elector* was the non-free, non-white, mostly non-person (who was property) — the black slave.

Slavery was common with all races in all ages. For thousands of years, *war* was a common source of slaves; to the victors of war went the spoils, including people. It was considered an act of mercy to take the conquered people as slaves, for the alternative was often death.

The fact that so many slaves of the 1700's came from one continent — Africa — says so much more about the countries which created them, than in America and other countries that unfortunately yet allowed them (and made the trading in them profitable commerce).

To concentrate on the evils which *perpetuated* slavery is to ignore the far greater evil that *originated* slavery. Slavery, once started, has always proved difficult to eradicate other than by degrees as well as violence.

History can be looked at as a series of progressive improvements in the living conditions and respect of all people. Those people last to see their living conditions improve obviously don't have the same history as those further up the ladder of freedom who saw their living conditions improve first.

Before America, governments were instituted for the benefit of Royalty and the wealthy. America, in throwing off its own shackles, brought greater freedom to many people that never before had such. That it didn't bring freedom to everyone equally all at once is a standard which, though certainly ideal, is probably unrealistic.

That the slaves were eventually emancipated shows that the ideals upon which America were founded had validity, even if it took some time to more fully realize them. That it took time to more fully put into action the words of the Declaration that "all men are created equal, that they are endowed by their Creator with certain unalienable Rights" does not stain these principles, nor America; but best shows evidence of the conditions out of which America developed.

Article I, Section 2, Clause 2 of the Constitution declares:

> "No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen."

The Constitution uses the terms *Person*, *Citizen*, and *Inhabitant* all within Clause 2. Different words which relate to people are used when the circumstances warrant it.

A *natural born Citizen* is offered within Article II, Section 1, Clause 5 as an alternative to a *Citizen of the United States*. This wording shows that the terms *natural born Citizen* and *Citizen of the United States* are not completely synonymous terms.

A *natural-born Citizen* is one who was born that way — one who has been a Citizen one's entire life — a Citizen by birth. A *Citizen of the United States* can be then understood as one who *became* a Citizen at some point after birth — a Citizen by the governmental procedure of *naturalization* (to become like a natural-born Citizen).

Strictly speaking, *Person* references the:

> "part which a man plays in society...a person is a man considered according to the rank he holds in society, with all the rights to which the place he holds entitles him, *and the duties which it imposes*." [2]

This word (person/persona) may make more sense when understood in relation to acting. Use of terms such as *person* allow for a separation of the *part* from the *man*. Which *person* a man *portrays* determines the *part* he is to *play* in society.

The mechanism employed to gain political power over others is to consider men, not as men with unalienable rights, but as *persons* with varying sorts with duties, limitations and revocable privileges.

If not for the concept of *person*, the African man would have had unalienable rights when he arrived in America, according to the Declaration's recognition that "All men…are endowed…with…unalienable rights". It is obvious that the slave must have been considered something other than as a *man* to be kept in slavery. The slave was considered in the Constitution as a *person* (with few rights).

The person of a *wife* also had various implications at times past.

The power to create various definitions of types of persons is an awesome power. To make definitions of various persons indirectly involves the ability to define who is *not* a person. To be or not to be a person is at the center of one of the most decisive issues to face Americans today: the issue of abortion. Definitions of terms have an amazing importance in life and in death yet in the 21st century.

Apportionment

Article I, Section 2, Clause 3 of the Constitution reads:

> "Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons."

2. John Bouvier, *Institutes of American Law* (Philadelphia: Robert E. Peterson, 1851), Vol. I, p. 57.

This clause details the manner of distribution for the Members of the House of Representatives among the several States, as well as the distribution of any direct Taxes which Congress may happen to lay upon the United States. The basis for the distribution of Representatives and Taxes is *proportional*; meaning in the proportion or in the ratio of State population to the total population of all the States.

The apportionment of direct taxation is such an important principle that it is the only rule within the main body of the Constitution which is specifically repeated. **Article I, Section 9, Clause 4** mandates that:

> "No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken."

Direct taxation under the Constitution was seen as a necessary ace up the Legislator's sleeve, essentially only to provide sufficient revenue during war or pending war. It was used precisely as intended, providing revenue during three different war-time eras.

The government was expected to be funded in normal day-to-day operations in time of peace by the so-called power of indirect taxation (Article I, Section 8, Clause 1: the ability to lay and collect uniform Duties, Imposts, and Excises).

The Constitution mandates that each State "shall have at Least one Representative" to maintain the federal arrangement of separate States meeting together.

This is one place where Article IV, Section 4 and its "guarantee to every State in this Union a Republican Form of Government" protections come into play. If a State was part of the Union, then it had to be Republican (representational) in form. Without a voice in government, there is no concept of representation.

Enumeration

Article I, Section 2, Clause 3 mandates that an *Enumeration* be performed within three years of the first meeting of the Congress of the United States and within every subsequent term of ten years thereafter. Art. I:9:4 prohibits any direct tax from being laid unless "in proportion to the Census or Enumeration".

The specified purpose of this enumeration or census is to collect the population numbers for the apportionment of Representatives and direct taxes. In that there has not been a direct Tax imposed since the Civil War period, the census primarily maintains proper representation numbers today.

Apportionment is the process of determining the pro-rata distribution of taxes and Representatives to the various States so each *pays* or *obtains* its share. The appropriateness of one's share is determined by *numbers* of its population in proportion to the whole.

The Constitution specifies the formula for the determination of the total number of enumerated persons as covered earlier. The Constitution is silent however, on the important matter of how Congress determines both the total *number* as well as the actual *distribution* of Representatives among the States for the House of Representatives.

Congress therefore has a great deal of discretion regarding the *number* and specific *method* of apportionment of Representatives. Over the years, there have been varying numbers of Representatives, with 105 in total number after the 1790 census to 435 today.

The only requirements specifically listed are that when Congress does allot each State its share of Representatives, it must apportion them; that each State shall have at least one Representative; and that there be no more than one Representative for every 30,000 persons.

Indians

The Constitution divides *Persons* into three major groupings; free persons, Indians (not taxed), and slaves. Many people viewed these groups in a simplified fashion as the white man, the red man, and the black man.

Article I, Section 2, Clause 3 of the Constitution excludes "Indians not taxed" from the formula for enumerating the number of persons for the apportionment of Representatives and direct Taxes among the several States.

"Indians not taxed", those Indians who lived under a tribal government, were separate from all other inhabitants, citizens and residents of the United States. Indians were dealt with separately because the government was not able to extend jurisdiction over them in a normal manner due to their fiercely-independent nature.

The distancing of American government from Indian government and negotiation through treaty are testaments to the strong Indian desire to remain separate from normal American government and in recognition of their status much as a self-governing body of people who had their own way of life prior to the white man's coming to America.

Among the briefest of Legislative Acts, passed on June 2, 1924 (43, U.S. Statutes at Large, 253), changed to a great degree, the entire relationship between the U. S. Government and rest of the Indian people not yet citizens.

All Indians born within the territorial limits of the United States who were not yet citizens were declared by this Act to now be citizens of the United States. Indians are now viewed in a complicated, hybrid manner; individually, they are considered citizens of the United States and therefore generally subject to law and government. As such, they have been assimilated into general American society by degrees over a long period of time which was impossible to accomplish initially.

They are yet *Indians*, who, as members of an (acknowledged) Indian nation, have privileges as a group not afforded non-Indians.

Many of the failed attempts to treat the Indians fairly were in regards to the government's attempt to actually care for them benevolently. The many failures of the white man in regards to treatment of the Indian attest to the failures of *socialism*, of the failure for government to competently act as a care-taker of a people.

Senate

Article I, Section 3, Clause 1 and the Seventeenth Amendment both specify that Senators will be numbered *two* per State. This number, being fixed, is therefore independent of both the physical size and population of any State. With an equal number of Senators in every State, the Senate acts as the House of Congress where the States are represented in co-equal fashion with one another.

Under the Articles of Confederation, each *State* had one vote. This pure confederation rested squarely on State sovereignty, the idea that States were of primary importance in their own right. State sovereignty dictates that States be represented equal with the other States of the confederation.

The Senate under the Constitution is the branch of the Congress which retains (some of) the principles of a confederation that each State be represented in a co-equal manner with the other States.

Under the Constitution, however, it is the *Senators* (individually) which each have one vote, not the States. Each State has an equal number of Senators; each State having an equal voice with every other State.

The change from each *State* having one vote to each *Senator* having one vote is a significant step *away* from State sovereignty, while not completely severing it. The potential in every State of a split vote greatly dilutes the primary authority of the State with regards to the Union.

The voting as States with each State having one vote only strictly occurs now in two places: in ratifying Amendments (and in conventions) and in Presidential elections (and here only strictly when thrown into the House of Representatives).

In its pure form, the States strictly have sovereign attributes where it yet really counts — in changing the authority of the government of the United States. It is the manner of how the authority of government is determined which ultimately determines the structure of American government.

The Constitution discusses a total of *three* different Presiding Officers of the Senate, depending upon the circumstance involved. The primary presiding officer of the Senate is the Vice President of the United States. When the Vice President is absent, the President *pro tempore* is the acting President of the Senate. The supreme Court Chief Justice presides over the Senate when the Senate constitutes itself as a Court of Impeachment and is trying the President of the United States.

Impeachment

Article I, Section 2, Clause 5 grants the exclusive power of impeachment to the House of Representatives. Article I, Section 3, Clauses 6 grants to the Senate the sole power to try all impeachments.

Early in the history of the Republic, the question of the extent of the authority of Impeachment came before the Senate. On July 7th, 1797, the House of Representatives impeached Senator William Blount of Tennessee for High Crimes and Misdemeanors.

Blount, through his counsel, refused to answer, laying his defense on the position that:

> "a Senator is not an officer of the United States; and that no persons but the President, Vice President and civil officers are liable, by the Constitution, to impeachment."

On January 14th, 1799, the Court authoritatively concluded that legislative *members* are not *officers* and thus not subject to impeachment.

Senate convictions of *officers* in cases of impeachment are limited to removal from office and exclusion from holding future offices (though such persons are liable to future punishment upon conviction in a judicial trial).

Strictly speaking, impeachment and conviction of officers are not a bar for them becoming future legislative members, since *members* do not hold *offices*. This principle may sound odd at first, but is actually quite consistent with limited, representative government.

Since Citizens elect members to represent them, it is not within the purview of members to tell Citizens whom they can or cannot choose.

Legislative members have oversight (via Senate confirmation, enactment of law and/or impeachment) over executive and judicial officers, but do not have oversight over Citizens who choose the members themselves. The concept of inherent sovereignty ultimately residing in the people is but a farce if the choice of the people is greatly limited by outside means.

Examination of a recent impeachment trial provides insight which will later prove beneficial.

William Jefferson Clinton was impeached by the House of Representatives by two articles of impeachment; though the Senate failed to convict him.

While President Clinton's impeachment trial could be discussed from any number of viewpoints; it is important to be briefly exposed to the use of deception as the principle means to circumvent the Constitution to increase government power and authority.

President Clinton, through his team of 11 attorneys, answered the Articles of Impeachment in the Senate, in part, with the following admission:

> "The President denies that he obstructed justice when he mislead his aides...The President acknowledges that...he misled his family, his friends and staff, and the Nation..."

By Clinton's admissions and the Senate's inaction, one must conclude that it is possible to mislead and deceive in a legal fashion.

Clinton's tactics of misleading people can be viewed as a primer of the condition of American politics in the 20th century. As such, they can provide a reality check for those desiring to get to the bottom of the actual obstruction of justice during the entire 20th century.

We Americans simply have to discover how many freedoms and liberties were deceptively taken from us. The good thing about this is that we do not have to *fight* — we must simply *learn*!

Deception, when exposed to the light of day, becomes completely powerless. Government activity, even though practiced for decades (even over a century), when resting upon that deception for its authority, ceases to be *authorized* — it being without sufficient constitutional base.

End of Volume I.

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1500 Highway 2
Leavenworth, WA 98826

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