The BEACON SpotLight
A Study of Constitutional Issues by Topic

Issue 21: The Inherent Contradiction Yet Existing in the U.S. Constitution

Although the meteoric rise of The Administrative State has occurred more recently, its origin nevertheless stretches back hundreds of years.

While a long slow march under the radar helps obscure its source, its origin may yet be discovered by examining how federal officials and members of Congress were ever able to begin bypassing their constitutional constraints, with impunity.

Found at the base of federal servants acting as our political masters is an odd contradiction within the U.S. Constitution—between its letter and its spirit—that has long been carefully exploited by a few, for immense political gain.

Thankfully, full and adequate exposure of the fragile means of constitutional bypass brings sufficient awareness to begin dismantling this clever bypass strategy. This frailty, however, also explains the great care exerted to keep quiet this mechanism, by those availing themselves of its immense privileges.

There are a number of important dates in history that help expose this inherent contradiction to the bright light of day, to show how it is the single source of our nation's federal political ills, that allows federal servants to do as they please and make it appear that the U.S. Constitution is powerless to stop them.

That tyranny would one day rear its ugly head became all but guaranteed on March 3, 1821, when Chief Justice John Marshall, writing for the majority of the U.S. Supreme Court, simply wrote:

> "The clause which gives exclusive jurisdiction is, unquestionably, a part of the Constitution, and, as such, binds all the United States."[1]

These 21 words of the little-known *Cohens* case 200 years ago stand at the base of inherent federal discretion exercised throughout the land, and were the final nail in the limited government coffin, needed to advance the march of The Administrative State (also called "The Deep State") into high gear.

The "exclusive jurisdiction" mentioned in the court passage references the special authority of Article I, Section 8, Clause 17 of the U.S. Constitution—for the federal District Seat (the District of Columbia). This clause also extends to exclusive legislation grounds scattered throughout the States and used for forts, magazines, arsenals, dockyards and other needful buildings (including federal court houses, post offices, and light houses).

Whereas ratification of the U.S. Constitution *divided* governing authority into enumerated *federal* powers for the Union and reserved *State* powers remaining with each individual State, in the District Seat and other exclusive lands under Clause 17, government powers were here specially allowed to *accumulate* in and to Congress.

And, that difference between the *division* of governing powers throughout the Union, but the

1. *Cohens v. Virginia*, 19 U.S. 264 @ 424. 1821. Italics added.

FOUNDATION FOR Liberty

Released into the Public Domain
April 7, 2021

accumulation of all governing power, federally, in these special exclusive-legislation areas, explains the parallel rise of omnipotent federal action of The Administratives State, even as it does not here explain how these D.C.-based powers ever escaped beyond the District's geographical borders.

Under the remainder of clauses of the Constitution—i.e., all the clauses besides Clause 17—members of Congress and federal officials may use necessary and proper means to implement enumerated powers, throughout the Union, as delineated in Article I, Section 8, Clause 18. Powers not delegated federally were typically reserved to the States, individually, or the people themselves—see the Tenth Amendment.

However, in the District Seat and other exclusive federal areas, federal servants may—under their accumulated powers under Clause 17—do pretty much as they please. They need only avoid the few things expressly prohibited them (such as found in the First Amendment, like being prohibited from making a law "respecting an establishment of religion").

Normal constitutional constraints simply do not operate in the District of Columbia, because there members of Congress exercise governing powers that are otherwise similar to actions elsewhere performed by State and local governments under their respective State Constitutions. Because, no State government ever operates in the District Seat.

Since someone must enact what otherwise amounts to local law therein, the Constitution—via Clause 17—vests exclusive powers in Congress to do so (and, because of this vesting in Congress, one may ignore as irrelevant any delegation Congress makes to a local government therein, such as mayor and city council).

It is critical to realize that no State, State-like, or District Constitution exists to guide and direct [local] government activity within the District Seat.

Therefore, in the District of Columbia, members of Congress and federal officials must make up all their own [local] rules, as they go along, within their inherent discretion, needing only to avoid those things expressly prohibited (because, again, no local Constitution there exists and the U.S. Constitution, beyond Clause 17, isn't concerned with exclusive District matters).

With, by and after the *Cohens* decision, federal servants had behind them the color of law, giving them a *prima facie* case, supporting their extension of their inherent power, *now even beyond District borders!*

If D.C.-based actions "bind all the…States," as the Court explicitly decreed, then D.C.-based congressional laws are not strictly *local* laws, limited to D.C., as Americans would otherwise understandably believe.

If people don't understand how this clever mechanism—based upon exclusive D.C.-powers—provides government servants a clever way to evade the Constitution's normal constraints, then what they don't know can and will enslave them.

If all these odd circumstances sound strange and peculiar, it is because they are. While conformable to the strictest letter of the currently-worded Constitution, such unrestricted federal actions certainly violate its spirit, and in the process turn the Constitution inside-out and against itself, as government-without-limits consumes everything in its path.

The idea that congressionally-enacted D.C.-based law, exercised almost without limitation, may nevertheless bind the States, has never been openly examined, because the moment it would be brought forth into a full and open discussion would be but the moment before proper steps would be taken to end this self-destructive charade.

In other words, full and open disclosure of this constitutional-bypass mechanism by itself would begin the process needed to dismantle it, *permanently*. What may be properly diagnosed in this instance may be appropriately cured.

Since those who currently exploit this unknown contradiction would lose their powerful tool by which they achieve spectacular political success, means that they will fight tooth and nail to keep well-hidden their clever method of constitutional-bypass.

Everything done in excess of normal constitutional powers, but also beyond exclusive legislation borders, has been done furtively and under the radar, to keep hidden the fragile base of inherent tyranny exercised throughout the land.

Marshall was able to write his words in 1821 listed above, simply by holding that even Clause 17 is a part of "This Constitution" which Article VI, Clause 2 expressly details is the "supreme Law of the Land" that binds the States through their judges.

Because the seventeenth clause of the eighth section of the first article of the Constitution of the United States is a "part" of "This Constitution," then even Clause 17-based congressional legislation "binds" all of the States—the U.S. Supreme Court expressly held, over 200 years ago. Of course, the Court did not in this case go into the very limited extent to which Clause 17-based congressional laws actually "bind" the several States (which is very limited, indeed).

By being ultra-precise in one moment, only to be ultra-general the next, Congress and the Courts have been able to extend D.C.-based congressional laws far beyond their proper constraints.

In *Cohens*, the Court found no express words in Article VI—or elsewhere—that would expressly and overtly exempt Clause 17 from being part of the supreme Law of the Land. So, the strictest letter of the Constitution supports Marshall's precise ruling, but only generally (ignoring here the extremely limited extent to which D.C.-based congressional laws actually "bind" the States).

However, the spirit of the Constitution would necessarily restrict D.C.-based congressional laws, to D.C.-based lands, to allow the remainder of the Constitution to exist and properly operate.

That both the country and the Constitution are in peril shows just how devastating is this holding. But, that by itself does not necessarily mean that the Court's opinion is necessarily wrong, per se.

The extensive devastation just shows how important it is to permanently resolve this inherent conflict, to bring into harmony, finally, the letter and spirit of the Constitution.

But, before looking into corrective measures, it is appropriate to delve deeper into the single political problem facing us federally, to understand its interrelated nuances, so the needed cure can be appropriately applied.

Marshall's 1821 extension of Clause 17 exclusive legislation powers wasn't his first attempt, or even his second, to extend tyranny throughout the land.

Marbury v. Madison

In 1803—shortly after Marshall became Chief Justice of the U.S. Supreme Court—he created, within his infamous *Marbury v. Madison* ruling—the power of "judicial review." Judicial review is the supposed power of the U.S. Supreme Court being able to examine legislative and executive actions and declare those beyond the Constitution's scope as "unconstitutional."

While decrees of "unconstitutional" government action are not necessarily harmful by themselves (as they appropriately stop improper legislative or executive behavior), what has proven terribly harmful is the false idea that correlates alongside of judicial review, which is that the U.S. Supreme Court is the ultimate arbiter of the Constitution and its meaning.

Indeed, the idea that the Court may "interpret" the words of the Constitution to some new and alternate meaning appears to change the powers allowed government, changing the Constitution itself, without an amendment, and without action by the principals of the compact—the States themselves.

The idea that a creation of the Constitution—the Court, in this case—may in turn rule over and overrule the Constitution that created it, is the political equivalent to man throwing off God and operating in His place.

It is no coincidence, after all, that as some men become increasingly powerful politically, the remainder become increasingly subjugated.

It should be expressly mentioned that judges exercise no enumerated, named power to declare things done by members of Congress or federal officers in the executive departments "unconstitutional."

Nowhere mentioned in the Constitution is there an express power of judicial review.

Allowing federal servants to become our political masters has proven to be very beneficial for those controlling the reins, but not to those being reigned.

In reality, judges only exercise the same power in this regard as that given to *every* person who exercises delegated federal authority.

After all, every person exercising positions of [higher] federal authority must necessarily take an oath or give an affirmation to support the Constitution, under the express directive of Article VI, Clause 3 (except the President, of course, who has his own special oath, to "preserve, protect and defend" the Constitution and to faithfully exercise his office). And, inferior officers who do not themselves take an oath, necessarily work under a superior who already has taken one.

Each and every person exercising federal authority has the constitutional obligation—via sworn oaths—to uphold the Constitution and deny anything and everything that is contrary to it.

Judges only have the power in this case as it falls upon *every* federal servant, regarding the necessity of supporting the U.S. Constitution, over anything and everything contrary to it.

Judges adjudicate cases and controversies according to law—they apply the law to the facts of a case, to determine the appropriate dissolution of the case. Adjudicating cases and controversies *according to law* does not by itself judge the law. It is just that the constitutional oath necessitates refusing to uphold a "law" enacted in contravention to the Constitution. Thus, executive officers would have just as much obligation and power to refuse to even bring to trial a supposed violation of an unconstitutional law (but, if they did, then the judges would have the same obligation to set free the Defendant, giving Defendants the protection they need against "unconstitutional" laws enacted by Congress).

Marshall necessarily implied that his *Marbury* ruling was meant to impact the whole Union; i.e., that the Court could reinterpret words found in the Constitution, differently, for direct exercise throughout the Union.

However, it is quite simple to show that the *Marbury* ruling only applies to the exclusive legislation lands for the District of Columbia and other exclusive federal areas.

Marbury v. Madison easily proves this.

First, the background. The "Madison" of the M*arbury v. Madison* case was James Madison, Secretary of State under President Thomas Jefferson.

The "Marbury" fellow was William Marbury, a man nominated and confirmed to be a new Justice of the Peace, but who didn't receive his commission, because it didn't get delivered to him in time, before Thomas Jefferson took office as President, in 1801.

In the Presidential election of 1800, Thomas Jefferson and Aaron Burr each had an equal number of Electoral Votes when those votes were counted on February 11th, 1801. This meant the tie would necessarily be thrown into the House of Representatives, where each State gets one vote.

The Federalists knew their candidate—single-term President John Adams—had already lost.

In response to the loss, the majority in Congress immediately set out to secure Federalist influence after their political influence evaporated, but before the party would fall into obscurity. On February 13th, they enacted a new Judiciary Act, to appoint new Federalist judges to the federal bench, to stack the deck toward the Federalists even as the Party was falling into oblivion. President Adams nominated the new justices and the Federalist Senate quickly confirmed them.

On February 27th, 1801, the Federalist Congress and President Adams next enacted the Organic Act for the District of Columbia.[2]

President Adams quickly nominated 23 Federalist Justices of the Peace for Washington County and 19 for Alexandria County, under Section 11 of the new D.C. Organic Act. The Federalist Senate quickly confirmed them.

President Adams signed the commissions and his Secretary of State—John Marshall—affixed his secretarial seal for these "Midnight Judges," whose commissions were sealed near midnight, of Adams' last day of office.

John Marshall charged his brother, James, to deliver the commissions. James Marshall delivered all the commissions to the Alexandria County Justices, but none to the Washington County Justices.

---

2. Volume 2, Statutes at Large. Page 103. February 27, 1801.

Thomas Jefferson took office the next day, March 4, at noon, having won on the 36th ballot in the House of Representatives, with Aaron Burr becoming his Vice-President.

When the Jefferson Administration found the undelivered commissions, Jefferson ordered his new Secretary of State, James Madison, to deliver only those commissions of which Jefferson approved, but to withhold delivery to the 11 men he did not.

Ten men went away quietly, but the 11th—William Marbury—sued in federal court to get his commission.

When the matter came before the Supreme Court, John Marshall, once Secretary of State, but now Chief Justice—having been nominated by President Adams and confirmed by the Federalist Senate—came to rule over the case where he had been at least a material participant if not the actual ring-leader.

Marshall refused to recuse himself, even with his obvious conflict of interest. If one wants to look for conspiracies, one needn't likely look any further. Remember, he even chose his own brother to deliver (or not deliver) the commissions (as the case may be).

And, of course, one of those undelivered commissions ended up setting up the whole case Marshall would ultimately use to begin extending federal authority far past its original constraints, through the implementation of Alexander Hamilton's D.C. loophole (described more fully, below).

Marshall took the opportunity presented and established Judicial Review. He implied, of course, this new standard was not merely for the District Seat, but the whole Union.

But, why should Americans believe that a court opinion, that dealt with a commission for a man for a Justice of the Peace, for the District of Columbia—under the 1801 Organic Act, for the District of Columbia—necessarily influences the whole Union?

Indeed, the District of Columbia is a special place, wholly unlike the normal division of governing powers for the Union, into enumerated federal powers and reserved State powers.

When all governing powers for the District Seat are accumulated in Congress, and Congress enacts a law under that exclusive power, there is no reason to believe that this law should directly impact the whole Union (at least absent a full and open investigation into actual jurisdictional parameters).

While it is possible that a D.C.-based law enacted under Clause 17 could conform to the remainder of the clauses of the Constitution—and thus even be enforceable throughout the Union as one of the supreme Laws of the Land—the burden of proof should be on the government (and absent direct proof, failing in that regard).

But, instead, Marshall placed the burden of proof on persons who claim such laws are *not* part of the supreme Law of the Land that binds the States, by saying, in *Cohens*:

> "Those who contend that acts of Congress, made in pursuance of this power, do not, like acts made in pursuance of other powers, bind the nation ought to show some safe and clear rule which shall support this construction, and prove that an act of Congress, clothed in all the forms which attend other legislative acts and passed in virtue of a power conferred on, and exercised by Congress as the legislature of the Union, is not a law of the United States and does not bind them."[3]

Therefore, because of *Cohens*—until the Supreme Court overturns the opinion, or until ratification of a new constitution amendment that directly overturns *Cohens*—the burden of proof has been placed upon individual Americans, to prove that Clause 17-based laws do not bind them (in the States). And, failing to prove that, *Cohens* says they will lose their court case. Failing to even bring up the argument, however, assuredly means Defendants will lose their cases.

Because of Clause 17, "facial" challenges to the constitutionality of omnipotent federal laws shouldn't be made, asserting the Congress may *never* perform particular actions.

Being able to do anything and everything within their inherent discretion, except those precious few things expressly prohibited, means in most cases, that federal servants are able to perform most any action in question.

---

1. *Cohens v. Virginia*, 19 U.S. 264 @ 424 - 425. 1821. Italics added.

Until *Cohens* is overturned, it is best to make "as applied" challenges, asserting the case isn't properly before the federal court (that the Defendant isn't on exclusive legislative lands of Congress).

Thankfully, Marshall himself expressly admitted that the Court's opinion in *Marbury* was based upon D.C.-based legislation (under Clause 17).

Marshall begins his Court opinion by examining the Court's "first object of inquiry"—which was:

> "Has the applicant a right to the commission he demands?"[4]

And, before he answers, Marshall plainly lists the explicit source for William Marbury's claim, writing:

> "His right originates in *an act* of Congress passed in February, 1801, *concerning the District of Columbia*."[5]

To be clear, when Marshall details that William Marbury's right to his commission originates in "an act" of Congress "concerning the District of Columbia," he is not casually referencing a legislative Act dealing with D.C. —he is, in fact, citing its actual title—*"An Act concerning the District of Columbia."*

Thus, there can be no question upon which legislative Act *Marbury v. Madison* wholly rests—the Organic Act for the District of Columbia.

But, even if there were doubt (since Marshall doesn't mention the specific date of enactment [February 27th], and since numerous authorities assert it rests upon the February 13th Judiciary Act) his next point eliminates all doubt, when he directly quotes from Section 11 of the Act giving rise to Marbury's claim, when he writes:

> "After dividing the district into two counties, *the eleventh section of this law* enacts,
>
> > "'that there shall be appointed in and for each of the said counties such number of discreet persons to be justices of the peace as the President of the United States shall, from time to time, think expedient, to continue in office for five years'."[6]

Thus, by citing the month and year of the legislative Act, by citing the explicit name of the Act, and finally by quoting the express words found in Section 11 of the Act which Marshall pointedly admits gave William Marbury his claim to his commission, there can be no doubt, that *Marbury v. Madison* rested fully upon the Organic Act for the District of Columbia.

Therefore, all the fruits of the case, including Judicial Review, and especially of the Court's ability to interpret words found within the Constitution, to some new meaning, necessarily rests upon Clause 17 of the U.S. Constitution, in and for the District Seat.

The necessary implication of these facts means that the Court's reinterpretation of the words in the Constitution *may only have an alternate meaning in the District Seat*, and in other exclusive legislative lands found scattered throughout the Union.

Who cares about Judicial Review, if it is really only appropriate to D.C.?

Who cares if the Court "reinterprets" words found in the Constitution, differently, *for the District Seat?*

People care because they foolishly now believe the false implications of the Supreme Court—that these D.C.-based congressional laws [indirectly] bind all the States.

The trick here, of course, rests upon the very limited extent to which D.C.-based congressional laws may actually bind the States. In truth, only minorly, such as allowing officials to bypass extradition of suspects who committed a crime in D.C. and fled the area.

What *Marbury* should tell Americans is that James Marshall seized the first opportunity possible (and possibly even arranged the whole claim), to turn the Constitution inside-out and upside-down, for the immense benefit of those who could grab ahold of the reins and hide what was actually occurring.[7]

Marbury is one of the most-cited of all Supreme Court opinions (as the source of authority, for later actions). It is taught in first-year law classes throughout the land and revered throughout the law profession, where it has been studied in-depth and ad infinitum.

---

4. *Marbury v. Madison*, 5 U.S. 137 @ 154. 1803.
5. *Ibid.*, Italics added.
6. *Ibid.*, Italics added.

7. See also the July 17, 1790 Act "establishing the temporary and permanent seat of Government of the United States" (1 Stat. 130) and the March 3, 1791 amendatory Act (1 Stat. 214).

And, yet readers here are just discovering this information, now, that *Marbury* deals only with D.C.-based powers, that explicitly traced the Defendant's claims directly to the Organic Act for D.C.

Marbury all but begs the question—"Are centuries' worth of legal scholars, law professors and legal professionals incompetent or are they complicit?"

Conservatives are often ridiculed as conspiracy theorists, yet here stands *Marbury*, resting at or near the base of federal tyranny exercised throughout the land.

Marshall's 17 words "His right originates in an act of Congress passed in February, 1801, concerning the District of Columbia," after all, come only 242 words after the very beginning of Marshall's written opinion. How could they be missed, by oversight?

Really? Hundreds of law schools, over hundreds of years, teach millions of law students and none of them, or their graduated counterparts, or scores of legal scholars, have yet picked up on the easily-provable fact that *Marbury* and judicial review are only directly applicable in and for the District of Columbia, under [Section 11 of] the February, 1801 Act "concerning the District of Columbia," as Marshall specifically spells out at the beginning of his opinion?

There certainly appears to be a whole lot of heavy indoctrination going on here, with precious little questioning of the status quo.

Indeed, the oath taken by even Supreme Court justices easily prove they are subservient to the Constitution that they cannot even hope to change, for the Union.

In the District Seat, however, justices are free to exercise whatever powers they are able to wrangle out themselves, by their clever twisting and turning of logic and law, which is, of course, where they specifically excel.

Two hundred years of clever twisting and turning of law and fact by those who swear an oath to support the Constitution is being now fully exposed to the bright light of day, proving that adequate exposure evaporates fictitious power.

McCulloch v. Maryland

Another milestone in history, signifying the progressive march forward of tyranny, again stemmed from overt action by Chief Justice John Marshall, in his 1819 court ruling, *McCulloch v. Maryland*.

McCulloch is another of the most-quoted, most-referenced, and most cited of all court opinions. *McCulloch* involved the Court's opinion on the constitutionality of the second bank of the United States (1816 - 1836).

It was in *McCulloch* that Chief Justice John Marshall famously gave his "allowable-means" test for determining allowable federal action, saying:

> "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional."[8]

This "standard," of course, is little more than gibberish, as evident on its face.

Indeed, when boiled down to its basic premise, the words necessarily imply:

> "Whatever is not expressly prohibited, is allowed."

Because, after all, who determines if the end is legitimate?

Who determines if the end is within the scope of the constitution?

Who determines if the means implemented are appropriate?

Lastly, who determines if the means are plainly adapted to that end?

Marshall's answer (in *Marbury*—to the question, to whom these powers were entrusted) was, of course, "the Supreme Court."

While *Marbury* mapped out the progressive course to promote inherent federal discretion, it was *McCulloch*, however, which really got the ball rolling.

---

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

What Marshall was able to accomplish in *McCulloch* was perhaps best summarized by an 1871 Supreme Court case, which wrote:

> "for the convenience of the treasury…a corporation known as the United States Bank was early created...Its incorporation was a constitutional exercise of congressional power for no other reason than that it was deemed to be a *convenient* instrument or means for accomplishing one or more of the ends for which the government was established, or, in the language of the first article, already quoted, 'necessary and proper' for carrying into execution some or all the powers vested in the government."[9]

In other words, the 1871 Supreme Court asserted that the 1819 *McCulloch* Court "interpreted" the phrase "necessary and proper"—as found in Article I, Section 8, Clause 18, and as the standard for determining allowable government means, when pursuing enumerated ends—to merely mean, "convenient."

The Legal Tender Cases' quote even points directly to *McCulloch*, as it immediately continued:

> "Clearly this necessity, if any existed, was not a direct and obvious one. Yet this court, in *McCulloch v. Maryland*, unanimously ruled that in authorizing the bank, Congress had not transcended its powers."[10]

Of course, *The Legal Tender Cases* Court could write that "Congress had not transcended its powers" by conveniently chartering the second bank of the United States—because Congress could charter the bank under the express power of Clause 17, because no clause of the Constitution expressly forbids Congress from chartering a corporation.

How the Court upheld the second bank in 1819 is perhaps best exposed by looking at the Court's express support of the second bank, by looking to first bank, that operated for the 20-year term, from 1791 - 1811.

Indeed, in *McCulloch*, Marshall expressly pointed to the first bank for support of the second, writing:

> "The principle now contested was exercised by the first Congress elected under the present constitution. The bill for incorporating the bank of the United States did not steal upon an unsuspecting legislature, and pass unobserved. Its principle was completely understood, and was opposed with equal zeal and ability. After being resisted, first in the fair and open field of debate, and afterwards in the executive cabinet, with as much persevering talent as any measure has ever experienced, and being supported by arguments which convinced as pure and intelligent as this country can boast, it became a law."[11]

In *McCulloch*, the Supreme Court placed a fair amount of political weight for the second bank, on the first. Witness therefore, historical precedent, paving the way forward, to continue the mistakes of the past into the future, to expand federal powers.

Given the 1819 Court's express deference to the first bank, it is appropriate to examine the first bank closely, especially since it was the first real constitutional controversy, where the first significant claims of unconstitutional federal action were asserted.

It isn't necessarily surprising, that in order to get extreme federal powers rolling from a dead stop, Secretary of the Treasury Alexander Hamilton had to be a little more forthcoming than Chief Justice John Marshall was, in 1803, 1819 or 1821.

It was February of 1791, when the bill to charter a bank landed on President Washington's desk, for his signature, to become law. But, Washington had also been President of the 1787 Convention where delegates framed the Constitution and sent it to the States for ratification.

Thus, Washington would have personally heard the conversation of September 14th, 1787, involving James Madison's suggested motion, asking convention delegates to consider adding in a proposed power:

> "to grant charters of incorporation where the interest of the U.S. might require & the legislative provisions of individual States may be incompetent."[12]

---

9. *The Legal Tender Cases*, 79 U.S. 457 @ 537, 1871. Italics added.

10. *Ibid.*

11. *McCulloch v. Maryland*, 17 U.S. 316 @ 402. 1819

The pending power was debated at the convention, but ultimately stricken from being included within the proposed Constitution, in no small part because delegates feared it could perhaps be stretched to reach the establishment of a national bank (of which there were few proponents at the convention).

When the stricken power to charter a corporation nevertheless came before President Washington in the form of an approved legislative bill, just four years later—incorporating a bank, no less—it shouldn't surprise anyone he sought formal opinions from his principal officers on the subject, as it related to the duties of their respective offices, before making his final decision.

Secretary of State Thomas Jefferson specifically noted in his formal reply, "the very power now proposed as a means was rejected as an end by the Convention which formed the Constitution," showing how inappropriate he thought it was, given the delegates' overt denial over giving the express power.[13]

Both Jefferson and (Attorney General) Edmund Randolph argued the proposed bill was unconstitutional. These two men first laid out the failed strategy of declaring things otherwise allowable under Clause 17, (facially) unconstitutional.

Like all who would later follow their ignominious lead, they suffered the same result—failure.

Failure to contain Hamilton at that critical juncture ultimately led us down the path we find ourselves facing today, staring into an abyss, ready to plunge into full and open chaos at any moment.

Hamilton, as the primary advocate for the controversial banking bill, had to give his best performance yet, if he wished to get the President to sign it.

It is interesting to note, that before he gave his treasury secretary's opinion in favor of the bill, Hamilton first affirmed that the power of erecting a corporation was not included in the enumerated powers and he specifically conceded that the power of incorporation was not expressly given to Congress.

In a government of delegated powers, exercised only using necessary and proper means, it would be difficult to make such admissions and recover. But, with deft precision, Hamilton moved past government of defined powers and laid the groundwork for inherent discretion, stating:

> "Surely it can never be believed that Congress with exclusive powers of legislation in all cases whatsoever, cannot erect a corporation within the district which shall become the seat of government...And yet there is an unqualified denial of the power to erect corporations *in every case* on the part both of the Secretary of State and of the Attorney General."[14]

In other words, Hamilton let it be known to the careful reader (who could sift through a great amount of filler he had added to confuse matters and hide the real issue), he was not going to look at the normal rules of the Constitution to support his favored bill, as did his opponents, to object to the bill.

Hamilton merely sought to exploit what would later prove to be conservatives' Achilles Heel—their blind inability to ever consider Clause 17 as allowing Congress special powers, even as the clause essentially allows Congress unlimited authority.

Failure to look at this clause in 1791 proved to be an accurate foreshadowing of the next 230 years of failed conservative action, proving conservatives just don't understand the devious mind that seeks its warped ends through despicable means.

So, while conservatives only look to the normal rules of the Constitution to support federal action, Hamilton looked instead to the Constitution's highly usual exception, for authority to act where and when the normal rules wouldn't otherwise allow him, since he didn't necessarily care how he got it, only that he did, somehow.

---

12. https://press-pubs.uchicago.edu/founders/documents/a1_8_7s1.html

13. https://founders.archives.gov/documents/Jefferson/01-19-02-0051

14. https://press-pubs.uchicago.edu/founders/documents/a1_8_18s11.html. Italics added.

Hamilton continued, making his subtle point a bit clearer, yet keeping it sufficiently obscure to avoid tipping his hand, for those who needn't follow along:

> "Here then is express power to exercise exclusive legislation in all cases whatsoever over certain places, that is, to do in respect to those places all that any government whatsoever may do; For language does not afford a more complete designation of sovereign power than in those comprehensive terms."[15]

Whereas the Secretary of State and the Attorney General didn't address the highly-unusual exception to all the normal rules of the Constitution, Hamilton correctly pointed out members of Congress could—under their exclusive authority for the government seat—do whatever they wanted, under this unique power, except those matters that were expressly prohibited. And, since the Constitution does not anywhere expressly prohibit Congress from chartering a bank, then Congress could charter it, under their exclusive D.C. power.

Hamilton expressly admits that this power to exercise exclusive legislation in all cases whatsoever, allows government "to do…all that any government whatsoever may do" because "language does not afford a more complete designation of sovereign power than in those comprehensive terms."

Powerful words signifying extreme power, indeed.

Hamilton inferred that Secretary of State Thomas Jefferson and Attorney General Randolph failed to look at every clause of the Constitution before they asserted that members of Congress didn't have the power to enact the banking bill.

Hamilton easily proved them wrong, simply by showing that the proposed banking bill was not "facially" unconstitutional, *in every case*. In *one* case—under the District Seat power of Article I, Section 8, Clause 17—members of Congress could assuredly charter a bank.

Game. Set. Match. And, repeat this devilish means, over and over, for the next 230 years.

---

15. *Ibid.*

In his 1791 Treasury Secretary's opinion on the constitutionality of the [first] bank of the United States, Alexander Hamilton gave his "allowable-means-test"—his standard for determining allowable federal action. He wrote:

> "If the end be clearly comprehended within any of the specified powers, and if the measure have an obvious relation to that end, and is not forbidden by any particular provision of the Constitution, it may safely be deemed to come within the compass of the national authority."[16]

Comparing Hamilton's 1791 standard of allowable government means, to Marshall's earlier-discussed 1819 standard, one sees they are nearly identically worded, and both mean, "whatever isn't prohibited, is allowed."

It is not surprising that they are nearly identical, since Marshall wrote *McCulloch v. Maryland* in response to a challenge on the constitutionality of the second bank of the United States (1816 - 1836), while Hamilton responded to the challenge to the question of the constitutionality of the first bank (1791 - 1811).

Marshall merely followed Hamilton's express lead, while sanctioning the Secretary of the Treasury's opinion now with official court approval.

Both Hamilton and Marshall really only gave their "allowable-means-tests" as the "standard" for allowable government action under Clause 17, even as they purposefully implied it was the proper standard for the whole Union.

But, Article I, Section 8, Clause 18 of the U.S. Constitution already expressly details the appropriate allowable-means-test for the Union, being "necessary and proper" (but not meaning "convenient," as the Court has defined the phrase, for use in D.C., but by being truly "necessary *and* proper").

Hamilton and Marshall—as mere federal officials (Secretary of the Treasury and the Chief Justice, respectively) who necessarily swear an oath to support the Constitution—cannot change the meaning of words found in the Constitution, for the Union.

---

16. *Ibid.*

These power-seeking men confuse the issue, to throw off their opponents, so others don't learn how these two scoundrels were cleverly using the District Seat power to remake government in their own image.

Implementing enumerated powers using necessary and proper means is the true standard for allowable federal action throughout the Union, which cannot ever be changed by legislative, executive or judicial action, period.

Federal servants who exercise delegated powers and who must necessarily swear an oath to support the Constitution may only change the meaning of terms found in the Constitution, *for use in the District Seat.*

Only States ratify changes to the U.S. Constitution, by ratifying formal amendments.

The bottom line is that Chief Justice John Marshall's *Tyranny Trifecta*—1803 *Marbury*, 1819 *McCulloch*, and 1821 *Cohens*—all necessarily dealt with the exclusive powers of the District Seat. These precedent-setting court cases intentionally sought to expand D.C. powers, throughout the Union, so federal servants could become our political masters.

Marshall implied the "standards" that his three court cases set, all dealt with the whole Union. He lied—if one defines a lie as intentionally obscuring the truth, even if one doesn't perhaps directly cover it up.

Americans have been paying the price of their own ignorance, ever since. Failing to recognize the evil ways of devious men has proved extremely harmful to individual liberty and limited government.

Thankfully, however, once one adequately diagnoses the single political problem we face federally—which is how members of Congress and federal officials bypass their constitutional constraints, with impunity—we may immediately begin taking the steps needed to cure it.

Indeed, while fraud enslaves, full disclosure frees. We are able to cure what we can understand, at least in this situation.

Chief Justice John Marshall, following Alexander Hamilton's devious lead, exploited the little-understood contradiction within the U.S. Constitution, for immense political gain, for those holding the reins of omnipotent federal action.

Thankfully, in the earlier-mentioned 1821 Cohens case, Chief Justice John Marshall does provide us today with a clue on how to overrule his holding, as he wrote:

> "Those who contend that acts of Congress, made in pursuance of this power, do not, like acts made in pursuance of other powers, bind the nation ought to show some safe and clear rule which shall support this construction, and prove that an act of Congress, clothed in all the forms which attend other legislative acts and passed in virtue of a power conferred on, and exercised by Congress as the legislature of the Union, is not a law of the United States and does not bind them."[17]

While no existing words are yet found in the Constitution, to counter the Court's holding that even Clause 17-based congressional laws bind the States, that doesn't mean that we cannot now add such sorely-needed words, via a new constitutional amendment.

Indeed, to overturn Cohens and the presumption of Clause 17-based congressional laws binding all the States, we merely need to propose and ratify a new amendment that simply exempts Article I, Section 8, Clause 17 from being any part of the supreme Law of the Land under Article VI, Clause 2, that says something to the effect:

> "The seventeenth clause of the eighth section of the first article of the Constitution for the United States of America shall not be construed to be any part of the supreme Law of the Land under Article VI."

This new amendment, once ratified, would clearly exempt Clause 17-based congressional laws from being any part of the supreme Law of the Land, that may bind the States, through their judges.

No law enacted by any State legislature and signed by the respective governor ever binds another State. Neither should laws made under the District of Columbia power, just because they are enacted by Congress and signed by the President (since no other clauses of the Constitution directly come into play with Clause 17-based congressional laws).

---

17. *Cohens v. Virginia*, 19 U.S. 264 @ 424 – 425.

This amendment—which the author calls his "Once and For All Amendment" to contain tyranny—will contain the D.C.-based laws to D.C. and other exclusive legislation lands.

All of the vast federal legislation already written under the authority of Clause 17 and already on the books would remain intact, but never again could they bind the States, even indirectly. *The Once and For All Amendment* would contain Clause 17-based congressional laws, to Clause 17-based lands, period.

Another option going forward, is to repeal Clause 17-based congressional laws, entirely. The author calls this powerful option, his "Happily-Ever-After Amendment," to repeal tyranny.

Whereas the Once and For All Amendment would follow the lead of the Eleventh Amendment, ratified in 1795, the Happily-Ever-After Amendment would follow the lead of the Twenty-First Amendment, which repealed Prohibition put in place by the Eighteenth Amendment.

The Happily-Ever-After Amendment to repeal tyranny would be worded something to the effect:

> "The seventeenth clause of the eighth section of the first article of the Constitution for the United States is hereby repealed."

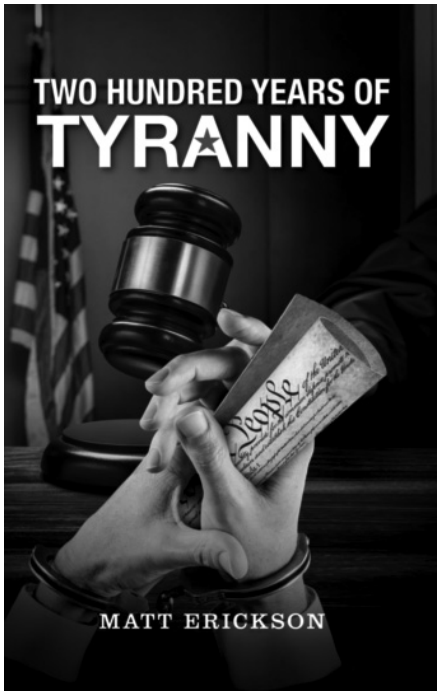
Gone under repeal would be all of government beyond strict construction of the whole Constitution, immediately—the EPAs, the FDAs, the FCCs, the FTCs, the SECs, the Federal Reserve, the Social Security Administration, and all similar bureaucracies and entitlement programs, including much of the IRS.

Repeal the clause allowing independent establishments and omnipotent government programs to exist, and with repeal, they would all be gone. Short of new amendments, they could not ever again be allowed.

But, at this initial step, we needn't be overly concerned with the last step of our plan to Restore Our American Republic, only our next step.

And, the next step is merely to educate oneself as to what is actually going on and then tell everyone possible, in every way possible.

At the www.PatriotCorps.org website, are a dozen books, all freely-available in the public domain—including the most recent, *Two Hundred Years of Tyranny*—that discuss the information herein contained, and show how to move forward.



Although the hour is late, it is not too late to learn what it is that we actually face, so we may throw off our oppression and fully restore our American Republic, once and for all or happily-ever-after.

Thankfully, nothing any federal servant has ever done has actually ever changed the Constitution.

Thus, we may now fully contain exclusive federal powers to exclusive federal lands, or we may fully repeal the source of their seemingly-magical powers, forever.

For, in truth, federal servants have no actual magic, thus, once we pull back the curtain, we may fully expose their fraud, and regain our liberty and limited government.

God bless these United States of America, and to the Republic they stand.

FOUNDATION FOR Liberty

Released into the Public Domain
by Matt Erickson
April 7, 2021