Volume II: Issue 4

The BEACON OF LIBERTY

A Structured Curriculum of Constitutional Study

Clauses Discussed:
• Article I, Section 7, Clauses 1-3

Concept Discussed:
• Enactment of Law

Article I, Section 7, Clause 1 of the Constitution for the United States of America mandates:

> "All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills."

This clause requires that all bills for raising revenue originate in the *House of Representatives*, the House where members are chosen in proportion to population.

The government "raises Revenue" in a manner totally dissimilar from non-government entities. Government is not a charitable organization which solicits donations. It is not a volunteer organization that organizes fundraising bake sales. It is not a profit-seeking company that makes or distributes products offered in the marketplace to willing purchasers who are free to take their business elsewhere.

Government raises Revenue mostly under compulsion through some form of taxation. The use of compulsion raises the stakes of action; therefore certain requirements for its use are mandated to protect people from being coerced by unjust authority.

Specific articles of goods have duties, imposts or excises levied upon them (their manufacture, importation, transfer of ownership, etc.). These are generally (and imprecisely) said to be "indirect taxes" since they impact the consumer indirectly (upon their expense).

Direct taxes, in contrast, are laid upon a person or on their existing wealth and collected directly by government according to the rule of apportionment. Direct taxes cannot be easily circumvented because they are not laid on a person's *consumption* (consumption-based Duties can be easily and legally evaded by simply witholding purchase of items levied with a Duty, Impost or Excise).

Direct taxes are laid upon the person themselves in the form of a *capitation* tax (Latin *caput* meaning head) or on an item of their wealth (especially real property). A capitation tax cannot be evaded (except by death); it is possible, of course, to sell property or other items upon which is laid a direct tax, though this is not as simple as abstaining from buying (as with duties, etc.).

Besides taxes, duties, imposts, and excises, a number of government activities are supported by *user-fees*.

For example, at the local level, if one desires to record the sale of real property at the County, the Auditor charges a *fee* for doing so (in Clark County, Washington, it is currently [generally] $19 for the *first* page and $1 per page for every additional page of the same document).

Even within user-fees can be hidden subsidies: the standard fee for recording the first page (of up to legal-sized paper) provided by statute (RCW 36.18.010) is $5.00 ($1 for each additional page).

RCW (Revised Code of Washington) 36.22.170 and RCW 36.22.175 allow the total surcharges of $4.00 per document (i.e., for the first page) for archival preservation and technological updates.

The above surcharges are at least directly related to the express duty of the County Auditors to record public documents. Modernization of access to such information greatly increases the ease of accessing it.

RCW 36.22.178, however, provides a surcharge of $10 per document for *low-income housing*. The only tie one could make for recording documents to low-income housing is that a great many documents recorded pertain to real property transfers and mortgages.

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The *effect* of this legislation is that the cost of housing is *increased* (the recording of the deed/mortgage/contract for purchasing a house will be *double* for the first page) so that a few can have their housing provided to them at subsidized rates. Unfortunately, the said *solution* is an direct *impediment* to affordable housing; the *cure* actually worsens the *illness*!

More common (in total dollars) than user-fee subsidy are the many forms of government activity where the service is *separated* from the expense, such as taxation of real property by the States to fund *education*.

It does not matter if a property owner has any school-aged children; the owners of *all* property found on the tax rolls pay for schooling (even if only of others), and even if little "schooling" actually occurs.

Separating the *cost* of an item from its *use* is generally a recipe for *increased* consumption, with an ever-increasing need for additional future revenue. Since subsidy shields the user from actual costs, more of the subsidized item will generally be desired.

The requirement for all bills for raising Revenue to originate in the House which is tied to representation can trace its roots to the fundamental theme of the American Revolution that taxation be tied to representation. The British colonies were taxed by Great Britain but they had no voice in legislation enacted there. The local colonial governments were powerless to oppose mandates issued overseas.

Citizens ultimately (directly or indirectly) pay the taxes, duties, imposts, excises, and user-fees which make up the government's revenue from which the government draws upon for authorized expenditures. It is thus appropriate that the political body which numerically represents Citizens originates revenue bills.

Having revenue bills originate in the House that is elected every *second* year provides a quicker and more direct positive-feedback-mechanism to ensure that voters are more apt to have the representation they desire. This gives voters a quicker opportunity to replace Representatives who tax-and-spend in an inappropriate manner.

Once a revenue bill which originated in the House of Representatives passes that House, it is sent over to the Senate, which may then modify the bill ("propose or concur with Amendments") as they think proper.

The form of a proposed law is most often a *bill*. Strictly speaking, a *bill* is a writing or letter (such as a *Bill of Sale* which gives written evidence of transfer of ownership of goods from one party to another). A legislative bill becomes an *Act* (enacted as law) after it *passes* both Houses and is *signed* by the President (or alternative routes for enactment discussed below).

Most familiar are *public* bills, which affect the general public. A *private* bill affects only an individual, corporation or other entity separately. Private bills often are to provide *relief*, such as in cases of immigration or naturalization problems, veteran's benefits, or claims against the government.

A *Resolution* is the expressed opinion of the entity who passes it (House/Senate etc.).

A *Concurrent* Resolution has only the concurrence of both Houses and is not sent to President; and thus does not ever have the effect of law. It is used to deal with issues involving both Houses which do not directly concern the President or the rest of the country. A concurrent resolution is used with regards to *adjournment* (Art. I:7:3 excepts the need for Presidential action on the "question of adjournment") since both Houses must adjourn within three days of one another.

A *Joint* Resolution is a resolution adopted by the majority of a quorum of both the Senate and House of Representatives. When signed by the President, it has the effect of law (therefore it has little real difference from a bill).

Joint Resolutions proposing Constitutional Amendments are not signed by the President (see Article V of the Constitution). Resolutions proposing Amendments require a two-thirds majority of both Houses and are sent to the State Legislatures for (three-fourths) ratification.

A bill must be read (at least the *title* to the law must be read) *three* times in each House before it can be finally voted upon (and, on demand by any one Senator, on three *different* legislative days — Senate Rule XIV/House Rule XVI[8], 108th Congress).

A bill is *engrossed* when it is copied in final draft form and is ready for a vote in one House. If the bill originated in the House, it is signed by the Speaker and certified by the Clerk (of the House of Representatives) after it has been approved by the House and is then sent to the Senate. If the bill originated in the Senate, it is signed by the President (pro tempore) of the Senate and certified by the Secretary of the Senate and sent to the House of Representatives.

A bill is *enrolled* when it is processed as the final copy which has passed both Houses in identical format. It is printed and signed by the proper House and Senate Officers and then submitted to the President for his signature. The term *enrolled* bill originates from literally writing on a *roll* of paper; parchment paper wrapped in cylindrical fashion (as in a scroll), used long ago to keep track of official records.

Article I, Section 7, Clauses 2 & 3

Article I, Section 7, Clause 2 declares:

> "Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law."

Clause 3, with its similarly-worded requirements discussing orders, resolutions and votes, should be discussed concurrently with clause 2.

Article I, Section 7, Clause 3 states:

> "Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill."

Clause 3 of Section 7 mandates that any other legislative actions of importance (orders, resolutions and votes) requiring the concurrence of both Houses must, in effect, follow the general procedural requirements found in Clause 2.

The normal process by which a proposed bill becomes an enacted law is detailed in the second clause. The main theme of this clause is that before any proposed bill can become a law, it must specifically follow one of three courses, depending upon the action (or inaction) of the President.

The normal procedure is for a bill which passes the majority vote of a quorum of both Houses to be sent to the President who signs it. Every bill of proper authority following this path is enacted as law with the full force of the government standing behind it.

Another possible course is that a bill which passes the majority of the quorum of both Houses is *returned* to the House which originated it by the President's *veto* after he viewed it. If *both* Houses, looking at the President's objections, can agree by a *two-thirds* majority of a quorum on the reconsideration of that bill, then the bill is enacted into law over the President's objections. In every case of such reconsideration, the votes of members from both Houses will be entered in their respective Journals (noting the *Yea* and *Nay* vote of every member).

The third scenario involves a bill passing the majority vote of the quorum of both Houses and is sent to the President, who does not act upon it (neither signing, nor rejecting) for 10 days (not counting Sundays). This bill automatically becomes law after 10 days, provided that Congress is still in session. If Congress adjourns, thereby preventing the President from returning the bill to the House of origination, then the bill will not become a law.

Section 7 outlines the procedure by which *every* Law is enacted into existence. In government, *procedure* is everything. Procedure is of absolute necessity because the proper *delegation* of authority *must* occur for such action to be lawful government activity.

Improper procedure is improper government activity; improper government activity is *unauthorized* activity. Unauthorized government activity is an oxymoron, a contradiction of terms. If *unauthorized*, it is *not* government activity.

> *Unauthorized* government activity is an oxymoron. If *unauthorized*, it is **not** *government* activity.

Clauses 2 & 3 of Section 7 are two of the most important Clauses within the Constitution, clauses which have been ignored by far too many politicians and Citizens alike since the dawn of the administrative agencies in the 1880's.

The main point to these Clauses is that American Citizens elect Representatives who pass Laws according to their powers as outlined in the Constitution. The whole idea of a Constitutional Republic is that of *representative* government.

The wording in Section 7 leaves no room for administrative dictates imposed from behind closed-door sessions of un-elected lawyer-bureaucrats within the Executive Departments or "Independent Establishments."

Republican government, which these United States *guarantee* to every State in the Union, is government by one's elected Representatives who enact law and direct government action according to their powers.

Administrative "law", that imposed by the administrative (executive) branch *independent* of the legislative branch (or within very loosely-defined and broadly-based structures given by the legislative branch which the administrators fill in with a minutiae of regulations) is not *republican* government.

The Constitution is very clear as to the status of any legislative bill which does not meet the strict requirements of Section 7 — "in which Case it shall *not* be a Law". Section 7, Clause 2 is discussing bills which were *legislatively* acted upon. Certainly something "Shall not be a Law" which is not passed (nor even proposed) by the *Legislative* department!

To be enacted as law, a bill must [1]:

1. Be passed by both the House of Representatives and the Senate by majority-vote of a quorum, and approved by the President of the United States; or

2. Be passed by both the House of Representatives and the Senate by majority-vote of a quorum, and not be dis-approved of by the President of the United States within 10 days while Congress is in session; or

3. Be passed by both the House of Representatives and the Senate by two-thirds vote of a quorum over the President's veto (after reviewing the President's objections).

If a bill does not pass *both* Houses, then it *cannot* be a law. In no way can **any** legislation be law that was not enacted by the legislative branch (the President can unilaterally issue that which carries the equivalent force of law when granting reprieves and pardons for offenses against the United States other than impeachments).

If a bill does not pass *both* Houses, then it *cannot* be a law.

Law may be enacted unilaterally by the legislative branch, but never by the executive branch (other than reprieves/pardons [which cannot strictly be considered *law*]). Since the President cannot create law unilaterally; certainly his inferior department officers cannot ever enact law — that is why it is called *legislation*!

For the *executive* branch, which is empowered solely to *execute/administer* the laws, to *enact* law (or that treated as law) unilaterally is contrary to representative government and is contrary to the division of power granted to the three branches of government.

1. If a bill raises *revenue*, it must also originate in the House of Representatives and then follow one of the items (1-3) above.

Article I, Section 7, Clause 2 is very specific about the status of a bill which does not follow the stated procedures — "in which Case it shall *not* be a Law". Likewise, "Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary" shall follow lawful procedure "before the Same shall take Effect".

No law can be law but by proper legislative action and proper legislative procedure. Even action proposed by the Senate and House of Representatives but not conforming to the required procedures will not be law. Certainly no action which *bypasses* the Senate and House of Representatives completely can ever become law in these United States of America.

The elaboration of what is and what is not a law may seem repetitive, but when one realizes the extent of all that masquerading as law which has not been specifically passed by both Houses of Congress, then one realizes the vast extent of the problem. Repetition is here certainly not out of order.

Requirements of Law

Due to the widespread nature of codes masquerading as laws, a re-cap of the requirements of law follows.

Article I, Section 1:

"All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

Article I, Section 8, Clause 18:

"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."

The Congress of the United States consists of the Senate and House of Representatives. These members assemble together as delegates of the separate States and discuss items within their given authority.

All *legislative* power is specifically *vested* (fixed) in this Congress of the United States. Congress have sole Power to make all Laws — law cannot be made *without* them.

The Constitution grants specified powers unto Congress. No other entity has any federal *legislative* authority, the ability to *create* federal law.

While Congress shall have *delegated* authority granted by the Constitution, they do not have *inherent* legislative authority.

Congress shall have Power to make *all* Laws which shall be *necessary* and *proper* for carrying into *Execution* the foregoing Powers.

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.

If a law is for carrying into *Execution* a power discussed by the Constitution, it will be enacted by *legislative* action.

If a law is made for carrying into Execution a power discussed by the Constitution for any *Executive Department*, it will be enacted by *legislative* action.

If a law is made Executing a power discussed by the Constitution for any *Officer* of any Executive Department, it will be enacted by *legislative* action.

There is no person in America which can refute the Constitution and its limitations. The supreme Court Justices are not empowered to over-rule the Constitution, from whence they get their sole judicial authority.

The President of the United States is powerless to by-pass the constitutional limitations imposed upon him. The heads of the various Executive Departments and agencies are powerless to bypass constitutional limitations and to issue dictates by which every American must adhere.

It is not important to here analyze these conclusions (which will only be properly refuted once *The Beacon of Liberty* has published far more volumes) but to know that the Constitution lists specific procedural requirements of every enacted law (which Congress is powerless to transgress). Not every activity of Congress is then necessarily authorized, only that activity in conformance with the constitutional procedures and powers.

If Congress had *discretion* as to the *extent* of their power (which, of course, they do not), then any activity they chose would be necessarily authorized. The Senate and House of Representatives, however, do not have such ability; they are entities of *limited* (delegated) powers.

Section 8 of Article I discusses the bulk of Congress' authorized powers. This section is the last which needs to be covered before beginning the actual look into activities of the federal government generally unauthorized by the Constitution.

Rules and Exceptions

The learning of *rules* helps one by providing a structural framework to place various facts, theories and observations into a outline — upon which one may build knowledge. Rather than a person being a storehouse of seemingly-unrelated tidbits of information, rules help provide an outline to organize knowledge which builds a known fact upon a more-basic known fact. Observations and theories can be placed within such a structure to help one better understand a principle.

As is often the case with man-made rules, they are seldom set in stone; they may have *exceptions* to them. Even a rule with exceptions can be important to learn to help one gain a broader understanding of a given topic.

A very brief look at government *as practiced* (the *exception*) can be of benefit before getting deeply into the specified *rules* [powers] of Congress in Section 8. To understand at least the basic outline of the *abnormal* will help one better learn the *normal*. If a rule happens to correct in 19-out-of-20 instances, the quick exposure to that 1-in-20 may help one when studying the 19 cases.

Education and Federal Authority

One will find no power under the ordinary Clauses of Section 8 which gives Congress the express ability to legislate in matters regarding *education*, yet within the Executive Branch is now an entire department nominally devoted to education; named appropriately, the *Department of Education*. Scores of laws have been passed on education by Congress; below are a few regarding the organization of the federal entities which deal (or dealt) with education.

In 1867, Congress created an Independent entity (not an Executive Department) called the *Department of Education* (XIV Stat. 434) to "promote the cause of education throughout the country".

In an 1868 appropriations bill (XV Stat. 92, at 106), Congress terminated the Department of Education and created the *Office of Education*, placing it under the (Executive) *Department of the Interior* effective June 1869.

In 1939, in the **Reorganization Plan No. 1** (found at 53 Stat. 1423), the Office of Education and a number of other agencies were consolidated into the *Federal Security Agency*. To this agency was transferred the functions of the Office of Education.

This Government **Reorganization Plan No. 1** was, as detailed in the plan:

> "Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, April 25, 1939, pursuant to the provisions of the *Reorganization Act of 1939*, approved April 3, 1939."

The said **Reorganization Act of 1939** (53 Stat. 561), enacted by Congress, granted to the President the stated authority to reorganize government agencies. The reasons for granting this authority were stated in the

Reorganization Act of 1939, in **Section 1**(**a**):

> "The Congress hereby declares that by reason of continued national deficits beginning in 1931 it is desirable to reduce substantially Government expenditures."

In the 1939 Reorganization Act, Congress directed the President to investigate the organization of all agencies and determine necessary changes to accomplish the following goals *(italics emphasis added, publisher)*:

> "(1) To reduce expenditures to the fullest extent consistent with the *efficient* operation of the Government;
>
> "(2) To increase the *efficiency* of the operations of the Government to the fullest extent practicable within the revenues;
>
> "(3) To group, coordinate, and *consolidate* agencies of the Government, as nearly as may be, according to major purposes;
>
> "(4) To reduce the number of agencies by *consolidating* those having similar functions under a single head, and to abolish such agencies as may not be necessary for the *efficient* conduct of the Government; and
>
> "(5) To *eliminate* overlapping and *duplication* of effort."

Section 5 of the said Act provided than any Plan offered by the President would take effect 60 days after it was transmitted to Congress unless Congress issued a resolution within that period stating that they did not favor such Plan.

This Plan, as with all *reorganization* plans, delegates primary authority to the *President* to *create* the "legislation", reserving unto Congress only the ability to later *approve* or *disapprove* of such action.

The procedure of enacting law authorized by the Constitution is expressly a *legislative* function followed (normally) with *Presidential* approval.

Such reversal of legislative and executive roles cannot be justified by the *spirit* nor the *intent* of the Constitution. A later look into this *abnormal* procedure will eventually better explain this reversal of roles.

The President's **Reorganization Plan No. 1 of 1953** (see 67 Stat. 631; "authorized" by the Reorganization Act of 1949, 63 Stat. 203) abolished the Federal Security Agency. The former functions of this agency were transferred to the *Department of Health, Education and Welfare* which this Plan of the President created and established as an Executive Department.

The Department of Health, Education and Welfare was re-designated by a legislative act in 1979 (93 Stat. 668 in Section 509(a) at page 695) as the *Department of Health and Human Services*. Education was transferred to the newly established (at page 671 of said act) Executive Department, the *Department of Education*.

This circuitous history was often the result, as stated by Congress, for the express purposes "to increase *efficiency*"; "to *consolidate* similar functions of differing agencies"; and "to *eliminate duplication* of effort". These worth-while goals, however, are generally the siren-song of totalitarian government — the *consolidation* of power into *fewer* and *fewer* hands where power and government are ultimately *expanded*, **not *contracted***.

If Congress were sincere with their stated desire to "*reduce* substantially Government *expenditures*", the said government expenditures would have actually *fallen* substantially. Employees would have been laid off and budgets reduced, with entire activities stopped completely.

Looking at the federal government expenditures on education for given years shows this not to be the case.

Federal Government Expenditure on Education

Year	Intergovernmental Expenditure	Direct Expenditure	Combined
1970	$5,844,000,000.	$3,053,000,000.	$8,897,000,000.
1965	$1,677,000,000.	$1,050,000,000.	$2,727,000,000.
1960	$950,000,000.	$685,000,000.	$1,635,000,000.
1955	$521,000,000.	$802,000,000.	$1,323,000,000.
1950	$369,000,000.	$2,470,000,000.	$2,839,000,000.
1946	$149,000,000.	$355,000,000.	$504,000,000.
1944	$193,000,000.	$12,000,000.	$205,000,000.
1942	$76,000,000.	$110,000,000.	$186,000,000.
1940	$154,000,000.	$189,000,000.	$343,000,000.
1938	$112,000,000.	$162,000,000.	$274,000,000.
1936	$147,000,000.	$188,000,000.	$335,000,000.
1934	$61,000,000.	$174,000,000.	$235,000,000.
1932	$12,000,000.	$14,000,000.	$26,000,000.
1927	$10,000,000.	$8,000,000.	$18,000,000.
1922	$7,000,000.	$8,000,000.	$15,000,000.
1913	$3,000,000.	$5,000,000.	$8,000,000.
1902	$1,000,000.	$3,000,000.	$4,000,000.

Source: *Historical Statistics of the United States, Colonial Times to 1970*. U.S. Department of Commerce, Bureau of the Census (House Document No. 93-78, 93rd Congress, 1st Session). Chart Series Y 608, Y 618, Pages 1123-1124.

The structural changes made in 1939 appeared to help by 1942, but by 1946 had almost doubled the 1938 figures. If Congress truly wanted to substantially *reduce* expenditures, they should have went back to what they were doing seven years before (or, more correctly, they should have went back to *not* doing in 1939 what they were *not* also doing in 1932).

Of course, *reducing expenditures* is not really a primary function of government. The function of government is outlined in the Constitution: to follow what the Constitution *commands* and to refrain from doing what the Constitution *prohibits* or does not allow.

This would not restrict activity in 1939 to that done or not done in *1932*, but to restrict activity done in any year to that done within the constitutional parameters from *1789* (except as changed by constitutional amendment).

As such, activity which had not been attempted for the first 78 years of federal existence (such as education) would be strong evidence that the government had no such proper authority. Thus, activity *during* and *after* the Civil War would not look any different as federal activity done *before* the war, except as changed by amendment.

Independent Establishments

An even-bigger issue than education can be the "Independent Agencies" or "Independent Establishments" which routinely establish their own regulations which affect businesses and individuals far and wide.

Agencies such as the **Environmental Protection Agency** (EPA) carry out activities with extensive reach. The EPA was created by the Presidential **Reorganization Plan No. 3 of 1970** (see 84 Stat. 2086) nominally allowed by congressional statute (80 Stat. 378 at 393). The purpose of the EPA was not given in the plan (though one could deduce such from the functions transferred to them), but the EPA's website (http://www.epa.gov/epahome/aboutepa.htm) now declares that its **mission statement** is to:

> "protect human health and to safeguard the natural environment — air, water, and land — upon which life depends."

No such lofty goals such as "protect human health" and to "safeguard the natural environment" are to be found in the standard clauses of Article I, Section 8: nor the ability for Independent Agencies or Executive Departments to issue dictates by which American businesses and individuals must live.

More informative at the EPA website (http://www.epa.gov/epahome/lawintro.htm) is an "**Introduction to Laws and Regulations**", which is given so us mere mortals can better understand their lofty intentions and actions.

Under Item **# 1** is listed "**Creating a Law**", which outlines the general procedure listed in Article I, Section 7 of the U.S. Constitution. Creating law detailed there is in general agreement with general constitutional parameters (though not the delegated authority of enacting such laws as the Water Pollution Control Act [a.k.a., Clean Water Act — 62 Stat. 1155] in 1948).

Under Item **# 2** at the website, labeled "**Putting the Law to Work**", the EPA admits:

> "Laws often do not include all the details."

After that understatement of the century, Item **# 2** next details that:

> "Congress authorizes certain government agencies — including EPA — to create regulations."

The passage then admits:

> "Regulations set specific rules about what is legal and what isn't."

Of course, authority for Congress to delegate such power to create regulations is not stated, nor is the subject even approached.

Under Item **# 3** "**Creating a Regulation**", the EPA details that:

> "First, an authorized agency — such as EPA — decides that a regulation may be needed. The agency researches it and, if necessary, proposes a regulation. The proposal is listed in the Federal Register so that members of the public can consider it and send their comments to the agency. The agency considers all the comments, revises the regulation accordingly, and issues a final rule."

Item **# 3** later states:

> "Once a regulation is completed and has been printed in the Federal Register as a final rule, it is 'codified' by being published in the Code of Federal Regulations (CFR). The CFR is the official record of all regulations created by the federal government."

The process detailed by the EPA (of Congress enacting broad-based law and empowering an executive agency [even those created without legislative input] to enact detailed regulations) is a process repeated throughout the many government agencies. By this mechanism, copious amounts of regulation on every topic imaginable are passed, the extent of which Congress could not easily enact on their own.

The calling of these "enactments" not *law*, but *regulation*, is the vital first step to breaking the link of authorized action. Law, of course, can only be enacted by Congress. The Constitution is very specific that *only* Congress has the authority to enact law.

The Constitution uses the words *regulate* or *regulation* a number of times (Art. I:4:1/Art. I:8:3/ Art. I:8:5/Art. I:8:14/Art. I:9:6/Art. III:2:2/Art. IV:2:3/ Art. IV:3:2/and the 2nd Amendment — all of which specifically pertain to *legislative* authority). Of critical importance is that the Constitution does not also detail explicitly the legal ramifications of this word. As such, it is more open to mis-use by the executive branch.

For the EPA to admit that "Regulations set specific rules about what is legal and what isn't" and then adopt them anyway under their *own* authority (albeit under authority supposedly delegated to them or the President by Congress) is an affront to representative government. That they so boldly proclaim it shows how far from representative government we have traveled.

Those who understand the Constitution and desire limited government must search for the mechanism of by-pass until found. To understand the Constitution means that one understands that its commands cannot be overturned or ignored by mere legislative, executive or judicial action (they can only be tricked into thinking it has). They must look for the *exception* to the *rule* to better understand the *rules* which *do not* seem to conform with the commands of the Constitution yet are not overturned.

As no EPA official has ever been elected to that post by any Citizen-elector, do Congressmen have the ability to delegate the law-making authority (regulation-making ability) to this un-elected bureaucrat who is not even under the Executive Department (it is listed under "*independent establishments*") ?

Can Congress bypass the guarantee to every State in the Union of a *republican* form of government?

Can Congress, who gets their sole authority to act from the Constitution, authorize actions which appear contrary to that very Constitution?

Is the Constitution circumvented simply by calling something another name (calling a "law" a "regulation")?

Can the many Independent Establishments, Government Corporations, and Executive Departments create “enactments” called *regulations* which detail the activities *authorized* and *prohibited* to American businesses and individuals in excruciating detail?

Studying the Constitution, one must answer these questions with "*no*" (at least according to the *rule*).

As the answer "*no*" flies in the face of what *is* occurring, one must question if it is actually the *correct* answer. Since one cannot ignore "reality", a "reality-check" leads us to the answer being *yes*, at least *somehow*.

That the government *is* doing such activity is strong evidence that it *can* (again, at least in *some* manner). That almost every judicial action *supports* such activity is even stronger evidence that government *has* that authority (at least in terms of the *exception* to the rule).

The quest must therefore be **to find that one exception whereby such activity is authorized**. With the knowledge of the *exception*, the *rule* is simply modified to state "that in *a, b, c, d, e, f, g, h, i, j, k, l, m, n, o, p, q, r, s, t, u, v, w*, and *x* cases, government cannot do *y*, but in *z* case, they can.

Just because such activity can be warranted in *one* case does not mean that such activity can be stretched to apply in *all* other cases. The Constitution is the bulwark against improper activity which all three branches of government are powerless to breach.

> Just because such activity *can* be warranted in *one* case does *not* mean that such activity can be *stretched* to apply in *all* other cases.

To stretch the Constitution where it never meant to go is to deny its limited applicability.

As Section 8 powers of Congress are discussed, one should realize that there can be conditions or instances where the powers of Congress are not limited in the normal manner (*exceptions* will begin to be discussed after Section 8 is covered over the coming volumes). This does not tarnish the Constitution, it simply means that laws can have exceptions to them in uncommon situations which limit their action. One must simply learn the limitations and act accordingly.

Just because *exceptions* **can** occur does **not** *destroy* the *rules* the remainder of the time. Just because Congress can act in a manner greater than the Constitution normally allows in *one* situation does not mean that they can act in that greater manner in *all* situations.

One cannot, in order to correlate *actual* government activity with *authorized* activity, throw out the Constitution, the sole authority by which the government of the United States acts. Besides being incorrect, this is a poor excuse for *understanding* government authority. Those giving this as an "answer" have given up on their attempt to understand proper government behavior and the Constitution.

One cannot simply call activity performed by the government in apparent disregard of the Constitution *unconstitutional* and act as that is the answer. Government cannot act in an unlawful manner (if *unlawful*, it is *not* government activity; it is only the activity of an individual outside of his capacity as an member or officer who is liable for his transgressions).

Non-contradictory understanding of proper *authority* and actual *activity* must be the goal of any serious study of the Constitution to reconcile any apparent contradiction between them.

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