

A Guide to the Constitution

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Over 200 years ago our forefathers undertook a GRAND EXPERIMENT in self-government. Brought together for the purpose of providing amendments to the Articles of Confederation, they instead offered the Constitution of the United States of America.

But how well do you know the Constitution?

The Constitution has as its origin that the people; that is, the people of the United States, hold all power. [Footnote 1] And that through the constitutions of the several States the people delegated some of their powers to their state governments. While in the Constitution of the United States of America [Footnotes 2, 10 and 11], they transferred some of the powers which they granted to the individual States, in whole or in part, to the United States, as well as delegated it with some of their own powers. [Footnote 3]

The powers that were given to the United States in the Constitution were either exclusive or concurrent (that is shared) with the individual States. Exclusive power for the United States existed in three ways: ". . . (2nd para) where the Constitution in express terms granted an exclusive authority to the Union; where it granted in one instance an authority to the Union, and in another prohibited the States from exercising the like authority; and where it granted an authority to the Union, to which a similar authority in the States would be absolutely and totally contradictory and repugnant. Alexander Hamilton, Federalist Papers #32."

(<http://www.foundingfathers.info/federalistpapers/fed32.htm>)

"The Government of the United States (therefore) is one of delegated, limited and enumerated powers. United States v. Harris, 106 U.S. 629, 635" State of Kansas v. State of Colorado: 206 U.S. 46, at 87 (1907). [Footnote 4]

REPORTS OF CASES ADJUDGED IN THE SUPREME COURT OF THE UNITED STATES

(<http://books.google.com/books?id=AW4UAAAAYAAJ&pg=PA87#v=onepage&q=&f=false>)

And to carry out these exclusive and concurrent powers, the United States was given the power "to make 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. Article 1, Section 18, Constitution of the United States (of America)."

Commenting on this provision, Alexander Hamilton wrote in Federalist Paper #33:

(<http://www.foundingfathers.info/federalistpapers/fed33.htm>)

"(3rd para) What is a power, but the ability or faculty of doing a thing? What is the ability to do a thing, but the power of employing the means necessary to its execution? What is a legislative power, but a power of making laws? What are the means to execute a legislative power but laws? What is the power of laying and collecting taxes, but a legislative power, or a power of making laws to lay and collect taxes? What are the proper means of executing such a power but necessary and proper laws? This simple train of inquiry furnishes us at once with a test by which to judge of the true nature of the clause It conducts us to this palpable truth, that a power to lay and collect taxes must be a power to pass all laws necessary and proper for the execution of that power; and what does [this] provision in question do more than declare the same truth, to wit, that the national legislature to whom the power of laying and collecting taxes had been previously given, might, in the execution of that power, pass all laws necessary and proper to carry it into effect? . . . [T]he same process will lead to the same result, in relation to all other powers declared in the Constitution. *And it is expressly to execute these powers that the sweeping clause, as it has been affectedly called, authorizes the national legislature to pass all necessary and proper laws.* [Footnote 5]

(2nd para) . . . [I]t may be affirmed with perfect confidence that the constitutional operation of the intended government would be precisely the same, if [the] clause was entirely obliterated as if [it] were repeated in every article. [It] is only declaratory of a truth which would have resulted by necessary and unavoidable implication from the very act of constituting a federal government and vesting it with certain specified powers." [Footnote 6]

And to execute these powers, through legislation, ". . . [W]e think the sound construction of the constitution must allow to the national legislature that discretion, with respect to the

means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. 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." McCulloch v. State of Maryland: 17 (Wheat 4) U.S. 316, 421 [Footnote 7]

REPORTS OF CASES ARGUED AND ADJUDGED IN THE SUPREME COURT OF THE UNITED STATES

<http://books.google.com/books?id=TW4DAAAQAAJ&pg=PA421#v=onepage&q=&f=false>

Along with the powers granted to the United States in the Constitution exceptions (limitations, or restrictions) were placed of these powers. [Footnote 8] Some examples:

- 1) On the power of Congress ". . . To lay and collect Taxes, Duties, Imposts, and Excises (Article I, Section 8, Clause 1)," we have some of the following exceptions:
 - a) "No Capitation or other direct, Tax shall be laid, unless in Proportion to the Census or enumeration herein before directed to be taken (Article I, Section 9, Clause 4),"
 - b) "No tax or duty shall be laid on articles exported from any State (Article I, Section 9, Clause 5),"
 - c) "No vessel bound to, or from, one State shall be obligated to pay duties in another (Article I, Section 9, Clause 6)," and,
 - d) "But all Duties, Imposts and Excises shall be uniform throughout the United States (Article I, Section 8, Clause 1)."
- 2) For the power of Congress ". . . To regulate Commerce among the several States (Article I, Section 8, Clause 3)," we have this restriction:

"No Preference shall be given by any Regulation of Commerce to the Ports of one State over those of another (Article I, Section 9, Clause 6)."
- 3) Regarding the power of Congress ". . . To constitute

Tribunals inferior to the supreme Court (Article I, Section 8, Clause 9)," there is this exception:

"The privilege of the writ of habeas corpus shall not be suspended unless when in cases of rebellion or invasion the public safety may require it (Article I, Section 9, Clause 2)."

4) And the power of Congress ". . . To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers (Article I, Section 8, Clause 18)," there is this restriction:

"No Bill of attainder or ex post facto law shall be passed (Article I, Section 9, Clause 3)."

Originally, the Constitution of the United States of America had no amendments. [Footnote 9] On September 23, 1789; Congress proposed "Articles in addition to, and amendment of, the Constitution of the United States of America" to the legislatures of the several States. [Footnote 10] The reason for the proposed amendments was "The Conventions of a number of the States having at the time of their adopting the Constitution expressed a desire, in order to prevent misconstruction or abuse of its powers, that further DECLARATORY AND RESTRICTIVE CLAUSES should be added: And as extending the ground of public confidence in the government will best insure the beneficent ends of its institution —." [Footnote 10]

The Declaration (Bill) of Rights and further Restrictions contains some rights of the people and exceptions on the powers granted to Congress.

http://www.archives.gov/exhibits/charters/bill_of_rights_transcript.html

Amendment 1 is:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Amendment 1 is a exception on the power granted in Article I, Section 8, Clause 18 of the Constitution of the United States of America:

"The Congress shall have Power to make all Laws which shall be necessary and proper for carrying into Execution the

foregoing Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

Amendment 3 reads:

"No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law."

Amendment 3 is a limitation on the power granted in Article I, Section 8, Clause 14 of the Constitution of the United States of America:

"The Congress shall have Power to make Rules for the Government and Regulation of the land Forces."

Amendment 5 states:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Amendment 5 is a restriction on the power granted in Article I, Section 8, Clause 9 of the Constitution of the United States of America:

"The Congress shall have Power to constitute Tribunals inferior to the supreme Court." Note: In particular, rules of evidence and rules of procedure.

Amendment 6 declares:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

Amendment 6 is a restriction on the power granted in Article I, Section 8, Clause 9 of the Constitution of the United States of America:

"The Congress shall have Power to constitute Tribunals inferior to the supreme Court." Note: In particular, rules of evidence and rules of procedure.

Amendment 7 provides:

"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

Amendment 7 is a limitation on the power granted in Article I, Section 8, Clause 9 of the Constitution of the United States of America:

"The Congress shall have Power to constitute Tribunals inferior to the supreme Court." Note: In particular, rules of evidence and rules of procedure.

Amendment 8 conveys:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

Amendment 8 is a restriction on the power granted in Article I, Section 8, Clause 9 of the Constitution of the United States of America:

"The Congress shall have Power to constitute Tribunals inferior to the supreme Court." Note: In particular, rules of evidence and rules of procedure.

Amendments 2 and 4 are:

"(2) A well regulated Militia, being necessary to the security of a free State, THE RIGHT OF THE PEOPLE to keep and bear Arms, shall not be infringed."

"(4) THE RIGHT OF THE PEOPLE to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

These provisions are Declarations of Rights of the People.

Two provisions, the Ninth Amendment and the Tenth Amendment, are neither exceptions to powers granted to Congress nor declarations of rights of the people. They are instead constitutional principles.

The Ninth Amendment proclaims:

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." [Footnote 12]

The Tenth Amendment 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." [Footnote 4]

The Constitution of the United States of America is therefore a document "ordained and established" by the people, for the United States of America, in which the government; that is, the Congress is given "delegated, limited and enumerated powers." In addition, some exceptions, limitations, or restrictions were placed on some of these powers. And, additional powers, or restrictions to powers granted, to Congress can be granted, or imposed, through an amendment to the Constitution.

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Footnotes:

1. "We, the People of the United States, in Order to form a more Perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."
Preamble, Constitution of the United States (of America).

http://www.archives.gov/exhibits/charters/constitution_transcript.html

(Author's note: You may wish to keep this link to the Constitution of the United States of America activated as additional references to it are made in this work.)

And,

"In discussing this question, the counsel for the State of Maryland have deemed it of some importance, in the construction of the

constitution, to consider that instrument not as emanating from the people, but as the act of sovereign and independent States. The powers of the general government, it has been said, are delegated by the States, who alone are truly sovereign; and must be exercised in subordination to the States, who alone possess supreme dominion.

It would be difficult to sustain this proposition. The Convention which framed the constitution was indeed elected by the State legislatures. But the instrument, when it came from their hands, was a mere proposal, without obligation, or pretensions to it. It was reported to the then existing Congress of the United States, with a request that it might 'be submitted to a Convention of Delegates, chosen in each State by the people thereof, under the recommendation of its Legislature, for their assent and ratification.' This mode of proceeding was adopted; and by the Convention, by Congress, and by the State Legislatures, the instrument was submitted to the people. They acted upon it in the only manner in which they can act safely, effectively and wisely, on such a subject, by assembling in Convention. It is true, they assembled in their several States—and where else should they have assembled? No political dreamer was ever wild enough to think of breaking down the lines which separate the States, and of compounding the American people into one common mass. Of consequence, when they act, they act in their States. But the measures they adopt do not, on that account, cease to be the measures of the people themselves, or become the measures of the State governments.

From these Conventions, the constitution derives its whole authority. The government proceeds directly from the people; is 'ordained and established,' in the name of the people; and is declared to be ordained, 'in order to form a more perfect union, establish justice, insure domestic tranquillity, and secure the blessings of liberty to themselves and to their posterity.' The assent of the States, in their sovereign capacity, is implied in calling a Convention, and thus submitting that instrument to the people. But the people were at perfect liberty to accept or reject it; and their act was final. It required not the affirmance, and could not be negatived, by the State governments. The constitution, when thus adopted, was of complete obligation, and bound the state sovereignties.

It has been said, that the people had already surrendered all their powers to the State sovereignties, and had nothing more to give. But, surely, the question whether they may resume and modify the powers granted to government does not remain to be settled in this country. Much more might the legitimacy of the general government be doubted, had it been created by the States. The powers delegated to the State sovereignties were to be exercised by themselves, not by a distinct and independent sovereignty, created by themselves. To the formation of a league, such as was the confederation, the state sovereignties were certainly competent. But when, 'in order to form a more perfect union,' it was deemed necessary to change this alliance

into an effective government, possessing great and sovereign powers, and acting directly on the people, the necessity of referring it to the people, and of deriving its powers directly from them, was felt and acknowledged by all.

The government of the Union, then (whatever may be the influence of this fact on the case,) is, emphatically, and truly, a government of the people. In form and in substance it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit." McCulloch v. State of Maryland: 17 (Wheat 4) U.S. 316, 402 thru 405 (1819).

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<http://books.google.com/books?id=TW4DAAAQAAJ&pg=PA402#v=onepage&q=&f=false>

Also:

"(2nd para) What, then are the distinctive characters of the republican form? . . .

(3rd para) If we resort for a criterion to the different principles on which different forms of government are established, **we may define a republic to be, or at least may bestow that name on, a government which derives all its powers directly or indirectly from the great body of the people**, and is administered by persons holding their office during pleasure, for a limited period, or during good behavior. It is ESSENTIAL to such a government that it be derived from the great body of the society, not from an inconsiderable proportion, or a favored class of it; otherwise a handful of tyrannical nobles, exercising their oppressions by a delegation of their powers, might aspire to the rank of republicans, and claim for their government the honorable title of republic. It is SUFFICIENT for such a government that the persons administering it be appointed, either directly or indirectly, by the people; and that they hold their appointments by either of the tenures just specified; otherwise every government in the United States, as well as every other popular government that has been or can be well organized or well executed, would be degraded from the republican character. According to the constitution of every State in the Union, some or other of the officers of government are appointed indirectly only by the people. According to most of them, the chief magistrate himself is so appointed. And according to one, this mode of appointment is extended to one of the co-ordinate branches of the legislature. According to all the constitutions, also, the tenure of the highest offices is extended to a definite period, and in many instances, both within the legislative and executive departments, to a period of years. According to the provisions of most of the constitutions, again, as well as according to the most respectable and received opinions on the subject, the members of the judiciary department are to retain their offices by the firm tenure of good behavior.

On comparing the Constitution planned by the convention with the standard here fixed, we perceive at once that it is, in the most rigid sense, conformable to it. The House of Representatives, like that of one branch at least of all the State legislatures, is elected immediately by the great body of the people. The Senate, like the present Congress, and the Senate of Maryland, derives its appointment indirectly from the people. The President is indirectly derived from the choice of the people, according to the example in most of the States. Even the judges, with all other officers of the Union, will, as in the several States, be the choice, though a remote choice, of the people themselves, the duration of the appointments is equally conformable to the republican standard, and to the model of State constitutions. The House of Representatives is periodically elective, as in all the States; and for the period of two years, as in the State of South Carolina. The Senate is elective, for the period of six years; which is but one year more than the period of the Senate of Maryland, and but two more than that of the Senates of New York and Virginia. The President is to continue in office for the period of four years; as in New York and Delaware, the chief magistrate is elected for three years, and in South Carolina for two years. In the other States the election is annual. In several of the States, however, no constitutional provision is made for the impeachment of the chief magistrate. And in Delaware and Virginia he is not impeachable till out of office. The President of the United States is impeachable at any time during his continuance in office. The tenure by which the judges are to hold their places, is, as it unquestionably ought to be, that of good behavior. The tenure of the ministerial offices generally, will be a subject of legal regulation, conformably to the reason of the case and the example of the State constitutions.

Could any further proof be required of the republican complexion of this system, the most decisive one might be found in its absolute prohibition of titles of nobility, both under the federal and the State governments; and in its express guaranty of the republican form to each of the latter." Federalist Papers #39 (James Madison).

<http://www.foundingfathers.info/federalistpapers/fed39.htm>

2. ". . . It is no longer open to question that by the Constitution a nation was brought into being, and that that instrument was not merely operative to establish a closer union or league of States. Whatever powers of government were granted to the Nation or reserved to the States (and for the description and limitation of those powers we must always accept the Constitution as alone and absolutely controlling), there was created a Nation, to be known as the United States of America, and as such then assumed its place among the nations of the world." State of Kansas v. State of Colorado: 206 U.S. 46, 80 (1907).

<http://books.google.com/books?id=AW4UAAAAYAAJ&pg=PA80#v=onepage&q=&f=false>

3. "Before the adoption of the Constitution, most if not all the States had constitutions. Under its own constitution each State, as a separate and independent sovereignty, had certain separate and independent powers, which it retained, while it surrendered other powers to the General Government under the Articles of Confederation. When the Constitution was adopted the States surrendered to the General Government, or, to use the language of the Constitution, 'delegated to the United States,' certain other or greater powers. But only such powers as were delegated to the United States, . . . were surrendered by the States. Such other powers as the States at that time possessed, and such as were not forbidden them by the Constitution, the States reserved to themselves, or to the people." The Constitution of the United States: its history, application and construction; David Kemper Watson (of the Columbus, Ohio, Bar); Volume II, Page 1527, 1910 (Callaghan & Company).

<http://books.google.com/books?id=9ozFAAAAMAAJ&pg=PA1527#v=onepage&q=&f=false>

An example of a power transferred from the several States to the United States:

Coining money

From Article I, Section 10, Clause 3 it declares:

"No State shall coin Money."

To Article I, Section 8, Clause 5 it provides:

"The Congress shall have power to coin Money."

An example of a power granted to the United States:

At Article I, Section 8, Clause 4 it reads:

"The Congress shall have power to establish a uniform Rule of Naturalization."

4. ". . . [T]he proposition that there are legislative powers affecting the Nation as a whole which belong to, although not expressed in the grant of powers, is in direct conflict with the doctrine that this is a government of enumerated powers. That this is such a government clearly appears from the Constitution, independently

of the Amendments, for otherwise there would be an instrument granting certain specified things made operative to grant other and distinct things. This natural construction of the original body of the Constitution is made absolutely certain by the Tenth Amendment. This amendment, which was seemingly adopted with prescience of just such contention as the present, disclosed the widespread fear that the National Government might, under the pressure of a supposed general welfare, attempt to exercise powers which had not been granted. With equal determination, the framers intended that no such assumption should ever find justification in the organic act, and that if, in the future further powers seemed necessary they should be granted by the people in the manner they had provided for amending that act. It reads:

'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 argument of counsel ignores the principal factor in this article, to-wit, 'the people.' Its principal purpose was not the distribution of power between the United States and the States, *but a reservation to the people of all powers not granted.* The preamble of the Constitution declares who framed it – 'we the people of the United States,' not the people of one State, but the people of all the States, and Article X reserves to the people of all the States the powers not delegated to the United States. The powers affecting the internal affairs of the States not granted to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, *and all powers of a national character which are not delegated to the National Government by the Constitution are reserved to the people of the United States.* The people who adopted the Constitution knew that in the nature of things they could not foresee all the questions which might arise in the future, all the circumstances which might call for the exercise of further national powers than those granted to the United States, and, after making provision for an amendment to the Constitution by which any needed additional powers would be granted, they reserved to themselves all powers not so delegated. State of Kansas v. State of Colorado: 206 U.S. 46, 89 thru 90 (1907).

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<http://books.google.com/books?id=AW4UAAAAYAAJ&pg=PA89#v=onepage&q=&f=false>

5. In Contra:

". . . To [Congress'] enumeration of powers is added that of making '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 thereof.'

The counsel for the State of Maryland have urged various arguments, to prove that this clause, though, in terms a grant of power, is not so in effect; but is really restrictive of the general right, which might otherwise be implied, of selecting means for executing the enumerated powers.

In support of this proposition, they have found it necessary to contend, that this clause was inserted for the purpose of conferring on Congress the power of making laws. That, without it, doubts might be entertained, whether Congress could exercise its powers in the form of legislation.

But could this be the object for which it was inserted? A government is created by the people, having legislative, executive and judicial powers. Its legislative powers are vested in a Congress, which is to consist of a Senate and House of Representatives. Each house may determine the rule of its proceedings; and it is declared that every bill which shall have passed both houses, shall, before it becomes a law, be presented to the President of the United States. The 7th section describes the course of proceedings, by which a bill shall become a law; and, then, the 8th section enumerates the powers of Congress. Could it be necessary to say, that a legislature should exercise legislative powers, in the shape of legislation? *After allowing each house to prescribe its own course of proceeding, after describing the manner in which a bill should become a law, would it have entered into the mind of a single member of the Convention, that an express power to make laws was necessary, to enable the legislature to make them? That a legislature, endowed with legislative powers, can legislate, is a proposition too self-evident to have been questioned."* McCulloch v. State of Maryland: 17 U.S. 316, 411 thru 413 (1819).

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6. There is also the following from the Federalist Papers #44 (Alexander Hamilton):

"(9th para)The SIXTH and last class consists of the several powers and provisions by which efficacy is given to all the rest.

1. Of these the first is, the '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.'

Few parts of the Constitution have been assailed with more intemperance than this; yet on a fair investigation of it, no part can appear more completely invulnerable. Without the SUBSTANCE of this power, the whole Constitution would be a dead letter. Those who object to the article, therefore, as a part of the Constitution, can only mean that the FORM of the provision is improper. But have they considered whether a better form could have been substituted?

There are four other possible methods which the Constitution might have taken on this subject. They might have copied the second article of the existing Confederation, which would have prohibited the exercise of any power not EXPRESSLY delegated; they might have attempted a positive enumeration of the powers comprehended under the general terms 'necessary and proper'; they might have attempted a negative enumeration of them, by specifying the powers excepted from the general definition; they might have been altogether silent on the subject, leaving these necessary and proper powers to construction and inference.

Had the convention taken the first method of adopting the second article of Confederation, it is evident that the new Congress would be continually exposed, as their predecessors have been, to the alternative of construing the term "EXPRESSLY" with so much rigor, as to disarm the government of all real authority whatever, or with so much latitude as to destroy altogether the force of the restriction. It would be easy to show, if it were necessary, that no important power, delegated by the articles of Confederation, has been or can be executed by Congress, without recurring more or less to the doctrine of CONSTRUCTION or IMPLICATION. As the powers delegated under the new system are more extensive, the government which is to administer it would find itself still more distressed with the alternative of betraying the public interests by doing nothing, or of violating the Constitution by exercising powers indispensably necessary and proper, but, at the same time, not EXPRESSLY granted.

Had the convention attempted a positive enumeration of the powers necessary and proper for carrying their other powers into effect, the attempt would have involved a complete digest of laws on every subject to which the Constitution relates; accommodated too, not only to the existing state of things, but to all the possible changes which futurity may produce; for in every new application of a general power, the PARTICULAR POWERS, which are the means of attaining the OBJECT of the general power, must always necessarily vary with that object, and be often properly varied whilst the object remains the same.

Had they attempted to enumerate the particular powers or means not necessary or proper for carrying the general powers into execution, the task would have been no less chimerical; and would have been liable to this further objection, that every defect in the enumeration would have been equivalent to a positive grant of authority. If, to avoid this consequence, they had attempted a partial enumeration of the exceptions, and described the residue by the general terms, NOT NECESSARY OR PROPER, it must have happened that the enumeration would comprehend a few of the excepted powers only; that these would be such as would be least likely to be assumed or tolerated, because the enumeration would of course select such as would be least necessary or proper; and that the unnecessary and improper powers included in the residuum, would be less forcibly excepted, than if no partial enumeration had been made.

Had the Constitution been silent on this head, there can be no doubt that all the particular powers requisite as means of executing the general powers would have resulted to the government, by unavoidable implication. No axiom is more clearly established in law, or in reason, than that wherever the end is required, the means are authorized; wherever a general power to do a thing is given, every particular power necessary for doing it is included. Had this last method, therefore, been pursued by the convention, every objection now urged against their plan would remain in all its plausibility; and the real inconveniency would be incurred of not removing a pretext which may be seized on critical occasions for drawing into question the essential powers of the Union."

<http://www.foundingfathers.info/federalistpapers/fed44.htm>

7. "The government is to pay the debt of the union, and must be authorized to use the means which appear to itself most eligible to effect that object. It has consequently a right to make remittances by bills or otherwise, and to take those precautions which will render the transaction safe." United States v. Fisher: 6 (Cranch 2) U.S. 358, 396 (1805).

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<http://books.google.com/books?id=qzkFAAAAYAAJ&pg=PA396#v=onepage&q=&f=false>

8. "The constitution of the United States was ordained and established, not by the states in their sovereign capacities, but emphatically, as the preamble of the constitution declares, by 'the people of the United States.' There can be no doubt that it was competent to the people to invest the general government with all the

powers which they might deem proper and necessary, to extend or restrain these powers according to their own good pleasure, and to give them a paramount and supreme authority." Martin v. Hunter's Lessee: 14 (Wheat 1) U.S. 304, 324 thru 325 (1816).

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For an illustration of a restriction, see State of South Carolina v. United States: 199 U.S. 437, 450 thru 451 (1905).

9. They were many objections to the Constitution in its course of being ratified by the States. One was that the Constitution of the United States of America did not have a declaration (or bill) of rights. But why no bill or rights?

"(8th para). . . [A] minute detail of particular rights is certainly far less applicable to a Constitution like that under consideration, which is merely intended to regulate the general political interests of the nation, than to a constitution which has the regulation of every species of personal and private concerns.

(7th para) It has been several times truly remarked that bills of rights are, in their origin, stipulations between kings and their subjects, abridgements of prerogative in favor of privilege, reservations of rights not surrendered to the prince. Such was *Magna Charta*, obtained by the barons, sword in hand, from King John. Such was the subsequent confirmations of that charter by succeeding princes. Such was the *Petition of Right* assented to by Charles I., in the beginning of his reign. Such, also, was the *Declaration of Right* presented by the Lords and Commons to the Prince of Orange in 1688, and afterwards thrown into the form of an act of Parliament called the Bill of Rights. It is evident, therefore, that, according to primitive signification, they have no application to constitutions, professedly founded upon the power of the people and executed by their immediate representatives and servants. Here in strictness, the people surrender nothing; and as they retain everything, they have no need of particular reservations. . . .

(11th para). . . The truth is, after all the declamations we have heard, that the Constitution is itself, in every rational sense, and to every useful purpose, a *Bill of Rights*. The several bills of rights in Great Britain form its Constitution; and conversely, the constitution of each State is its bill of rights. And the proposed Constitution, if adopted, will be the bill of rights of the Union." Federalist Papers #84 (Alexander Hamilton).

<http://www.foundingfathers.info/federalistpapers/fed84.htm>

10. Statutes at Large, 1st Congress, 1st Session, Page 97.

<http://memory.loc.gov/cgi-bin/ampage?collId=llsl&fileName=001/llsl001.db&recNum=220>

11. "To the People of the State of New York:

AFTER an unequivocal experience of the inefficiency of the subsisting federal government, you are called upon to deliberate on a new Constitution for the United States of America." Federalist Papers #1 (Alexander Hamilton)

<http://www.foundingfathers.info/federalistpapers/fed01.htm>

12. ". . . The Ninth Amendment reads, 'The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.'

The Amendment is almost entirely the work of James Madison. It was introduced in Congress by him, and passed the House and Senate with little or no debate and virtually no change in language. It was proffered to quiet expressed fears that a bill of specifically enumerated rights could not be sufficiently broad to cover all essential rights, and that the specific mention of certain rights would be interpreted as a denial that others were protected." Griswold v. State of Connecticut: 381 U.S. 479, 488 thru 489, *concurring opinion of Justice Goldberg, the Chief Justice, and Justice Brennan* (1965)

<http://supreme.justia.com/us/381/479/case.html#488>

"Madison's comments in Congress also reveal the perceived need for some sort of constitutional 'saving clause,' which, among other things, would serve to foreclose application to the Bill of Rights of the maxim that the affirmation of particular rights implies a negation of those not expressly defined. See 1 *Annals of Congress* 438-440 (1789). See also, e.g., 2 J. Story, *Commentaries on the Constitution of the United States* 651 (5th ed. 1891). Madison's efforts, culminating in the Ninth Amendment, served to allay the fears of those who were concerned that expressing certain guarantees could be read as excluding others." Richmond Newspapers, Incorporated v. State of Virginia: 448 U.S. 555 (Fn 15) (1980).

<http://supreme.justia.com/us/448/555/case.html#F15>